

3/09/1849/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 Sandie Brent

Date of Receipt: 17. 11.09

Type: s.106 Variation - Major

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 1997 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 and the material guidance on planning obligations, Circular 05/2005 is that permission should be granted.

_____ (184909FP.MC)

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 permission 3/96/0813/FP and signed on the 10th March 1997. Although the

3/09/1849/SV

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).

- 1.3 Members may recall that a previous application to remove this clause of the agreement (Ref: 3/09/0124/SV) was refused permission in April 2009 as members felt that there was a continuing need for the provision of accommodation for elderly persons in the village of Walkern. Legal proceedings were also authorised in November 2009 in respect of the particular breach at number 15 Finches End. In view of this latest application, however, no proceedings have as yet been instigated.
- 1.4 This current application again requests permission to vary the agreement by the removal of the age restricting clause. In a supporting statement submitted with the application, the applicant's agent stresses that, in his view, the local planning authority cannot reasonably withhold such permission for the following reasons:-

- Paragraph 4 of the agreement prevents the LPA from withholding consent for any relaxation or variation of the agreement where permission is granted for the redevelopment of the Finches End site and that relaxation or variation would be necessary to secure that redevelopment
- There is no identified need for elderly housing provision in the village or policy requirement for this
- A Strategic Housing Market Assessment has not been carried out in the local area to identify any local need for elderly housing accommodation
- The current accommodation does not represent affordable housing as the houses are all privately owned
- The owner has attempted to rent out the property to over 55's but without success
- The agreement does not currently meet the tests of Circular 05/2005

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 permission was not implemented however. An additional S.106 agreement exists in relation to this permission. This agreement, signed on the 25th September 1995, also required the retention

3/09/1849/SV

of four bungalows for occupants over 55 years of age. As this development was never implemented the agreement never came into force and does not require removal.

- 2.2 A later application (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 four '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 development that was constructed and which is the subject of this application to now remove this age restriction.
- 2.3 3/09/0124/SV – Modify the Section 106 agreement attached to planning permission 3/96/0813/FP to remove the clause restricting the age of occupancy to persons of at least fifty-five years – Refused April 2009
- 2.4 E/07/0319/B – Breach of S106 agreement, restricting occupation by persons over 55 years of age – Enforcement action authorised November 2009

3.0 Consultation Responses

- 3.1 No responses have been received at the time of writing this report.
- 3.2 With regard to the previous application on this site, the Council's Housing Development Officer confirmed that all properties on the street were privately owned, with no Registered Social Landlord involved with the site.
- 3.3 Any further responses received will be reported verbally at the meeting

4.0 Parish Council Representations

- 4.1 No representations have been received from Walkern Parish Council at the time of writing this report.
- 4.2 With regard to the previous application on this site, the 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.'

4.3 Any further responses received from the Parish Council will again be reported verbally at the meeting.

5.0 Other Representations

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

5.2 Ten letters of representation have been received, raising the following concerns:

- No change in circumstance from previous applications
- Concern regarding the loss of elderly persons units within village
- Garden size not suitable for family home
- Likely increase in noise and disturbance to local residents from family homes
- Setting a precedent in terms of removal of S.106 obligations elsewhere in the District

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

3/09/1849/SV

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 the S106 agreement. The elderly person's accommodation had been offered as part of the proposal by the applicant at the time.

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.

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, your 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. The layout and siting of the homes covered by the agreement is considered to be equally acceptable for occupation by persons under the age of 55.

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. Officers therefore consider that the type of housing in itself will influence the demographic mix in the area.

- 7.8 The properties on Finches End are all privately owned. There is no control over their price or availability as would be the case if they were managed by a Registered Social Landlord. There can be no guarantee therefore that these properties would be affordable by the over 55's even if the restriction were to remain in place, and it may be inferred from the owner's inability to sell the property to a person over 55 that this is presently the case.
- 7.9 Whilst the applicant's submissions in respect of paragraph 4 of the agreement (as referred to in paragraph 1.4 of this report) are noted, officers do not consider that this is relevant to the issue before members. There is no redevelopment proposal for the "application site" (which, in the agreement, is defined as encompassing the whole area of the Finches end) and therefore no necessity to consider whether the variation of the clause would hinder the implementation of it.
- 7.10 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.
- 7.11 Each of the properties has access to off street parking. The age restriction is not therefore necessary to render the development acceptable in parking
- 7.12 Although Members have previously refused to agree to this request and have authorised legal proceedings in respect of the current breach at 15 Finches End, Officers remain of the view that the relevant clause in this agreement is not justified on planning grounds. In these circumstances, Officers also consider that legal action in this respect would be unlikely to be successful. Accordingly, Members are asked to consider the resource implications of continuing with such action and it is recommended that this latest request is granted.

8.0 Conclusion

- 8.1 To conclude, it is considered that it is not necessary or reasonable, 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.

3/09/1849/SV

8.2 Officers therefore remain of the view 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 and that the no further action be taken in respect of the occupancy of number 15 Finches End.