

5f 3/11/0086/SV - Modify the S106 agreement attached to planning permission 3/06/0314/FP to remove the elderly persons age restriction (defined as being over 50 years of age) at Land at Stocking Hill Lane, Cottered for Darling Homes LLP

Date of Receipt: 20.01.2011

Type: Variation of S106 - Minor

Parish: COTTERED

Ward: MUNDENS AND COTTERED

RECOMMENDATION:

That a removal of Clause 4.1 of the S106 Legal Agreement signed on 23rd August 2007 under planning reference 3/06/0314/FP be **GRANTED**.

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1.0 Background

- 1.1 The application site is shown on the attached OS extract and comprises a new build residential development of 8 no. two storey units (6 no. 2 bed and 2 no. 3 bed) with associated parking and landscaping. None of the units are yet occupied.
- 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 with a sewage treatment plant adjacent to the north. There is an existing age restricted residential development located to the south (Nos. 1-9 Stocking Hill) which falls outside the application site and was developed in line with the original planning consent in 1987.
- 1.3 This application proposes to remove Clause 4.1 of the legal agreement signed in relation to application 3/06/0314/FP. The clause is worded as follows:

“to use the dwellings permitted by the Planning Permission for the purpose of providing accommodation for elderly persons only (being persons over the age of 50 years) and not for any other purpose.”

2.0 Site History

- 2.1 The site is the subject of a lengthy planning history for residential developments. Initially, outline permission was granted in 1987 for 15 no. elderly persons dwellings (reference 3/86/1939/OP) together with a community building, subject to a legal agreement restricting occupation

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to 'elderly persons' (with no age specified), and 5 of the units to be rented to meet local housing needs. A reserved matters application was then approved in 1988 under reference 3/87/1750/RP.

- 2.2 Those consents were implemented but then an application was later approved in 1992 for a revised layout (reference 3/92/0474/FP), omitting the community building. 9 no. units were completed on the southern part of the site (now occupied as Nos. 1-9 Stocking Hill), but apparently the developer got into financial difficulties, and the remaining 6 units were not constructed.
- 2.3 The site was then purchased by the Hexagon Housing Association who proposed a community care home and two bungalows, but that was refused consent under reference 3/97/1392/FP. The Housing Association then chose to sell the site but had difficulties, and applied for 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. This was approved at Committee in November 1999.
- 2.4 Darling Homes, the current owner, then purchased the site at auction in December 2000. They were granted permission for an amended scheme for 8 no. units under reference 3/02/0696/FP. Again this was subject to a legal agreement restricting occupancy to those aged 50 years or over. Two further applications were then submitted for 10 and 11 units respectively (3/03/1804/OP and 3/03/0608/OP), but both were refused and dismissed at appeal on the grounds that the higher density schemes would harm the character and appearance of the area, and conflict with sustainability objectives.
- 2.5 A revised application was then submitted (reference 3/06/0314/FP) for 8 no. units, which was approved in 2007 and has now been constructed. Again, this was subject to a similar legal agreement restricting occupancy to those aged 50 years or over, along with several other clauses. It is this clause of the legal agreement which the developer now proposes to remove.
- 2.6 There have been two subsequent applications on site. Application 3/09/0759/FP was approved in 2009 to erect a 2m high windbreak fence along the northern boundary for 3 years; this will expire on 28th July 2012. Application 3/09/1126/FP was also approved in 2009 for the conversion of double garages at Units 1 and 2 to single garages with additional residential accommodation.

3.0 Consultation Responses

- 3.1 The Council's Housing Team comment that they "have looked at the housing register applicants who have specifically ticked Cottered as an area they would be interested in. There are approximately 100 of which 5 are over 60 and only 3 are currently living in the district. I think it would be difficult for Housing options to support or provide evidence for an age restriction at Stocking Lane."
- 3.2 No response has yet been received from the Council's Solicitor, or County Highways.

4.0 Parish Council Representations

- 4.1 Cottered Parish Council object on the grounds that the planning is for elderly people's housing and should remain as such. A number of parishioners have expressed concern and asked that the age restriction condition remains.

5.0 Other Representations

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification.
- 5.2 8 no. letters of objection have been received from Nos. 2, 4, 6, 7 and 8 Stocking Hill and Childs Farm, The Elms and Stocking Hill Farm, Cottered, which can be summarised as follows:-
- The age restriction related to the whole development; if the restriction is removed then this should also apply to 1-9 Stocking Hill;
 - Failure to sell the properties is not due to the age restriction, but due to design and location – clear from the outset that the development was not intended for the age group for which permission was granted;
 - Removing the restriction would create more vehicles; there is already a shortfall of parking, and concerns over impact and safety on the bridleway;
 - Figures on a previous application gave average traffic movements of 6.1 per household per day (therefore 50 trips per day) whereas the current average for the existing 9 units is under 10 trips per day;
 - The developers have already gone from 8 to 8 units, from 2 to 3 bedrooms losing 2 garages, and with further basement accommodation;

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- Concern over loss of peace and quiet for existing residents;
- If the properties cannot sell then there is no alternative but to remove the age restriction;
- Increased car ownership would be the only objection;
- Unrestricted housing should not be granted in the Rural Area Beyond the Green Belt;
- The developer has always been fully aware of the restriction;
- Concern that the applicant has not made genuine attempts to market the units with local agents at a reasonable price – the neighbouring houses have all sold or been rented comparatively easily even in a subdued market;
- The quantity of water consumed will increase substantially and Three Valleys Water should be consulted;
- The houses overlook a sewer field which is not suitable for families with children;
- None of the houses have gardens for children to play;
- The Council has always seen fit to repeat and reinforce the age restriction; in previous Committee reports;
- The comparison with the site at Walkern is erroneous and should not influence the decision – Stocking Hill was developed specifically as an area for older people to live in a peaceful environment.

5.3 2 no. letters of support have also been received from Nos. 1 and 3 Stocking Hill, which can be summarised as follows:

- The term 'elderly persons' is ageist, old fashioned and unlawful on the same par as colour and race discrimination;
- Properties at 1-9 Stocking Hill are now estimated to be £100,000 below average market values because the properties are marketed as homes for the elderly, giving a totally untrue reflection of the inhabitants;
- The original vision was to include warden control and facilities for elderly people, but this did not come to pass and the owner left the site years ago;
- Covenants attached to Nos. 1-9 are apparently ridiculous and unlawful;
- Removal of the age restriction would encourage people to buy and sell regardless of age, and benefit the village;
- Restrictions have caused arguments amongst existing residents at 1-9;
- The rural location and lack of shops in the village is not suitable for older residents;
- The site is not suitable for those with mobility issues due to the levels, stairs and lack of facilities;

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- Mixed ages works best as the different generations often provide support to one another.

5.4 An email has been received from Councillor Jim Ranger objecting strongly to the application on the grounds that “it goes against all that was planned for the site which is adjacent to old persons who need it quiet.”

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 question of justification and evidence for the age restriction to remain in place on this development. Obligations in legal agreements must meet the tests set out in Circular 05/2005 ‘Planning Obligations’, and the Community Infrastructure Levy Regulations 2010. Obligations must be:

7.1.1 necessary to make the development acceptable in planning terms;

7.1.2 directly related to the development; and

7.1.3 fairly and reasonably related in scale and kind to the development.

7.2 In order for an obligation to be deemed necessary to make the development acceptable in planning terms, there must be a policy justification. Annex B of Circular 05/2005 states that development plan policies are “a crucial pre-determinant in justifying the seeking of any planning obligations since they set out the matters which, following consultation with potential developers, the public and other bodies, are agreed to be essential in order for development to proceed (05/2005: B8).”

- 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 restriction 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 As set out above, the original approval included a community building which would have provided a facility for elderly residents. This provision was removed from subsequent revised applications.
- 7.5 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.
- 7.6 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 Local Development Framework, 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.
- 7.7 The Housing Team have indicated that although a few people over the age of 60 have shown an interest in living in Cottered, it would be difficult for them to provide sufficient evidence to justify retention of the age restriction. Unfortunately it is not possible to obtain similar figures of demand for those over the age of 50. There is no information to show the need is greater and there remains insufficient as evidence to support retention of the age restriction; a housing needs survey would instead be required.

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- 7.8 A Committee report for application 3/92/0474/FP in 1999 to vary the terms of the legal agreement stated that there was no local reason or statistical evidence requiring either restriction to remain (the age restriction or the 5 units for local rent). However, it is noted that at the time, Officers recommended refusal of removing the age restriction entirely. They considered that there was limited parking provision on site, and given that the development was planned for elderly people in mind, “the provision of unrestricted dwellings on this part of the site would be out of keeping with the remainder of the development to the detriment of existing occupiers”.
- 7.9 With regards to the first point, this current application relates solely to the new development approved under a later 2006 application, which has more than sufficient on-site parking (see paragraph 7.14 below). Turning to the second point, regard is had to potential impacts on neighbouring amenity in paragraph 7.13 below. More significantly, however, regard is had to a recent appeal decision that Members may recall to remove an age occupancy restriction at 5 Finches End, Walkern (3/09/1849/SV). This was refused by the Council and allowed on appeal. The Council was viewed as having taken an unreasonable position on this proposal and a cost award was made against it. The Inspector considered that there was a lack of evidence to justify the restriction. Although it has been suggested by neighbours that this appeal case should not influence this current decision, and Officers acknowledge the geographical differences, it is considered that the issue is largely the same and that, as a result, significant weight should be given to this appeal case. The Inspector made it very clear that policy justification for an age restriction has to be the underlying issue to address.
- 7.10 If there were sufficient evidence to justify an age restriction in this case, Members are advised to consider that the site is located in a remote rural location without convenient access to facilities, and with no shops in the village. There is 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.
- 7.11 Finally, the developer makes reference to difficulties in marketing the units for those over the age of 50, and a number of objections have been received regarding the marketing approach. Whilst this may demonstrate a lack of interest and provide some justification for removal of the age restriction, Officers do not consider this to weigh heavily in the balance of considerations as the main issue is the policy justification and a lack of evidence.

Design and Layout

- 7.12 Officers consider that there is nothing in the layout or design of the development that would make the units unsuitable for any other age occupant. Each unit is provided with a small private garden area, whereas the adjacent age restricted development is laid out on a more open plan basis. The units also provide satisfactory internal living accommodation to suit all ages. The layout would not therefore result in unacceptable living conditions if the dwellings were occupied on an unrestricted basis.

Neighbour Amenity

- 7.13 In terms of neighbour impact, concerns have been raised by some of the existing residents at Nos. 1-9 Stocking Hill that a removal of the age restriction would result in noise and disturbance. Officers assume that this relates to noise from younger people and children. Whilst the point being raised is understood, it is of course common for residential developments to accommodate a mix of people and ages, which contributes to a mixed community. 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. Any additional noise or other issues arising from family living is not considered to be significant to result in harm to those living on the adjoining site. Officers consider that only limited weight can be assigned to this matter.
- 7.14 The point has also been made that existing residents will be more inclined to support and assist each other with everyday tasks and indeed do, with the current living arrangements. Whilst this is understandable, again it is considered that only limited weight can be assigned to this given that it is also quite common for younger families to support more elderly neighbours – and indeed may have greater capacity and ability to do so.

Parking Provision and Access

- 7.15 Concerns have also been raised over insufficient parking given that younger people, or families, would be likely to own more vehicles and account for a greater number of movements throughout the day. In terms of parking provision, there are currently 17 no. spaces for the 8 units (6 no. 2 bed and 2 no. 3 bed units). The maximum parking provision for the development, given its location, would amount to 13 no. spaces. The existing 17 space provision therefore already exceeds the maximum parking provision, and cannot be used as a reason to refuse this application. It is acknowledged that there was originally a shortfall in parking provision for the neighbouring site; however the

developer for application 3/06/0314/FP provided 3 further spaces would be provided for those residents. Officers have confirmed on a recent site visit that 20 no. spaces have been provided on site in accordance with the approved plans.

- 7.16 Concerns have also been raised over an increased frequency of vehicular movements for unrestricted living, compared to age restricted living. Officers have no evidence to support this concern, but note that any increase in vehicular movements would be unlikely to be significant. It is also important to remember that the existing age restriction of 50 years could still accommodate full-time workers, commuting on a daily basis and having families to visit. Further, the units are predominantly 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 those over the age of 50 years. The restriction was originally offered by the developer at the time as a way of securing permission, but was not considered to be justified in planning policy terms, hence the original Officer recommendation to refuse permission on the grounds of Rural Area policy.
- 8.2 A similar application to lift an age restriction in Walkern was recently allowed on appeal, with full costs awarded against the Council, due to the lack of evidence to justify the restriction. Overall, Officers consider that the planning obligation fails to meet the tests set out in Circular 05/2005, and the Community Infrastructure Levy Regulations 2010.
- 8.3 The application is therefore recommended for approval.