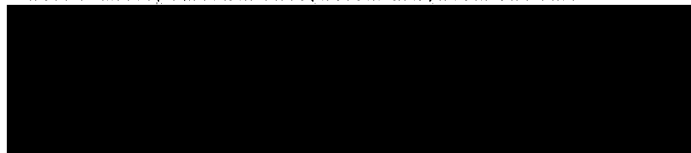




WALSINGHAM PLANNING

SPECIALIST PLANNING & DEVELOPMENT CONSULTANTS

Bourne House, Cores End Road, Bourne End, Bucks SL8 5AR



Our Ref: SB/cd/B2055/17

22 March 2017

Director of Planning
Arun District Council
The Arun Civic Centre
Maltravers Road
Littlehampton
BN17 5LF

For the attention of Simon Davis

Dear Sir

**S52 Agreement dated 10/02/1989
Essex House, 3 Walton Road, Bognor Regis
Application to remove Planning Agreement**

Please find attached completed application forms in respect of the above.

For the sake of completeness, I also attach the following:-

- Copy of Agreement and associated planning permission BR/484/88
- Location plan for subject property
- Floor plans of property
- Plan to show potential location for refuse store
- Completed application form

The site owners wish to have the Agreement deleted and for a Deed to this effect to be agreed.

It is understood (Encyclopaedia of Planning Law para 106.41) that the procedures in relation to Agreements dated before 25/10/91 are not, strictly speaking, dealt with under s106A, nonetheless I attach the completed form as requested. If it is agreed to delete the Agreement the process will be same, i.e. completion of a Deed.

The applicants are happy to prepare a draft of the necessary Deed if this would assist in expeditious determination of this submission.



Directors: Stephen Brooker Dip. T&CP, MRTPI, Mark Krassowski MRICS, Jonathan Vose Dip. TP, MRTPI

Crowdcrete Ltd, Bourne House, Cores End Road, Bourne End, Bucks SL8 5AR Company Reg No. 1840469 VAT No. 413303013

1.0 Background to imposition of restriction

- 1.1 Background documents to the decision to impose the Agreement is not available on the Council's publicly available on-line records. However, it is noted that the Agreement itself very strongly implies that the limitation was imposed as a result of concerns regarding the availability of car parking.
- 1.2 The Agreement, at the Second Schedule, places the limitation on the age of occupants of the flats in paragraph 1. Paragraph 2 goes on to require that the property not be used for any other purpose "...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..."
- 1.3 The Council's Local Plan, adopted in 2003, is long out of date, albeit postdating the 1989 planning permission and Agreement. Nonetheless, it is instructive to observe that the car parking standards set out in the 2003 Local Plan distinguish between unrestricted occupancy residential flats and flats occupied by "the elderly (where occupation is restricted by legal agreement to elderly persons, i.e. of state pensionable age)". For open occupancy flats the standard requires a maximum of 1.7 spaces where there are 3 or more habitable rooms and 1.2 spaces where there are 2 or less habitable rooms whereas flats for the "elderly" with 2 or less habitable rooms require a maximum of only 0.5 spaces.
- 1.4 The Planning Portal advises that there is no single legal definition of "habitable" room so that whilst it is generally agreed not to include a bathroom it may or may not include a room solely used as a kitchen. In this context it is worthy of note that the Essex House ground floor flat has a bathroom plus 4 additional rooms and the first floor flat has a bathroom plus 4 additional rooms. Therefore, had the 2003 parking standards been applicable in 1993 the lesser standard for an "elderly" persons flat would not have been applicable to either of the permitted flats.
- 1.5 Furthermore, Policy Dev 21 of the 2003 Local Plan makes it clear that in considering proposals for "accommodation restricted to occupation by the elderly", a legal agreement will be, imposed where reduced parking standards are applied.
- 1.6 As shown on the accompanying plans there are only 2 parking spaces available with Essex House; the garage and a "tandem" space on the drive.
- 1.7 Therefore, it is reasonable to conclude that the Agreement was imposed as the Council had accepted the change of use to 2 flats with a reduced level of parking provision.

2.0 Current Policy Position

- 2.1 As set out above, the 2003 Local Plan is long out of date and only a material consideration in so far as it is compliant with NPPF.
- 2.2 Policy Dev 22 of the 2003 Local Plan sets out that applications for relaxation of restrictions in the occupation of accommodation by the elderly will not be agreed unless the proposal remains in accordance with other policies in the Plan in particular availability of parking, amenity space and open space and that this does not prejudice the amenity of other nearby restricted occupancy properties.
- 2.3 The relevant 2003 Plan maximum parking standards are set out in para. 1.3 above. In 2010 the County Council reviewed parking standards and deleted the residential standards leaving these to be determined by District Councils.
- 2.4 The 2003 Local Plan does not include any amenity space or open space standards and the 2000 SPD on open space makes clear (para 3.5) that developments of less than 50 flats are not required to meet the standards.

3.0 Case for removal of the Agreement

- 3.1 Determination of the submission to delete the Agreement should be based upon:
- (i) Whether there is the continued need for the Agreement to satisfactorily control the development, i.e. if it no longer serves a “useful purpose” (s106 A [6] (b)) or if it is needed to mitigate an unacceptable impact of the development (NPPG 236/001/20161116),
 - (ii) Any relevant Local Plan policy,
 - (iii) Whether any application made now for the development would have been reasonably subjected to the same Agreement.
- 3.2 As set out in sections 1 and 2 above the issue with regard to (i) and (ii) principally balances upon the availability and requirement for parking provision.
- 3.3 Any consideration of the current (as opposed to 1993) requirement for parking must note the following:
- a) the 2003 Local Plan parking standard is out of date,
 - b) the 2003 parking standard is expressed as a maximum,
 - c) the site is located in a highly accessible position in the town centre with easy access to all facilities and public transport,

- d) it is now a gross over-simplification to assume that persons over state retirement age necessarily have a reduced car parking requirement, there is no reason to assume that those capable of independent living in a flat are any less likely to have a car than the general flat-occupying population.
- 3.4 None of the nearby District Councils or West Sussex County Council has produced a recent review of parking standards. Brighton & Hove Borough Council produced an SPD on car parking standards in October 2016; it is the most up to date nearby Council set of parking standards. The Brighton standards make no distinction between flats with open or restricted elderly person occupancy (reflecting the point made at para 3.3 (d) above; but it does have much reduced standards for C2 residential institutions. The Brighton Standard requires a maximum only 0.25 spaces per dwelling for 1 and 2 bed dwellings and only 0.4 spaces for 3+ bed dwellings in the central area 1 per dwelling in “outer areas”.
- 3.5 The Council may, or may not, reduce parking standards as part of the emerging new Local Plan but can be expected to continue to express standards as maxima and to take account of the centrality and availability of public transport in exercising discretion about how the standard is applied on a case by case basis.
- 3.6 In the Essex House instance it could be expected that the Council may, now, be willing to accept that the 3 flats need not make any provision at all bearing in mind the central location.
- 3.7 It is submitted that Local Plan Policy Dev 22 is met as the absence of parking should be acceptable in this location and as there are no specific amenity or open space standards to be met; together with the fact that in this instance, the nearby residential properties are not of restricted occupancy for the elderly and would not be prejudiced by open market occupation.
- 3.8 Local Plan policy Dev 23 deals with proposals for conversion of existing buildings to flats, i.e. the policy that would be applied to a current application for conversion of Essex House. This requires the following:
- a) **satisfactory internal floorspace** – Essex House provides 2 no. 2 bedroom flats (of 4 no. habitable rooms, inc kitchen) of 80 sq m and 60 sq m and 1 no. 1 bedroom flat (of 3 no. habitable rooms inc. kitchen) of 48 sq m; in 2 of the flats these sizes either significantly exceed or are minimally below the 2016 London Plan standards dependent on the assumptions regarding number of occupants,

and in the case of the 3rd flat significantly exceed the standard. I refer to this standard in the absence of any local standard as it is generally recognised as a benchmark figure.

- b) **Satisfactory sanitary/kitchen facilities** – Essex House provides a separate kitchen and bathroom in each flat, this provides a high standard of sanitary and kitchen facilities.
 - c) **adequate access to external amenity space for refuse, clothes drying etc** – as shown on the accompanying plan there is an area for refuse storage for each flat together with a modest amount of external area capable of use for other purposes
 - d) **adequate pedestrian access** – as shown on the submitted plan both the ground and first floor flats have easy pedestrian access from Albert Road without prejudice to each other or to any other property.
- 3.9 Policy Dev 23 also requires that flats should be capable of adequate sound insulation to protect the amenity of neighbours and other units in the same building. The two flats are on different floors and therefore perfectly capable of adequate attenuation between one another. The flats wholly occupy an end of terrace building the remainder of which has been recently permitted for use as HMO accommodation for Butlins staff and are therefore very unlikely to cause loss of amenity to other nearby properties.

- 3.10 The proposal passes the tests set by policies Dev 22 and Dev 23. On these bases it is submitted that the Agreement no longer passes the tests set by the Act or by NPPG as the age restriction is not needed in order to make use of the building as 3 flats acceptable from a planning point. Therefore, the Agreement should be deleted.

4.0 43 Rock Gardens – dismissed appeal

- 4.1 An application for removal of an age restriction dating from a 1984 Agreement in respect of 43 Rock Gardens, Bognor Regis was refused and an appeal was subsequently dismissed in October 2016.
- 4.2 In view of the recent date of the appeal decision it is worthwhile to make comparisons between Essex House and the Rock Gardens case.
- 4.3 There are very important differences between the cases which justify different conclusions and decisions.

- 4.4 In the Rock Gardens decision the Inspector was dealing with a single flat within a large block which had other flats available for both open and age restricted occupation. The car parking at the block of flats was also in a shared area albeit that 2 spaces were reserved for no. 43.
- 4.5 In the appeal case the Council stated that the age restriction had been imposed (on a proportion of the flats in the block) in order to allow the development to be permitted without making full provision for parking and amenity areas.
- 4.6 The Inspector noted that policy with regard to parking provision had changed since 1984 so that individual circumstances of any particular site should be taken into account. The Inspector also observed that any excess of parking demand above the space available at Rock Gardens could be displaced to nearby streets where there is unrestricted on-street parking available thereby limiting that available for other flats and nearby residents.
- 4.7 The Inspector also noted that “An aim of the development was clearly to provide housing for the elderly” and that open occupation would possibly “....generate more late-night comings and goings, maybe entertaining and the like but the scope for harm would be limited.....Nevertheless, occupiers who have chosen to live here for its peace and quiet may find their living conditions adversely altered contrary to Policy Dev 22”.
- 4.8 The Rock Gardens flat, unusually, had 2 balconies and the Inspector implied this to be an acceptable level of amenity space but found”should any relaxation here lead to pressure to relax the restriction elsewhere, there could be a harmful cumulative effect”.
- 4.9 The Inspector concluded that whilst “....there could be limited adverse effects on parking and amenity space, the retention of the restriction assists in providing mixed communities and specifically for the needs of elderly people in the area, in a flat that is eminently suited to the need and in a sustainable location close to the town centre and transport”. It was also concluded that the”risk of noise and disturbance.....could cause planning harm to their (other residents) living conditions”.
- 4.10 The circumstances at Essex House are very different and fully justify reaching a different conclusion to that reached by the Inspector.
- 4.11 Rock Gardens is a 67 dwelling purpose built block of flats and it is understood that the original intention was for 21 to be for those aged 65 or above and that this “....enabled permission to be granted for a development that proposed an under provision of vehicle parking and amenity space”. (Officers report on Rock Gardens appeal application).

- 4.12 Essex House comprises a former 5 bedroom end of terrace dwelling now converted into 3 flats located in an area of strict parking controls with double yellow lines and all on-street parking is limited to residents permit bays. Each of the flats has access to an, albeit modest, area of external amenity space. As a detached building surrounded by other residential properties that are not the subject of age restriction limitations there is an entirely different context to that at Rock Gardens.
- 4.13 Whilst it might be argued that Essex House nonetheless makes a contribution to meeting a specialist housing need in the area it must be acknowledged that Essex House is far less well adapted to meeting the specialist needs of the elderly than Rock Gardens. For example, there is no lift to the first floor, Essex House is in a residential street rather than a cul-de-sac overlooking the beach and sea. Loss of the minor contribution that Essex House makes to age limited accommodation in the area is, therefore, insufficient to justify a refusal.
- 4.14 The Inspectors decision to dismiss the appeal was based upon an accumulation of different conclusions, it is submitted that none of those conclusions is applicable in the case of Essex House.
- 4.14 The Council is, therefore, entirely justified to make a different decision in respect of Essex House compared to Rock Gardens and to reach conclusions different to those of the October 2016 appeal Inspector.

5.0 Conclusions

- 5.1 The S52 Agreement at Essex House no longer serves the useful planning purpose of making the development acceptable in planning terms and is not needed to mitigate an unacceptable impact of development.
- 5.2 The requirements of policy Dev 22 are met as the absence of on-site parking in this town centre location is unremarkable by modern standards, there is adequate amenity space and there will be no adverse impact on any other age restricted dwellings.
- 5.3 Furthermore, was the application for conversion of Essex House from a single dwelling into 3 flats to be made today the requirements of policy Dev 23 would be met and permission should be granted without any age restriction.
- 5.4 On these bases the Agreement should be deleted.

As set out above, the applicants are willing to draft the necessary Deed if this assists in expeditious determination of the matter.

I trust that this provides all of the information required to determine the submission but please contact me with any queries. Meanwhile, I look forward to your favourable determination.

Yours faithfully

Stephen Brooker Dip T&CP MRTPI
Director
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