ARUN
DISTRICT COUNCIL

# MEMO

15 July 2010

**FROM:**
Delwyn Jones
Planning Solicitor
Resources Department
Tel Ext 37737

**TO:**
S Leeson
Planning

**CONSULTATION ON DISCHARGE OR VARIATION OF PLANNING OBLIGATION /S52 AGREEMENT**
**ADDRESS FLAT 6 SIMON COURT 8-12 CRESCENT ROAD BOGNOR REGIS**
**REF BR/199/10**

## GENERAL

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

I refer you to Counsels Advice dated 11 October 2006 and my summary of that dated 16 October 2006 by way of general background together with a copy of S84 Law of Property Act 1925 against which criteria thi9s should be judged.

## COPY DEED

No copy of the deed is enclosed but I am told that 1 November 1983 ref BR/349/82 Please supply a copy .I have proceeded on the assumption the deed is worded in the same firm as deeds from this time are.

Let me have a copy of questions arise

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

Due to date of the deed 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.

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 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 suggest in this case that there are no useful purposes identified on the file . Indeed a previous discharge dated 2 November 2004 ref BR/402/04/PO in relation to Flat No 4 in the same block suggests that there is no purpose for the retention of this covenant.

Indeed previous discharges are one criterion within S84LPA 1925 to discharge a S52 Agreement . It is also a ground of appeal to the LT. Further this suggests that other grounds viz impeding reasonable use , obsolescence due to changed circumstances and nobody will be harmed by the discharge, may apply

**FURTHER EVIDENCE**

I rely on you to show me any new or further evidence which may change the tenor of this advice.

**CONCLUSION**

I see no grounds for refusal
I see grounds for grant due to previous discharges and impliedly obsolescence ,no harm , and impeding reasonable use
Please send me instructions to draft a deed of discharge if you agree to discharge this deed on Flat No 6

Ref/lgdr/legprec/pl/podisch