

29 November 2012

FROM:

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Planning Solicitor
Resources Department
Tel Ext 737737

TO:

A Gardner
Planning Officer

CONSULTATION ON DISCHARGE OR VARIATION OF PLANNING OBLIGATION
S52 AGREEMENT
ADDRESS FLAT 8 MADEHURSY COURT GLOUCESTER ROAD LITTLEHAMPTON
BN17 7BX
REF LU/283/12/PO

GENERAL

Thank you for your recent consultation memo now returned together with the file on which alone this advice is based.

I refer you to Counsels Advice dated 11 October 2006 and my summary of that dated 16 October 2006 by way of general background.

COPY DEED

You haven't enclosed a copy of the deed but I note its dated 1 August 1986 so the pre 1992 rules apply as explained below. I am generally familiar with the terms of these deeds so can advise further.

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/reasonable expectation 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 so we can defend as invalid any appeal to PINS.

Criteria

Strictly the tests are those identified in S84 LPA 1984 as S106A and “useful purpose” does not apply to cases pre 9/11/1992 but for practical purposes I think you can use “useful purpose”.

The Application

The applicant seeks to vary the deed so as to allow her son [now under retirement age] to inherit and live in the property in future.

She proposes an age restriction to “over 50 years “.

The Determination in this Case.

Representations

County Highways no longer back this age restriction [see their letter dated 23 /11/12 from C Platt]. So the “highway justification” based on the theory [unsustainable in my view] that elderly residents don’t drive or require car transport cannot be used to seek retention.

It may still serve a useful purpose if there is evidence to show (judged by you as a planner) that there is another planning ground for keeping the age restriction eg lack of amenity open space, adverse affect on amenity from mixed age groups, discharge or variation will mean a loss of affordable housing for a sector of the population.I have seen none on file.

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

I see no evidence on file for refusal.The residents have written in to say they are concerned about noise and nuisance from younger residents ,but these can be addressed via landlord management of covenants for quiet enjoyment.

I can draft the deed of variation for you.

If there is a refusal ,there may be an appeal under S84 Law of Property Act 1925 to the Lands Tribunal, which I consider the Council could not defend.

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