

REF NO: BR/199/10/PO**LOCATION:** Flat 6
Simon Court
8/12 Crescent Road Bognor Regis**PROPOSAL:** Application to discharge a planning obligation dated 1st November 1983 under planning application ref no: BR/349/82/ relating to age occupancy restriction**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	The application requests the discharge of a Planning Obligation made under S52 of the Town and Country Planning Act 1971, originally relating to Simon Court, to enable the property at Flat 6, Simon Court to be occupied by a person, or persons, younger than State pensionable age.
SITE AREA	N/A
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat.
TREES	None affected.
BOUNDARY TREATMENT	Brick and rendered walling and fencing.
SITE CHARACTERISTICS	Two storey terraced block divided into flats. The property has smooth brown rendered walls and hipped slate roof. There is a car park to the rear with approximately 7/8 parking spaces for the use of Simon Court.
CHARACTER OF LOCALITY	Residential area consisting of predominantly two storey terraced properties. There is a commercial area with various uses to the northern end of Crescent Road.

RELEVANT SITE HISTORY

BR/402/04/PO	Application to discharge planning obligation BR/349/82 dated 1.11.83 relating to age occupancy restriction.	Approved with S106 10-03-2005
BR/349/82	8 no flats consisting of 6 no 1 bedroom flats & 2 no 2 bed- room flats at ground and 1st floor for elderly persons	Approve Cond 01-11-1983

REPRESENTATIONS**Representations received:**

Bognor Regis Town Council

Objection:

This would change the tenure of the area with people of pensionable age so that they can enjoy a peaceful retirement. It would therefore be unneighbourly.

Comments on Representations received:

Comment on Town Council Representations:

Noted. The flats are in an area of mixed tenure and mixed age groups where planning policies encourage mixed use/tenure/age group development. It is therefore not considered to be unneighbourly.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor:

The tests are those identified in S.84 Law of Property Act 1925, 1984 as S106A and "useful purpose" does not apply to cases pre 9th April 1992 but for practical purposes:

THE DETERMINATION OF THE CASE:

It may be judged that County Highways no longer back this age restriction but it may still serve a useful purpose if it is judged that there is another planning ground for keeping the age restriction.

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

Therefore recommend grant as there are no grounds for refusal.

Comments on Consultation responses:

Noted and agreed.

POLICY CONTEXT

Designation applicable to site:

Within Built-up Area Boundary

DEVELOPMENT PLAN POLICIES

Arun District Local Plan:

[GEN7](#)
[GEN22](#)
[GEN12](#)

The Form of New Development
Buildings or Structures of Character
Parking in New Development

PLANNING POLICY GUIDANCE

PPS1
PPS3

Delivering Sustainable Development
Housing

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.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

S. 84 Law of Property Act 1925 provides that a Planning Obligation made pre 9th November 1992

must be discharged if:-

- a. the obligation is obsolete due to changed circumstances
- b. the obligation prevents reasonable use of the land
- c. its removal will cause no harm
- d. other similar obligations have been discharged before

The original S106 Agreement was completed prior to 1992, the correct legislation for considering these proposals is S84 of the Law of Property Act 1925. The decision is either to discharge or modify the Planning Agreement.

The proposal is considered to comply with relevant Development Plan policies in that it would have no materially adverse affect on the character and amenities of the area or be detrimental to the existing occupiers and its original use pertains to parking standards which have been revised.

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

The application is for the removal of an age restriction on a single flat which is part of a large development and which was imposed under a Section 52 Agreement following the approval of BR/349/82 for eight flats. This restriction was imposed to ensure that no future change of use would require a greater number of car parking spaces in accordance with the Council's adopted car parking standards.

POLICY DEV22 - RELAXATION OF RESTRICTIONS RELATING TO OCCUPATION BY THE ELDERLY

This policy states that the restriction relating to persons over state pensionable age will not be agreed when the development remains in accordance with other policies, specifically that adequate parking and amenity space are provided and a satisfactory environment is maintained for the remaining units.

OTHER MATERIAL CONSIDERATIONS

However, 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 amenity space considerations. A further consideration is the supply of accommodation for elderly residents of the District and it is considered a special justification has to be put forward to allow for loss of such accommodation.

CARPARKING

BR/402/04/PO has been approved to release flat 4 from this restriction. Since the date of the signing of the agreement (BR/349/82) car parking standard policies have been adjusted

downwards. County Highways have been consulted.

AMENITY PROVISION

The existing flats have limited amenity area, the rear are consisting of carparking. The remaining flats at first floor are unrestricted and therefore there is already non-elderly persons accommodation with limited or no amenity space provision. In any case, the site is in a town centre location close to facilities where amenity provision for residents is less important. Therefore the resulting amenity provision for residents of an unrestricted unit of accommodation is not considered a significant issue in this instance.

NOISE AND DISTURBANCE

The original permission proposed mixed restrictions on this site because the first floor was unrestricted. Further another flat within this development has had its age restriction lifted in March 2005 under BR/402/04/PO. Therefore the issue of noise and disturbance from further mixing restricted and unrestricted accommodation is not considered to be a viable objection. Furthermore there is no evidence to suggest noise and disturbance is more characterised by certain age group over another. Ultimately significant nuisance matters can be dealt with by Environmental Health.

SUPPLY OF ELDERLY PERSONS ACCOMMODATION

The Council has to have regard to the supply of elderly persons accommodation. However, the flats were not purpose built for elderly residents and given the modern nature and requirements the loss of this unit is considered justified. One of the units has already had its age restriction lifted as mentioned.

SUMMARY

The observations made above show that the relaxation of the Planning Obligation at Flat 6 would be in accordance with Policy DEV22 of the Arun District Local Plan and other considerations. It is therefore recommended that this request be approved.

RECOMMENDATION

APPROVE

- 1 **INFORMATIVE:** This approval relates to an application to discharge a planning obligation dated 1st November 2010 under planning application ref no.BR/349/82/ relating to age occupancy restriction.