

5d 3/13/1266/SV - Modify the s.52 (now known as section 106) agreement attached to planning permission 3/86/1939/OP to remove the 'elderly persons' age restriction at Land at Stocking Hill Lane, Cottered, SG9 9PY for Joseph Edis

Date of Receipt: 05.12.2013

Type: Variation of Section 106
- Major

Parish: COTTERED

Ward: MUNDENS AND COTTERED

RECOMMENDATION:

That the removal of Clause 1 (i) of the Section 52 Legal Agreement signed on 28th September 1987 under planning reference 3/86/1939/OP be **GRANTED**.

_____ (126613SV.LP)

1.0 Background:

- 1.1 The application site is shown on the attached OS extract and comprises a residential development of 9 no. single storey dwellings with associated parking and landscaping.
- 1.2 The site is located in the Rural Area Beyond the Green Belt, at the northern end of Stocking Hill Lane backing onto open countryside. There is an existing residential development located to the north (No 10-17 Stocking Hill Lane) which falls outside the current application site but was also developed in accordance with the original planning permission in 1987.
- 1.3 This application proposes to remove Clause 1 (i) of the legal agreement signed in relation to application 3/86/1939/OP. The clause is worded as follows:

“use the dwellings for the purposes of providing accommodation for elderly persons and not for any other purpose.”
- 1.4 The term 'elderly persons' was not defined at that time, although Members will note from the Planning history set out below that it was later defined as being aged 50 and over.
- 1.5 Members may also recall that a similar age restriction on a legal agreement accompanying a later application (ref: 3/06/0314/FP) for the 8 units to the north of this current application site (which also restricted occupancy to age 50+) was removed on an appeal in 2013.

1.6 This history is set out in the following section.

2.0 Site History:

2.1 The site has a lengthy planning history for residential developments, as follows:

- Outline permission was granted in 1987 for 15 no. elderly persons dwellings on the wider site (reference 3/86/1939/OP) and a community building. A legal agreement restricted occupation to 'elderly persons' (with no age specified), and required that 5 of the units be rented to meet local housing needs. It is this legal agreement that relates to this current application.
- Those permissions were implemented, but an application was later approved in 1992 for a revised layout (reference 3/92/0474/FP), omitting the community building. Nine of the 15 dwellings were completed on the southern part of the site - now occupied as Nos. 1-9 Stocking Hill which forms the dwellings subject to this application. The remaining 6 units were not constructed
- A variation of the original legal agreement to remove the requirement to make 5 units available for local housing needs, and to define the term 'elderly persons' as being aged 50 years or over was later approved at Committee in November 1999.
- An amended scheme for 8 no. units to the north of the current application site (reference 3/02/0696/FP) was granted subject to a legal agreement restricting occupancy to those aged 50 years or over. A further revised application was then submitted (reference 3/06/0314/FP) again for 8 no. units, which was approved in 2007 and constructed (now known as 10-17 Stocking Hill Lane). This permission was also subject to a similar legal agreement, restricting occupancy to those aged 50 years or over.
- Members may recall that a planning application was submitted in September 2012, under reference 3/12/1485/SV to modify the Section 106 agreement attached to planning permission 3/06/0314/FP to remove the elderly persons age restriction on the northern part of the site. Officers recommended the application for approval. However, Members were concerned about the impact of the proposal on the residential amenity of the existing and adjacent properties and refused the application for the following reason:

'The Council is of the view that removing the restriction could lead

to a harmful impact on the residential amenity of existing and adjacent properties contrary to policy ENV1 of the East Herts Local Plan Second Review April 2007’.

An appeal against that decision was, however, allowed, with the Inspector noting that the removal of the restriction would not result in unacceptable impact to occupiers of the dwellings nor would there be any significant harm in terms of the supply of housing for older people, either in the local area or in the District as a whole. In regards to that appeal, an application for full costs was also awarded against the Council.

3.0 Consultation Responses:

3.1 There are no consultation responses in this case.

4.0 Parish Council Representations:

4.1 Cottered Parish Council has objected to the proposal although no reasons for the objection are stated in their letter of representation.

5.0 Other Representations:

5.1 The application has been advertised by way of press notice, site notice and neighbour notification.

5.2 Nine letters of objection have been received from Stocking Hill residents which can be summarised as follows:

- Purchased the properties wanting a certain lifestyle and security in mature years
- Removal of the age restriction would be a breach of the covenants
- Would result in a loss of quietness. Likelihood of children living in properties – increased noise
- Do not consider restrictions affect value of property
- Concern that communal grounds would be full of trampolines, swings etc and increase in dog fouling

5.3 Six letters of support have been received, which can be summarised as follows:

- Restriction denies wider community from purchasing a property
- Age of 45 is not considered elderly. Inappropriate
- Would open the site to younger people/mix of ages – the elderly do not want to live in a ‘home for senior citizens’

- Restrictions make it harder to sell and reduces values
- Location of site does not lend properties to being occupied by elderly. Isolated location and limited public transport

6.0 Policy:

6.1 There are no saved Local Plan policies relevant to this application. Historically, the 1981 East Hertfordshire District Plan included a policy, H4, which encouraged development proposals that make special provision for the elderly as a 'special needs group'. Subsequent Local Plans (adopted in 1993 and 1999) included policies which favoured proposals that make a particular provision for 'special needs groups', but only within the towns and selected rural settlements, and Cottered was not one of these selected settlements. No equivalent policy applies in the saved 2007 Local Plan.

7.0 Considerations:

Evidence and Need for Elderly Accommodation

- 7.1 The main issue in this case relates to the planning justification and evidence of planning reasons for the age restriction to remain in place on this development. Circular 05/2005 which set out policy on Planning Obligations was cancelled with the publication of the NPPF in March 2012. Paragraph 204 of the NPPF replicates the requirements of the previous Circular, however, stating that planning obligations should only be sought where they meet the following tests:
- *necessary to make the development acceptable in planning terms;*
 - *directly related to the development; and*
 - *fairly and reasonably related in scale and kind to the development.*
- 7.2 Paragraph 205 of the NPPF states that 'where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.' Furthermore, in order for an obligation to be deemed necessary to make the development acceptable in planning terms, there must clearly be a policy justification.
- 7.3 In this case there is no saved policy in the adopted Local Plan that requires any specific accommodation to be provided for elderly residents in this district, or to require the restriction of the occupation of

any dwellings to those over a certain age. Although there was a policy in the 1981 Local Plan that favoured proposals making special provision for the elderly, this policy was not repeated in subsequent plans. The age restriction in the case of the application site was only put in place originally as it was offered by the applicant at the time as a way of securing planning consent for housing in the Rural Area. Officers advised at the time that permission should be refused on the grounds of the presumption against development in the Rural Area.

- 7.4 The Council has no evidence in the form of housing needs surveys to identify a particular need for age restricted residential units in the Cottered area. Members may be aware that a Strategic Housing Market Assessment (SHMA) was carried out by the Council in 2008 to identify any particular housing needs to inform future policy making. This report recognised the importance of ensuring that a part of the new housing delivery across all tenures is particularly suited for the elderly, and identified that specialised 'extra care housing' for the elderly should form part of the future housing requirement.
- 7.5 It is important to acknowledge that these recommendations will be taken into account in forming future housing policy for the district, as part of the new District Plan, but this does not identify any specific need for age restricted accommodation in the Cottered area. Further, any future need that may be identified in Council policy would be likely to relate to 'extra care housing', which includes a high level of on-site support, not present at Stocking Hill, and would most likely cater for those far over the age of 50. There is therefore no evidence in the SHMA to justify retention of this age restriction.
- 7.6 As outlined above within the 'Site History' an application to remove the age occupancy restriction of 50 years for the 8 dwellings to the immediate north of the site (reference 3/12/1485/SV) was refused by the Council and allowed on appeal. The Council was viewed as having taken an unreasonable position on this proposal and a costs award was made against it. The Inspector considered that the removal of the age restriction was not needed to protect the living conditions of neighbours and that nothing in the Local Plan or the NPPF suggest separating different age groups in any event. It would not conflict with Policy nor result in any significant harm in terms of the supply of housing for older people either in the local area or in the District. It is considered that the issues at this site are the same and that, as a result, significant weight should be given to this appeal decision. The Inspector made it very clear that policy justification for an age restriction has to be available and relevant in each case.

- 7.7 Members are advised to note that the site is located in a remote rural location without convenient access to facilities, and with no shops in the village. There is a bus stop on the main road, involving a walk of some 280m. Officers therefore do not consider the site particularly suited for older generations, particularly those with mobility problems.

Design and Layout

- 7.8 Officers consider that there is nothing significant in the layout or design of the development that would make the units unsuitable for any other age occupant. The dwellings are laid out in an open plan form with shared communal gardens – however each dwelling is provided with a small private garden area. There has been concern raised that the units would not be suitable for those with children, however of course any future occupiers would be aware of the outdoor amenity space provision if they were to occupy the dwelling. The layout would not therefore result in unacceptable living conditions if the dwellings were occupied on an unrestricted basis.

Neighbour Amenity

- 7.9 In terms of neighbour impact, a concern has been raised by one of the existing residents at No.6 Stocking Hill that a removal of the age restriction would result in noise and disturbance, particularly from children. The maintenance of good living conditions is important for all occupiers, including the elderly and that aim is reflected in Policy ENV1(d) of the Local Plan, and in the core planning principles of the NPPF. However, as the Inspector in the recent appeal decision commented, nothing in either of these documents suggests that this should involve separating different age groups, nor is there any policy or guidance that advocates different standards of residential amenity for the elderly compared to other occupiers. The surroundings at Stocking Hill are relatively peaceful and secluded and it is likely that existing residents value those qualities, and indeed may have chosen to live there for that very reason. It may well be that younger occupiers would be more likely to include families with children, and would probably tend to generate a higher level of activity. However, and as noted by the Inspector on 3/06/0314/SV, the removal of the age restriction might result in some increase in noise, but that does not mean that the noise and disturbance would be so great as to result in unacceptable living conditions, even in an otherwise quiet location.
- 7.10 In addition, the common counter argument is that many elderly residents enjoy the activity and vitality that living in an area with mixed age groups brings (as noted within the support letter by one of the existing residents). Any additional noise or other issues arising from

family living is not considered to be so significant as to result in harm to those living on the site. Officers consider that only limited weight can be assigned to this matter.

Parking Provision and Access

- 7.11 In terms of parking provision, there are currently 12 no. allocated spaces for the 9 x 2 bed dwellings (within the garage and in open parking at the site entrance). The maximum parking provision for the development, given its location, would amount to 13.5 no. spaces. The existing 12 space provision therefore falls only slightly short of the maximum parking provision, and given that any occupier of this isolated site will be reliant on car transport, Officers consider that this cannot be used as a reason to refuse this application.
- 7.12 Officers note that there is the potential for the increased frequency of vehicular movements for unrestricted living, compared to age restricted living. However, any increase in vehicular movements would be unlikely to be significant. It is also important to remember that the existing age restriction could still accommodate full-time workers, commuting on a daily basis and having families to visit. Further, the units are 2 beds and would therefore not be capable of accommodating large families. The proposal is therefore considered to be acceptable in this regard.

8.0 Conclusion:

- 8.1 Overall, Members are advised that there is no policy justification in Local or National policy to require this residential development to be occupied solely by 'elderly persons.' The removal is not considered to result in unacceptable amenity impacts to occupiers, nor would it raise highway concerns.
- 8.2 The similar application to lift an age restriction on the adjacent site was recently allowed on appeal, with full costs awarded against the Council due to the lack of evidence to justify the refusal.
- 8.3 Overall, Officers consider that the planning obligation fails to meet the tests set out in paragraph 204 of the NPPF and the application to remove it is therefore recommended for approval.