

**5d 3/11/0236/SV – Modification of Section 106 Unilateral Undertaking (ref 3/07/1546/FO) to omit clause 5.1 removing the requirement to provide a Car Club at Former TXU Site, Mead Lane, Hertford, SG13 7AH for Western Homes (Housing) Ltd.**

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**Date of Receipt:** 11.02.2010

**Type:** Major - S106 Variation

**Parish:** HERTFORD

**Ward:** HERTFORD CASTLE

**RECOMMENDATION:**

- a) That a variation of the S106 unilateral undertaking (reference 3/11/0236/SV) dated 21<sup>st</sup> January 2008 pursuant to planning permission 3/07/1546/FO to omit Clause 5.1 removing the requirement to provide a Car Club, be **GRANTED** subject to new clauses to require the following matters:
- Allocation of the 2 parking spaces to residents of Spencer Street free of charge, including details of parking enforcement measures, appropriate signage, and details of future maintenance.
  - a financial contribution of £4,000 (index linked using SPONS from 1<sup>st</sup> March 2006) towards the provision of a car club in the Mead Lane area within a defined time period, or otherwise towards sustainable transport initiatives.

\_\_\_\_\_ (023611SV.HI)

**1.0 Background:**

- 1.1 Members may recall that a decision on this application was deferred at 22<sup>nd</sup> June Committee when permission was granted for a separate application (Ref: 3/11/0217/FP) for 12 car parking spaces. There were ongoing concerns about Spencer Street and its omission from the Residents Parking Scheme which led to the decision to defer in order to allow officers to investigate its possible extension. A copy of the previous Officer report and recommendation is attached as Appendix A.
- 1.2 Further discussions have been held with the Council's Parking Team, Hertfordshire Highways and the Land Searches team to establish the legalities and potential for extending the existing residents' car parking permit scheme to include Spencer Street, and the results of these discussions are set out below.

**2.0 Status/Options for Spencer Street:**

- 2.1 The status of Spencer Street has again been confirmed as a highway, but not highway maintainable at the public expense. Whilst this means that the Council has the power to promote a Traffic Regulation Order covering the street, the maintenance of the signs and lines that must accompany any resident permit parking scheme must fall to the residents and not to the District Council.
- 2.2 Further, the Land Searches team at Herts County Council have confirmed that ownership of Spencer Street is likely to rest with those households whose properties front the street, with each household owning the section outside its frontage to the middle of the carriageway. They state that:
- “The information from our Land Registry enquiry is that there are some tiny areas that are registered but the whole running area of the road is not registered. .. if it is not possible to find an owner then my understanding is that the presumption kicks in that frontagers own up to the mid point. And of course since the road is considered to be highway at present the owners only control the subsoil until such time, if ever, that the highway is stopped up in which case control of the surface layers reverts to the subsoil owners.”*
- 2.3 Under these circumstances, we are advised by Herts Highways that even if the first costs impediment identified could be overcome, the Council would still need the unanimous agreement of all households before it could implement the scheme throughout Spencer Street.
- 2.4 The Highway Authority have confirmed that they will not adopt Spencer Street as various other works would be required to bring the road up to adoption standard and there would be associated ongoing maintenance costs. Furthermore the County Council’s Executive last year agreed a policy that they will only adopt spine roads but not adopt no-through roads. As Spencer Street is no-through road they therefore have no interest from a highway point of view in adoption.
- 2.5 The Council’s Parking Team advise on the improbability of all the residents in Spencer Street giving agreement to a parking scheme as in all their public consultations there will always be some opposition. When consultations were carried out on the Controlled Parking Zone in Mead Lane area before they have records of some objections to a Parking Scheme.

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- 2.6 They consider that, unless and until the Highway Authority adopt Spencer Street, and until the problems over ownership could be overcome, East Herts Council would not consider offering a resident permit scheme in Spencer Street.
- 2.7 It has been suggested by objectors to the application that additional contributions could be sought from Weston Homes to fund measures to bring the road up to adoption standard and the implementation of a resident's permit scheme.

### **3.0 Considerations and Conclusions:**

- 3.1 Members are reminded that this application proposes to vary the legal agreement to remove the 2 Car Club requirement. It is therefore necessary to consider whether there is still a justification and whether it is reasonable to require a two bay car club, having regard to the approved additional 12 space car park; the provision of an additional 2 private spaces (6 overall) dedicated for Spencer Street residents; the lack of a commercial car club operator and a sum of £4000 (index linked) to support future start up costs of a Car Club in accordance with the original S106 and the draft Mead Lane Urban Design Framework area.
- 3.2 Officers continue to consider that, given the current parking situation, the effects of the Mead Lane controlled parking zone and residents' permit scheme, and the level of occupancy of the new development, that the resulting parking provision would not be unacceptable in planning terms, and that a continuing requirement for a 2 space Car Club is no longer justified.
- 3.3 With regards to Spencer Street the improbability of its adoption due to legal ownership issues, the unwillingness of the Highway Authority to adopt the road, and the fact that this matter is not directly related to the original development, mean that while this situation is a local problem it is not reason to refuse the variation to the S106 agreement.
- 3.4 Overall, it is clear that the requirement for the car club was considered necessary by the Inspector, when allowing the scheme without the second basement level of parking, to make the development acceptable in planning terms. This was due to a shortfall of parking provision, and "a very severe parking stress in the surrounding residential streets". Officers had previously recommended refusal of application 3/10/1746/SV on the grounds that removal of the car club requirement, without acceptable alternative provision, would result in inadequate parking provision for the development resulting in additional on street parking and traffic congestion in surrounding roads, and would fail to provide alternative transport options to the private motor vehicle for users of the site.

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- 3.5 Weston Homes are continuing to offer the two car parking spaces previously allocated for use by the Car Club exclusively and free of charge to Spencer Street residents, along with the 4 parking spaces in the recently approved car park. By providing these spaces on private land, it would be possible for the Elder Court Management Company to enforce any unlawful parking. Full details of this allocation for Spencer Street residents, along with details of monitoring and enforcement, maintenance, and appropriate signage would be required through a legal agreement, and it is considered that this would be justified under Circular 05/2005.
- 3.6 While the original 2 car club obligation is no longer justified given the additional parking provisions, a sum of £4000 (now confirmed as £5,556 as index linked from 2006) will support the start-up costs of a wider community car club as advocated in the Mead Lane Urban Design Framework and the Hertford and Ware Urban Transport Plan. Weston Homes, based on recent experience, advise that this sum could provide a one year free membership of a Car club for all the 119 households in Elder Court and still leaving enough for the households in Spencer Street, Mead Lane and Marshgate Drive. In the long term this can reduce parking demands in the area including Spencer Street.
- 3.7 The adoption of Spencer Street for residents parking is a problem without apparent resolution in the context of this application and not one that can be given as a reason to refuse the amendment of the current S106 agreement. The original planning permission granted for the TXU/Elder Court site (Ref: 3/05/0316/FP) did not include a provision or contribution towards Resident's Parking Zone in the associated S106 agreement although sums for Traffic Regulation Orders were used.
- 3.8 It may be that Spencer Street residents could demonstrate that there is universal agreement to consent for works to take place on Spencer Street and then pursue this with public authorities but, given the unlikely agreement to road adoption, as well as the lack of parking justification, it would be unreasonable to refuse this planning application or seek to require a sum of money for it. The Controlled Parking Zone scheme introduced was done independently of the Elder Court development to address commuter parking problems in the area. The problem of Spencer Street's status would therefore have arisen independently of the planning of the Elder Court development.
- 3.9 It is no longer considered that the 2 car club obligation is a reasonable or necessary requirement for parking with the development given the alternative provisions for allocated parking and the start-up costs of a wider community car club as advocated in the Mead Lane Urban Design

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Framework and the Hertford and Ware Urban Transport Plan.

3.10 The application is therefore recommended for approval subject to the provision of revised obligations as set out above.