

3/09/0124/SV – Modify Section 106 agreement to planning permission lpa ref: 3/96/0813/FP to remove the clause restricting the age of occupancy to that of persons of at least 55 years, at 15 Finches End, Walkern for Mr W. Atkinson

Date of Receipt: 27.01.09

Type: Section 106 Variation

Parish: WALKERN

Ward: WALKERN

RECOMMENDATION

That the Director of Neighbourhood Services be authorised to **GRANT** the variation of the Section 106 agreement dated 10th March 1007 pursuant to planning application 3/96/0813/FP, to allow for the deletion of Clause 2. (c) which reads ‘That no retirement home shall be used or occupied other than as private residential accommodation for persons where at least one member of the household is of the specified age (aged 55 years or over) provided that this restriction shall not apply to the occupation of any retirement home by surviving spouse or sibling under the specified age who was permanently residing with a person of the specified age at the date of death and continues to occupy the retirement homes after the death of the said person of the specified age who had occupied that retirement home in the period immediately before his or her death’.

Summary of Reasons for Decision:

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and East Herts Local Plan Second Review April 2007), and in particular policy OSV1. The balance of the considerations having regard to those policies is that permission should be granted.

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1.0 Background

- 1.1 The site is on the eastern side of Walkern High Street, with the road of Finches End sited opposite the junction with Stevenage Road, as shown on the attached OS extract. The site lies within the confines of the Category 1 Village of Walkern and falls within the Conservation Area.
- 1.2 This application seeks to remove the age restriction of occupiers of the above property, imposed by the Section 106 agreement attached to the permission lpa ref 3/96/0813/FP. Although the application has been submitted on behalf of the owner of one of the properties subject to this

restriction (No. 15 Finches End), the removal of the agreement would relate to the four properties that fall within this age restriction clause (No. 2, 3, 14 and 15 Finches End).

2.0 Site History

- 2.1 A planning application in 1994, lpa ref 3/94/1508/FP for the demolition of existing buildings and erection of 20 dwellings and garages was approved at Committee. This proposal included 4, 2 bed 'elderly persons' bungalows. This permission was not implemented however.
- 2.2 A later application lpa ref 3/96/0813/FP for the construction of 18 no. houses and garages with associated roads, landscaping and drainage was approved as a variation of the previously approved permission. This proposal also included 4, 2 bed 'elderly persons' bungalows which formed part of the Section 106 agreement, requiring that *'no retirement home shall be used or occupied other than as private residential accommodation for persons where at least one member of the household is of the specified age (aged 55 years or over) provided that this restriction shall not apply to the occupation of any retirement home by surviving spouse or sibling under the specified age who was permanently residing with a person of the specified age at the date of death and continues to occupy the retirement homes after the death of the said person of the specified age who had occupied that retirement home in the period immediately before his or her death.'* It is this permission that was constructed and the subject of this application to now remove this age restriction.

3.0 Consultation Responses

- 3.1 The Councils Housing Development Officer has commented that the site is a private development with no connections to affordable housing. They comment that there is no RSL involved in the scheme and as such make no comments.

4.0 Parish Council Representations

- 4.1 Walkern Parish Council made the following comments:-

'...Walkern Parish Council wish it to be recorded that they are not in favour of the application to remove the clause attached to the above property to therefore allow persons under the age of 55 to live there, either privately or rented. There is no case being made as a reason to lift it and no justification for this. The covenant was created for a reason, that these few bungalows should be available for persons 55 years and over and the Parish Council feels very strongly that they should remain this way.'

5.0 Other Representations

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification.
- 5.2 13 neighbours have submitted letters raising objections as follows:-
- Previously the need was identified – no change in circumstance
 - Concern of loss of elderly persons units within village
 - Garden size not suitable for family home
 - Impact to neighbouring amenity (noise and disturbance from coming and goings) from a family home

6.0 Policy

- 6.1 When considering the application the main policy contained in the adopted Local Plan to take into account is policy OSV1: Category 1 Villages. Furthermore, Circular 05/2005 provides national guidance on the appropriate tests to be applied when imposing Planning Obligations.

7.0 Considerations

- 7.1 The main considerations in this case relate to whether the S106 agreement remains necessary and related to policy and the impact of its removal on the adjoining occupiers and wider locality.
- 7.2 At the time of the original approval for this residential development ref 3/96/0813/FP, the site fell within the Rural Area (there being no Category 1, 2 or 3 designation at this time). Although recommended for refusal by officers on Rural Area grounds, members of the Development Control Committee felt that there were other material considerations which outweighed the policy presumption against the residential development and resolved to grant planning permission, subject to a S106 agreement.
- 7.3 Circular 05/2005 provides national guidance on the appropriate tests to be applied to planning obligations and this states that such obligations must meet all of the following tests:
- (i) relevant to planning;
 - (ii) necessary to make the proposed development acceptable in planning terms;
 - (iii) directly related to the proposed development;
 - (iv) fairly and related in scale and kind to the proposed development; and
 - (v) reasonable in all other respects.

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- 7.4 That guidance highlights the fact that obligations are “*intended to make acceptable development which would otherwise be unacceptable in planning terms*”
- 7.5 In this case, however, Officers consider that the relevant clause in the S106 obligation would not meet all the above tests. In particular, it is not considered that the retention of the elderly person’s accommodation is *necessary* in planning terms. There is no policy justification for requiring elderly persons’ accommodation on this site within the Local Plan and the removal of the restriction would not, as a result, make the residential use of this site unacceptable in planning policy terms.
- 7.6 Furthermore, Officers do not consider that the removal of the clause would result in any harm being caused to neighbouring occupiers or the character and appearance of the area as a whole.
- 7.7 Whilst Officers are sympathetic to the Parish Council and neighbours concern and can see benefits, such a mixed demographic mix, of retaining these units for persons over 55 years, it is not considered that a legal agreement is necessary to do this. The properties in question are of a modest size with 2 bedrooms and a private rear garden space of around 40 square metres. It is likely that the units, by reason of their size, are likely to be retained by elderly persons or as a ‘starter home’ for young people, and as such are likely to still meet the needs of these sections of the population. Officers therefore consider that the type of housing in itself will influence the demographic mix in the area.
- 7.8 The concerns expressed by third parties regarding noise and general disturbance from the potential use of the property by families are noted. However, the dwellings are situated no closer to their neighbours than other unrestricted dwellings nearby and therefore any noise or disturbance would be no greater than that which could result from any of the adjacent properties. Furthermore, the properties are unlikely to be used for family housing due to their modest size.
- 7.9 Each of the properties has adequate off-street parking provision and therefore the age restriction is not necessary to render the development acceptable in parking or highway terms.

8.0 Conclusion

- 8.1 To conclude, it is considered that it is not unnecessary, in planning terms, to restrict the occupancy of these four dwellings to elderly persons. There is no policy justification in the current Local Plan for doing so, and there are no other planning reasons why such a restriction is necessary.

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8.2 Officers therefore consider that the clause does not meet the tests of Circular 05/2005 and it is therefore recommended that this application to remove it be granted.