

**5q E/11/0234/B – Breach of a s106 agreement, which restricts the property to be occupied by persons over 50 years of age, at 11 Stocking Hill, Cottered.**

**Parish: COTTERED**

**Ward: MUNDENS AND COTTERED**

**RECOMMENDATION**

That no further action is taken in respect of the breach of Clause 4.1 of the Legal Agreement under s.106 of the Town and Country Planning Act 1990, signed on 23<sup>rd</sup> August 2007 under planning reference 3/06/0314/FP in respect of the land at Stocking Hill, Cottered.

\_\_\_\_\_ (023411B.PD)

**1.0 Background:**

- 1.1 The site is shown on the attached OS extract and comprises one unit on 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.
- 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 was developed in line with the original planning consent in 1987.
- 1.3 The development the subject of this report comprises 8 properties with associated car parking and garages that were granted planning permission in 2006 under reference 3/06/0314/FP subject to a s.106 agreement restricting the use of the properties 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.”*
- 1.4 Members may recall that an application was submitted in February 2011 by the owners of the site under reference 3/11/0086/SV which sought to modify the s.106 agreement by removing the above age restriction. Officers recommended the application for approval and a copy of the Officer report is attached as Appendix A. However, Members were concerned about the impact of that proposal on the residential amenity of the existing and adjacent properties and accordingly refused the application for the following reason:

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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.

- 1.5 At the time of the refusal, it was apparent that none of the units on the site were occupied. However, in July 2011, Officers were advised that the property known as 11 Stocking Hill was being occupied by persons under the age of 50 with children, in breach of the S106 agreement.
- 1.6 In September 2011 a letter and Planning Contravention Notice were sent to the occupier of the property setting out the position regarding the S106 agreement and requesting a response to the notice.
- 1.7 A letter was later received from a firm of solicitors who stated that the person currently occupying the property was a tenant who had moved into the property on the 1 July 2011 and that his current age was 42.
- 1.8 A further letter from the solicitors stated that they were aware of the terms of the s.106 agreement but that they considered it unreasonable and were prepared to defend their position should the Council resolve to take legal action in respect of the breach.

### **2.0 Planning History:**

- 2.1 This is set out in detail within the report attached as Appendix A and is summarised below:

3/02/0696/FP	Erection of 8No. elderly persons (Defined as being over 50 years of age) dwellings with associated car parking and garaging	Approved with conditions and S106
3/06/0314/FP	Erection of 8No. elderly persons (Defined as being over 50 years of age) dwellings with associated car parking and garaging	Approved with conditions and S106
3/11/0086/SV	Modify S106 agreement to remove the elderly persons age restriction (defined as being over 50 years of age)	Refused

### **3.0 Considerations:**

- 3.1 The main considerations in this case are set out in the report attached as

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### Appendix A.

- 3.2 Some Members will recall officer advice at the time, that there is no evidence, in the form of housing needs surveys; to identify a particular need for age restricted residential units in the Cottered area. Nor was there any National or Local planning policy justification for the retention of the legal agreement.
  - 3.3 In similar circumstances at a site in Finches End Walkern, the Council's stance had been found to be unreasonable and permission was granted for the restriction to be removed and costs were also awarded to the applicant in that case.
  - 3.4 It is important to note that, in this case, because the agreement is less than 5 years old, the applicant does not have a right of appeal against the refused application under reference 3/11/0086/SV. The Council would therefore have to take legal action in the courts to remedy the breach of the agreement.
  - 3.5 Officers have taken legal advice, therefore, and have been advised that, bearing in mind the lack of planning policy justification for the restriction; the lack of evidence of need in the area; and the decision of the Planning Inspectorate on the similar case at Walkern and his comments in respect of the Council's unreasonable stance, the position taken by the Council may well not be supported in the courts. In such circumstances, of course, the legal costs to the Council could be significant.
  - 3.6 Members are asked therefore to re-consider this matter in the light of this advice and to consider whether it is in the public interest to pursue legal action in this case.
- 4.0 Conclusion:**
- 4.1 For the reasons stated in this report, and the report attached as Appendix A, it is recommended that no further action is taken in respect of the breach of the S106 agreement in this case.