

Committee Date: 14 October 2010

Reference: 10/00582/VAC
Date Submitted: 02.08.2010
Applicant: Ms Penny Zygmant & Lookmaster Limited
Location: Sysonby Lodge, Nottingham Road, Melton Mowbray, LE13 0NU
Proposal: Variation of condition 2 of permission 04/00918/FUL, to remove the occupancy restriction from unit 5

Introduction:-

This application seeks planning permission for the variation of a condition that restricts occupation of the property to the over 55's, in relation to unit 5.

The application was considered at the Committee of 2nd September 2010, when the matter was deferred to seek the following:-

- Details of the level of 'advertising' undertaken by the applicant
- The views of the Council's legal department
- The views of the Council's Housing Policy section, specifically in relation to the current demand for over 55's accommodation.

The relevant information required by the Committee is summarised as follows:-

(i) *Relevant Advertising*

The Agent has forwarded a copy of the advertising brochure that was prepared for the 'marketing' along with a 'press release' from Aug 2007 that was printed in 18 different publications locally/nationally with a record of extensive marketing between Dec 2006 and May 2010.

The agent states that the marketing was undertaken by 4 different agents, both locally and nationally and did not receive any offers Dec 2006 - May 2010, including the period when there was a healthy market.

The agent goes on to state that they consider that the level of marketing is irrelevant as there is no planning justification for the occupancy restriction

(ii) *Legal department View*

This is included within the Consultation section, highlighted for members consideration and concludes that the application to vary the condition has been made in the appropriate manner

(iii) *Views of the Housing Policy Officer on the need for elderly person's accommodation.*

This is included within the Consultation section, highlighted for members consideration and concludes that there is evidence to show an ageing population, the demand is for accommodation integrated in to the community

The original Planning permission for the conversion of the building in to 2 dwellings (units 5 and 6) was granted by Committee in October 2004 and was part of a larger scheme to convert 3 ranges of 'barns/outbuildings' in to numerous dwellings. The buildings form the curtilage buildings to Sysonby Lodge, an imposing 'Country House' that is also converted to several smaller dwelling units and was the subject of a recent appeal referred to by the applicant.

The application is presented to the Committee because the recommendation comprises a departure from current Local Plan Policy and the previous involvement by Committee.

The key issues are considered to be:

- **The original basis for the condition limiting occupancy to over 55's**
- **Current national policy requirements (and how they relate to the original condition)**
- **The impact of a related appeal decision**

Relevant History:-

04/00460/FUL - Change of use of Main House to residential & Change of use of Blocks A, B, C, to restricted residential - retirement complex (9 dwellings) – Approved 01.09.2004

04/00918/FUL - Proposed revision of Planning Permission 04/00460/FUL to return Unit 5 The Cottage to original internal layout (insertion of staircase and internal wall in original position) to form Unit 5 and Unit 6 semi-detached dwellings – Approved 25.10.2004 (Subject to condition the subject of current application)

07/00773/FUL - Conversion of Sysonby Lodge and outbuildings to 9 apartments – Refused 19.12.2007

APP/Y2430/A/08/2067013 – Appeal against above refusal – Allowed 06.10.2008

Planning Policies:-

PPS1 - Delivering Sustainable Development - planning authorities should promote more efficient use of land through higher density development and suitably located previously developed land and buildings.

PPS3 - Housing - planning system should deliver a flexible, responsive supply of land - which makes efficient and effective use of land, including re-use of previously-developed land. It supports the efficient use of previously developed sites (brownfield). It promotes designs and layouts which make efficient and effective use of land, encouraging innovative approaches. It encourages the re-use of vacant buildings for residential use. Advocates social inclusion; the use of a variety of dwelling types, and the creation of 'mixed' communities.

PPS7 - Sustainable Development in Rural Areas - Key principle in land use planning is giving priority to re-use of previously-developed ('brownfield') sites and providing rural housing close to existing towns/villages. Allows for the re-use of rural buildings for residential purposes in some instances.

PPS 5 - states that authorities should pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Areas/Setting of Listed Buildings

Melton Local Plan (saved policies):

Policies OS2 and BE1:-

Allows for appropriate uses in the Countryside outside of Development Limits and:-

- the form, character and appearance of the settlement are not adversely affected;
- the form, size, scale, mass, materials and architectural detailing of the development is in keeping with the character of the locality;
- the development would not cause undue loss of residential privacy, outlook and amenities as enjoyed by occupants of existing dwellings in the vicinity; and,
- satisfactory access and parking provision can be made available.

Policy C7:-

Seeks to resist barn conversions to dwellings outside of village envelopes except for agricultural workers or affordable housing.

Consultations:-

Consultation reply	Assessment of Head of Regulatory Services
<p>Ward Member –no response received at the time of drafting the report</p>	
<p>Comments of Legal Officer (As requested by Committee):- The relevant legislation is S73 and S73a of the Town and Country Planning Act 1990. I have copied the relevant sections below for your information. As discussed it would appear the important factor is that the Committee shall only consider <i>'the question of the conditions subject to which planning permission should be granted'</i>.</p>	<p>The planning application for the variation of the condition has been correctly made in accordance with the appropriate section of the Planning Act.</p> <p>The courts have ruled that whilst a 'new' planning decision is made (and therefore any relevant conditions need to re-imposed on the new permission), in relation to the consideration of the application it is only the condition itself that can be considered.</p> <p>In this instance, the condition under consideration is the one which restricts the occupation of units 5 and 6 to the "over 55's", and the applicant has requested that this be removed in relation to unit 5 but remain in place in relation to unit 6.</p>
<p>Comments of Housing Policy Officer (As requested by Committee):- The application site is located to the north of Melton Mowbray. The application seeks the removal of the age restriction on unit 5 of the Sysonby Lodge development. The main point to consider before a decision can be made is the impact that this will have on the housing market for the ageing population.</p> <p>There is no research available that identifies specific need in this area although the general increase in older persons identified throughout the Borough is likely to be replicated in this vicinity.</p> <p>The population in the UK is aging and this is evident in Leicestershire, according to figures from the Office of National Statistics (ONS 2006). The estimated increased in the number of people aged 65 and over in Leicester and Leicestershire is from 111,200 in 2009 (equivalent to 17.03% of the population) to 127,500 by 2013 (18.80% of the population). In the long term this figure is expected to increase from 114,600 in 2010 to 165,600 by 2025. (Taken from A Qualitative Assessment of the Housing Needs and Aspirations of Older people in Leicestershire 2010)</p> <p>Current housing trends and market position have been taken into account in predicting the kind of housing that future populations/households are</p>	<p>The principle of retaining an occupancy condition (in this case a restriction to over 55's) is not well documented in National guidance.</p> <p>In the case of "agricultural occupancy" conditions, the advice contained within P.P.S 7, indicates that even where the condition was in-correctly imposed in the first instance, such a condition should only be removed if there has been a proper assessment as to the continuing need for such a restriction to meet the agricultural need for such dwellings in the locality.</p> <p>This guidance has direct comparisons with the current application, as even though the appeal decision (quoted by the applicant) suggests that in the light of later changes in National Policy since the condition was imposed, such a condition would not be imposed if the 2004 application was considered today, the condition never-the-less seeks to 'protect' the dwellings for the over 55's.</p> <p>If it is correct to consider whether an agricultural occupancy condition should remain in place to meet a need, - even when such a condition has been incorrectly imposed - then it is equally correct to assess whether an over 55's occupancy condition should remain in place to meet any 'need' that might exist for such accommodation and the</p>

<p>likely to aspire to and accept. With regard to older persons accommodation it is predicted that by 2021 113,580 households (or 25% of all households) will require specific older person 2 bed flats or bungalows. (Taken from Leicester and Leicestershire Strategic Housing Market Assessment (SHMA) 2008)</p> <p>Although the statistical evidence suggests a need for units to meet this need the qualitative assessment set out in the Housing Needs and Aspirations of Older People in Leicestershire suggests otherwise. The study found that older people want housing provision that is well integrated into the local community with good access to the local services rather than age specific developments (H.N.A.O.P. 2010:31). The findings of this study are generally in conformity with planning guidance set out in Planning Policy Statement 3 'Housing', which states the requirement for a mix of housing to encourage a fully integrated and diverse community.</p> <p>Whilst there is evidence available to suggest an ageing population the requirements of national policy to achieve a balanced community should be taken into consideration when making a decision on this application.</p>	<p>Committee deferral to consider such matters was not unreasonable.</p> <p>The issue therefore is to consider whether there is a need for the type of accommodation, and if so, whether it should be provided at Sysonby lodge, and in the form that currently exists, bearing in mind Government advice contained within P.P.S 3, in relation to meeting local needs for all types of housing.</p> <p>With applications to remove agricultural occupancy conditions, one of the tests for 'need' is whether adequate marketing has been undertaken and in this instance, the level of marketing by the applicant suggests that there is no longer a 'need' for such accommodation.</p> <p>This is borne out by the view of the Housing Policy Officer who suggests that in quantitative terms, there is a need for housing to provide housing to meet the needs of an ageing population, when a qualitative assessment is made, it has been found that older people do not want 'isolated' accommodation and they desire instead to be integrated in to the community.</p> <p>This could be indicative as to why the applicants marketing did not generate a sale with the over 55's condition in place, as the Policy section's studies show that older people do not want accommodation in such an "isolated" location.</p> <p>P.P.S 3 indicates that the aim of National Policy is to secure a 'range' of housing types within a given location, and to provide for a 'mix' of units that will create inclusive communities with mixed social groups.</p> <p>By retaining the over 55's condition in relation to the Sysonby site, this will continue to maintain an 'exclusive' community and does not allow for integration or a mixed community as required by P.P.S 3.</p> <p>The advice from the Housing Policy section, backed up by the marketing undertaken by the applicant, suggests that whilst there is a 'need' to provide accommodation to meet an ageing population, there is not a need for the type of accommodation that exists at Sysonby Lodge, as this is an isolated and exclusive community, that is no longer considered to be desirable in terms of P.P.S 3 advice in relation to the creation of mixed and inclusive communities.</p> <p>As such, the retention of the condition would not be</p>
---	--

	meeting a local 'need' (such need being for accommodation in mixed communities with good access to services) and to do so is no longer consistent with National policy advice.
--	--

Representations:

The neighbouring properties have been consulted (Consultation period ended 10 September 2010), and 7 letters of representation have been received as follows:-

The following representations have been received:-

Considerations	Assessment of Head of Regulatory Services
We chose to buy our property because it was restricted to the over 55's – all the other residents have agreed to it – and the properties were sold at a premium due to the restriction, compared with similar property elsewhere. The sales particulars made it clear that the property was restricted.	The 'sales particulars' and any agreements on age restrictions on which residents based their purchase, is a legal matter between the buyer and seller and not a 'planning' consideration. If the residents have been mis-sold their property, they would need to take their own legal action.
Conversion of Sysonby Lodge – if the developer ever gets on with the project, and introduction of families and children by reducing the age limit can not be tolerated	The comments regarding the completion of the project are noted, although this is something that purchasers of properties on the scheme could have controlled through their purchase. Central Government policy contained in P.P.S 3, seeks inclusive communities and to avoid social exclusion, and to seek to resist families and children is not in accordance with Governments aims.
It is selfish of the developer to apply for this removal at this stage, and merely widens the scope of his sale at the expense of the other 9 residents and if the closer attention was made to the property and its deteriorating approaches, then perhaps a sale could be achieved. We are all bound by the joint obligation to share in the management of the common areas and the covenant, not to sell or lease to anyone under the age of 55. There would need to be a legal variation and not just a planning one.	The objectors comments regarding the impact of the application are noted – see above. The management obligation in relation to communal areas is noted – and the residents therefore have control over any deterioration in appearance. A covenant restricting age of occupation is for residents to enforce as legal agreements on sales are not material planning considerations.
The site is surely Plot 2 (not unit 5) and we would point out that not all residents have been notified. The map is unclear and the blue line is no longer correct as the properties are now 'freehold' and the applicant only owns number 5	The application site is described as Plot 5 by the applicant and shown as such on the approved plans for application ref 04/00918/FUL
When the original application was approved by Committee, it was exclusively for the over 55's, due to a lack of housing aimed at this age group. As the majority of the population is now 50+, there is a need for discrete housing that targets this age group, and this will increase. There has been no additional housing for the over 55's in the Borough since the previous approval in 2004 and therefore not a pressing need to release this site to other groups.	Whilst the original approval was limited to the over 55's, government policy has since changed and the condition can no longer be justified. Whilst the comments regarding over 55's is noted, limiting occupation in such a manner is contrary to PPS 3 advice regarding social exclusion and inclusive/mixed communities.

Other material considerations (not raised through consultation of representation)

Considerations	Assessment of Head of Regulatory Services
<p>Removal of the Over 55's Condition</p>	<p>With applications for the removal of conditions, only the condition itself can be considered – in this instance, whether it is appropriate to retain the condition in view of the policy advice that exists today.</p> <p>When the conversion applications were considered by the Committee in 2004, the policy at the time was C7 of the Adopted Local plan, which followed advice contained in PPG 7 in seeking to resist conversions to dwellings, in favour of employment generating uses.</p> <p>The applications were approved by Committee, who were persuaded by the applicant's case that there was a lack of accommodation aimed at older people, and the applications were approved, as an exception to normal policy but with the restrictive condition the subject of this application.</p> <p>Subsequent to the approvals in 2004, the guidance has changed, and PPS 3 seeks to achieve mixed and balanced communities, that there should be no social exclusion. The condition is therefore no longer compatible with Central Government housing policy expressed in PPS 3.</p>
<p>Impact of related appeal decision</p> <p>In 2007, there was a similar application for the conversion of the main Sysonby Lodge (the Listed Country House), which the Council refused on the same policy C7, although the subsequent appeal was allowed.</p>	<p>The Inspector made specific reference to the fact that although the proposal was contrary to the Adopted Local Plan Policy C7, this was somewhat out-of-date and was no longer in line with the newer guidance contained in PPS 7, which was not as restrictive as its predecessor – PPG 7 – and Government policy allowed for appropriate conversions to dwellings as the re-use of vacant buildings for housing purposes was encouraged by PPS 3.</p> <p>As the only reason for restricting the occupation of the conversion scheme at Sysonby Lodge, was that at the time (in 2004), the scheme would not have been approved (as it was contrary to Policy C7), and the recent appeal indicates that such conversions are now acceptable, then there is no longer a justification for restricting the occupancy of the site.</p>

Conclusion

It is considered that the only issue for the Committee to consider is the condition itself, which was imposed in 2004, as Government and Local Plan Policy at the time, sought to restrict conversions to residential in favour of employment generating uses. By the time of the appeal in 2008, the Inspector stated that Local Plan Policy C7 was out-dated as the more recent PPS 7 does not seek to resist such conversions and therefore the change of use of the building to general market housing would now be acceptable.

Following the deferment at the Planning Committee of 2 September 2010, the 'need' for such accommodation has been assessed, and it has been found that whilst there is a quantitative need for ageing persons accommodation, the need is for such accommodation to be provided within mixed communities with good access to services.

As the conversion would now be acceptable (in Policy terms) and in line with Government advice, and that any 'need' should be provided elsewhere, and in a form that provides for the inclusive communities envisaged by P.P.S 3, there is no longer a justification for the restrictive condition which should be relaxed.

In view of the above justification the proposal is recommended for approval.

RECOMMENDATION:- APPROVAL

Contact : Rob Forrester

Date: 29.09.2010