

Sandra Edwards

From: Amanda Scholes on behalf of Planning.Responses
Sent: 05 September 2017 09:28
To: Planning Scanning
Subject: FW: Planning Consultation on: BR/232/17/PO
Attachments: podisch.doc; dec3322a4f8d42d.pdf; 5e7ad36ef46b4f4.pdf; 60eefe6c21a14fc.pdf; dc5dbecb371744e.pdf; 20170904120416859.pdf; instsmag.doc; 20110822142156385.pdf

From: Delwyn Jones
Sent: 04 September 2017 12:12
To: Planning.Responses
Subject: RE: Planning Consultation on: BR/232/17/PO

Delwyn Jones | Planning Solicitor and Deputy Monitoring Officer , Legal Services, [Arun District Council](#) | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton
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Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: planning.responses@arun.gov.uk [<mailto:planning.responses@arun.gov.uk>]
Sent: 24 August 2017 15:04
To: Delwyn Jones
Subject: Planning Consultation on: BR/232/17/PO

To: Planning Solicitor- Delwyn Jones

NOTIFICATION FROM ARUN DISTRICT COUNCIL

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (As Amended)

Removal of a Planning Obligation

APPLICATION NO: BR/232/17/PO

Registered: 11th August 2017

Site Address: Arran Gate Marian Way Bognor Reis PO21 1PD

Grid Reference:

Description of Works: Application to modify a Planning Obligation dated 13th March 1987 imposed under Planning application BR/450/86 - Change

of age restriction from 'State Pensionable Age' to 'Persons of 55 years or over'

The Council have received the above application. I shall be pleased to receive any observations you may wish to make.

[Click here to view the application details](#)

Should you have any comments to make, these should be sent by replying to this email

by 28-SEP-17.

You can also monitor the progress of this application through the Council web site:
www.arun.gov.uk/planning

Please be aware that any comments you may make will be available on our website so please do not insert personal details or signatures on your reply.

In the absence of a reply within the period stated, I shall assume that you have no observations to make.

The application will be determined having regard to the development plan policies (if any are relevant) and other material considerations. The development plan can be accessed via the website as can the leaflet which deals with material planning considerations.

Should the application go to appeal the Planning Inspectorate will publish any comments made to the Council on their website:

www.planningportal.gov.uk/planning/appeals/ but they will protect personal details.

The officer dealing with this application is Richard Temple who can be contacted on telephone number [REDACTED]

Regards
Planning Officer

consultee_email

05 September 2017

FROM:

Delwyn Jones Planning Solicitor
Resources Department
Te [REDACTED]
Dated 4 September 2017

TO:

Richard Temple
Planning Department

CONSULTATION ON DISCHARGE OR VARIATION OF PLANNING OBLIGATION /S52 AGREEMENT Application to modify a Planning Obligation dated 13th March 1987 imposed under Planning application BR/450/86 - Change of age restriction from 'State Pensionable Age' to 'Persons of 55 years or over' **ADDRESS** Arran Gate Marian Way Bognor Reis PO21 1PD
REF BR/232/17/PO

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.

COPY DEED

I enclose a copy of the deed which shows it is dated 13 March 1987 .

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

Strictly speaking -Due to date of the deed this applies.
However, the test of – **“does the deed still fulfil a useful purpose?”** --applicable post 9 November 1992 under S106A TCPA 1990 may usually result in a similar if not the same conclusion –so you will detect that I approach the matter from and referring to that test as well.

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) if but only if the evidence justifies it - 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.

I recommend a grant in the terms of the application ie “55 years or over “because :-

[a] the application seeks a modernisation of the clause – not a complete discharge and removal

[b] so it still performs a useful purpose and /or complies with S84 LPA 1925 – but in a modified and modernised form

[c] nowadays the old formula “state pensionable age “ is difficult to apply as it rises to 67 and 68

[d] by contrast this proposal is for a specific clause related to a specific age ie “55 years or over “ ie occupation is prohibited of the flats except for [a] persons of 55 years or over [b] a couple one of whom is 55 years or over or [c] a survivor of a couple one of whom was 55 years or over “

This reflects up to date trends

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. But I think that unlikely in this case – where the “55 years” formula is still likely to fulfil these criteria and fit within modern up to date trends

I suggest in this case that there are (no) useful purpose(s) identified namely but because of the formula of “over 55 years there is no case to refuse.

COMMENTS ON EVIDENCE

ITEM	COMMENTS
Questionnaire	This may not address specifically – useful purpose or similar c- but it does show resident opinion in tune with the modern preferred phrasing of these “age restricted” clauses
Application	This helpfully identifies the s52 deed as dated 13 March 1987 ref BR/450/86 and the intention is not for complete removal of the deed but its modification t reflect the usual modern day clauses of “over 55 years “ The application is prompted by a 62 year old wishing to move in

	and pensionable age is now up to 67 so not in keeping with actual more flexible retirement ages or indeed – choosing still to work ages!
Statement Tim Morgan by email 10 July 17	Exhibit confirms owners as Arran Gate Limited at HMLR on 8 July 2017

HISTORY

I looked up some history and I not a previous application ref BR/340/13 /PO was refused due to lack of information.

I append a copy of the decision for you to compare.

Given the reason to refuse was “lack of evidence” I suggest this has now been remedied with this application which is evidence based.

FURTHER EVIDENCE

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

Ref/lgdr/legprec/pl/podisch

NPPG Extracts

Can an agreed planning obligation be changed?

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990).

Sections 106BA to 106BC of the 1990 Act used to provide an application and appeal procedure for the review of affordable housing obligations based on economic viability without taking into account other aspects of the planning consent. These provisions were repealed at the end of 30 April 2016. Guidance concerning applications made under section 106BA continues to apply to applications received before the end of April 2016.

Paragraph: 009 Reference ID: 23b-009-20160519 Revision date: 19 05 2016 See previous version

**IN THE MATTER OF PLANNING CONDITIONS AND PLANNING OBLIGATIONS RESTRICTING
OCCUPATION OF DWELLINGS TO PERSONS OF STATE RETIREMENT AGE OR OVER ("THE
RESTRICTIONS ")AND**

**IN THE MATTER OF VARIOUS APPLICATIONS TO REMOVE OR VARY SUCH
CONDITIONS/PLANNING OBLIGATIONS UNDER S106A TOWN AND COUNTRY PLANNING
ACT 1990**

URGENT INSTRUCTIONS TO COUNSEL
DEADLINE ADVICE REQUIRED BY 19 OCTOBER 2006

1.0 ENCLOSURES

Learned Counsel ("LC") has with these instructions the following enclosures:-

- i) File reference BR/293/06/PO application for modification of planning obligation dated 19th June 2001 to reduce the age restriction to 50 years of age Flat 7, Magnolia Court, 119 Victoria Drive, Bognor Regis.
- ii) Application BR/298/06/PO to modify planning obligation dated 19th June 2001 to reduce age restriction to 50 years of age Flat 1, Magnolia Court, 119 Victoria Drive, Bognor Regis.
- iii) Application BR/299/06/PO to modify planning obligation dated 19th June 2001 to reduce age restriction to 50 years of age Flat 15, Magnolia Court, 119 Victoria Drive, Bognor Regis.
- iv) Extracts from Arun District Local Plan 2003 Policies DEV21 and DEV 22 which gives some policy background upon the imposition of these conditions/planning obligations. IS has found no previous policies applicable to this issue. Restrictions appear to have been based on car parking standards.
- v) The planning obligation dated 19 June 2001 imposing the restrictions and subject to the applications to modify .

- vi) Extracts from file reference BR/95/00 being an earlier application on same site for “ **14 sheltered flats in 3 storey block**” .No planning obligation was completed on this application because the application at enclosure vii superceded it. This includes the Officer Report and a letter dated 16 August 2000 sending out the draft planning obligation.
- vii) Extracts from file reference BR/9/01 being the planning application for “**Revision to existing planning approval to include 1 additional flat at 2nd floor level**” for which resulted in the issue of the decision notice granting planning permission but subject to the imposition of the age restriction via the planning obligation. This includes the Officer’s Report and decision notice all giving background as to the reasons based on policies and other matters for the imposition of the age restriction. In fact the background is slight but there is reference to “ adequate amenity space for sheltered housing ..” and IS is told that car parking was inadequate for open market housing but adequate for sheltered housing without any rationale supplied.
- viii) E mails between IS and Planners.

2.0 INTRODUCTORY

2.1 Instructing Solicitor (“IS”) is Delwyn Jones, Planning Solicitor, Arun District Council (“LPA”) whose full address, telephone number and other contact details appears on the accompanying letter of instructions.

2.2 LC is requested to provide written advice on the questions posed by on or before 19 October 2006 that being the date when the 8 weeks to determine the above applications expires.

3.0 HISTORICAL AND POLICY BACKGROUND – ISSUE OF PLANNING PERMISSION FOR BLOCK OF FLATS WITH RESTRICTIONS

- 3.1 Enclosures vi and vii refer to extracts from planning application reference BR/95/00 and planning application reference BR/9/01. These enclosures and in particular the Officer Reports set out the background including policy references to the planning applications and the subsequent planning permissions and planning obligations.

3.2 With particular reference to the age restriction the background in summary is:-

- i) The original planning application was for “elderly person’s accommodation” ie “sheltered flats “ as the application title explained.
- ii) IS is advised that in development (as here) where there are reduced parking standards or scope for the provision of parking and open space is limited then this can be overcome by converting an application for a block of flats as general market housing to occupation by persons of retirement age. There is some slight allusion to this in the wording Policies DEV 21 and DEV 22 at enclosure iv. The rationale being that persons in this age category tend not to rely on the private motor car so much and do not need the same amount of amenity space as ,say, a young family with children.

3.3 It appears that these factors, as well as the factors identified in the Planning Officer’s Report indicated that these applications conformed with the Development Plan and that there were no material considerations indicating otherwise and accordingly they were granted but subject to planning obligations imposing age restrictions.

3.4 For the wording precisely of the age restrictions LC is referred to the planning obligation at enclosures v and in particular to Schedule 3 contained in it .

4.0 WIDER POLICY BACKGROUND

4.1 It occurs to IS that the imposition of the restrictions may no longer be justifiable by reduced car parking standards it being not uncommon nowadays to grant planning permissions for town centre developments with very little or no car parking due to policy changes in PPG 13 “Housing” paras 12 to 17 and “Car Parking “ paras 49- 56 . Accordingly there may be other justifications for these restrictions. Possibly these issues may indeed carry greater weight than alleged reduced parking standards.

4.2 These issues do not appear to be alluded to in any way in the planning applications at enclosures vi and vii . It is, therefore, an issue whether or not these can be invoked at the present time although it does appear to IS that they could certainly be justifications for imposing restrictions.

4.3 By way of summary of these further justifications IS would refer to:-

- i) Affordable housing in that the imposition of these covenants will reduce the value of these properties.
- ii) Promotion of mixed communities in town centres.
- iii) Promotion of sustainable development by way of promoting town centre development without reliance on cars. Often, if not in all cases, developments affected by the restrictions are located in town centres .Policies DEV 21 and DEV 22 refer to this ie DEV 21 “ Within the built up area”.
- iv) Reduced amenity space being available to developments affected by these restrictions.
- v) Sheltered Housing with the usual justification for that ie accommodation for a sector of the population with special needs which may not be compatible with the population at large owing to different lifestyle and routines. Accommodating the age groups together may adversely affect the amenities of either group or both. IS appreciates that this may contradict ii above.
- vi) PPG 3 on Housing and the need for more efficient use of land by higher density more intensive use of land and consequent lack or reduced car parking and amenity spaces as part of developments.

4.3 IS suggests that any applications to discharge or vary planning obligations restrictions could be made subject to these wider considerations and not just limited to “car parking standards issue” which, IS is advised, was the criteria upon which the initial imposition of the restrictions was based.

4.4 If helpful IS can obtain copies of car parking standards applied from time to time within the LPA's area.

5.IMMEDIATE ISSUE –APPLICATIONS TO DISCAHRGE OR VARY S106A TOWN AND COUNTRY PLANNING ACT 1990 AND CRITERIA APPLICABLE TO DETERMINATION

5.1 Enclosures i-iii reveal that applications are being made to vary or discharge these restrictions under S106A Town and Country Planning Act 1990 and SI 1992/2832 Modification and Discharge of Planning Obligations Regulations 1992.The eight weeks target to determine the applications expires on 19 October 2006

5.2 Enclosure vii shows query by Head of Planning about what criteria are applicable to these determinations, and whether indeed they are capable of refusal on certain grounds, possibly other than car parking standards which may no longer be so weighty in light of policy changes. Also in this enclosure is advice given by IS initially on the relevant criteria applicable to these determinations. IS has based this advice in particular on S106A (6)(b)(c) and Encyclopaedia of Planning Law “EPL” Vol 2 para 106.08 and Circular 5/2005 para A20. In short IS believes that the phrase “useful purpose “ in the section in light of this policy advice can be broader than just asking whether the original reason for imposing the restriction still applies.

5.3 These questions are asked having regard to the volume of applications now being made to discharge or modify restrictions and the rights of appeal under S106B Town and Country Planning Act 1990.IS is told that the volume is such that if granted the District may lose significant amounts of flats with restrictions—which is significant in view of a large number of residents in higher age groups. Provided there is enough evidence for this ,this itself may be a material consideration.

5.4 The applications enclosed are only examples. There are several others. In view of this, and the general principle that each case be decided on its own merits ,IS understands that LC may want to give only general advice as to the meaning and scope of material considerations in these cases.

5.5 The flats with restrictions are divided into two categories ie :-

(i) developments of flats exclusively for the elderly which have age restrictions on all flats eg MC Carthy and Stone and other specialist sheltered housing providers which tends to be the case in more recent developments and

(ii) mixed developments with some flats with age restrictions and others open market which tend to have been approved in the 1970s -1990s .

6. FURTHER ISSUES RELATING TO APPLICATIONS TO MODIFY OR DISCHARGE RESTRICTIONS PRE INTRODUCTION OF SS106A AND 106B ON 9 NOVEMBER 1992

6.1 IS is advised that there have been received ,or are awaited ,similar applications ,but this time in relation to Planning Obligations made prior to the introduction of the new procedures for discharging or modifying Planning Obligations .Some of these applications may indeed relate to Planning Agreements made under S52 Town and Country Planning Act 1971.They still relate to the restrictions defined above.

6.2 This simple question is asked what criteria are applicable to determination of these applications? No specific examples have been copied to IS so this question is asked very generally. Naturally IS and Planners will understand that LC's advice will be similarly general.

6.3 The policy and factual background is the same for these restrictions as for those enclosed at enclosures i-iii above ie they are occupancy restrictions limiting occupancy to persons over State Pensionable Age were imposed at the time ,principally ,due to limited or reduced car parking standards on the sites .The restrictions may have been justified by limited amenity open space too.

6.4 These restrictions fall into two groups viz :-

- (i) Those made under S106 Town and Country Planning Act 1990 as originally enacted the before amendment by Planning and Compensation Act 1991 and
- (ii) Those made under S52 Town and Country Planning Act 1971 and even predecessor legislation.

6.5 IS is asked to seek advice from LC as to what criteria should be applied to these restrictions in the event of applications made to modify or discharge them.

6.6 IS is aware that previously Planners have determined these having regard to much the same criteria as referred to above. If they have consented to modify or discharge then a deed of modification or discharge has been entered into because the provisions of S106A are inapplicable so a deed would be the only way to modify or discharge another deed (see S106(9)) . In the event of a refusal of the application then the applicants have had ,and continue to have , the option of an application to the Lands Tribunal under S84 Law of Property Act 1925 and the criteria set out there. Further S106A (10) excludes S84 Law of Property Act 1925 from applying to Planning Obligations made post 9 November 1992.

7. HUMAN RIGHTS AND AGE DISCRIMINATION LEGISLATION

7.1 By way of comprehensiveness some potential applicants have alleged that these restrictions breach Article 8 European Convention of Human Rights (“ECHR”) and/or the new Age Discrimination Legislation applicable as of 1 October 2006.

7.2 The LPA have replied in short that neither of these provisions can apply because :-

- (i) the planning reasons for requiring the restrictions summarised above are sufficient to make the restrictions justifiable within Article 8.2 ECHR .
- (ii) The Age Discrimination legislation clearly affects only contracts of employment as its title implies Employment Equality (Age) Regulations 2006 .

8. QUESTIONS FOR LC

8.1 LC is asked to provide written advice on these questions in light of the above summary of issues:-

- i) What is the correct criteria for the LPA to consider when considering the applications at enclosures i-iii all of which relate to planning obligations which were made **post 9 November 1992** ?
- ii) Are the LPA confined only to considering the considerations applicable when the obligations were originally made?

- iii) If the answer to ii) above is "No" please confirm that the LPA can consider further criteria in addition to those application when the planning obligations were made.
- iv) If the answer to ii) above is "No" please identify the criteria which the LPA have to consider. IS appreciates that the description of criteria to be considered may not be exhaustive and may differ from one application to another. Do these issues fall within the usually understood definition of "material considerations " within the context of Town and Country Planning in general ?
- v) Are the criteria identified in the Head of Planning Services' memo of 26th September appropriate and relevant criteria having regard to the meaning of "useful purpose" and /or "material consideration " ? If so, what additional criteria can be considered --- examples will suffice the question possibly not being capable of a final answer as each case will be decided on its own merits ?
- vi) What criteria apply to discharge or modification of Planning Obligations made **pre 9 November 1992 ?**
- vii) What criteria apply to discharge or modifications of Planning Agreements made under S52 Town and Country Planning Act 1971 or indeed predecessor legislation?
- viii) For completeness what rights of appeal apply to to each of the three cases described above?
- ix) Do Human Rights or Age Discrimination issues impact on this matter ?
- x) What general advice ,if any ,in addition to the above does LC have?

Date: 29th September 2006

Ref/leg/gdr/legprec/pl/instsmag

Arran Gate Residents Association

1) Do you agree to having a gentleman aged 62 move into flat 4.

2) Do you agree for a codicil to our lease to change the term "of pension able age" to 2 an age of 60/⁵⁵years for both men and women.

Flat		1	2
1	Mr & Mrs C Mann	✓	✓
2	Mrs J Hurst	✓	✓
3	Mrs M Hunter	✓	✓
5	Mrs J Whitehead	✓	✓
6	Mrs D Whitehead	✓	✓
7	Mr W Robinson	✓	✓
8	Mr & Mrs J Alcott	✓	✓
9	Mr G Main		
10	Mrs A Rutland	✓	✓
11	Mr & Mrs H Entwistle	✓	✓
12	Mrs G Barnard	✓	✓
14	Ms D Balaam	✓	✓
15	Mrs J Tapping	✓	✓
16	Mrs B Brown	✓	✓
17	Mrs N Lawrence	✓	✓
19	Mrs E Sizmur	✓	✓
22	Mrs D Scottow	✓	✓
23	Mr D Undy		
24	Mr & Mrs P Cheesme	✓	✓
25	Mr & Mrs B Noble	✓	✓



Town and Country Planning Act 1990, Section 106A
Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

Notice of an Application to Modify or Discharge a Planning Obligation
Under Section 106A of the Town and Country Planning Act 1990
(Notice to be given by the local planning authority)

Take notice that (a) ARRAN GATE LTD
has applied to the (b) ARUN DISTRICT COUNCIL
to *modify/*discharge the planning obligation described below

Planning Obligation
Obligation (c):

PLANNING 450/86 IS MODIFIED FROM STATE PENSIONABLE AGE TO 1 PERSONS OVER 55 YEARS OLD.

Land to which obligation relates (d):

ARRAN GATE, MARIAN WAY, BOGNOR REGIS, PO21 1PD

Date on which obligation was entered into (e): 13 MARCH 1987

Members of the public may inspect copies of the application and the relevant part of the instrument creating the obligation at (f) STRIDE AND SON

during all reasonable hours until (g) 9am - 5pm MON - FRI UNTIL 29 SEPTEMBER 2017

Anyone who wished to make representation about the application write to the authority at (h)

by (g) ARUN DISTRICT COUNCIL

Signed 

on behalf of* ARRAN GATE LTD

Date 9 AUGUST 2017

Notes

*Delete where inappropriate

(a) name of applicant

(b) name of local planning authority

(c) brief description of the planning obligation which the applicant wishes to have modified or discharged

(d) address or location of the land

(e) relevant date

(f) address at which the documents may be inspected

(g) date giving period of 21 days beginning with the date on which the notice is posted, published or served, as the case may be.

(h) address of local planning authority.

Data Protection

The information contained in this form will be used by Arun District Council for the purposes indicated and will be further used or transferred to other organisations or individuals, only as the law permits.

009.02..07 (v.1)

scan

BR/232/17/PO

TOWN AND COUNTRY PLANNING ACT 1990, sect. 106A

Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

For the Council's use only

Application No.

Date received

APPLICATION FOR THE MODIFICATION OR DISCHARGE OF PLANNING OBLIGATIONS

1 Applicant (in block capitals)

Name: ARRAN GATE LIMITED

Address: MARIAN WAY, BOGNOR REGIS

Post Code PO21 1PD

Tel. No:

2 Agent (if any)

Name: STRIDE AND SON

Address: SOUTHDOWN HOUSE, ST. JOHNS STREET
CHICHESTER

Post Code PO19 1XQ

Tel. No: [REDACTED]

3 Address or exact location of the land to which this application relates:

ARRAN GATE, MARIAN WAY, BOGNOR REGIS, PO21 1PD

Describe here and enclose a map identifying the land to which the obligation relates.

MAP OF ARRAN GATE ENCLOSED

4 Nature of applicant's interest in the land (eg owner, lessee, occupier):

FREEHOLDER

5 Please give sufficient information to enable the authority to identify the planning obligation which you wish to have modified or discharged:

APPLICATION TO MODIFY A PLANNING OBLIGATION
DATED 13TH MARCH 1987 IMPOSED ON PLANNING
APPLICATION BR/450/86 - CHANGE OF RESTRICTION
FROM 'STATE PENSIONABLE AGE' TO 'PERSONS OF 55
YEARS OR OVER'

Certificate A

I certify that on the day 21 days before the date of the accompanying application the planning obligation to which the application relates was enforceable against nobody other than the applicant.

Signed

[on behalf of]

Date

ARRAN GATE LIMITED

9 AUGUST 2017

Certificate B

I certify that [I have] [the applicant has] given notice to everyone else against whom, on the day 21 days before the date of the accompanying application, the planning obligation to which the application relates was enforceable, as listed below.

Person on whom
notice was served

Address at which
notice was served

Date on which
notice was served

ATTACHED.

10-JUL-2017

Signed

[on behalf of]

Date

ARRAN GATE LIMITED

9 AUGUST 2017

Cross out any words in square brackets which do not apply

CONTINUED OVERLEAF

NOTES

Amendments

Sub-s (5): inserted by the Law of Property (Miscellaneous Provisions) Act 1989, s 1(8), Sch 1, para 5.

Sub-s (1): Person See the note to s 1 ante.

Sub-s (1): Commencement of this Act This Act came into operation on 1 January 1926 by virtue of s 209(2) (repealed). See the note "Commencement" to s 209 post. Sub-s (1)-(4) (apart from the words from "and where" to "each of them" in sub-s (1) above, which are new) reproduce the Conveyancing Act 1881, s 60 (repealed).

Sub-s (2): Covenant implied Covenants are implied by virtue of ss 48(2), 76(1) (repealed), 77(1) ante, this section and ss 117(2), 118(3), 119 post. This section also applies to a covenant implied by virtue of the Law of Property (Miscellaneous Provisions) Act 1994, Pt I post; see s 8(2) of that Act.

Sub-s (3): Contrary intention This section is applicable to trustees (see the Trustee Act 1925, s 18, Vol 48, title Trusts and Settlements), and if, therefore, in their case, as in any other, it is desired to prevent the covenants made with them jointly being also several, a contrary intention must be expressed.

The clearest possible words should be used where it is intended to exclude this section.

Sub-s (4): 31st December 1881 It the day before the Conveyancing Act 1881, s 60, came into operation.

Additional information See the Introductory Note(s) to this Act.

Law of Property (Miscellaneous Provisions) Act 1989 See this title post.

Definitions "conveyance", s 205(1)(ii)

82 Covenants and agreements entered into by a person with himself and another or others [161]

(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

NOTES

Sub-s (1): Person See the note to s 1 ante.

Sub-s (2): Before or after the commencement of this Act This Act came into operation on 1 January 1926 by virtue of s 209(2) (repealed); see the note "Commencement" to s 209 post.

Sub-s (2): Covenants implied See ss 48(2), 76(1) (repealed), 77(1), 81(1) ante and ss 117(2), 118(3), 119 post for the covenants of title and indemnity which are implied on the part of any person conveying or expressed to convey in any of the capacities therein specified.

Additional information See the Introductory Note(s) to this Act.

Cases relating to this section

Bonsor v Musicians' Union [1954] Ch 479, [1954] 1 All ER 822, CA, partly revsd on another point at [1956] AC 104, [1955] 3 All ER 518, HL (sub-s (1))

Ellis v Kerr [1910] 1 Ch 529, 79 LJ Ch 291 (sub-s (1))

Napier v Williams [1911] 1 Ch 361, 80 LJ Ch 298 (sub-s (1))

"the court": s 203(2)

83 Construction of implied covenants [162]

In the construction of a covenant or proviso, or other provision, implied in a deed or assent by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

NOTES

Covenant ... implied Covenants are implied by virtue of ss 48(2), 76(1) (repealed), 77(1), 81(1) ante and ss 117(2), 118(3), 119 post. This section also applies to a covenant implied by virtue of the Law of Property (Miscellaneous Provisions) Act 1994, Pt I post; see s 8(2) of that Act.

Deed or assent The Conveyancing Act 1881, s 64 (repealed), which this section replaced, did not mention assents.

Singular or plural; masculine gender Cf s 61 ante and the Interpretation Act 1978, s 6, Vol 41, title Statutes.

Additional information See the Introductory Note(s) to this Act.

[84 Power to discharge or modify restrictive covenants affecting land [163]

(1) The Lands Tribunal shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction on being satisfied—

- (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Lands Tribunal may deem material, the restriction ought to be deemed obsolete; or
- (aa) that (in a case falling within subsection (1A) below) the continued existence thereof would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified so impede such user; or
- (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or
- (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction;

and an order discharging or modifying a restriction under this subsection may direct the applicant to pay to any person entitled to the benefit of the restriction such sum by way of consideration as the Tribunal may think it just to award under one, but not both, of the following heads, that is to say, either—

(1) a sum to make up for any loss or disadvantage suffered by that person in consequence of the discharge or modification; or

(ii) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.

(1A) Subsection (1)(a) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of land in any case in which the Lands Tribunal is satisfied that the restriction, in impeding that user, either—

- (a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or
- (b) is contrary to the public interest;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification.

(1B) In determining whether a case is one falling within subsection (1A) above, and in determining whether (in any such case or otherwise) a restriction ought to be discharged or modified, the Lands Tribunal shall take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.

(1C) It is hereby declared that the power conferred by this section to modify a restriction includes power to add such further provisions restricting the user of or the building on the land affected as appear to the Lands Tribunal to be reasonable in view of the relaxation of the existing provisions, and as may be accepted by the applicant; and the Lands Tribunal may accordingly refuse to modify a restriction without some such addition.

- (2) The court shall have power on the application of any person interested—
- (a) to declare whether or not in any particular case any freehold land is, or would in any given event be, affected by a restriction imposed by any instrument; or
- (b) to declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is, or would in any given event be, enforceable and if so by whom.

Neither subsections (7) and (11) of this section nor, unless the contrary is expressed, any later enactment providing for this section not to apply to any purposes of this subsection of any other provisions of this section.

(3) The Lands Tribunal shall, before making any order under this section, direct such enquiries, if any, to be made of any government department or local authority, and such notices, if any, whether by way of advertisement or otherwise, to be given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified, or dealt with as, having regard to any enquiries, notices or other proceedings previously made, given or taken, the Lands Tribunal may think fit.

(3A) On an application to the Lands Tribunal under this section the Lands Tribunal shall give any necessary directions as to the persons who are to be admitted (as appearing to be entitled to the benefit of the restriction) to oppose the application, and no appeal shall lie against any such direction; but rules under the Lands Tribunal Act 1949 shall make provision whereby, in cases in which there arises on such an application a question as to the persons who are to be admitted (as appearing to be entitled to the benefit of the restriction) to oppose the application, and no appeal shall lie against any such direction; but rules under the Lands Tribunal Act 1949 shall make provision whereby, in cases

the admission of persons to oppose) any such question as is referred to in subsection (2)(a) or (b) of this section, the proceedings on the application can and, if the rules so provide, shall be suspended to enable the decision of the court to be obtained on that question by an application under that subsection, or by means of a case stated by the Lands Tribunal, or otherwise, as may be provided by those rules or by rules of court.

(5) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction, which is thereby discharged, modified or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not.

(6) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with, may not have been produced to the court or the Lands Tribunal, and the court or the Lands Tribunal may act on such evidence of that instrument as it may think sufficient.

(7) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter, but this section does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.

(8) This section applies whether the land affected by the restrictions is registered or not ...

(9) Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken, may in such proceedings apply to the court for an order giving leave to apply to the Lands Tribunal under this section, and staying the proceedings in the meantime.

(11) This section does not apply to restrictions imposed by the Commissioners of Works under any statutory power for the protection of any Royal Park or Garden or to restrictions of a like character imposed upon the occasion of any enfranchisement effected before the commencement of this Act in any manor vested in His Majesty in right of the Crown or the Duchy of Lancaster, nor (subject to subsection (11A) below) to restrictions created or imposed—

- (a) for naval, military or air force purposes,
- [(b) for civil aviation purposes under the powers of the Air Navigation Act 1920, of section 19 or 23 of the Civil Aviation Act 1949 or of section 30 or 41 of the Civil Aviation Act 1982.]

(11A) Subsection (11) of this section—

- (a) shall exclude the application of this section to a restriction falling within subsection (11)(a), and not created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown; and
- (b) shall exclude the application of this section to a restriction falling within subsection (11)(b), or created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown or any public or international authority.

(12) Where a term of more than forty years is created in land (whether before or after the commencement of this Act) this section shall, after the expiration of twenty-five years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been

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ARUN DISTRICT COUNCIL

**IN THE MATTER OF PLANNING CONDITIONS AND PLANNING
OBLIGATIONS RESTRICTING OCCUPATION OF DWELLINGS TO
PERSONS OF STATE RETIREMENT AGE OR OVER ("THE
RESTRICTIONS") AND**

**IN THE MATTER OF VARIOUS APPLICATIONS TO REMOVE OR VARY
SUCH CONDITIONS/PLANNING OBLIGATIONS UNDER S106A TOWN AND
COUNTRY PLANNING ACT 1990.**

ADVICE

1. I am asked to advise urgently upon the following matters;
 - (i) What is the correct criteria for the LPA to employ when considering the applications at enclosures i-iii all of which relate to planning obligations which were made post 9 November 1992?
 - (ii) Are the LPA confined only to considering the matters applicable when the obligations were originally made?
 - (iii) If the answer to ii) above is "No" please confirm that the LPA can consider further criteria in addition to those when the planning obligations were made?
 - (iv) If the answer to ii) above is "No" please identify the criteria which the LPA have to consider. IS appreciates that the description of criteria to be considered may not be exhaustive and may differ from one application to another. Do these issues fall within the

usually understood definition of “material considerations” within the context of Town and Country planning in general?

- (v) Are the criteria identified in the Head of Planning Services Memo of 26th September appropriate and relevant criteria having regard to the meaning of “useful purpose” and/or “material consideration”? If so what additional criteria can be considered-examples will suffice the question possibly not being capable of a final answer as each case will be decided on its own merits?
- (vi) What criteria apply to discharge or modification of planning obligations made pre 9 November 1992?
- (vii) What criteria apply to discharge or modifications of Planning Agreements made under section 52 of the Town and Country planning Act 1971 or indeed predecessor legislation?
- (viii) What rights of appeal apply to each of the three cases described above?
- (ix) Do Human Rights or Age Discrimination issues impact on this matter?
- (x) Generally.

Background

- 2.0 I shall set out the general background to this matter. Planning permission was granted (BR/95/00) for 14 sheltered flats in a 3 storey block at 119 Victoria Drive, Bognor Regis subject to a section 106 Agreement that the flats should only be occupied by persons of state pensionable age (“the first permission”). The first

permission was granted on 15th August 2000. A later revision to this permission (BR/9/01) to include an additional flat at second floor level and minor amendments was approved on 19th June 2001 subject to the same section 106 Agreement ("the second permission"). Applications have now been made in relation to 2 flats at 119 Victoria Drive to modify the planning obligation and to lower the age restriction to 50. The reasoning behind the applications is that the majority of retirement flats have an age restriction of 50 and that the current restriction gives the impression that the properties are warden assisted which they are not.

- 2.1. The Officers Reports in relation to both of these permissions refer to 3 policies in 2 Local Plans current at the time-Arun District Local Plan EVT7, HSG5 and Arun District Local Plan Second Review Revised Deposit Draft GEN7. As I understand it these are general policies and do not specifically relate to the provision of accommodation for the elderly. I am referred to 2 policies in the current local plan namely DEV 21 and 22;

*"DEV 21 Accommodation Restricted to occupation by the Elderly
Within the built up area, planning permission will be granted for the erection of new dwellings restricted to occupation by persons of 60 years of age or over. When such a person is sharing with a partner or spouse, that partner or spouse may be 55 years of age or over. Where reduced parking standards are considered appropriate, planning permission will only be granted subject to a legal agreement restricting occupancy of the units to persons complying with these criteria.*

Reason

To protect the character of the area and the amenities of the neighbouring occupiers

DEV22 Relaxation of restrictions relating to occupation by the elderly

The amendment of conditions, planning agreements or planning 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 and 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 the units are to be de-restricted, a satisfactory environment is maintained for those units that remain restricted under the terms of the legal agreement or condition.*

Reason

To protect the character of the area and the amenities of neighbouring occupiers.

2.2 The section 106 Agreement Schedule 3 restricts the following;

"Not to permit any unit of residential accommodation forming part of the Development [except any unit occupied by a house manager and his or her spouse] to be occupied by a person or persons other than;

[a] a single resident who has attained the age of sixty years unless the survivor of those persons mentioned in [b];

[b] joint residents, one of whom has attained the age of sixty years .

Unless otherwise agreed in writing by the Council"

2.3 The rationale behind the age restriction is that persons in this age category do not rely on the private car so much and do not need as much amenity space as those for example with young children.

2.4 My instructing solicitor helpfully refers me to policy changes set out in national guidance on transport and car parking in PPG 13. PPG 13- Transport was

produced on March 27th 2001 after the first permission was granted but before the second permission.

2.5 He also draws attention to the current policies relating to reduced parking standards on town centre developments generally. In particular he draws attention to the advice in PPG13 at paragraphs 12-17 and 49-56.

2.6.1 He sets out a number of other possible justifications for the restrictions at present;

- i) The provision of affordable housing in that the imposition of these covenants will reduce the value of these properties.
- ii) The promotion of mixed communities in town centres.
- iii) The promotion of sustainable development by way of promoting town centre development without reliance on cars. Often, although not in all cases, developments affected by the restrictions are located in town centres. Policies DEV 21 and 22 refer to this eg DEV 21 "Within the built up area..."
- iv) Reduced amenity space being available to developments affected by these restrictions.
- v) Sheltered housing with the usual justification for that ie accommodation for a sector of the population with special needs which may not be compatible with the population at large owing to different lifestyle and routines. Accommodating the age groups together may adversely affect the amenities of either group or both. (IS appreciates that this may contradict ii above)
- vi) PPG 3 –Housing and the need for more efficient use of land by higher density and more intensive use of land and consequent lack or reduced car parking amenity spaces as part of developments.

2.6.2 Whilst this Advice is specifically directed to the two applications which have to be determined by 19th October 2006, I am advised that there are many more such applications for modification/discharge within the District generally which if granted would significantly reduce the amounts of flats with restrictions and I shall give general advice in relation to those applications. It is suggested that provided there is enough evidence for this, it may be of itself a material consideration. The flats with restrictions are divided into two categories;

- (i) developments of flats exclusively for the elderly which have age restrictions on all flats eg McCarthy and Stone and other specialist sheltered housing providers which tends to be the case in more recent developments
- (ii) mixed developments with some flats with age restrictions and other open market which tend to have been approved in the 1970-90s.

These restrictions may have been granted on the basis of reduced car parking /and or reduced provision of amenity space. My instructing solicitor sets out the position generally rather than specifically in relation to these circumstances and this Advice is necessarily general in relation to other possible applications.

Those restrictions further fall into two groups

- (i) those made under section 106 of the Town and Country planning Act 1990 and
- (ii) those made under section 52 of the Town and Country Planning Act 1971.

2.6.3 Further some potential Applicants have alleged that these restrictions breach Article 8 of the European Convention of Human Rights and/or the new Age Discrimination legislation.

2.6.4. The Head of Legal Services has identified that a possible reason for refusal on the following lines;

The whole development was assessed and granted planning permission on the basis that the development would be occupied by persons of retirement age. To remove this restriction in a piecemeal fashion flat by flat would result in development that did not make adequate provision for off-site facilities such as children's playspace and amenity areas needed to serve general family unit accommodation. The partial conversion of the flatted schemes would also lead to conditions of noise and general disturbance that would adversely affect the residential amenities of the remaining elderly occupiers who had purchased the accommodation specifically to provide themselves with a particular environment.

Legal Background

3.1 Section 106A of the *Town and Country Planning Act 1990 as amended* provides for modification/discharge of planning obligations either by agreement or by way of an appeal to the Secretary of State under section 106B. When such an application is made, a local planning authority may determine that;

- (a) *the planning obligation shall continue without modification*
- (b) *if the obligation no longer serves a useful purpose, that it shall be discharged*
- (c) *if the obligation continues to serve a useful purpose, but would continue to serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications. (s 106A(6))*

3.2.3 The scope of this section was considered by the High Court in *R (The Garden and Leisure Group Ltd) v North Somerset Council* [2003] EWHC 1605 and it was concluded that the section does not require that the obligation should continue to serve its original purpose, what matters is that the obligation should serve a useful purpose. The Planning Encyclopedia notes at 106/8 that it is not a “useful planning purpose” which must be met. However Circular 5/2005 entitled Planning Obligations advises at A20;

“The Secretary of State considers that the expression “no longer serves any useful purpose” should be understood in land use planning terms.”

Furthermore A33 advises that;

“The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992..... The procedures in these Regulations apply only to planning obligations entered into under section 106 or section 299A of the Town and Country Planning Act 1990, as substituted and inserted by section 12 of the Planning and Compensation Act 1991. They do not apply to agreements entered into under other powers, including section 106 as originally enacted.”

The accompanying Regulations confirm this.

3.2.4 PPG13 Transport was issued on 27th March 2001. Paragraphs 12-17 set out the advice in relation to housing and cross refers to the advice in PPG3 which was issued in March 2000. In essence the advice set out in both encourages development to be located in sustainable locations and discourages the use of the car. This advice represented a shift of direction in Government thinking. Paragraphs 49-56 further advises that parking provision should generally be reduced in new developments to reduce the reliance on the private car.

3.2.5 Some of the potential Applicants have alleged that the restrictions breach Article 8 of the European Convention of Human Rights and/or the new Age Discrimination legislation. Article 8 provides a “right to a home/private life”. Any restrictions have to be judged against this right and be proportionate. The Employment Equality (Age) Regulations 2006 came into force on 1st October 2006 but do not apply in this case as they relate to employment as the title of the Regulations suggests. However they are an indication of Government thinking.

3.2.6 Applications to remove restrictive covenants may be made to the Lands Tribunal under section 84 of the Law of Property Act 1925. Until the introduction of section 106A and B this was the procedure which applied to planning obligations. The section provides that such restrictions may be partially or wholly modified by the Tribunal if satisfied-

(a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the lands tribunal may deem material, the restriction ought to be deemed obsolete; or

(aa) that(in a case falling within subsection (1A) below) the continued existence thereof would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified so impede such user; or.....

(c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.

Analysis

4.0 I shall give advice primarily directed to the facts of these two applications but it is also of general relevance in relation to other similar applications obviously with the usual caveat that the specific facts need to be considered in each case. The views expressed below are inevitably “on balance views” as there is little case law on this matter.

1. In my view the LPA is able to take into account all of the criteria set out in paragraph 2.6.1 supra in determining the applications referred to in this Advice which relate to the specific applications to remove planning obligations set out in paragraph 2.0 which were made post-1992. The term “Useful purpose” in section 106A (6) should be broadly interpreted. Whilst it is unclear from the case law and Government advice whether “useful purpose” should mean useful planning purpose it will make little difference as material considerations for planning purposes has been very widely interpreted by the Courts and this is a similar provision. However the LPA must give proper reasons for refusing applications to discharge/modify and therefore the considerations which are taken into account must be supported evidentially and/or in policy terms. Although of interest little turns on it but I note that the advice on sustainability contained in PPG13 which referred back to PPG3 was issued prior to the determination of the permissions and it is reasonable to assume that the LPA took it into account in determining the applications.
- 2 It follows that the LPA is not confined to consideration of the matters which were applicable when the obligations were made and can consider further criteria as I set out above.

- 3 The further criteria set out in paragraph 2.6.1 of this Advice may be material but as I have indicated there needs to be clear evidence that the removal of the restriction will have a clear adverse impact on those matters.
- 4 The Head of Planning Services has set out a reason for refusal referred to in paragraph X of this Advice. It relates to piecemeal change and can constitute a reason for refusal in addition to the other matters identified in paragraph 2.6.1.
- 5 The criteria which apply to discharge/modification of planning obligations made pre-November 1992 (which include applications to discharge/modify planning agreements made earlier under any legislation) are set out in section 84 referred to in paragraph 3.2.6 supra. The only procedure for removal of those agreements is by way of an application to the Lands Tribunal.
- 6 In my view the rationale behind these restrictions is proportionate in terms of the Human Rights Convention and the Age Discrimination legislation does not apply for the reasons set out in paragraph 3.2.5 of this Advice.

Those instructing should not hesitate to contact me if I can be of any further assistance. I would be pleased to advise further by telephone.

Anne Williams
6 Pump Court
Temple
London EC4Y7AR

October 11th 2006

4th July 2007

FROM:
Delwyn Jones
Planning Solicitor
[REDACTED]

TO:
Howard Cheadle
Head of Planning

c.c. Juan Baez, Planning Appeals Officer

Ref: BR/282/06/PO-DJ/jc

Priory Court, Cambell Road, Bognor Regis
Jurisdiction to hear Appeal against refusal to amend Planning Obligation/Section 52 Agreement

1. Your Question

I return the papers on which you endorse your questions. I address the questions below.

2. Answers in a nutshell

We have previously discussed the different regimes which apply to applications and appeals for discharging or varying planning obligations/Section 52 Agreements.

In brief the Tribunal with jurisdiction and legal powers to hear the Appeal will vary dependent on the date of the Planning Obligation/Section 52 Agreement.

If the Section 52 Agreement pre-dates changes introduced by the Planning and Compensation Act 1991 the correct Tribunal for determining the Appeal is the Lands Tribunal. This is essentially a Court who has jurisdiction over land disputes and compensation issues. Section 106A sub-section 10 Town and Country Planning Act 1990 provides that the Lands Tribunal has no jurisdiction to determine disputes concerning the discharge of planning obligations. However, this only applies after 25th October 1991 and 9th November 1992.

These dates are when the reforms introduced by the Planning and Compensation Act 1991 came into force.

There are numerous authorities and references which confirm this, I refer in particular to Circular 5/2005 paragraph A33.

I attach Counsel's opinion which we took on the matter.

3. The present decision

The present decision as appears from the note attached related to the discharge or variation of a Section 52 Planning Agreement dated 7th October 1988 (wrongly referred to as "1998" by the Planning Inspectorate in their letter).

Continued...../

..../Continued.....

Consequently, Juan and I wrote to the Inspectorate raising a fundamental objection to the Inspectorate saying that they would deal with the Appeal. The point was a very simple one namely that the Inspectorate had no jurisdiction because of the date of the Agreement. The Agreement clearly pre-dated the reforms and consequently only the Lands Tribunal had jurisdiction.

The letter confirms that the Inspectorate considered the position and now agrees with us.

4. Implications for future

1. In my opinion there is no problem for us to continue using the same forms as we do for ordinary applications whether the agreement or the planning obligation pre or post dates the reforms. This helps because of consistency and the issues are more or less the same, i.e. "useful purpose" or whether the agreement still confers some benefits or is not obsolete.
2. The Counsel's opinion attached confirms this.
3. The crucial issue is what happens on appeal.
4. If, as in the present case, the appellant mistakenly apply to the Planning Inspectorate to hear the Appeal in the case of a planning agreement which pre-dates the reforms then we should raise a fundamental point on jurisdiction. This is a good tactical point as the costs of going to the Lands Tribunal may be more significant than a Planning Inspectors Appeal. Further, it is an essential legal point as if the wrong tribunal determines the appeal the determination will be ultra vires and null and void.

5. All Issues covered

I believe that this is a sufficient explanation of your questions. Juan Baez has the full file with correspondence between me and the Planning Inspectorate which lead to the successful determination. I have kept records for future reference. The matter may need raising with your Officers in case the point arises again.

6. Future Appeals

There are no time limits. Consequently, it is always open for the present appellant to decide to appeal to the Lands Tribunal now he has received this determination. If he does so then we will be dealing with the matter on the basis of Section 84 Law of Property Act 1925. However, stated above the issues are not dissimilar to those under Section 106A Town and Country Planning 1990. The Lands Tribunal does not deal with matters informally and usually requires oral hearings where parties are represented by barristers. If need be that is a matter we can discuss in future. Clearly we have already got a barrister with background on the issue having regard to Anne Williams' evidence attached.

Delwyn Jones

Enc.



The Planning Inspectorate

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<http://www.planning-inspectorate.gov.uk>

ARUN DISTRICT COUNCIL
RESOURCES DEPT

29 JUN 2007

ACTION...
PO

Delwyn Jones
Planning Solicitor
Arun District Council
Arun Civic Offices
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Your Ref: BR/282/06/PO
Our Ref: APP/C3810/A/07/2044521/NWF
Date: 28 June 2007

Dear Mr Jones

Town and Country Planning Act 1990

Appeal by D G & B R Vincent

Site at Flat No.s 2, 3, 4, 5, 6, 7, 9 + 10 Priory Court, Campbell Road, Bognor
Regis, PO21 1NW

Further to your letter of 7 June regarding this appeal. I enclose a copy of the response we received from A R Brown Solicitors on behalf of the appellants.

We have carefully considered the views of both parties and concluded that this appeal cannot be entertained. Please find enclosed a copy of our letter to the solicitors formally turning this appeal away.

Yours sincerely

[REDACTED]

Dave Flower

211B(BPR)

You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/caserearch.asp>

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INVESTOR IN PEOPLE





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A R Brown Solicitors
Rivoli Chambers
77/79 Chapel Road
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BN11 1HU

Your Ref: BRV/sjc/VINCENT
Our Ref: APP/C3810/A/07/2044521/NWF
Date: 28 June 2007

Dear Sirs

Town and Country Planning Act 1990

Appeal by D G & B R Vincent

Site at Flat No.s 2, 3, 4, 5, 6, 7, 9 + 10 Priory Court, Campbell Road, Bognor Regis, PO21 1NW

I refer to your letter of 19 June in response to the Council's letter of 7 June. We have carefully considered the views of both parties.

I would first emphasize that although a number of points/matters have been raised the only issue before us is whether the appeal lodged in respect of the application made by your clients on 4 September 2006 can be accepted. We consider that the LPA's reference to paragraph A33 of Circular 5/2005 is relevant. This paragraph confirms that the procedures of the 'The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (SI 1992/2832)' apply only to planning obligations entered into under Section 106 or Section 299A of the Town and Country Planning Act 1990, as substituted and inserted by Section 12 of the Planning and Compensation Act 1991. They do not apply to agreements entered into under other powers, including Section 106 as originally enacted. As you know the relevant Agreement relating to your clients' application was dated 7 October 1998 and was made under Section 52.

The LPA has argued that the existing Section 106 became effective from 25 October 1991. I would refer you to Statutory Instrument 1991 No. 2272 (C.68) which confirms that this is the situation. It was only from that date that the right of appeal was introduced with regard to the modification/discharge of planning obligations. The aforementioned SI 1991 No 2272 is the Commencement Order which confirms that the existing Section 106 came into force with effect from 25 October 1991. As a consequence we can only accept modification/discharge appeals relating to obligations signed after 25 October 1991.



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I therefore confirm that we have no alternative but to turn your clients' appeal away as we have no power to accept it. I realise that this advice will not be welcomed by your clients. It is unfortunate that this matter could not be resolved earlier but it has now fallen to us to decide whether the appeal can be entertained and in our judgement we have no option but to formally turn it away.

A copy of this letter has been forwarded to the local planning authority.

Yours faithfully



Dave Flower

211B(BPR)

You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

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RECEIVED

20 JUN 2007

Planning Inspectorate
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2 The Square, Temple Quay
BRISTOL BS1 6PN

Your Ref APP/C3810/A/07/2044521/MWS

Our Ref BRV/sjc/VINCENT/

Date 19 June 2007

Dear Sirs

Re: Flats 2-10 Priory Court, Campbell Road, Bognor Regis, West Sussex

We write on behalf of the Appellants in response to a letter sent to you by Arun District Council dated 7th June 2007.

We note the Local Authority's comments with regard to jurisdiction.

On behalf of the Appellants we are forwarding to you a copy of correspondence between this firm and the Local Authority prior to the Appellant's application on 4th September 2006. You will note that in respect of our enquiries in November 2003 and again in August 2006 that the Council stated on both occasions in their letters of 25th February 2004 and 18th August 2006 that a planning application would be required. In particular, you should note in the letter of 18th August 2006 the Council provided application forms and these were the forms submitted by the Appellant on 4th September 2006.

The Appellants have followed the directions given by the Planning Authority with regard to the submission of a planning application. We find it surprising therefore that the Council should therefore now argue that there is no jurisdiction for your office to deal with an appeal in respect of the Council's refusal of this application.

We note the Council make reference to the Lands Tribunal. It is not clear whether this is a reference to the original application or the determining of an appeal in respect of the Council's rejection of the application.

In this respect information we believe has already been provided by the Appellant to the extent that the Lands Tribunal have confirmed that they have no jurisdiction to deal with an appeal in respect of the Council's refusal.

/cont.

If it is the Council's contention that the application that has been rejected should never have been dealt with and should in fact have been sent to the Lands Tribunal we would challenge this both in the light of the enclosed correspondence and also the fact that the Council have already approved a similar application relating solely to Flat 12.

We trust that this information will be of assistance in dealing with the comments made by the Local Authority.

If we can assist further then please do not hesitate to contact us.

Yours faithfully

A R BROWN & CO

THIS AGREEMENT is made the thirtieth day of March
One thousand nine hundred and eighty-seven BETWEEN ARUN DISTRICT
COUNCIL of The Arun Civic Centre Maltravers Road Littlehampton in
the County of West Sussex BN17 5LF (hereinafter called "the
Council") of the one part and SERVITE SISTERS TRUSTEES (ENGLISH
PROVINCE) of St. Mary's Servite Priory St. Ann's Road London
N15 5RM (hereinafter called "the Owner") of the other part _____

W H E R E A S:

(1) The Council is the local planning authority for the purposes
of the Town and Country Planning Act 1971 for the area within which
the property the subject of this agreement is situated _____

(2) The Owner is the owner in fee simple in possession free from
incumbrances of the property situate and known as Villa Maria
Playingfield High Street Bognor Regis in the County of West
Sussex (hereinafter referred to as "the Property") _____

(3) An application (Reference No. BR/450/86) dated 24th October
1986 has been made to the Council for permission to develop the
Property and the Council is satisfied that the development
disclosed by the said application is such as may be approved under
the said Act subject to the covenants hereinafter contained _____

NOW THIS DEED WITNESSETH as follows:-

1. THIS Agreement is made in pursuance of Section 52 of the Town
and Country Planning Act 1971 and Section 33 of the Local Government
(Miscellaneous Provisions) Act 1982 and in consideration of the
covenants by the Owner hereinafter contained _____

2. THE Council hereby approve the said development (Reference No.
BR/450/86) subject to the conditions set out in the Notice of
Approval of even date _____

3. THE Owner hereby covenants with the Council as follows:-

(1) Without the payment of compensation the Owner will not permit
the property or any part thereof to be occupied by persons of less
than State Pensionable Age PROVIDED THAT it shall not be deemed to
be a breach of this covenant either in the case of occupation of any
of the units comprised in the Property by:-

(a) a husband or wife where one of them is below State Pensionable
age _____

(b) the continued occupation by a spouse below State Pensionable
age following the death of his or her spouse neither of whom have
attained the said age _____

(c) a resident Warden and his or her spouse neither of whom have
attained the said age _____

(2) Not to use the Property for any other purpose than is permitted by the Approval and in particular for any purpose which would give rise to any future change of use and require the provision of a greater number of car parking spaces in accordance with the Council's adopted car parking standards than is required in connection with the development as hereby approved _____

(3) To comply with the Conditions set out in the Notice of Approval of even date _____

4. THE expressions "the Council" and "the Owner" shall include their respective successors in title and assigns _____

IN WITNESS whereof the Council and the Owner have set their respective Common Seals the day and year first hereinbefore written



(THE COMMON SEAL of the ARUN
(DISTRICT COUNCIL was hereunto
(affixed in the presence of:-

A handwritten signature in dark ink, appearing to read "D. Eastham".

Authorised Signatory

(THE COMMON SEAL of SERVITE
(SISTERS TRUSTEES (ENGLISH
(PROVINCE) was hereunto affixed
(in the presence of:-

M.E. McKeon

A handwritten signature in dark ink, appearing to read "J. Wallis".



The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (As Amended)

Application for Modify or Discharge a Planning Obligation DECISION NOTICE

Application Ref: BR/304/13/PO

1 To Addressee

Mr C Mann
Director/Chairman Arran Gate Ltd
1 Arran Gate
Marian Way
Bognor Regis
West Sussex
PO21 1PD

2 Site Address

Arran Gate
Marian Way

PO21 1PD

3 Description of Development

Application to modify a planning obligation dated 13th March 1987 imposed on planning application BR/450/86 - change of age restriction from "State Pensionable Age" to "Persons of 60 Years or Over".

4 In pursuance of their powers under this Act and related Regulations the Council **REFUSE** this application for the reason(s) stated below. Therefore the planning obligation shall continue to have effect without modification.

- 1 Insufficient information (in terms of a draft deed of variation) has been provided in order to allow the local planning authority to vary the existing legal agreement. Therefore, the local planning authority is unable to proceed to determine this application and as such the application is in conflict with policies GEN7 and DEV22 of the Arun District Local Plan.

INFORMATIVE: Statement pursuant to Article 31 of the Town and Country Planning (Development Management Procedure)(England) (Amendment No. 2) Order 2012. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.



Karl Roberts
Assistant Director Planning & Economic Regeneration

Case Officer: Mr S Davis

Date of Decision:

18 June 2014

Arun District Council
The Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF

IT IS IMPORTANT THAT YOU READ THE NOTES ATTACHED TO THIS DOCUMENT

NOTES RELATING TO PLANNING APPLICATION TOWN AND COUNTRY PLANNING ACT 1990

APPEALS TO THE SECRETARY OF STATE

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the First Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Please note that this decision notice only relates to matters under the Planning Acts and does not give consent under any other legislation that may apply to the development. You will need to carry out your own checks to determine whether any other consents or permissions are required. For example, the Building Regulations are likely to apply to most developments, and a Highways Licence may be required from West Sussex County Council for any development within the public highway (including the placing of skips on highway land).

Copy of email from Tim Morgan Dated 10-Jul- 2017

I am pleased to report that I have now completed the registration of your title at HM Land Registry. I attach:

- A. Copy of the title and plan for you to refer to in the future.
- B. Copy of the Convent's title and plan.
- C. Copy transfer document

One of the objects in the acquisition of the freehold by lessees is to acquire the ability to grant themselves 999 year leases at peppercorn ground rents. If you all wish to do this now we would be very happy to let you have a quote. Some of the advantages of carrying out this sooner rather than later are:-

- 1. There may be serious adverse tax implications for both the freehold company and for the individual leaseholders if the new leases are not carried out shortly after the enfranchisement.
- 2. If there is a serious defect in the lease affecting service charges or the ability to manage the building then it will be beneficial to sort the leases out as soon as possible.
- 3. You have all recently acted together to secure the freehold. It is an ideal time to sort out the leases whilst you are all in close communication.
- 4. When you wish to sell/remortgage your flat, your purchaser/new lender may require a new lease to be granted before the sale/remortgage goes through. It can take some time to sort the leases out so it may be advisable to do this now rather than at the same time as your sale/remortgage.

I attach a copy of my firm's cash account and you will note this is clear.

I am now placing any deeds provided by the freeholder in our strong room. I confirm that we do not make a charge for storing documents. If you wish me to send the deeds to you or someone else please let me know.

Regards

Tim Morgan

Partner

PLANNING APPLICATION BR/450/86

Land Registry

Transfer of part of registered title(s)

TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

1	Title number(s) out of which the property is transferred: WSX334194
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
3	Property: Arran Gate Marian Way Bognor Regis PO21 1PD The property is identified ☒ on the attached plan and shown: edged red ☐ on the title plan(s) of the above titles and shown:
4	Date: 4 th January 2017
5	Transferor: SERVITE SISTERS TRUSTEES (ENGLISH PROVINCE) incorporated under Part 12 of the Charities Act 2011 (registered charity number: 241434) <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
6	Transferee for entry in the register: ARRAN GATE LIMITED <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 2754644 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

7	Transferee's intended address(es) for service for entry in the register: Southdown House, St Johns Street, Chichester, PO19 1XQ
8	The transferor transfers the property to the transferee
9	Consideration ☒ The transferor has received from the transferee for the property the following sum (in words and figures): Twenty-seven thousand five hundred pounds (£27,500) ☐ The transfer is not for money or anything that has a monetary value ☐ Insert other receipt as appropriate:
10	The transferor transfers with ☐ full title guarantee ☒ limited title guarantee
11	Declaration of trust. The transferee is more than one person and ☐ they are to hold the property on trust for themselves as joint tenants ☐ they are to hold the property on trust for themselves as tenants in common in equal shares ☐ they are to hold the property on trust:
12	Additional provisions Definitions "The Property" means the property transferred described in paragraph 3 "The Other Land" means all the land vested in the Transferor and registered under Title Number WSX334194 and edged in green, (and part hatched brown) on the attached plan. "The Access Road" means the roadway and pavements forming part of the Other Land shown hatched brown on the attached plan "Service Installations" mean sewers drains channels pipes watercourses gutters mains wires cables or pipes and channels ducts flues conduits aerial tanks and soakaways and other conducting media and other apparatus for the supply of water electricity telephone or television or other communication signals or for the disposal of foul or surface water References to "the Transferee" and "the Transferor" shall be deemed to include their successors in title and where the Transferee is more than one person all covenants by the

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Transferee shall be deemed to be joint and several on the part of such persons

Rights granted for the benefit of the property

12.1 The following rights for the Transferee (and where appropriate his licensees visitors and employees) in common with the Transferor and others similarly entitled:

- a. A right of way with or without vehicles in over and along the Access Road
- b. The right to the free running of water waste-water sewage and electricity telephone and television signals and other services through and from existing Service Installations serving the Property on or under the Other Land and future Service Installations that have been laid within the Other Land in accordance with the rights in paragraph 12.1(c)
- c. The right on seven days prior written notice to enter on to the Other Land and to construct or lay thereon future Service Installations in such positions as the Transferor may first have approved (such approval not to be unreasonably withheld) and the Transferee making good all damage caused to the reasonable satisfaction of the Transferor's surveyor
- d. The right to enter upon any part of the Other Land in order to connect into and subsequently to inspect test repair improve or renew any existing or future Service Installations provided that the Transferee shall:
 - i. Give reasonable prior written notice to the occupier of its intention to exercise this right
 - ii. Make good any damage resulting from its exercising this right
- e. Such rights as are reasonably necessary to enter open parts of the Other Land for the purpose of carrying out works of inspecting maintaining decorating repairing and renewing the Property and necessary performance of the Transferee's obligations hereunder where it is not possible to carry out those works without taking that entry provided that the rights are exercised at reasonable times on giving reasonable prior notice (except in the case of emergency) to the Transferor and shall be in accordance with the Transferor's reasonable requirements and subject to the person exercising the right a) causing as little disturbance as possible to the Transferor and others using the Other Land and b) making good any damage thereby occasioned

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights reserved for the benefit of other land

12.2 The following rights for the Transferor (and where appropriate his licensees visitors and employees) for the benefit of the Other Land in common with the Transferee and others similarly entitled:

- a. Rights of access over the Property for the purposes of repair and maintenance of the Other Land
- b. The right to the free running of water waste-water sewage and electricity telephone and television signals and other services through and from existing Service Installations serving the Other Land on or under the Property and future Service Installations that have been laid within the Property in accordance with the rights in paragraph 12.2(c)
- c. The right on seven days prior written notice to enter on to the Property and to construct or lay thereon future Service Installations in such positions as the Transferee may first have approved (such approval not to be unreasonably withheld) and the Transferor making good all damage caused to the reasonable satisfaction of the Transferee's surveyor
- d. The right to enter upon any part of the Property in order to connect into and subsequently to inspect test repair or renew any existing or future Service Installations provided that the Transferor shall
 - i) Give reasonable notice to the occupier of their intention to exercise this right and
 - ii) Make good any damage resulting from their exercising this right

Transferor's covenants

12.3 The Transferor so as to bind the Transferor and its successors in title to the intent that this covenant shall bind the Other Land into whosoever hands the same may come for the benefit and protection of the Property or any part or parts thereof HEREBY COVENANTS with the Transferee to perform and observe the following restrictions and stipulations:-

12.3.1 The Transferor will (subject to the Transferee paying a fair proportion according to use of the Access Road being not less than two thirds) at all times properly maintain and repair the Access Road

12.3.2 Prior to any transfer of the Access Road or of any part thereof to give 14 days' written notice of the intention to execute the same to the Transferee and not to execute any such transfer unless contemporaneously therewith the transferee or lessee shall enter into a deed of covenant with the Transferee covenanting (in the terms of clause 12.3 of this transfer) on behalf of himself his successors in title and assigns and other persons claiming under him to observe and perform the restrictions and stipulations contained in clause 12.3 (including this covenant) and shall deliver such deed to the Transferee

12.3.3 To give effect to clause 12.3.2 of this Transfer to request the Chief Land Registrar to enter a Restriction on the Register of the Transferor's title to the Access Road in the following form:-

"No disposition of the registered estate (or part thereof) by the proprietor of the registered estate [the Access Road] or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written certificate signed by the proprietor for the time-being of the [Access Road] (or their conveyancer) that the provisions of clause 12.3.2 of a Transfer dated 2016 and made between the SERVITE SISTERS TRUSTEES (ENGLISH PROVINCE) (1) and ARRAN GATE LIMITED (2) have been complied with or that they do not apply to the disposition"

Transferee's covenants

12.4 The Transferee so as to bind the Transferee and its successors in title to the Property to the intent that this covenant shall bind the Property into whosoever hands the same may come for the benefit and protection of the Other Land or any part or parts thereof HEREBY COVENANTS with the Transferor to perform and observe the following restrictions and stipulations:-

12.4.1 To make the contributions and pay on demand the sums for maintaining repairing cleaning and renewing the Access Road referred to in clause 12.3.1 of this transfer

- 12.4.2 Not to permit on the Property buildings of more than two storeys in height nor
- 12.4.3 Not to permit on the Property more than twenty four retirement housing units (including a wardens flat)
- 12.4.4 Not to permit the Property or any part to be occupied by a person of less than the state pensionable age (or such younger age as the local government authority holding the powers that were on 29th July 1987 held by Arun District Council may agree in its absolute discretion (having received a joint application by the Transferor and Transferee for an individual case PROVIDED THAT the Transferor need not be a party to any application where the age of the occupiers will be no less than 55) Provided that the following shall not be in breach of this covenant:
- (i) A husband or wife where one of them has not attained the said age
 - (ii) A spouse below the said age following the death of his or her spouse who had acquired the said age
 - (iii) In the case of one dwelling or unit only for use by a resident Warden or deputising resident warden and his or her spouse neither of whom having attained the said Age
- 12.4.5 Not to use the Property for any other purpose than is permitted by any Planning Permission for retirement housing and in particular for any purpose which would require the provision of a greater number of car parking spaces in accordance with the said Council's adopted car parking standards than is required in connection with the development
- 12.4.6 Prior to any transfer of the Property of any part thereof to give 14 days' written notice of the intention to execute the same to the Transferor and not to execute any such transfer unless contemporaneously therewith the transferee shall enter into a deed of covenant with the Transferor covenanting (in the terms of clause 12.4 of this transfer) on behalf of himself his successors in title and assigns and other persons claiming under him to observe and perform the restrictions and stipulations contained in clause 12.4 (including this covenant) and shall deliver such deed to the Transferor
- 12.4.7 To give effect to clause 12.4.6 of this Transfer to request the Chief Land Registrar to enter a Restriction on the Register of the Transferee's title to the Property in the following form:-
- "No transfer of the registered estate (or part thereof) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written certificate signed by the proprietor for the time-being of the estate registered under [new freehold title number] (or their conveyancer) that the provisions of clause 12.4.6 of a Transfer dated 2016 and made between the SERVITE SISTERS TRUSTEES (ENGLISH PROVINCE) (1) and ARRAN GATE LIMITED (2) have been complied with or that they do not apply to the transfer"

Additional provisions

12.5 The Transferee hereby covenants with the Transferor by way of indemnity only to observe and perform the covenants and obligations on the part of the Landlord contained in the registered Leases and to keep the Transferor indemnified from and against all future costs claims demands actions expenses losses and all liability whatsoever raised in respect of any breach non-observance and non-performance thereof

12.6 This Transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993

12.7 The Property has been held by the Transferor on trust for a charity which is a non-exempt charity and the restrictions on disposition contained in Section 117 of the Charities Act 2011 (subject to Section 117(3)).

12.8 The Transferor as trustee of the charity certifies that it has power under the trusts of the charity and has satisfied the provisions of s117-9 of the Charities Act 2011 (so far as applicable to this transfer).

12.9 It is agreed and declared that the Transferee shall not become entitled to any right of light or air over the Other Land

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

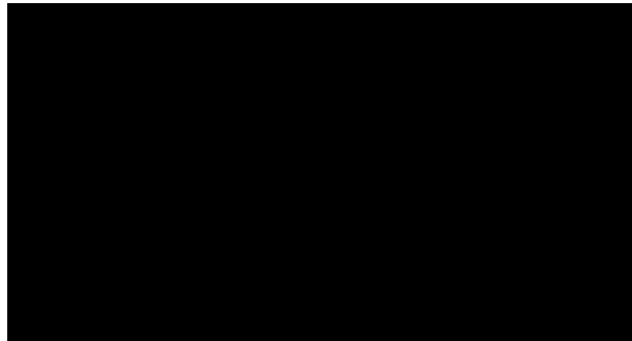
13 Execution

Executed as a deed by
ARRAN GATE LIMITED acting by
a director in the presence of

Director

Counterpart

The COMMON SEAL of
SERVITE SISTERS TRUSTEES
(ENGLISH PROVINCE) was hereunto
affixed in the presence of:-



WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

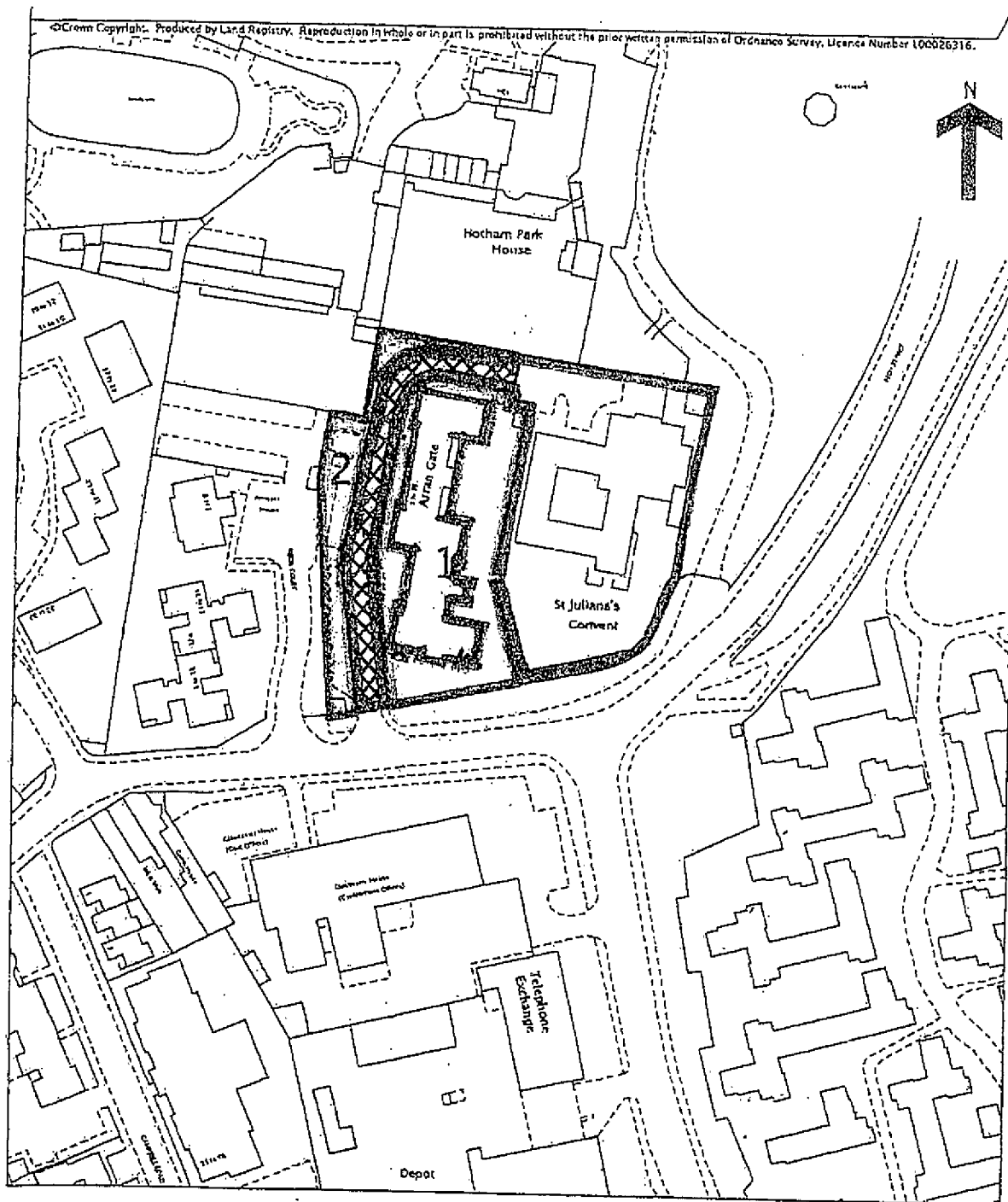
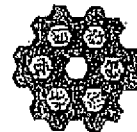
Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 86 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

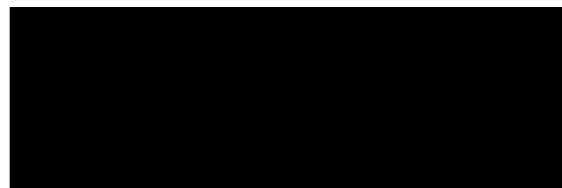
© Crown copyright (ref: LR/HO) 07/09

Land Registry
Official copy of
title plan

Title number WSX334194
Ordnance Survey map reference SZ9499SW
Scale 1:1250
Administrative area West Sussex : Arun



This official copy is incomplete without the preceding notes page.





Official copy of register of title

Title number WSX387474 Edition date 16.01.2017

- This official copy shows the entries on the register of title on 08 Jul 2017 at 15:14:59.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 08 Jul 2017.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 (30.03.2010) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Arran Gate, Marian Way, Bognor Regis (PO21 1PD).
- 2 (30.03.2010) The land has the benefit of but is subject to the rights granted by a Deed dated 29 July 1980 made between (1) Servite Sisters Trustees (English Province) and (2) Arun District Council.

NOTE: Copy Deed filed under WSX334194.

- 3 (16.01.2017) The land has the benefit of any legal easements granted by the Transfer dated 4 January 2017 referred to in the Charges Register but is subject to any rights that are reserved by the said deed and affect the registered land.
- 4 (16.01.2017) The Transfer dated 4 January 2017 referred to above contains a provision as to light or air.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (16.01.2017) PROPRIETOR: ARRAN GATE LIMITED (Co. Regn. No. 2754644) of Southdown House, St. Johns Street, Chichester PO19 1XQ.
- 2 (16.01.2017) The price stated to have been paid on 4 January 2017 was £27,500.
- 3 (16.01.2017) RESTRICTION: No Transfer of the registered estate (or part thereof) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number WSX387474 (or their Conveyancer) that the provisions of clause 12.4.6 of a Transfer dated 4 January 2017 made between (1) Servite Sisters Trustees (English Province) and (2) Arran

Title number WSX387474

B: Proprietorship Register continued

Gate Limited have been complied with or that they do not apply to the transfer.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 (16.01.2017) The land is subject to such rights as may have been granted by leases of land originally in the title out of which the land in this title was transferred, for the original terms of the respective leases or until earlier extinguishment of the rights.

2 (16.01.2017) A Transfer of the land in this title dated 4 January 2017 made between (1) Servite Sisters Trustees (English Province) and (2) Arran Gate Limited contains restrictive covenants.

NOTE: Copy filed.

3 (16.01.2017) The land is subject to the lease set out in the schedule of leases hereto.

Schedule of notices of leases

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
1	30.03.2010	Arran Gate	24.07.1987 125 years from 24/07/1987	WSX121840

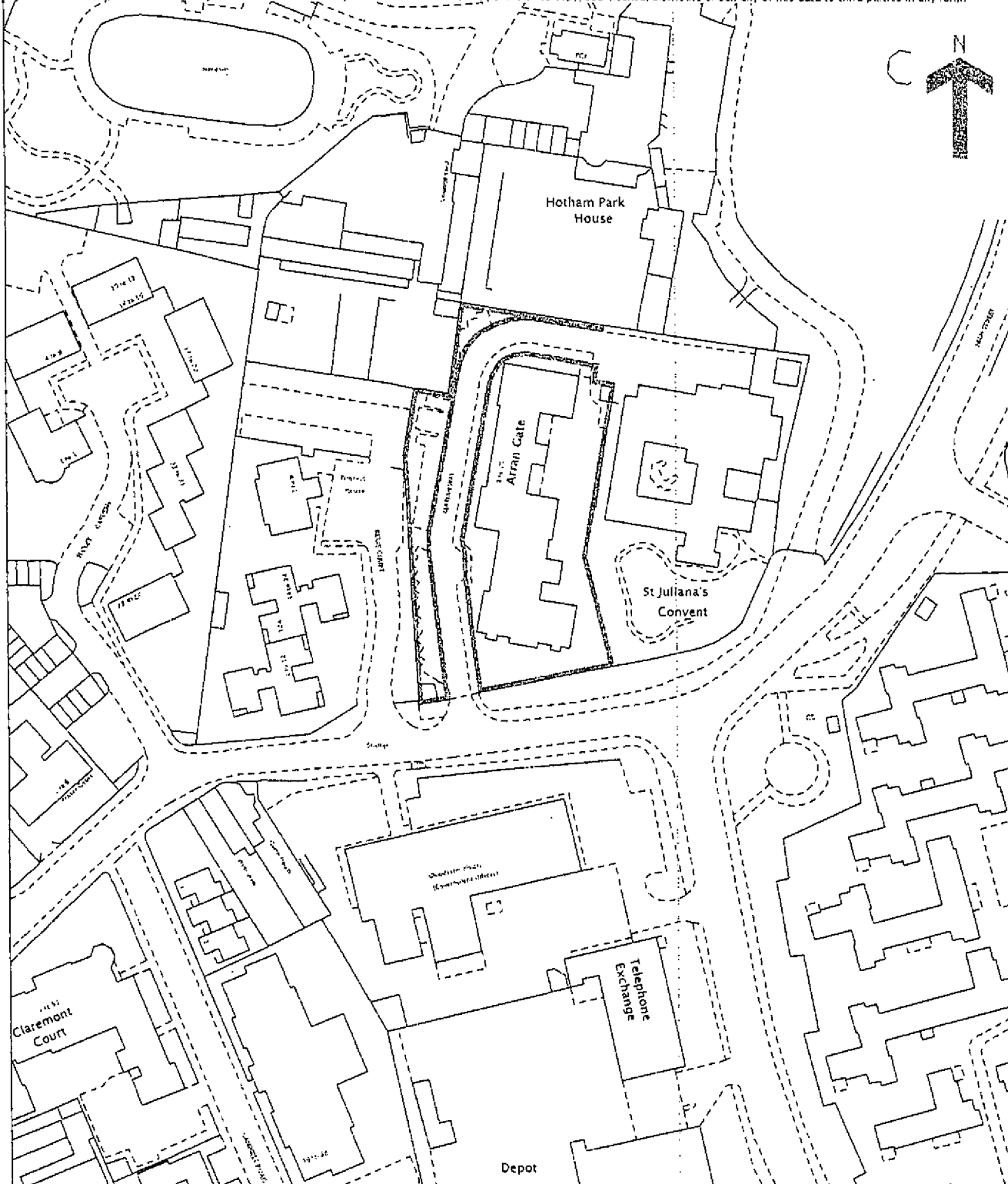
End of register

HM Land Registry
Official copy of
title plan

Title number **WSX387474**
Ordnance Survey map reference **SZ9499SW**
Scale **1:1250**
Administrative area **West Sussex : Arun**



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This official copy is incomplete without the preceding notes page.