



**REGULATORY
SERVICES
COMMITTEE**

REPORT

30 June 2011

Subject Heading:

**P0368.09 - Pell court, 165 – 171
Hornchurch Road.**

**Variation of completed Section 106
Agreement following the grant of
planning permission under reference
P0368.09 for 23 sheltered residential
apartments.**

Report Author and contact details:

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Policy context:

Local Development Framework

Financial summary:

None

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input checked="" type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

The report concerns a proposed variation of a Section 106 Legal Agreement which was completed following the grant of full planning permission under application

reference P0368.09 for the erection of 23 sheltered housing apartments. The Section 106 Agreement restricts the occupancy of units to persons of sixty (60) years of age or older and the spouse and cohabiting partner of such person irrespective of age. The proposed variation seeks to allow a prospective purchaser who suffers from a number of medical conditions and nearing the required age (57) to be given the opportunity to purchase one of the units. In light of the specific circumstances pertaining here, Staff consider that the original legal agreement can be amended through the Deed of Variation.

RECOMMENDATIONS

That Staff be authorised to enter into a Section 106 Legal Agreement under the Town and Country Planning Act 1990 (as amended) (the 1990 Act), with the agreement of all parties to the original agreement or their successors in title to secure the following Deed of Variation pursuant to Section 106A of the 1990 Act relating to clause 3.3 of the Section 106 Legal Agreement dated 10th June 2009 (the original agreement):

- The lease tenancy agreement licenses or other occupancy agreement relating to the dwelling unit known as Plot 18, shown hatched in red on the Second Floor Plan, shall be amended to enable the prospective occupant to reside here.
- Save for the variation of clause 3.3 of the Section 106 Agreement dated 10th June 2009 all recitals, terms, covenants and obligations in the original agreement will remain unchanged.

REPORT DETAIL

1. Site Description

- 1.1 The site is located on the corner of the junction between Hornchurch Road and Babington Road, Hornchurch. Permission was granted in 2009 (Planning Ref: P0368.09) for the erection of 23 sheltered apartments. Construction works are currently taking place on the site. Access to the site remains from Hornchurch Road.
- 1.2 The general surroundings are predominantly suburban in character and consist of a mix of residential and commercial properties. The site is located in an area of predominantly two storey development. Opposite the site, however, is a parade of shops arranged in a terrace extending to two and a half storeys with residential accommodation above.

- 1.3 The site does not form part of any designated policy area as identified within the Local Development Framework Proposals Map.

2. Description of Proposal

- 2.1 The prospective purchaser of plot 18 has requested permission to vary the terms of the Section 106 Agreement dated 10th June 2009. which was completed on the grant of full planning permission under reference P0368.09.
- 2.2 The Section 106 Agreement restricts the occupancy of the units by persons of sixty years of age or older and the spouse or cohabiting partner of such person irrespective of age.
- 2.3 The proposed variation would allow the prospective purchaser, Mrs Pam Gane to occupy a unit within the sheltered scheme, having access to a much needed community support system, 24 hours emergency call system and other facilities which will help her overcome issues in relation to osteoarthritis and arthritis. Mrs Gane does not satisfy the qualifying occupancy criteria set out above.

3. Relevant History

- 3.1 P1218.07 Erection of 27 sheltered residential apartments - Withdrawn.
- 3.2 P2458.07 Erection of 26 sheltered residential apartments - Refused and appeal dismissed.
- 3.3 P0368.09 - Erection of 23 sheltered residential apartments – Approved.

4. Staff Comments

- 4.1 It is understood that Mrs Gane was born on 21st February 1955, making her 57 on her next birthday and therefore close to the required age restriction (60 years). It is also indicated that Mrs Gane is a single lady currently living in a 2-storey house. Mrs Gane has a number of severe health problems, and has no immediate relatives living in the UK. Mrs Gane is concerned about her continued long term health issues and combined with her lack of family support, she now wishes to move to Pell Court to take advantage of the 24 hour care-line call system, the lift, community support system and safety features which is achieved by living in a sheltered scheme and which she does not presently have at her current home.
- 4.2 Members are invited to consider whether the personal circumstances outlined in this case are sufficiently robust to accept the Deed of Variation proposed. In granting planning permission originally, a clause was inserted into the Section 106 Agreement to restrict occupation of the apartments to those 60 years and above, together with the spouse or cohabiting partner of such a person irrespective of age. As identified above, whilst Mrs Gane

does not meet the requirements of this clause, Staff are of the opinion that exceptional circumstances existing in this instance.

4.3 Whilst the proposed variation would not strictly adhere to the objectives of this clause to provide accommodation for this particular housing group, on balance, its acceptance in this instance would not, in Staff's view, be unduly prejudicial. The remaining units within Pell Court would still be subject to the original clause and the principal use of the block for sheltered housing accommodation would continue. Furthermore, the variation would enable Mrs Gane to be cared for in her own home. This approach is very much supported by the 'personalisation' agenda within Adult Social Services which seeks to tailor care provision to the needs of the individual.

4.4 Whilst it is recognised that the approval of this variation could give rise to additional requests for variations within the block, each request would be considered on its own merits and the approval of this request would not establish a precedent.

5. Conclusion:

5.1 Taking into account the personal circumstances outlined and the benefits arising to Mrs Gane, Staff consider that an exception to the occupancy criteria can be permitted. Members are invited to consider however whether the circumstances in this instance are sufficiently unique to allow an exception.

IMPLICATIONS AND RISKS

Financial implications and risks:

None.

Legal implications and risks:

A variation of the existing Section 106 Legal Agreement.

Human Resources implications and risks:

None.

Equalities implications and risks:

By allowing flexibility on the existing Legal Agreement, the Council is committed to provide equal and fair opportunities to its residents.

BACKGROUND PAPERS

Request for variation of Legal Agreement received on 17th May 2011.