

E/07/0319/B – Breach of a s106 agreement, which restricts the bungalow to be occupied by persons over 55 years of age, at 15 Finches End, Walkern.

Parish: WALKERN

Ward: WALKERN

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take legal proceedings under Section 106(3) of the Town and Country Planning Act 1990 and any such further steps as may be required to secure compliance with the s106 agreement.

Reasons why it is expedient to require compliance with the details of the s106 agreement.

It is considered that there is a continuing need for the provision of accommodation for elderly person within the village of Walkern.

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1.0 Background

- 1.1 The site lies 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 Finches End has 18 properties consisting of 14 free market dwellings and 4 retirement homes. The subject property is one of the 4 retirement dwellings.
- 1.3 In June 2007 it was brought to the attention of this local planning authority that the occupants of 15 Finches End, Walkern, one of the retirement bungalows, were under 55 years of age contrary to the requirements of a s106 agreement.
- 1.4 Officers wrote to the owner/occupier on several occasions regarding this matter but received no response. Eventually the owner requested an application form in order that an application could be submitted seeking permission to remove the onerous clause of the s106 agreement.
- 1.5 The application, received on the 27th January 2009, sought to remove the age restriction of occupiers of the property, imposed by the Section 106 agreement attached to the permission ref 3/96/0813/FP. Although the application had been submitted on behalf of the owner of the property subject to this restriction (No. 15 Finches End), the removal of the

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

- 1.6 Members may recall that on 8th April 2009 the Development Control Committee resolved to refuse permission to modify the s106 agreement as Members felt that there was a continuing need for the provision of accommodation for elderly persons within the village of Walkern.
- 1.7 During the consultation period for the above mentioned application 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.'

- 1.8 Following the decision to refuse permission to modify the s106 agreement, officers sought confirmation from the owner that the current tenancy agreement with persons under the age of 55 years would be terminated and that the age restriction would be complied with. No such confirmation has been received and the letting agent has advised officers that the owner has instructed the agent to renew the tenancy agreement and let the property to persons who are under the age of 55 years.

2.0 Site History

- 2.1 A planning application in 1994, 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 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.

3.0 Policy

3.1 When the application was considered the relevant policy of the adopted Local Plan was policy OSV1: Category 1 Villages. Furthermore, Circular 05/2005 provided national guidance on the appropriate tests to be applied when imposing Planning Obligations.

4.0 Considerations

4.1 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.

4.2 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.

4.3 Circular 05/2005 provided national guidance on the appropriate tests to be applied to planning obligations and this stated 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.

4.4 That guidance highlights the fact that obligations are "*intended to make acceptable development which would otherwise be unacceptable in planning terms*"

4.5 In this case, however, during the consideration of the application to modify the agreement, Officers considered that the relevant clause in the S106 obligation would not meet all the above tests. In particular, it was not considered that the retention of the elderly person's accommodation was *necessary* in planning terms. There was no policy justification for requiring elderly persons' accommodation on this site within the Local Plan and the

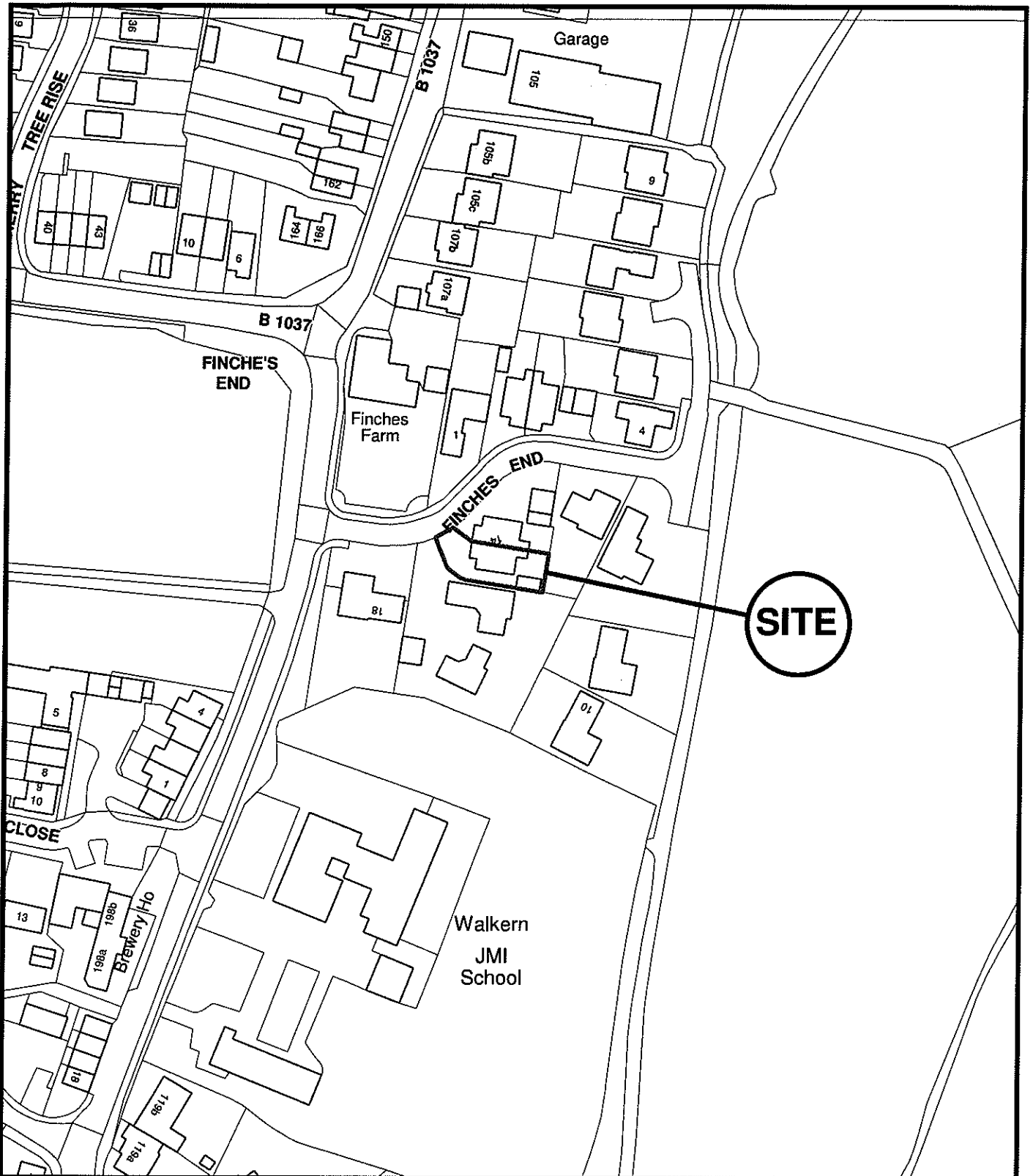
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removal of the restriction would not, as a result, make the residential use of this site unacceptable in planning policy terms.

- 4.6 Furthermore, Officers did 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.
- 4.7 Whilst Officers were sympathetic to the Parish Council and neighbours concern and could see benefits, such a mixed demographic mix, of retaining these units for persons over 55 years, it was not considered that a legal agreement was 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 was likely that the units, by reason of their size, were 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 considered that the type of housing in itself will influence the demographic mix in the area.
- 4.8 The concerns expressed by third parties regarding noise and general disturbance from the potential use of the property by families were 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 were unlikely to be used for family housing due to their modest size.
- 4.9 Each of the properties has adequate off-street parking provision and therefore the age restriction was not necessary to render the development acceptable in parking or highway terms.
- 4.10 However, the Development Control Committee, on the 8th April 2009, resolved to refuse any modification to the s106 agreement as Members felt that there was a continuing need for the provision of accommodation for elderly persons within the village of Walkern.

5.0 Conclusion

- 5.1 In view of the above it is recommended that the Development Control Committee authorise legal proceedings to ensure compliance with the details of the s106 agreement.



SITE

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