

**PHOENIX COURT, ELMS ROAD, ALDERSHOT
SECTION 52 LEGAL AGREEMENT & PLANNING CONDITION NO.11 OF
PLANNING PERMISSION RSH/04631/1**

1. INTRODUCTION

- 1.1 This report considers a request that has been received to relax a clause in a legal agreement under Section 52 of the Town and Country Planning Act 1971 restricting the age of occupiers of Flat No.2 Phoenix Court.

2. BACKGROUND

- 2.1 Phoenix Court comprises 23 flats divided between a larger three-storey building and a smaller two-storey building. Planning permission for the development was granted under ref.RSH04631/1 in December 1987 and the development was subsequently constructed in about 1989. Attached to the planning permission was a legal agreement under Section 52 of the Town & Country Planning Act 1971 (the pre-cursor to Section 106 agreements in the 1990 Act). One clause of this Agreement placed an age restriction on the occupants of 6 ground floor flats in the three-storey block (Flat Nos.1, 2, 7, 8, 13 & 14) to the effect that they should be occupied by at least one person of pensionable age. The reason for this was that at that time the parking standards were based on minimum standards. The developer proposed provided less than the full parking provision at the time, as the flats were for the elderly and therefore the parking requirement was less.
- 2.2 The legal agreement was also backed-up by the imposition of Condition No.11 of the planning permission, which states:-

“Unless otherwise agreed in writing by the Local Planning Authority, the occupation of six specified units of accommodation provided within this scheme shall be limited to include at least one person of sixty years of age minimum or any lower age which is for the time being defined as “pensionable age” in the Social Security Act 1975 or such age as shall replace “pensionable age” in any subsequent statute.”

The reason for the imposition of this condition was *“To ensure that the requirement for parking does not exceed the capacity of the site.”*

- 2.3 There has been some history of applications seeking the lifting of the age restriction from some flats in Phoenix Court. In 1989 an application for relaxation of the elderly occupancy clause of the legal agreement and planning condition in respect of Flats 2, 8 and 13 was refused (ref.RSH/06230 refers) for the following reason:-

“The development as originally permitted was for specialised housing for the elderly. The proposal to convert this partially to general-purpose accommodation, which cannot provide adequate on-site parking, is likely to have an adverse impact upon on-street parking and the visual amenities of the area, which is contrary to policy. Furthermore, the resultant on-street parking would be likely to be a hazard to highway safety in the area.”

- 2.4 In February 1995 planning permission was then refused for the formation of two additional parking spaces, enlargement of bin store and variation of Condition No.11 of planning permission RSH/04631/1 restricting occupancy to those of pensionable age to allow use of Flat 13 as a general purpose flat (ref.95/00021/FUL refers). The reasons for refusal were:-

“Having regard to the:-

- i) existing lack of residents’ parking which would not be addressed by the proposal;*
- ii) loss of on-street residents’ parking;*
- iii) relationship of the proposed additional parking spaces to flat 1; and*
- iv) the inappropriate location of the bin store;*

it is considered that the development would result in overflow parking on the public highway, noise and disturbance to Flat 1 and inconvenient refuse disposal arrangements to the detriment of highway safety and residential amenity. The proposal is therefore contrary to Policy TR15 and unacceptable when assessed against the criteria in Policy G9 of the Rushmoor Local Plan.”

- 2.5 In February 2005 it was agreed not to enforce the age related terms of the s52 Agreement having regard to the personal circumstances of the prospective purchaser of Flat 2 Phoenix Court, being a person younger than pensionable age. This Flat was evidently subsequently purchased and occupied on this basis since this was the recently deceased occupier of this flat the subject of the current request. This request was agreed on the basis that the original reason for the legal agreement age restriction had been to enable the development to meet the higher minimum parking standards in use at the time that planning permission was originally granted – but these were no longer applicable. However, it was agreed that the personal relaxation would only exist for the duration of the applicant’s period of residence at the site.
- 2.6 In October 2005 the Council agreed to a personal relaxation of a similar age restriction in respect of a flat at nearby Mountbatten Court in Birchett Road for similar reasons.
- 2.7 Requests for the relaxation of the age restriction in respect of Flats 7 and 13 Phoenix Court were subsequently considered and agreed by the Development Control Committee at their meeting on 16 August 2006.

3. REQUEST FOR RELAXATION

- 3.1 The Council has received a request from the executor to the estate of the late occupier of Flat No.2 Phoenix Court, whom has encountered difficulties in selling the Flat in order to execute the will and seek probate. This request is

that the age restriction be lifted to enable the property to be marketed and sold, and thereby occupied, without the age restriction.

- 3.2 Whilst the Council previously agreed not to enforce the age related terms of the s52 Agreement in respect of a, then, prospective purchaser and occupier of Flat 2 Phoenix Court in February 2005, the Council's letter in this respect did not confirm that the non-enforcement of the age-related s52 restriction had permanent effect; or, indeed, refer to the parallel restriction imposed by Condition No.11 of the planning permission for Phoenix Court.

4. NEIGHBOUR NOTIFICATION

- 4.1 All 23 flats in Phoenix Court have been notified by letter of the request for the relaxation in and invited to comment; as has the Management Company for the development, Merlin Estates. At the time of writing comments have been received as follows:-

On behalf of the occupier of Flat 5 Phoenix Court	Objection : The owner is currently seriously ill in hospital, but has asked that the Council be advised that it is their opinion that the status quo should remain.
Merlin Estates	Support : The restriction was originally imposed solely to facilitate reduced on-site parking provision and was not intended to serve a wider housing need. In my view, its removal in respect of Flat 2 would have no adverse impact on the development or the surrounding area. It is also relevant to note that many of the current occupiers of Phoenix Court are comparatively young, and the development has integrated this demographic mix without issue. The continued occupation of the flats by younger tenants has not placed any additional strain on local infrastructure or amenity. On that basis, lifting the restriction for Flat 2 would be consistent with the existing character of the development.

5. CONCLUSION

- 5.1 None of the age-restricted flats at Phoenix Court, although ground floor units, were designed to current "mobility" standards. The age restriction was not imposed for any 'social engineering' reasons to achieve a particular mix of old and young residents. Phoenix Court comprises 23 flats, of which only 6 were age restricted. The Council has already agreed relaxations of the age restriction in respect of 3 of the 6 flats involved. The age restriction was imposed because the developer was unable to provide enough parking on the site for the development to accord with the applicable minimum parking standards.
- 5.2 Since planning permission was granted the Council's parking requirements

have changed significantly in response to changes in Government planning guidance. Indeed, these changes took place some significant time after the Council's last *refusal* to allow a relaxation of the age restriction in 1995. The parking standards applicable to residential development have changed to a maximum provision and there is now, and has been for some time, no distinction made in terms of parking requirements between general purpose flats and those restricted to residents of pensionable age. The only reductions in parking requirements available for residential development now relate to sheltered housing establishments providing care to much less mobile residents. Further, current Government guidance and the Council's adopted parking requirements allow significant reductions in parking provision in town centre locations (such as Phoenix Court) having high accessibility by public transport.

- 5.3 Phoenix Court provides 26 on-site parking spaces for 23 flats, a provision slightly in excess of 1 parking space per flat. This is more than adequate parking provision for the development having regard to the town centre location of the site close to public transport interchanges and having regard to the Council's current adopted Parking Standards and Strategy. Accordingly, it is considered that there is no justification on planning grounds for the Council to resist the requested relaxations of the age restriction.
- 5.4 The original restriction was put in place for reasons relevant to planning at that time. However, those circumstances have changed significantly. The parking standards have altered such that the existing level of on-site parking provision is now acceptable for general residential accommodation. As a result, retention of the age restriction no longer serves a planning purpose. This approach has already been agreed on three other age-restricted flats at Phoenix Court.
- 5.5 It is therefore recommended that the Council should not seek to enforce the terms of the age restriction imposed by the s52 legal agreement and Condition No.11 of planning permission ref.RSH/04631/1 relating to Flat No.2 of Phoenix Court.

6. RECOMMENDATION

- 6.1 That the Corporate Manager Legal Services be authorised to advise the person making the request that the Council is minded not to enforce the terms of the Section 52 Agreement, or to take enforcement action in respect of the breach of Condition No.11 of planning permission ref.RSH/04631/1 relating to Flat No.2 only within Phoenix Court.

Tim Mills
Executive Head of Property & Growth

Background Papers: Planning permission ref. No. RSH 04631/1 and accompanying legal agreement.