

**GLOUCESTER CITY COUNCIL**

**COMMITTEE** : **PLANNING**

**DATE** : **12TH JANUARY 2016**

**ADDRESS/LOCATION** : **7 – 12 WESTMINSTER COURT, LONDON ROAD.**

**APPLICATION NO. & WARD** : **15/01291/MOD  
KINGSHOLM AND WOTTON**

**EXPIRY DATE** : **3<sup>RD</sup> DECEMBER 2015**

**APPLICANT** : **HARTLEYMORE LIMITED**

**PROPOSAL** : **DISCHARGE OF LEGAL AGREEMENT  
RESTRICTING THE AGE OF OCCUPANTS  
TO 50 YEARS AND OVER.**

**REPORT BY** : **CAROLINE TOWNLEY**

**NO. OF APPENDICES/  
OBJECTIONS** : **1. SITE LOCATION PLAN  
2. ORIGINAL LEGAL AGREEMENT DATED  
29<sup>TH</sup> JULY 1986**

**1.0 SITE DESCRIPTION AND PROPOSAL**

- 1.1 Westminster Court is a development comprising of 6 houses and a block of 6 no. 2 bedroom flats located on the southern side of London Road, approximately 75 metres to the east of its junction with Horton Road. Planning permission was granted for the three storey flats, formation of vehicular access and car parking area on 18<sup>th</sup> August 1986 (ref. 25170/07a). The application was the subject of a Legal Agreement which restricted the age of occupants to 50 years old and above. A copy of the Agreement is attached as an appendix.
- 1.2 There are currently 3 car parking spaces allocated to the six flats. There is no private amenity space. It appears from correspondence relating to the original planning application for the flats that the development was restricted on the basis that the City Council's normal planning standards of the time were relaxed in terms of both car parking and private amenity space.
- 1.3 This application seeks to discharge the legal agreement and so remove the age restriction for occupiers of the flats.

## **2.0 RELEVANT PLANNING HISTORY**

2.1 The planning permission to which the Legal Agreement relates to is ref. 25170/07a granted in August 1986 for the erection of three storey flats, formation of vehicular access and car parking area.

2.2 An application was received in 2002 for the variation of the Legal Agreement restricting the age of occupants for no. 11 Westminster Court. Three objections were received to this application from residents of the flats. This application was reported to Planning Committee on 9<sup>th</sup> April 2002 with an Officer recommendation that the age restriction be waived in respect of the occupancy of no. 11 Westminster Court. However, Members resolved to refuse the applications due to continued concerns relating to car parking, lack of amenity and the potential change in the character of the flats.

2.3 The earlier history relating to the site can be summarised as:

**2920/64/68** Conversion of house to nurses homes. Granted 25th May 1948.

**25170/01/OUT** (Outline) Erection of 2 blocks of 19 elderly persons flats and warden accommodation. Granted 14<sup>th</sup> September 1983. This permission was the subject of the following condition:

Condition

*The occupation of the dwellings hereby permitted shall be restricted to a maximum of 2 persons and the age of any one of those persons shall not be less than 50 years.*

Reason

*In view of the size of the flats proposed and the restricted area of amenity and parking space, the Council considers that the flats are unsuitable for family occupation.*

**25170/02** Change of use from dwelling house to elderly persons home. Granted 20<sup>th</sup> July 1983.

**25170/03** Construction of new vehicular access and formation of car parking areas. Refused 30<sup>th</sup> November 1983.

**25170/03/A** (Revised scheme) Construction of new vehicular access, alterations to existing access and formation of car parking areas. Granted 4<sup>th</sup> January 1984.

**25170/04** Erection of 16 flats in one block of two and three storeys and construction of vehicular access and car parking area. This application was refused on 21<sup>st</sup> March 1984 for the following reasons:

- *In the Council's opinion, the proposal would result in the over-development of the site, without adequate private amenity space for the reasonable enjoyment of its occupants.*

- *The development does not meet the Council's car parking standards which is considered essential in this location.*
- *Satisfactory on-site turning facilities are not available for service vehicles to manoeuvre within the curtilage of the site so as to be able to leave in a forward gear, consequently, such vehicles would either need to park on or reverse into the site, or reverse into London Road and thereby impede the free flow of traffic and cause danger to other highway users.*

**25170/05** Erection of one block of six flats and six no. 1 bedroom dwellings. Granted 31<sup>st</sup> October 1984.

**25170/06** Erection of new front boundary wall. Granted 16<sup>th</sup> April 1985.

**25170/07** Erection of six no. 1 bedroom dwellings and formation of vehicular access and car parking areas. Granted 25<sup>th</sup> February 1986.

### **3.0 PLANNING POLICIES**

3.1 The statutory development plan for Gloucester remains the 1983 City of Gloucester Local Plan. Regard is also had to the policies contained within the 2002 Revised Deposit Draft Local Plan which was subject to two comprehensive periods of public consultation and adopted by the Council for development control purposes. The National Planning Policy Framework has been published and is also a material consideration.

3.2 For the purposes of making decisions, the National Planning Policy Framework sets out that, policies in a Local Plan should not be considered out of date where they were adopted prior to the publication of the National Planning Policy Framework. In these circumstances due weight should be given to relevant policies in existing plans according to their degree of consistency with the National Planning Policy Framework.

3.3 The policies within the 1983 and the 2002 Local Plan remain therefore a material consideration where they are consistent with the National Planning Policy Framework.

3.4 From the Second Stage Deposit Plan the following policy is the most relevant:

Policy BE.21 (Safeguarding of Amenity)

Policy H.8 (Housing Mix)

Policy TR.9 (Parking Standards)

Policy TR.12 (Cycle Standards)

3.5 In terms of the emerging local plan, the Council has prepared a Joint Core Strategy with Cheltenham and Tewkesbury Councils which was submitted to the Planning Inspectorate on 20<sup>th</sup> November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and NPPG and are a material consideration. The weight to be attached to them is limited, the Plan has not yet been the subject of independent scrutiny and

does not have development plan status. The Examination in Public has been ongoing since May 2015. In addition to the Joint Core Strategy, the Council is preparing its local City Plan which is taking forward the policy framework contained within the City Council's Local Development Framework Documents which reached Preferred Options stage in 2006.

3.6 On adoption, the Joint Core Strategy, City Plan and any Neighbourhood Plans will provide a revised planning policy framework for the Council. In the interim period, weight can be attached to relevant policies in the emerging plans according to

- The stage of preparation of the emerging plan
- The extent to which there are unresolved objections to relevant policies; and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the National Planning Policy Framework.

3.7 All policies can be viewed at the relevant website address:- Gloucester Local Plan policies – [www.gloucester.gov.uk/planning](http://www.gloucester.gov.uk/planning); Gloucestershire Structure Plan policies – [www.gloucestershire.gov.uk/index.cfm?articleid=2112](http://www.gloucestershire.gov.uk/index.cfm?articleid=2112) and Department of Community and Local Government planning policies - [www.communities.gov.uk/planningandbuilding/planning/](http://www.communities.gov.uk/planningandbuilding/planning/).

#### **4.0 CONSULTATIONS**

4.1 **Gloucestershire County Council (Highways)** – The site is in an accessible area of the City with good access to public transport and other sustainable modes of travel. On street parking is controlled in the City, spare capacity is available in off street car parks. In addition planning policy has changed significantly since 1986. No highway objection is raised.

#### **5.0 PUBLICITY AND REPRESENTATIONS**

5.1 The application has been publicised through a press notice and the display of a site notice. In addition 46 properties have been notified of the application in writing.

5.2 Two letters of representation have been received. The main issues raised can be summarised as:

- Concerns regarding parking on site should residents own their own vehicles. There are currently 3 spaces for 6 properties and there seem to be problems whenever tradespeople or visitors come despite the majority of residents in nos. 7-12 not owning cars.
- Question whether it would be made clear to residents that there is no or very limited parking allocations for the flats or whether provision is being made elsewhere.
- Would appreciate it if this issue could be addressed first and new residents should be made aware of the lack of a yellow box junction enabling any of them who do have cars to get in and out of the drive

when Horton Road lights are red. It can take ridiculous amounts of time to leave the premises at peak times.

- Have no objection to the age of occupants being lowered but believe the flats should only be let to professional people without children. There is nowhere for children to play outside and the flats are not large enough for families to live without hindrance to other residents.

5.4 The full content of all correspondence on this application can be inspected at Herbert Warehouse, The Docks, Gloucester, or via the following link, prior to the Committee meeting:

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=15/01291/MOD>

## **6.0 OFFICER OPINION**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

6.2 The age restriction was originally imposed to address the limited car parking available for occupiers of the flats and the lack of any private amenity spaces taking into account the planning policies in existence in 1986.

6.3 Section 106A of the Town and Country Planning Act 1990 allows planning obligations to be renegotiated at any point where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and 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 is “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way.

6.4 Advice in respect of Planning Conditions and Obligations in the National Planning Policy Framework (paragraphs 203-206) states that in relation to planning obligations:

*203 Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*

*204. Planning obligations should only be sought where they meet all of the following tests:*

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly and reasonably related in scale and kind to the development.*

*205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.*

- 6.5 Since the grant of the original planning permission there have been significant changes in both local and national planning policies and any application to vary the agreement should be considered against today's standards.
- 6.6 The site is considered to be located in an accessible area of the city with good links to public transport and other sustainable modes of transport. The Highway Authority has raised no objection to the applications and in the light of advice in the NPPF, particularly in respect of the presumption in favour of sustainable development; it is not considered that an objection could be sustained on the grounds of parking standards.
- 6.7 The second reason cited for the age restriction relates to the lack of any private amenity space. The site is approximately 150 metres from the entrance into Barnwood Park and with possibly the exception of a family with young children I do not consider that a person under the age of 50 years has a necessarily greater need for private amenity space. An individual would take into account the lack of any such space in their decision to purchase or rent a property.
- 6.8 Given the location of the development, if the application were to be assessed under current planning policies and advice no objection would be raised by Officers on the grounds of insufficient parking or amenity space.

**7.0 CONCLUSION**

7.1 Overall In conclusion I do not consider that there is any planning reason to object to the discharge of the Legal Agreement to remove the age restriction of occupants.

**8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER**

8.1 To grant approval for the discharge of the Legal Agreement thereby removing the age restriction for occupants of the flats.

Decision: .....

Notes: .....

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Person to contact: Caroline Townley  
(Tel: 396780.)

15/01291/MOD

7-12 Westminster Court  
London Road  
Gloucester  
GL2 0RW

Planning Committee 12.01.2016





THIS AGREEMENT is made the *Twenty-third* day of *July* One Thousand Nine Hundred and Eighty-Six BETWEEN FUTURE HOMES OF GLOUCESTER LIMITED whose Registered Office is situate at 13 Park Road in the City of Gloucester (hereinafter called "the Developer") of the one part and THE COUNCIL OF THE CITY OF GLOUCESTER (hereinafter called "the Council") of the other part

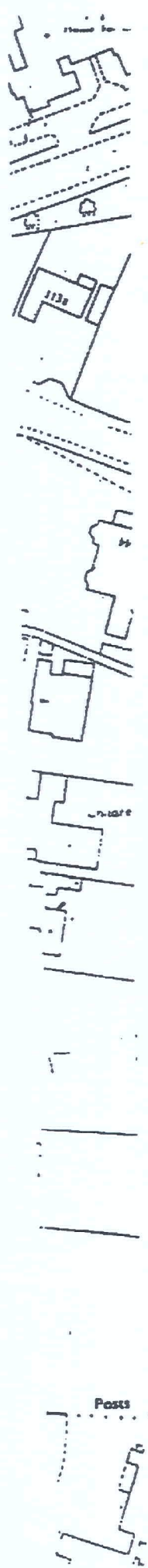
**WHEREAS:-**

- (1) The Developer is the registered proprietor of the land adjoining Number 146 London Road in the City of Gloucester which is registered with Title Absolute at H.M. Land Registry under Title Number GR74142 which is shown for identification only edged red on the plan annexed hereto (hereinafter called "the land")
- (2) The Developer has by application number 25170/07 applied to the Council for permission to develop the land by (inter alia) the erection thereon of six two-bedroomed elderly persons flats (hereinafter called "the flats")
- (3) The Council is the District Planning Authority for the purposes of the Town and Country Planning Act 1971 and the Local Government Act 1972 for the City of Gloucester
- (4) The flats are designed to provide accommodation suitable for elderly persons and the Council on the 25th day of February 1986 being desirous of restricting the use of the flats for that purpose resolved to grant the said application for planning permission subject to the covenants herein contained



NOW THIS DEED WITNESSETH as follows:-

- 1 The parties hereto hereby agree that this is an Agreement made in pursuance of Section 52 of the Town and Country Planning Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and that the same is registrable and shall be registered as a Local Land Charge against the land
- 2 The Developer for itself and its successors in title being owners or occupiers for the time being of the land or of any part or parts thereof hereby covenants with the Council:-
  - (a) not to cause or permit any of the flats to be occupied by any person who is under fifty years of age Except in the case of married couples where at least one spouse shall be over forty-nine years of age or in the case of resident married couples where the spouse over forty-nine years of age dies leaving a resident widow or widower under fifty years of age
  - (b) that no Transfer or Lease or other document passing the title to any one or more of the flats shall be completed without the same being made subject to the above-mentioned covenant
  - (c) to apply to H.M. Land Registry and to request the Registrar to enter details of this Agreement on the Registers of the Title or respective Titles of the flats
  - (d) immediately following registration as aforesaid to supply to the Council (free of charge) office copy entries of the said Title or respective Titles revealing the entries relating to this Agreement



IN WITNESS whereof the parties hereto have caused their respective  
Common Seals to be hereunto affixed the day and year first before  
written

THE COMMON SEAL OF FUTURE )  
HOMES OF GLOUCESTER LIMITED )  
was hereunto affixed in the )  
presence of:- )

Director

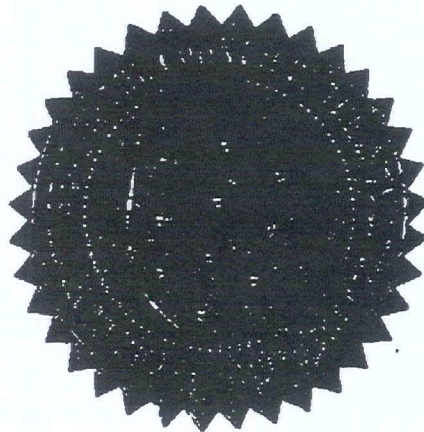


Secretary



THE COMMON SEAL OF THE COUNCIL OF )  
THE CITY OF GLOUCESTER affixed )  
hereto is authenticated by the )  
undersigned a person authorised by )  
the said Council to act for that )  
purpose:- )

  
Chief Executive Officer



SEAL N° 6789