

24 January 2014

FROM:

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Resources Department
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TO:

S Davis
Planning Officer

**CONSULTATION ON DISCHARGE OR VARIATION OF PLANNING OBLIGATION AND
S52 AGREEMENT**
ADDRESS RED RIDGES KINGS PARADE ALDWICK DEED DATED 1987 [?]
REF AW/267/13/PO

GENERAL

Thank you for your recent consultation memo now returned together with the file on which alone this advice is based, and which file I return.

I refer you to Counsels Advice dated 11 October 2006 and my summary of that dated 16 October 2006 by way of general background.

IS THERE A COPY DEED ?

Answering this question is slightly complicated in the absence of a deed. I am advised it is dated 1987 , but no deed is produced.

I can answer the question generally and then add some further comments on sight of the deed.

I will ask for the deed to be located and then add any comments.

**PLANNING OBLIGATION/S52 AGREEMENT MADE PRE 9 NOVEMBER 1992 AND
S84 LPA 1925**

Due to date of the deed ie circa 1987 , this applies.

Procedure

You have these alternatives :-

- (1) grant the application via a deed per EPL Vol 2 para 106.70 which would be the orthodox way of proceeding
- (2) grant via S106A and rely on estoppel to effectively ensure we do not enforce it in future which would be practical and effective in my view
- (3) refuse and see if they appeal and under which procedure. Strictly an appeal should be under S84 LPA 1925 to Lands Tribunal so we can defend as invalid any appeal to PINS. [see papers attached and speak to me if any difficulty]

Criteria

Strictly the tests are those identified in S84 LPA 1984 as S106A and “useful purpose” does not apply to cases pre 9/11/1992 but for practical purposes I think you can use “useful purpose”.

The Determination in this Case.

It may be that County Highways no longer back this age restriction [an you should check this] but it may still serve a useful purpose if there is evidence to show (judged by you as a planner) that there is another planning ground for keeping the age restriction eg lack of amenity open space, adverse affect on amenity from mixed age groups, discharge or variation will mean a loss of affordable housing for a sector of the population.

I have seen on file an agents letter and the applicants letters and a form. The case is basically that they want the age restriction reduced to 55 years and not “pensionable age”.

I can see no reason to deny them this and no reason to argue that the age restriction to “pensionable age” is still justified.

I suggest in this case that there are no useful purpose(s) identified namely so you cannot refuse a reasonable request.

I await instructions to draft a suitable Deed of Variation.

FURTHER EVIDENCE

I rely on you to show me any new or further evidence which may change the tenor of this advice. I will add any comments and any copy of the Planning Obligation that I can find.

Ref/Igdr/legprec/pl/podisch