

Recommendation Report for Removal of a Planning Obligation**REF NO:** **AW/267/13/PO****LOCATION:** Red Ridges
 Kings Parade
 Aldwick**PROPOSAL:** Discharge of planning obligation imposed under AW/94/87 to remove all age restrictions on all of the flats at Red Ridges.**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	This application seeks the discharge of a Planning Obligation made under S52 of the Town and Country Planning Act 1971 relating to occupation of 12 of the 15 flats and restricted to occupation by persons of state pensionable age or above.
TOPOGRAPHY	Predominantly flat.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	N/A.
SITE CHARACTERISTICS	3-4 storey flatted building located on the corner of Selsey Avenue and Kings Parade. Parking for 17 cars to the rear.
CHARACTER OF LOCALITY	Predominantly large residential buildings with some hotels in the immediate area. Overlooking a public park and within a short walk from the beach.

RELEVANT SITE HISTORY

AW/94/87	Demolition of existing house and erection of a new block of 11 x 2 bed and 4 x 1 bed flats for the retired	ApproveConditionally 13-10-1987
AW/325/87	Demolition of existing house and erection of a new block of 11 x 2 bed flats and 4 x 1 bed flats for the retired - amendment of planning application AW/94/87	ApproveConditionally 28-04-1988
AW/177/88	Erection of 7 car ports in place of 7 open parking spaces	ApproveConditionally 08-08-1988
AW/240/88	Erection of 2 car ports on site of old car port of original Red Ridges House.	ApproveConditionally 03-10-1988

AW/190/89	Erection of 6 garages in lieu of car ports - 4 off Main Drive 2 off Selsey Avenue and to provide dwellings Nos: 16, 15, and 14 as general family units	ApproveConditionally 25-10-1989
BR/560/73	Car port	ApproveConditionally 24-07-1973
BR/596/76	Construction of garden room conservatory	ApproveConditionally 25-11-1976
BR/5/77	Extension to form store at first floor over trades yard	ApproveConditionally 02-02-1977

Having viewed the layout plans for both AW/94/87 and AW/325/87, it is clear that the latter amended the former's parking/rear layout but that what is present on the ground is actually that approved by AW/94/87. It is therefore clear that it is the deed attached to AW/94/87 that needs to be varied.

REPRESENTATIONS

Representations received:

Aldwick Parish Council

Aldwick Parish Council - no objection

1 letter received from no. 6 Red Ridges stating that the outcome of the Red Ridges Residents Meeting held 23/09/13 was that: "The Chairman proposed that the age restriction should be 55. This was unanimously agreed". The resident therefore states that the residents agree to the restriction being lowered but not removed.

Comments on Representations received:

Comments noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor: "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 a appeal should be under S84 LPA 1925 to Lands Tribunal so we can defend as invalid any appeal to PINS.

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 [and 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 e.g. lack of amenity open space, adverse effect 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 agent's 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."

Comments on Consultation responses:

It should be noted that whilst the solicitor refers to a proposed reduction in the restriction to 55 years and above, the application quite clearly states its intention to completely remove all age restrictions.

POLICY CONTEXT

Designation applicable to site: Within the Built Up Area Boundary.

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:	GEN7	The Form of New Development
	GEN12	Parking in New Development
	DEV22	Relaxation of Restrictions (Occupation by the Elderly)

Publication Version of the Local Plan - Excluding the Spatial Portrait, Employment, Housing Allocations, Transport, Monitoring and Implementation sections (February 2014):	D DM1 Aspects of Form and Quality
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PLANNING POLICY GUIDANCE

NPPF

National Planning Policy Framework

POLICY COMMENTARY

The above policies combine to describe the criteria against which the application will be assessed particularly with regard to visual and residential amenity.

The Development Plan consists of the Arun District Local Plan 2003.

Paragraph 215 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework. It should be noted that the NPPF states that weight is given to individual policies and not to the plan as a whole.

NPPF Paragraph 216 confirms that weight can be given to policies in emerging plans following publication. The Council agreed the majority of the Arun Local Plan in February 2014 (Publication Version) and this is a material consideration in the determination of this planning application. The remaining chapters of the Local Plan will be considered for publication at a later meeting of Full Council and the whole Local Plan will undergo a formal public consultation once the remaining chapters have been published (with subsequent examination and adoption). The weight given to the published policies can be significant if the policies do not have unresolved objections and are consistent with the NPPF. The published chapters are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that it would have no materially adverse effect on the visual amenities of the locality or the residential amenities of the adjoining properties, nor would it have an adverse impact upon the established character of the surrounding area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PRINCIPLE:

This application is for the variation of an age restriction on 12 of a total of 15 flats which are subject to a restriction on occupation to persons of state pensionable age or higher. This restriction was imposed under a Section 52 Agreement following the approval of AW/94/87. The remaining 3 flats are not subject to this restriction.

This restriction was imposed because at the time of the application, there was not sufficient parking proposed to meet the Council's standards. Restricting occupation to the elderly meant that the parking standards could be relaxed. Notwithstanding this being the key issue, there are other material planning considerations that must be taken into account, particularly the potential impact of younger people occupying units amongst those that are still subject to age restrictions and open space considerations.

POLICY DEV22 "RELAXATION OF RESTRICTIONS RELATING TO OCCUPATION BY THE ELDERLY":

Policy DEV22 states that:

"The amendment of planning agreements or obligations relating to units of accommodation for persons over state pensionable age will not be agreed unless the development remains in accordance with other policies in this plan in particular:-

(i) adequate parking, amenity space and public open space to the standards required by unrestricted accommodation is provided and;

(ii) in cases where only a proportion of units are to be de-restricted, a satisfactory environment is maintained for those units that remain restricted under the terms of the legal agreement."

In this case, as a result of this application, the whole of the building will be derestricted, therefore criteria (ii) does not apply. With regard to (i), it is considered that there is sufficient amenity space locally (i.e. the park on Kings Parade & the beach to the south). Furthermore, with respect to parking, whilst the current parking requirements are for 21 spaces and there are only 17 on site, given the central location, available on street spaces and size of the accommodation (1 & 2 bed flats), it is not considered that the relaxation in the age of occupants will have a material impact. It should also be noted that since the agreement was signed in 1987, car parking standards have been adjusted downwards.

CONCLUSIONS:

For the reasons given above, it is considered that the discharge of this Planning Obligation is in accordance with this policy.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest

and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE