

5a 3/11/0793/FO – Removal of condition 3 of 3/04/1892/FP (provision of play equipment in lieu of financial contribution) at Sanville Gardens, Hoddesdon Road, Stanstead Abbots for Persimmon Homes

Date of Receipt: 05.05.2011

Type: Variation of Condition - Major

Parish: ST. MARGARET

Ward: STANSTEAD ABBOTTS

RECOMMENDATION:

That, subject to a variation of the S106 legal agreement dated 1st June 2005 in respect of application 3/04/1892/FP to cover the following matters:

1. To re-define the Play Space as Open Space amenity land including provisions for its transfer and adoption by the Council with a maintenance contribution of £18,637.50 index linked from 8th December 2004;
2. To make a financial contribution of £29,561.44 index linked from 8th December 2004 within 28 days of the signing of the varied legal agreement to be spent on play facilities within the vicinity of the site within a timescale of 10 years.

Planning permission be **GRANTED** subject to the following conditions:

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no further windows, doors or openings of any kind shall be inserted in the flank elevations of the development hereby permitted without the written permission of the Local Planning Authority.

Reason: To safeguard the privacy of occupiers of the adjoining properties, in accordance with Policy ENV1 of the East Herts Local Plan Second Review April 2007.

2. The proposed window openings (on the second floor rear elevation of plots 6, 7, 8, 50, 51 and 52) shall be fitted with obscured glass, and shall be permanently retained in that condition.

Reason: To safeguard the privacy of occupiers of the adjoining property, in accordance with Policy ENV1 of the East Herts Local Plan Second Review April 2007.

3. Spaces shown on the plans accompanying the application for the parking of cars shall be retained at all times for use in connection with the development hereby permitted.

Reason: To ensure adequate off street parking provision for the development, in the interests of highway safety, in accordance with Policy TR7 of the East Herts Local Plan Second Review April 2007.

4. All existing trees shall be retained, unless shown on the approved drawings as being removed. All trees on and immediately adjoining the site shall be protected from damage as a result of works on the site, to the satisfaction of the Local Planning Authority in accordance with relevant British Standards (e.g. BS 5837:1991), for the duration of the works on site and until at least five years following contractual practical completion of the approved development. In the event that trees become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed with the Authority.

Reason: To ensure the continuity of amenity afforded by existing trees, in accordance with Policy ENV11 of the East Herts Local Plan Second Review April 2007.

Directive:

1. Other legislation (01OL)

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 the 'saved' policies of the East Herts Local Plan Second Review April 2007), and in particular policies ENV1, ENV2, ENV11 and LRC3. The balance of the considerations having regard to those policies, and the consent granted under reference 3/04/1892/FP, is that permission should be granted.

1.0 Background:

1.1 The application site is shown on the attached OS extract and comprises a new build residential development of 87 units which has now been completed and is understood to be fully occupied. The land was allocated for residential development under policy ST1 of the 2007 Local Plan, including additional land to the north of the site which remains undeveloped.

1.2 Permission was originally granted back in 2005 (reference 3/04/1892/FP) subject to a number of conditions, including Condition 3 which was worded as follows:

The dwellings hereby permitted shall not be occupied until the play space shown on the plan approved hereby has been laid out in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and that area shall not thereafter be used for any purpose other than as a play area.

Reason: To ensure adequate provision of play space within the estate, in accordance with Appendix 1(B)(II) of the East Herts Local Plan.

1.3 Details of a play area, including equipment, were then submitted to discharge this condition, but the Council's Environment Manager advised that the play space was located too close to neighbouring residential dwellings and should therefore not include any equipment. The space should instead be a Local Area of Play (LAP) which would have no equipment other than a static item to mark it as a place for play. It was then suggested that the developer apply to remove the condition and offer a financial contribution instead towards the improvement of existing off-site play facilities. No such application was ever received, and the development therefore remains in breach of this condition.

1.4 The land in question is now overgrown and not available for use by the new residents. Officers are now keen to address this unresolved issue, and this application has now been received from Persimmon Homes to remove the condition and offer a financial contribution instead to go towards improving existing play facilities in the vicinity of the site.

2.0 Site History:

2.1 As discussed above, permission was granted for 87 residential units under reference 3/04/1892/FP and subsequently constructed and completed. Earlier applications for outline permission to develop the

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entire site (including additional allocated land to the north of this site) were withdrawn due to issues with flooding and objections from the Environment Agency (references 3/00/0819/OP and 3/03/1227/FP).

- 2.2 A later application for a revised scheme on this southern part of the site was then refused (reference 3/07/0175/FP) on the grounds of failure to make provision for affordable housing, community facilities or infrastructure provision, a cramped and congested layout, harm to neighbour amenity, poor design of the community hall, the lack of an adequate flood risk assessment, and insufficient information to demonstrate how the proposals support the principles of sustainable development. The developer therefore chose to implement the 2004 planning permission before it expired.

3.0 Consultation Responses:

- 3.1 At the time of writing this report no response had been received from the County Council Planning Obligations Unit.
- 3.2 The Council's Environment Manager had previously commented that he would not be prepared to accept the play area for adoption due to its location in relation to the adjacent properties and that it does not conform to relevant standards. A LAP should not have any equipment installed on it other than a static item to mark it as a 'place for play'.
- 3.3 In terms of adoption, he now confirms that he would not wish to support the provision of any play area that does not fully meet the needs of the children that are likely to use it, whether managed by East Herts Council, or a private management company. There doesn't seem to be a great deal of amenity value to it and it would be an isolated area to maintain in relation to the Grounds Contract. The off-site contribution to compensate for the lack of play provision on the site would need to be in the region of £80,000 for us to be able to actually use it to create a play ground. The minimum amount that we could realistically utilise would be £50,000 for negotiating purposes.
- 3.4 He goes on to comment that "Otherwise we would be looking at a sum to contribute to another site. We cannot enhance the Lawrence Road site without removing it and starting again (less than £60k would not be sufficient to do this). We are unlikely to have sufficient capital budget after this year to be able to contribute ourselves to any such upgrade. The High Street site, as noted, would no doubt benefit from further improvement but it would be a shame not to use the money to actually create a new play space in Stanstead Abbots if possible. If the potential new development was not large enough to contribute to a

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LEAP but could achieve one with this contribution then it may as you suggest be worth holding the funds for a while and combining them with another S106 contribution. My preferred option would be to get sufficient funds from this to enhance Lawrence Avenue next year.”

4.0 Parish Council Representations:

4.1 Stanstead St. Margarets Parish Council do not believe that this is in the best interests of the residents of the estate and parish of St. Margarets. The planning permission of the estate was to also provide a community parish hall, which has still not been done, so to remove the provision of the play equipment would not be prudent.

5.0 Other Representations:

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

5.2 5 no. letters have been received from Nos. 8, 48, 49, 80, 83 Sanville Gardens, plus 2 unaddressed emails raising the following points:

- Residents purchased new property on assurances from Persimmon Homes that a play area would be provided on this land for the local community;
- There are no other parks or play areas within reasonable distance and there are many children now living in this area;
- Children play in the street instead which is busy and with many parked cars; one child was knocked down by a motorist but not seriously harmed;
- Sanville Gardens includes a range of properties with no gardens whatsoever – outdoor play is important for children’s health and development;
- The land is overgrown and has never been maintained by the developer or the Council – query what will happen to this land?
- Query where the financial contribution would be spent?
- The original planning permission also included a community hall for parish use which has not yet been built;
- Do not agree that the condition is onerous.

6.0 Policy:

6.1 The relevant saved Local Plan policies in this application include the following:

ENV1 Design and Environmental Quality

ENV2 Landscaping

ENV11 Protection of Existing Hedgerows and Trees

LRC3 Recreational Requirements in New Residential Developments

6.2 In addition to the above, Planning Policy Statement 1 'Delivering Sustainable Development' and Planning Policy Statement 3 'Housing' and PPG17 'Planning for Open Space, Sport and Recreation' are considerations in determining this application.

7.0 Considerations:

7.1 The development was originally approved in 2005 with an area of land designated for use as a Local Area of Play (LAP) and public open space. The area was clearly identified on the approved plans and a condition was attached to the planning consent requiring completion of this play space prior to occupation of any of the new dwellings. It was also a requirement of the signed legal agreement that the play space be provided and then transferred to the Council for adoption with a maintenance contribution of £29,561.14 index linked from 8th December 2004. Officers understand that the play area was originally proposed as a Local Equipped Area of Play (a LEAP) but was reduced in size to meet the requirements of the Environment Agency in providing sufficient floodplain compensation space for the development.

7.2 In July 2005, the developer submitted plans of the play area in attempt to discharge Condition 3. The plans included items of play equipment, therefore categorising it as a Local Equipped Area of Play (LEAP) rather than a Local Area of Play (LAP). The Council's Environment Manager confirmed that the play area would not meet the Six Acre Standard given its proximity to neighbouring residential property, and would therefore not be adopted by the Council. It was then suggested that the land be redesigned as a simple grassed area and a contribution paid instead towards play provision in the Stanstead Abbots area. An application was invited but never received.

7.3 The Six Acre Standard has since been superseded by the Fields in Trust 'Planning and Design for Outdoor Sport and Play' 2008. This requires that a minimum of 20m should normally be provided between any equipment and the habitable room façade of the nearest dwelling. In this case only a very small part of the play space site in the northeast corner is located over 20m away from the façade of the nearest dwelling, No. 9 Sanville Gardens. The site in its current configuration is therefore unable to provide any play equipment.

7.4 Back in 2005, the High Street playground owned by the Parish Council

was in need of improvement, and it was also expected that when an application came forward for developing land to the north of the Sanville Gardens site, this play space could be extended to form a LEAP to serve both developments. The High Street play area has since been significantly improved through local contributions, and no proposals have yet come forward for the land to the north of the Sanville Gardens site, although subject to flooding issues the site is available and suitable for further development. The matter therefore now needs to be regularised.

- 7.5 A number of comments have been received from residents of the new development who were expecting a play area to be provided on site. Their concerns and disappointment with this application are understandable; however there is unfortunately no other option. The Council's Environment Manager has confirmed that he could not support any play area in this location whether it were to be adopted or not, because it would not meet the needs of the children. He therefore supports landscaping of the site to be used as amenity space, but ideally not to be adopted by the Council as it is remote from any other Council maintained land. He recommends instead that the land be maintained by the management company, which negates the need for the developer to pay further maintenance contributions.
- 7.6 Officers have made enquiries with the developer as to whether this land can be maintained by the existing management company on site. Unfortunately this has not proved possible because estate charges have already been agreed with residents and do not include the costs of maintaining this land. The Environment Manager has therefore agreed to its adoption by the Council, as per the original requirement of the legal agreement, but this will require the payment of future maintenance contributions. An original maintenance figure of £29,561.14 index linked from 8th December 2004 was required. This has been reduced by £11,000 due to the lack of equipment, leaving a figure of £18,637.50 index linked from 2004 to be paid upon transfer of the land to the Council. The legal agreement should therefore be varied in this way.
- 7.7 In terms of the future of this land, Officers recommend that it be landscaped in accordance with a previously approved landscaping scheme from September 2008 which has not yet been carried out, but can be enforced through the planning conditions. This will provide a grassed area as an attractive informal amenity space for the benefit of residents, but with no facilities for play provided.
- 7.8 In terms of the off-site contribution figure, the Environment Manager has now suggested £80,000, or a minimum of £50,000. However, he had

originally suggested in 2004 that a fair and reasonable contribution would be £29,561.44. Officers consider that this original figure should be applied, but index linked from 8th December 2004 to be in line with current prices. The legal agreement would of course need to be amended in this respect. The contribution would be spent on play equipment within the vicinity of the site in order to be justified in connection with the development. There may be potential for further money to be spent on the Parish Council's High Street play area, but the suggestion that enhancements be carried out at the Lawrence Avenue play area (East Herts Council's only play area in Stanstead Abbots) is not considered reasonably related to this development given the walking distance. Of course if land to the north of the Sanville Gardens site comes forward, then the money can be re-invested back into this site with a larger plot of land made available. In view of the fact that no application has been made on this site for the past 8 years, it is recommended that a reasonable timescale for spending this money would be 10 years.

- 7.9 Overall, Officers consider that the payment of a financial contribution to improve existing play facilities in the vicinity of the site, as originally suggested back in 2005, is the best approach in this case and that the land in question should be landscaped as open amenity space in accordance with the earlier conditions, and transferred to the Council for future maintenance.
- 7.10 Given that this is an application to remove a condition, it essentially grants a new permission for the site and therefore certain relevant conditions from the original consent must be carried over and are recommended at the outset of this report.
- 7.11 Finally, a number of residents have also requested an update on the land at the entrance to the site, which was approved for a Community Building, but not yet provided. This is not the responsibility of Persimmon Homes because that land was not sold as part of the development site. It remains the responsibility of the landowner to bring that project forward and Officers are expecting a revised scheme to be submitted shortly for planning permission subject to receiving funding through the Hertfordshire Community Foundation.

8.0 Conclusion:

- 8.1 In summary, this application is the result of Officer negotiations to regularise this on-going breach of condition in order to achieve some play facilities in connection with this new development. Unfortunately, the land allocated for the play area is deemed too close to residential

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property to comply with current standards and could therefore not include any play equipment. It is recommended instead that the site be landscaped as amenity green space and a financial contribution offered instead to go towards improving existing play facilities in the vicinity of the site. This is considered to be fair and reasonable in accordance with Circular 05/2005 'Planning Obligations'.

- 8.2 The application is therefore recommended for approval subject to a variation of the legal agreement and the conditions set out above.