

Recommendation Report for Removal of a Planning Obligation**REF NO:** BR/304/13/PO**LOCATION:** Arran Gate
Marian Way
Bognor Regis**PROPOSAL:** 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".**SITE AND SURROUNDINGS****DESCRIPTION OF APPLICATION**

This application seeks the variation of a clause in a Planning Obligation made under S52 of the Town and Country Planning Act 1971 which restricts the occupation of the flats to persons of or over state pensionable age. The modification seeks to amend this restriction to 60 or over years instead.

TOPOGRAPHY

Predominantly flat.

TREES

None of any significance affected by the proposed development.

BOUNDARY TREATMENT

N/A.

SITE CHARACTERISTICS

2-3 storey flatted building located adjacent to the southern edge of Hotham Park. The flats have off street parking bays all the way around the edge of the development.

CHARACTER OF LOCALITY

Part of a predominantly residential area located on the edge of Bognor Regis but with Hotham Park to the north, Butlins on the other side of the High Street to the east and a commercial building on the opposite side of the High Street to the south.

RELEVANT SITE HISTORY

BR/293/87	Amendments to plans previously approved under BR/450/86 Retirement housing - 23 Units	ApproveConditionally 13-07-1987
BR/567/87	Amendment to BR/293/87 for formation of extra flat in roof space (making 24 elderly person flats in total)	ApproveConditionally 14-12-1987

BR/149/93	Extension to east wing to provide laundry room and store area	ApproveConditionally 13-08-1993
BR/187/94	Alteration to access & parking with addition of four rooms & bathroom	ApproveConditionally 26-08-1994
BR/165/97	New conservatory adjacent to sitting room to form sun lounge	ApproveConditionally 29-08-1997
BR/164/97	Addition of toilet and storage areas within courtyard	ApproveConditionally 02-09-1997
BR/450/86	Retirement housing	ApproveConditionally 13-03-1987

None.

REPRESENTATIONS

Representations received:

Bognor Regis Town Council

Aldwick Parish Council - no objection

A petition of names of the residents in support of the application was submitted with the application. The petition contains signatures from all 25 flats.

Comments on Representations received:

Comments noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Planning Solicitor: Advises that the following alternatives are available:

- (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; and
- (3) refuse and see if they appeal and under which procedure. Strictly an appeal should be under S84 LPA 1925 to Lands Tribunal so we can defend as invalid any appeal to PINS.

"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 e.g. lack of amenity open space, adverse affect on amenity from mixed age groups, discharge or variation will mean a loss of affordable housing for a sector of the population. I suggest in this case that there is no evidence, seen by me, of useful purpose(s) identified namely so you should grant."

Comments on Consultation responses:

Comments noted.

POLICY CONTEXT

Designation applicable to site: Within the Built Up Area Boundary & Class B Road.

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003: [GEN7](#)
[GEN12](#)
[DEV22](#)

The Form of New Development
Parking in New Development
Relaxation of Restrictions (Occupation by
the Elderly)

Publication Version of the Local Plan -
Excluding the Spatial Portrait, Employment,
Housing Allocations, Transport, Monitoring and
Implementation sections (February 2014):

D DM1 Aspects of Form and Quality

PLANNING POLICY GUIDANCE

NPPF

National Planning Policy Framework

POLICY COMMENTARY

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

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

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

NPPF Paragraph 216 confirms that weight can be given to policies in emerging plans following publication. The Council agreed the majority of the Arun Local Plan in February 2014 (Publication Version) and this is a material consideration in the determination of this planning application. The remaining chapters of the Local Plan namely: the Spatial Portrait, Employment & Enterprise, Housing Allocations, Transport, Monitoring and Implementation will be considered for publication at a later meeting of Full Council. Following 'publication' of the Local Plan a formal public consultation, examination and adoption process takes place. The chapters that have been published will undergo public consultation alongside the remaining chapters when they have been agreed. The weight given to the current published policies can be significant depending:

- ? the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- ? the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
- ? the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

The policies within this published version of the plan are at an advanced stage as they have been agreed by Full Council for regulation 19 consultation, they have been subject to independent audit and are considered to meet the NPPF and there are no known significant unresolved issues arising from regulation 18 consultation for the published policies.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The statement of representations procedure and

statement of fact produced by the Council under regulation 19 explains that the consultation will take place once the remaining chapters / policies have been published.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

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

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

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

OTHER MATERIAL CONSIDERATIONS

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

CONCLUSIONS

This application is for the variation of an age restriction on 25 flats which are subject to a restriction on occupation to persons of state pensionable age or higher. This restriction was imposed under a Section 52 Agreement following the approval of BR/450/86.

It is not known exactly why this restriction was imposed. There may not have been sufficient parking at the time of the application. Restricting occupation to the elderly meant that the parking standards could be relaxed. However, it is also clear from the planning history that the scheme was specifically for retirement housing and as such the restriction may have been imposed by the Council in order to secure housing to meet a specific need or requested by the developers to ensure that the housing remained in its original purpose.

Policy DEV22 states that:

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

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

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

In this case, it is considered that the proposal is in accordance with Policy DEV22 as the accommodation will still be restricted to the over 60's. It is considered likely that the application has been made because the state pension age has gradually increased over the years since 1986 and has become greater than the age at which the obligation was originally set at. It is not

considered that there is a significant material difference between the age of 60 and the current state pension age of 66.

However, notwithstanding the above, the applicant has so far failed to provide a draft deed of variation. The local planning authority has repeatedly chased the applicant for this deed but has recently been informed that the priority is to purchase the freehold before preparing the deed. The applicant was then offered the opportunity to withdraw the application but has not yet responded to this request. Accordingly, the only option is to refuse the application on the basis of there not being sufficient information to determine it.

HUMAN RIGHTS ACT

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

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

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

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

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

RECOMMENDATION

REFUSE

- 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.
- 2 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.