

24 April 2017

FROM:

Delwyn Jones Planning Solicitor
Resources Department
Tel Ext 737737

TO:

Simon Davis
Planning ref **BR/99/17/PO**

CONSULTATION ON DISCHARGE OR VARIATION OF PLANNING OBLIGATION /S52 AGREEMENT

Application to Discharge a Planning Obligation dated 10/02/89
under BR/484/88/ relating to **S52 agreement**.

ADDRESS Essex House 3 Walton Road Bognor Regis
REF ref **BR/99/17/PO**

GENERAL

Thank you for your recent consultation memo now returned together with the file accessed from the Planning website 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. I enclose too S84 Law of Property Act 1925 which strictly speaking applies to any planning agreements pre 9 November 1992 – as this one is.

There are different modes of appeal for pre and post 9/11/1992 deeds so the difference can be significant, but the s84 principles listed can also be subsumed into the modern test of – does the agreement still fulfil a useful purpose in planning or other terms ? as here in particular – does the age restriction fulfil a useful purpose ?

If you decide to grant I enclose a template s106 deed of variation to be adapted for these purposes when you instruct me further

COPY DEED “the Deed”

I enclose a copy of the deed which shows it is dated 10 February 1989 which is written in a standard age restriction terms for the time

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

Due to date of the deed this applies.

Procedure

You have these alternatives :-

- (1) grant the application via a deed per EPL Vol 2 para 106.70 which would be the orthodox way of proceeding
- (2) grant via S106A and rely on estoppel to effectively ensure we do not enforce it in future which would be practical and effective in my view
- (3) refuse and see if they appeal and under which procedure. Strictly an appeal should be under S84 LPA 1925 to Lands Tribunal / now First Tier Tribunal Lands Chamber 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” too.

The Determination in this Case.

I see that the deed very clearly sets out at Schedule 2 (2) and the planning permission that the aim is to restrict occupation to age restricted residences/elderly occupation –on the belief [which motivated this policy I am advised] that elderly people ,did not drive cars as regularly as younger occupiers so requiring less car park spaces.

This belief about elderly car driving is questionable , not evidenced and may need to be reconsidered, in light of WSCC comments when it is consulted .

WSCC as highway authority backed this reason for imposing these restrictions in the 1980s/1990s so they should be re consulted to see if they have views/evidence either way in 2017 as to this application site.

It may be that County Highways no longer back this age restriction in this case, 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 needy sector of the population. DEV 22 Local Plan 2003 refers to the acceptability of parking in the neighbourhood

These factors tend to suggest this restriction can be removed in this case :-

I can find no equivalent to DEV 22 in the ELP

unlike modern purpose built blocks for elderly accommodation , there is no lift and there appear to be at least 2 maybe 3 floors for 3 flats [contrast Rock Gardens which the applicant refers to to distinguish the inspectors upholding of an age restriction]

elderly accommodation has expanded in the area , with more attractive ,more suitable accommodation provided

it may , if possible, be a good idea to check age of occupiers ----possibly by enquiry of the applicant --- because occupation by people younger than pensionable age would fall within S84(1)(b) as an implied breach of the age restriction

I suggest in this case that there are no useful purposes identified so you can grant in my opinion

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

ARUN DISTRICT COUNCIL

- and -

owner

[- and -]

mortgagee

DEED OF DISCHARGE/VARIATION

under Section 52 Town and Country Planning Act 1971 and Section 106A of the Town & Country Planning Act 1990 relating to Land at

in the County of West Sussex

**Delwyn Jones LLB
Planning Solicitor
Arun District Council
Arun Civic Centre
Maltravers Road
LITTLEHAMPTON
West Sussex
BN17 5LF
[☎ 01903 737737]**

Ref: PO/VAR

THIS DEED OF VARIATION/DISCHARGE is made the _____ day of _____ 200

BETWEEN:

- (1) "the Council" Arun District Council of the Arun Civic Centre Maltravers Road
Littlehampton West Sussex BN17 5LF and
- (2) "the Owners"
- (3) "the Mortgagee "

NOW THIS DEED WITNESSETH: as follows:-

1. Definitions

In this Deed:-

- 1.1. "the Property" means
- 1.2. "the Original Agreement" means an Agreement made pursuant to Section 52 /106
Town & Country Planning Act 1971/ 1990 on _____ between the Council
(1) and /the then/ Owners being (2)

2. Recitals

- 2.1 This Deed is supplemental to the Original Agreement
- 2.2 The Owner is successor in title to the Owner specified in the Original Agreement
- 2.2 The Council and the Owners agree that _____ and agree to join in this Deed to
give effect to such agreement
- 2.3 The Mortgagee holds a Legal Charge on the Property by virtue of a Deed made
between the Owners and the Mortgagee and has agreed to join in this Deed to give
effect to the agreement referred to at clause 2.2

3. Operative powers

The Council enters into this Deed under its powers contained in S52 /S106B S106 BA and
S106BC Town and Country Planning Act 1971/ 1990 S111 and S135 Local Government
Act 1972 and all other powers enabling

4. Release/Variation

Release

\\\\thunder.in.arun.gov.uk\\home\$\\rebecca.payne\\Files to Upload\\povar.doc

3.1 The Council **DISCHARGES RELEASES AND SURRENDERS** the Property to the Owners freed and discharged from the Original Agreement and all claims and demands under it

or

Variation

4.1 The Council and the Owner AGREE that the Original Agreement shall be varied in that:-

4.2 The Agreement shall otherwise continue in full force and shall have the same legal effect as before this amendment or variation.

4.3 The Mortgagee joins herein to confirm its agreement with the contents of this Deed

5. Three Years Time Limit for Applicability of Deed Of Variation for Affordable Housing Provisions

5.1 In accordance with S106BA and S106BC Town and Country Planning Act 1990 it is agreed by the Council and the Owner that :-

- (a) The variations contained in this Deed shall apply to the Land/Property for no more than three years from the date of this Deed.
- (b) The Time Period of three years is :- [Date of Deed –Three years hence]
- (c) If the Development has not been completed by the end of [3 years] the Deed shall be treated from that date as if it contained the Affordable Housing Provisions contained in the Original Agreement and those provisions shall apply then apply to the Land/Property/Development or such part of the Development that is not commenced on that date

6. Costs

The Owners shall pay the Council's reasonable legal costs on completion of this Agreement.

7. Local Land Charge

The Original Agreement is a local land charge and this Deed shall be entered in the relevant register [so as to record the variation]

or

The Original Agreement is a local land charge and is entered in the relevant register. Upon completion of this Deed of Discharge that entry shall be removed from the register.

IN WITNESS whereof the Council has hereunto caused its Common Seal to be affixed and the Owners have hereunto set their hands as a Deed the day and year first before written.

THE COMMON SEAL OF
Arun District Council was hereunto
affixed in the presence of:

AUTHORISED SIGNATORY:

SEAL BOOK NO

SIGNED by the said _____
as his Deed in the presence of:

SIGNED by the said _____
as her Deed in the presence of:

CERTIFICATE OF TITLE

I/We _____ of _____ Solicitors for the
Owners certify the truth of recital

hereunto

Dated this _____ day of _____

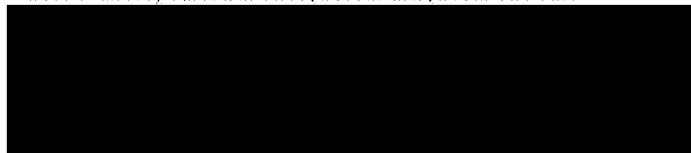
Signed _____



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
BOURNE END OFFICE

Sent: 22 March 2017 11:48

To: Planning

Cc: Simon Davis

Subject: Application to remove s52 Agreement on Essex House, 3 Walton Road, Bognor Regis

Application to remove s52 Agreement on Essex House, 3 Walton Road, Bognor Regis

Please find attached my explanatory letter, completed application form, plans and copies of the old Agreement and permission in respect of the above.

So far as I am aware there is no planning application fee for such applications and there is no facility to make such applications through the Planning Portal, hence forwarding the documents by email. Please let me now if you require anything else.

Please acknowledge receipt

Regards

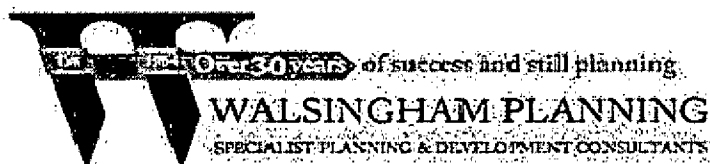
Stephen Brooker

Director

Walsingham Planning

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

www.walsinghamplanning.co.uk



Ian Jewson Planning is now part of the Walsingham Planning Group

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APPLICATION FOR THE MODIFICATION OR DISCHARGE OF PLANNING OBLIGATIONS

1 Applicant (in block capitals)

Name: ST JOSEPHS BR LLP

Address: 3 ROBERTSON STREET
LONDON

Post Code SW8 3SH

Tel. No:

2 Agent (if any)

Name: WALSINGHAM PLANNING

Address: BOURNE HOUSE, CORES END ROAD,
BOURNE END, BUCKS

Post Code SL8 5AR

Tel: [REDACTED]

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

ESSEX HOUSE, 3 WALTON ROAD, BOGNOR REGIS

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

PLEASE SEE LOCATION, SITE + FLOOR PLANS
ATTACHED 129/0/150(rev03) + 151(rev04)
129/2/006(rev02) + 096(rev01)

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

OWNER

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

S52 AGREEMENT DATED 10/2/89 ATTACHED

TO PERMISSION REFERENCE BR/484/88,

COPIES ATTACHED

BR/99/17/PO

Application to Discharge a Planning Obligation
dated 10/02/89 under BR/484/88/ relating to
S52 agreement.

6 Please state your reasons for applying for the modification or discharge of the planning obligation identified in paragraph 5 above:

PLEASE SEE ACCOMPANYING LETTER

7 Please give the following information, which the authority considers necessary to enable it to determine the application, namely:

PLEASE SEE ACCOMPANYING LETTER

8 Please give any other information you consider relevant to the determination of this application
(continue on a separate sheet if necessary)

PLEASE SEE ACCOMPANYING LETTER

I/We hereby apply for the modification or discharge of a planning obligation under section 160A of the Town and Country Planning Act 1990 in respect of an existing planning obligation described in this application and the documents and map which accompany it. I/We have completed the Certificate A, B or C, attached to this application, as appropriate.

Signed: WALSHINGHAM PLANNING

[on behalf of] SE JOSEPH'S BR LLP
(insert name of applicant if signed by agent)

Date 22 MARCH 2017

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

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

Ms T. FERRIS

ESSEX HOUSE

22 MARCH 2017

3 WALTON ROAD

BOGNOR REGIS

Signed

WALSINGHAM PLANNING

[on behalf of]

ST JOSEPHS BR LLP

Date

22 MARCH 2017

Cross out any words in square brackets which do not apply

CONTINUED OVERLEAF

Certificate C

I certify that

[I] [the applicant] cannot issue a Certificate A or B in respect of the accompanying application;
[[I have] [the applicant has] given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the application, the planning obligation to which the application relates was enforceable.

Person on whom
notice was served

Address at which
notice was served

Date on which
notice was served

[I have] [the applicant has] taken reasonable steps to ascertain the name and address of every person against whom, on the day 21 days before the date of the application, the planning obligation to which the application relates was enforceable and who has not been given notice of the application but has been unable to do so. These steps were as follows (a)

Notice of the application, as attached to this certificate, has been published in the (b)

on (c)

Signed

[on behalf of]

Date

Cross out any words in square brackets which do not apply

(a) description of steps taken

(b) name of local newspaper in which the notice was published

(c) date of publication.

ARUN DISTRICT COUNCIL:BR/484/88

TOWN AND COUNTRY PLANNING ACT 1990

BR/484/88

Conversion of existing 5
bedroom house into 3 self
contained flats for elderly
persons.

Essex House
Walton Road
Bognor Regis
West Sussex

In pursuance of their powers under this Act and related Orders and Regulations the Council Permit this development to be carried out in accordance with the application and plan and subject to compliance with the conditions specified.

TO: Mr K A A Green
Building Consultant
34 Stirling Road
Chichester
West Sussex

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

ARUN DISTRICT COUNCIL:BR/484/88

10th February 1989

BR/484/88	Conversion of existing 5 bedroom house into 3 self contained flats for elderly persons.	Essex House Walton Road Bognor Regis West Sussex
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CONDITION 1 : The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

REASON : To comply with Section 91 of the Town and Country Planning Act 1990.

CONDITION 2 : The use hereby permitted shall not be carried on until the premises have been sound insulated in accordance with a scheme submitted to and approved by the Local Planning Authority.

REASON : To safeguard the environment.

THIS AGREEMENT is made the fourth day of February
One thousand nine hundred and eighty-nine BETWEEN ARUN DISTRICT
COUNCIL of The Arun Civic Centre Maltravers Road Littlehampton in
the County of West Sussex BN17 5LE (hereinafter called "the
Council") of the one part and HOUSE OF HOSPITALITY LIMITED whose
registered office is situate at Holy Cross Priory Cross-in-Hand
Reathfield in the County of East Sussex (hereinafter called "the
Owner") of the other part

W H E R E A S:

(1) The District 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 absolute in possession
free from incumbrances of the land and Property specified in the
First Schedule hereto (hereinafter referred to as "the Property")

(3) An application (Reference No. BR/484/88) dated 30th August
1988 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 AGREEMENT 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 all other powers the
parties hereto enabling WITNESSETH as follows:-

1. THE Council hereby approve the said development (Reference
No. BR/484/88) subject to the conditions set out in the Notice of
Approval of even date

2. THE Owner for itself and its successors in title hereby
covenants with the Council with intent to bind the Property and
every part thereof into whosoever hands the same may come and to
the intent that this covenant may be enforced by the Council
against persons deriving title under the Owner pursuant to Section
52 of the Town and Country Planning Act 1971 as if the Council were
possessed of adjacent land and this covenant had been expressed to
be made for the benefit of such land to observe and perform the
covenants set out in the Second Schedule hereto

3. (1) Notwithstanding anything hereinbefore contained the foregoing covenants shall not prohibit or restrict or require anything to be done before the date on which the development specified in the planning permission shall be taken to be begun within the meaning of Section 41 or 42 and Section 43 of the 1971 Act

(2) If the planning permission shall expire before the development has been begun as aforesaid or is revoked or otherwise withdrawn or without the consent of the Owner or his successors in title modified by any statutory procedure this Agreement shall thereupon cease to have effect

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

FIRST SCHEDULE

Essex House 3 Walton Road Bognor Regis in the County of West Sussex shown edged red on the plan accompanying the said planning application

SECOND SCHEDULE

(1) Not to 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 in the case of the occupation of any dwelling unit comprised in the Property under the following circumstances:-

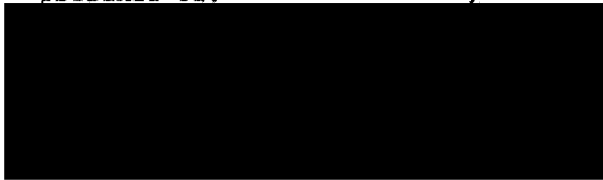
(a) by a husband and wife where one of them is below State Pensionable age

(b) the continued occupation by a spouse below State Pensionable age following the death of his or her spouse who had attained that 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 Notice of Approval of even date herewith

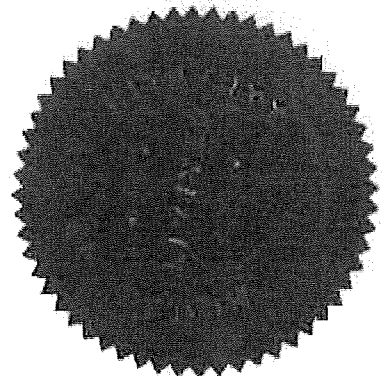
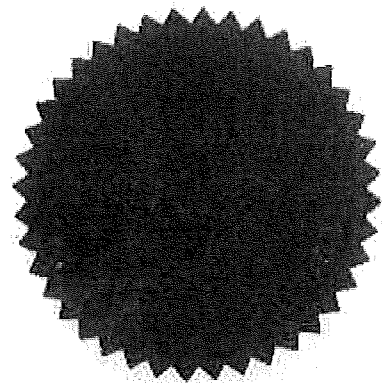
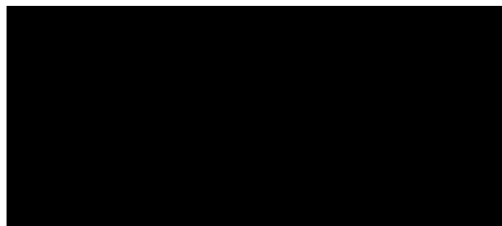
THE COMMON SEAL of the ARUN)
DISTRICT COUNCIL was here-)
unto affixed in the)
presence of:-)



Authorised Signatory

Seal Book No. 168/85

THE COMMON SEAL of HOUSE OF)
HOSPITALITY LIMITED was)
hereunto affixed in the)
presence of:-)



APPLICATION FOR THE MODIFICATION OR DISCHARGE OF PLANNING OBLIGATIONS

1 Applicant (in block capitals)

Name: ST JOSEPHS BR LLP

Address: 3 ROBERTSON STREET
LONDON

Post Code SW8 3SH

Tel. No:

2 Agent (if any)

Name: WALSINGHAM PLANNING

Address: BOURNE HOUSE, CORES END ROAD,
BOURNE END, BUCKS

Post Code SL8 5AR

Tel: [REDACTED]

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

ESSEX HOUSE, 3 WALTON ROAD, BOGNOR REGIS

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

PLEASE SEE LOCATION, SITE + FLOOR PLANS
ATTACHED 129/0/150(rev03) + 151(rev04)
129/2/006(rev02) + 096(rev01)

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

OWNER

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

S52 AGREEMENT DATED 10/2/89 ATTACHED

TO PERMISSION REFERENCE BR/484/88,

COPIES ATTACHED

BR/99/17/PO

Application to Discharge a Planning Obligation
dated 10/02/89 under BR/484/88/ relating to
S52 agreement.

6 Please state your reasons for applying for the modification or discharge of the planning obligation identified in paragraph 5 above:

PLEASE SEE ACCOMPANYING LETTER

7 Please give the following information, which the authority considers necessary to enable it to determine the application, namely:

PLEASE SEE ACCOMPANYING LETTER

8 Please give any other information you consider relevant to the determination of this application
(continue on a separate sheet if necessary)

PLEASE SEE ACCOMPANYING LETTER

I/We hereby apply for the modification or discharge of a planning obligation under section 160A of the Town and Country Planning Act 1990 in respect of an existing planning obligation described in this application and the documents and map which accompany it. I/We have completed the Certificate A, B or C, attached to this application, as appropriate.

Signed: WALSHINGHAM PLANNING

[on behalf of] SE JOSEPH'S BR LLP
(insert name of applicant if signed by agent)

Date 22 MARCH 2017

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

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

Ms T. FERRIS

ESSEX HOUSE

22 MARCH 2017

3 WALTON ROAD

BOGNOR REGIS

Signed

WALSINGHAM PLANNING

[on behalf of]

ST JOSEPHS BR LLP

Date

22 MARCH 2017

Cross out any words in square brackets which do not apply

CONTINUED OVERLEAF

Certificate C

I certify that

[I] [the applicant] cannot issue a Certificate A or B in respect of the accompanying application;
[[I have] [the applicant has] given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the application, the planning obligation to which the application relates was enforceable.

Person on whom
notice was served

Address at which
notice was served

Date on which
notice was served

[I have] [the applicant has] taken reasonable steps to ascertain the name and address of every person against whom, on the day 21 days before the date of the application, the planning obligation to which the application relates was enforceable and who has not been given notice of the application but has been unable to do so. These steps were as follows (a)

Notice of the application, as attached to this certificate, has been published in the (b)

on (c)

Signed

[on behalf of]

Date

Cross out any words in square brackets which do not apply

(a) description of steps taken

(b) name of local newspaper in which the notice was published

(c) date of publication.

**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

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-ss (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** Is 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(3)

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—

- (i) 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)(aa) 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 restrictions shall affect the operation of this subsection or the operation for 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 or are not 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 right of any person to be admitted to oppose the application, the court may, if it thinks fit, order that the question shall be referred to the Lands Tribunal for its decision.

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

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
Ext. 37737

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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GTN:

<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

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 -

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A R Brown Solicitors
Rivoli Chambers
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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.



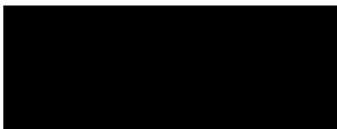
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I therefore confirm that we have no alternative but to turn your clients' appeal away as we have no power to accept it. I realise that this advice will not be welcomed by your clients. It is unfortunate that this matter could not be resolved earlier 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
Room 3/20, Eagle Wing
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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