

DEVELOPMENT COMMITTEE

29TH SEPTEMBER 2011

REPORT OF THE HEAD OF REGULATORY SERVICES

REVISIONS TO S106 AGREEMENT – RECTORY COURT, BOTTESFORD

1. PURPOSE OF THE REPORT

- 1.1 To consider a request for amendment to a s52 Agreement (s52 is now replaced by s106 of the 1990 Act).

2. RECOMMENDATION

- 2.1 **That approval is given to the amendments requested, i.e. to relinquish the requirement to dedicate any of the units to a warden serving the development.**

3. BACKGROUND

- 3.1 Application 87/00841/FUL was granted on 6th June 1988 subject to conditions and a s106 agreement. The permission permitted the conversion of the Old Rectory into 11 'warden controlled' old persons flats, and the erection of 6 old peoples flats in the grounds, and a pair of semi detached houses.

- 3.2 The agreement required a series of obligations as follows:

- Not to fell any trees on the site
- Not to demolish any boundary walls
- Not to add extensions to the buildings beyond those granted by the permission
- To prevent access onto Church St
- **Lease one of the flats to a warden for the site**
- **Lease one of the flats to a deputy warden for the site**
- **Lease the remaining flats to persons over 55 years old only**
- Maintain the landscaping and boundary walls
- Make repairs to the boundary wall facing Church St.
- Improve the bank of the River Devon where it forms the site boundary.
- Widen the footpath along Rectory Lane.

- 3.3 A subsequent 'Deed of Variation' was agreed in August 1996 amending the 5th, 6th and 7th requirements above (**in bold**) to allow:

(a) the lease of any 2 units to a warden and deputy warden and;

(b) allowing 3 units to be leased or sold to persons with a local connection to Bottesford (if not able to be sold to over 55's).

- 3.4 A request has now been received by a resident of the development, representing all of the Residents Association, to delete the clauses requiring leases to wardens altogether. In doing so, he has advised that no units in the scheme have ever been occupied by a warden since the completion of the development and that the current residents agree unanimously that the clause is undesirable. He has explained that it has come to light at this time due to the revealing of the s106 agreement during a property search associated with a sale.

- 3.5 Under s106A the Council is permitted, by agreement with all other parties with an interest in the land, to vary the terms of the original agreement. This would require a further 'deed of variation' which would be appended to the agreement.
- 3.6 **EVALUATION OF REQUEST**
The rationale for requiring the presence of wardens on the site is not clear from the records, and it is assumed that it had a purpose in justifying development in circumstances when it may not ordinarily be granted.
- 3.7 The site lies within the village envelope of Bottesford and is governed by Policies OS1 and H6. Both accept development in such locations without specific reference to the type and nature of housing (in terms of occupancy). PPS3 provides the expectation that developments meet identified local needs and the Council's evidence base demonstrates a continued need for housing suitable for older people but does not comment on the requirement for housing supported with warden services. The proposed variations to the s106 Agreement would not affect the suitability of the units for older people (or indeed the 'over 55's restriction). Accordingly, under current policy requirements there is no imperative or evidence that the units should be warden-controlled and as such there appears to be no ongoing justification for the restriction.
- 3.8 Additionally, it is considered that if unfulfilled for the period described by the resident (i.e for the entire existence of the development, - over 20 years) it is most unlikely that it could be capable of being enforced at this stage.

Background Papers:

Planning Permission no. 87/00841 and associated s52 Agreement and variation.

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Date: 19th September 2011