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## Appeal Decision

Site visit made on 4 October 2016

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 October 2016

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**Appeal Ref: APP/C3810/Q/16/3142811**

**43 Rock Gardens, Bognor Regis, West Sussex PO21 2LE**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
  - The appeal is made by Mr M J and Mrs C A Meek against the decision of Arun District Council.
  - The development to which the planning obligation relates is the erection of 67 flats with ancillary car parking, garages and access road.
  - The planning obligation, dated 19 April 1984, was made between Arun District Council and L Nicholas (Developments) Limited.
  - The application Ref BR/211/15/PO, dated 24 September 2015, was refused by notice dated 23 December 2015.
  - The application sought to have the planning obligation discharged.
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### Decision

1. I dismiss the appeal.

### Background

2. A retirement-age restriction was attached to the grant of permission in 1984, and applied to some but not all of the flats in the development. The web-based Planning Practice Guidance states (Reference ID: 23b-001-20150326) that planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These are statutory tests in the Community Infrastructure Levy Regulations 2010 and policy tests in the National Planning Policy Framework and whilst not in place in 1984, are what the continuing need for the obligation should be tested against.
  3. At reference ID: 23b-009-20160519 in answer to the question '*can an agreed planning obligation be changed?*' the Guidance states that where the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it '*no longer serves a useful purpose*' or would continue to serve a useful purpose in a modified way (see Section 106A of the Town and Country Planning Act 1990). Reference ID: 23b-011-20160519 sets out the procedure for an appeal.
  4. There is some reference to the lease, and it appears the case that the obligation was not specific as to which units were to be restricted, only the proportion; the intention being that the restriction would be put into the
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individual unit leases. The situation concerning any lease and its wording is not a matter for this Decision, which concerns only the planning need for the obligation. The Council states that Flat 43 is a restricted unit and the Decision is based on that assurance.

### **Main Issue**

5. This is therefore whether the retention of the restrictions in the obligation continues to serve a useful planning purpose in respect of Flat 43.

### **Reasons**

6. The Council state that the retirement-age restriction was attached in order to allow the development to proceed whilst not making full provision for parking or amenity areas. Policy GEN7 of the Arun District Local Plan concerns the form of new development and sets out requirements that include making provision for parking. Policy DEV22 is specific to the relaxation of restrictions relating to occupation by the elderly, which will not be agreed unless the development remains in accordance with other policies in the Development Plan, and in particular provides adequate parking and amenity space, and where only some are being considered for relaxation of the restriction, a satisfactory environment is retained for those that would remain restricted.
7. The Council's reason for refusal refers to the provision of the parking and amenity areas needed to serve an additional unit of family accommodation, increased likelihood of unacceptable conditions of noise and general disturbance that would adversely affect the residential amenities of the remaining elderly occupiers, and reducing the type of housing that is required in Arun District to meet the population profile of the area which has a high proportion of persons over the age of 65.
8. It must be said that this flat is somewhat unusual in having two balconies and two allocated parking spaces. The arrangement of the flat with only a single bedroom and that having the only bathing facility as an *en-suite* shower room militates against occupation by other than a single person or couple even if unrestricted.
9. With regard to the first matter of parking, the National Planning Policy Framework states at paragraph 39 that if setting local parking standards for residential and non-residential development, local planning authorities should take into account: the accessibility of the development; the type, mix and use of development; the availability of and opportunities for public transport; local car ownership levels; and an overall need to reduce the use of high-emission vehicles. To be read alongside this is the later Government statement that local planning authorities should only impose local parking standards where there is clear and compelling justification that it is necessary to manage their local road network.
10. Parking is therefore an area where policy has changed since the original grant of permission, as the amount of parking to be provided is to reflect more closely the location of the development and an assessment of harm where provision is limited. In addition, this flat has only a single bedroom, but has allocated parking for a possible two cars, albeit in a tandem arrangement of one in the garage and one outside it. The general arrangement of parking in

the development is unallocated outdoor spaces on a first-come-first-served basis and allocated garage and car-port spaces.

11. It is possible, but not certain, that a restricted one-bed flat would generate a need for a single car, whilst an unrestricted one-bed flat occupied by working-age people could generate the need for two. The garage is small but adequate, but the tandem arrangement would make it inconvenient at times to retrieve a car if the outer space was in use. The possibility is that a second car user in the flat would choose to park in an unallocated space rather than in-front of the garage.
12. Any subsequent displacement of parking onto the surrounding roads would be affected by the double yellow line restrictions on Aldwick Road, with some meter parking towards the Esplanade to the east, but some unrestricted parking in side roads within easy walking distance, since the Controlled Zone parking ends at the junction with Norfolk Square to the east.
13. To conclude on the matter of parking, there is less policy backing now for the restriction, but the effect could be of undue pressure on the occupiers of other flats in finding parking space. The possibility of a cumulative effect if removing the restriction on this flat led to other flats being de-restricted adds to the concern.
14. With regard to amenity space, the two balconies to this flat are unusual, as on the floor below there are 4 flats instead of the 3 on this floor, indicating a single balcony each. Because of its layout there would be no reasonable chance of this flat being occupied by a family with children for whom more amenity space would be desirable, and the fifth floor location would not necessarily suit that occupation either. As with parking, should any relaxation here lead to pressure to relax the restriction elsewhere, there could be a harmful cumulative effect.
15. It is part of the Council's case and that of third party objectors within the block that there could be an increase in noise and disturbance. The flat is flanked by two larger unrestricted flats already, and with only the single bedroom as stated, there would be limited, if any, scope for more than 2 occupants. Again, it is possible, but by no means certain, that two working-age people would generate more late-night comings and goings, maybe entertaining and the like, but the scope for harm would be limited by the lift access past other floors and the flanking unrestricted flats. Nevertheless, occupiers who have chosen to live here for its peace and quiet may find their living conditions adversely altered contrary to Policy DEV22.
16. An aim of the development was clearly to provide housing for the elderly. Whilst the then reason for the restriction was parking and amenity space, the retention of such a housing mix is now part of the Development Plan at Policy DEV22. One of the dimensions of sustainable development in the Framework is supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations. In the section on housing the Framework seeks to create sustainable, inclusive and mixed communities. The provision of restricted units in and among the unrestricted ones as here assists in fostering this desirable mix and provides an element of assistance and overseeing. The age profile of the wider area indicates a need for housing suited to elderly people.

## **Conclusions**

17. Whilst the particular circumstances of this flat mean that there could be limited adverse effects on parking and amenity space, the retention of the restriction assists in providing mixed communities and specifically for the needs of elderly people in the area, in a flat that is eminently suited to that need and in a sustainable location close to the town centre and transport. The risk of noise and disturbance to people who live here because of the environment that the restriction ensures through there being a proportion of elderly people, could cause planning harm to their living conditions.
18. On balance, the restriction by way of the obligation, with its restriction on Flat 43, continues to serve a useful planning purpose in line with the statutory and policy tests set out in the Planning Practice Guidance. For the reasons given above it is concluded that the appeal should be dismissed.

*S J Papworth*

INSPECTOR