



**REGULATORY
SERVICES
COMMITTEE**

REPORT

2 February 2012

Subject Heading:

Pell court, 165 – 171 Hornchurch Road.

Variation under Section 106A of a Unilateral Undertaking under Section 106 dated 10th June 2009 following the grant of planning permission under reference P0368.09 for 23 sheltered residential apartments and Highways Contribution.

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Policy context:

Local Development Framework

Financial summary:

None

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

Ensuring a clean, safe and green borough	[]
Championing education and learning for all	[]
Providing economic, social and cultural activity in thriving towns and villages	[]
Valuing and enhancing the lives of our residents	[x]
Delivering high customer satisfaction and a stable council tax	[]

SUMMARY

The report concerns a proposed variation of a Section 106 Unilateral Undertaking 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 Unilateral Undertaking amongst other things 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 Unilateral Undertaking also provides for a Highways Contribution of £25,000 for the provision of a Zebra crossing in Hornchurch Road, Romford within 50 metres of the proposed Development. The proposed variations seek, amongst other matters, to allow a prospective purchaser who suffers from a number of medical conditions and nearing the required age (58) to be given the opportunity to purchase one of the units (Plot 22). In light of the specific circumstances pertaining Staff consider that the original unilateral undertaking can be amended through the Deed of Variation.

Further subject to the completion of a Section 278 agreement under the Highways Act 1980 and the completion of works pursuant to that Section 278 Agreement to renew the footway in the area hatched on the attached plan (Drawing Reference: HRBR/01/02 Revision A) that the balance of the Highways Contribution following deduction of the highways supervision fees for the footway works and the investigation into the potential siting of the said Zebra Crossing be repaid following the issue of a Final Certificate in respect of the footway works indicating that they have been completed to the satisfaction of the Head of Streetcare. Following investigation into the siting of the Zebra crossing it was decided that the crossing was not appropriate and there was significant opposition locally to its siting. In respect of the Highway Contribution members should note that in the event that that sum is not spent within 2 years of the date of payment for its intended purposes of the investigation and construction of the Zebra crossing that any unspent balance would be repayable. The developers have agreed to carry out the footway works and following the Head of Streetcare issuing a Final Certificate that the footway works have been completed to the satisfaction of the highway authority the balance of the Highway Contribution would be repaid following deduction of the supervision fees in respect of the footways works and the sums spent on the design and consultation into the siting of the Zebra Crossing. Staff consider that the original unilateral undertaking can be amended through the Deed of Variation in this respect.

RECOMMENDATIONS

That Staff be authorised to enter into a Section 106 Legal Agreement under the Section 106 and 106A of the Town and Country Planning Act 1990 (as amended) (the 1990 Act), with the agreement of all parties to the original unilateral undertaking or their successors in title to secure the following Deed of Variation

pursuant to Section 106A of the 1990 Act relating to clauses 3.3, 4 and 5 of the unilateral undertaking dated 10th June 2009 (the original unilateral undertaking):

- The lease tenancy agreement licenses or other occupancy agreement relating to the dwelling unit known as Plot 22, shown hatched in red on the Second Floor Plan, clause 3.3 shall be amended to enable the prospective occupant to reside here.
- That clauses 4 and 5 of the unilateral undertaking dated 10th June 2009 shall be deleted.
- That the Applicant (Great Homes Limited) shall enter into a Section 278 agreement under the Highways Act 1980 with the Council as Highways Authority to secure the footway works to the extent shown hatched on Drawing Reference HRBR/01/02 Revision A, attached.
- Following satisfactory completion of the said footway works by the Head of Streetcare issuing a Final Certificate in respect of those works the Council shall repay the balance of the Highways Contribution (the sum of £20,500) having first deducted the supervision fees for the footway works and the costs incurred by the Council in respect of their investigation works into the siting of the Zebra Crossing.
- Save for the obligations set out in the above bullet points, the variation of clause 3.3 and the deletion of clauses 4 and 5 of the unilateral undertaking dated 10th June 2009 and any consequential variations or deletions all recitals, terms, covenants and obligations in the original unilateral undertaking 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 nearly completed. 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 22 has requested permission to vary the terms of the unilateral undertaking dated 10th June 2009, which was completed on the grant of full planning permission under reference P0368.09.
- 2.2 The unilateral undertaking 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 relating to clause 3.3 of the original unilateral undertaking would allow the prospective purchaser, Mrs Bernice Church 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 hypercholesterolemia (high cholesterol level) and anxiety/ stress due to the loss of her husband. Mrs Church does not satisfy the qualifying occupancy criteria set out above.
- 2.4 The highway Contribution is required to be spent on the consultation and design and subsequent construction of a Zebra Crossing within 50 metres of the development. Officers undertook extensive consultation and a number of design locations were presented in consultation which resulted in a high level of opposition to the installation of a Zebra crossing. The original unilateral undertaking as drafted requires the repayment of the unexpended balance of the Highways Contribution within 2 years of payment plus accrued interest. The Council would be required to repay the unspent balance of the Highways Contribution by October 2012. The Applicant Great Homes Limited have agreed to carry out footway improvement works adjacent to the site and hatched on the attached plan. Following the satisfactory completion of those works and the issue of the Final Certificate by the head of Streetcare the balance of the Highways Contribution £20,500 would be repaid.

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 Church was born on 23rd June 1953, making her 59 on her next birthday and therefore close to the required age restriction (60 years). It is indicated that Mrs Church is a single lady currently living alone. Mrs Church has a number of health problems, in terms of other available care, she has a son who has his own health problems. It is therefore considered that the accommodation at Pell Court is most suitable. Mrs Church is concerned about her continued long term health issues and combined with her lack of other available care, 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 unilateral undertaking 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 Church does not meet the requirements of this clause, Staff are of the opinion that exceptional circumstances exist in this instance.
- 4.3 Whilst the proposed variation would vary 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 the development 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 Church 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 This request is the second variation to the age restriction clause received by the Council. The first, received in May 2011 allowed a Mrs Gane to reside in Plot 18 at age 57 years. This variation refers to Plot 22. As this is the second request for variations, information has been submitted which show that of the 23 completed units, 10 are sold, 4 are currently awaiting exchange, 8 are reserved and 1 remains unsold. All buyers within the development meet the age restriction, with the exception of Plot 18 and now Plot 22. Staff consider that a variation to the age restriction on a second plot would be acceptable given the needs of Mrs Church.
- 4.5 As the development is now largely sold or reserved from occupiers which meet the age criteria. Should any further requests be submitted, each request would be considered on its own merits and the approval of this request would not establish a precedent.

- 4.6 A number of consultation exercises were undertaken and various locations proposed with 50 metres of the development. Designs were worked up and following consultation exercises there was little support for and a great deal of opposition to the siting of a Zebra crossing adjacent to the development.
- 4.7 The planning obligation which requires repayment of the Highways Contribution within 2 years of payment were part of a unilateral undertaking offered by the developers and the unspent balance of the Highways Contribution would have to be repaid with accrued interest by October 2012. There is substantial opposition to the siting of a Zebra crossing locally.
- 4.8 The Applicant (Great Homes Limited) have agreed to undertake footway improvements to and area of footway hatched on the attached plan. Following satisfactory completion of those works it is proposed that the unspent balance of the Highways Contribution be repaid, following deduction of the supervision fee for the footway works and the design and consultation costs for the Zebra crossing being deducted, the sum of £20,500.

5. Conclusion:

- 5.1 Taking into account the personal circumstances outlined and the benefits arising to Mrs Church, 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.
- 5.2 Taking into account the local opposition to a Zebra crossing in the location, the requirement in the unilateral undertaking to repay the Highways Contribution plus accrued interest by October 2012 and the willingness of the Applicant to undertake the improvement works to the footway at their cost Staff consider that the original unilateral undertaking can be amended through the Deed of Variation in this respect.

IMPLICATIONS AND RISKS

Financial implications and risks:

The unspent balance of the Highways Contribution would be repayable in any event after October 2012 and the footway works to be undertaken are at the Applicant's cost..

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 22nd November 2011.