

3/15/0228/SV – Variation of the Section 106 Legal Agreement associated with LPA 3/92/0474/FP (dated 3rd September 2001) by the removal of Clause 1.2 and the removal of Clause 1(i) of the s52 Agreement (dated 28th September 1987) associated with LPA 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: 28.01.2015

Type: Variation of Section 106
– Major

Parish: COTTERED

Ward: THE MUNDENS AND COTTERED

RECOMMENDATION:

That the removal of removal of Clause 1.2 of the Section 106 Legal Agreement associated with LPA 3/92/0474/FP (dated 3rd September 2001) be **APPROVED.**

_____022815SV.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 1.2 of the Section 106 Legal Agreement associated with LPA 3/92/0474/FP (dated 3rd September 2001). That Clause is worded as follows:

‘at all material times the dwellings shall each be occupied by at least one person over the age of 50 years’.

1.4 The application also seeks to remove Clause 1(i) of the s52 Legal Agreement associated with application 3/86/1939/OP. That clause is worded as follows:

“use the dwellings for the purposes of providing accommodation for elderly persons and not for any other purpose.”

- 1.5 This clause however, (clause 1(i)) has already been removed under Ipa 3/13/1266/SV and so there is no need to further address it here.
- 1.6 Of note is that a similar age restriction through 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.
- 1.7 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. The age restriction on this legal agreement has been removed under Ipa 3/13/1266/SV.
 - 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. This variation of the legal agreement inserted Clause 1.2 which restricted each of the dwellings to be occupied by at least one person over the age of 50 years. It is this clause that the application seeks to be removed.
 - 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.

- An 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 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. An application for full costs was 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 made no comment.

5.0 Other Representations

5.1 The application has been advertised by way of press notice, site notice and neighbour notification. No letters of representation have been received.

5.2 Former Councillor Ranger has commented in support of the application.

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.

- 6.2 The emerging District Plan seeks to reintroduce a policy that supports the provision of specialist housing for older people (policy HOU1). Any provision should be in accordance with the information in the latest Strategic Housing Market Assessment (SHMA) and be located on suitable sites in appropriate and sustainable locations. The District Plan is at an early stage in its preparation and this policy is subject to currently unresolved objections. Very little weight can be assigned to it at this stage.

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. Paragraph 204 of the NPPF states 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. It

appears that the age restriction in the case of the application site was only put in place originally.

- 7.4 As at this date 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. A 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. An update to that SHMA is being undertaken as well as an updated Housing Needs Survey.
- 7.5 This updated evidence will be taken into account in forming future housing policy for the district, as part of the new District Plan. It appears most likely, at this stage, the 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.
- 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 retention 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. The removal of the control 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. The layout would not therefore result in unacceptable living conditions if the dwellings were occupied on an unrestricted basis.

Residential Amenity

- 7.9 In terms of residential impact, the removal of the age restriction is not considered to result in unacceptable living conditions for future occupiers, or neighbouring amenity.

Parking Provision and Access

- 7.10 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, under the Councils current vehicle parking standards would amount to 13.5 no. spaces. A reduced level of provision is permitted for sheltered accommodation. However, even with the age occupancy control in place, these units did not fall into that category. Therefore, the parking standards remain unchanged in relation to the restricted and unrestricted occupancy of the site. The emerging standards would require 18 spaces, with a potential discount of up to 25%, taking the required provision back to 13.5 spaces.
- 7.11 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 terms to require this residential development to be occupied solely by ‘elderly persons.’ The removal of this control is not considered to result in unacceptable amenity impacts to occupiers, nor would it raise highway concerns.

3/15/0228/SV

- 8.2 The age restriction on the legal agreement for the outline consent has already been removed (3/13/1266/SV).
- 8.3 Furthermore, the similar application to lift an age restriction on the adjacent site was allowed on appeal.
- 8.4 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 to be agreed.