

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **2ND FEBRUARY 2016**

ADDRESS/LOCATION : **HUCCLECOTE MEWS, 78 HUCCLECOTE ROAD**

APPLICATION NO. & WARD : **15/01527/MOD
HUCCLECOTE**

EXPIRY DATE : **4TH FEBRUARY 2016**

APPLICANT : **HUCCLECOTE RETIREMENT PROPERTIES**

PROPOSAL : **VARIATION OF LEGAL AGREEMENT UNDER PLANNING PERMISSION REF. 22758/07 TO REMOVE THE REQUIREMENT TO PROVIDE ACCOMMODATION FOR A WARDEN.**

REPORT BY : **CAROLINE TOWNLEY**

**NO. OF APPENDICES/
OBJECTIONS** : **1. SITE LOCATION PLAN
2. ORIGINAL LEGAL AGREEMENT DATED
16TH AUGUST 1985.**

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 Hucclecote Mews is a development comprising the original detached two storey Grade II listed building with attic fronting Hucclecote Road, with modern development to the rear. The accommodation comprises 3 houses, 5 garages and 27 flats to the rear. The original building has been converted into 4 one-bedroom flats together with a two bedroomed warden's flat with a communal lounge, library, laundry area and warden's office.
- 1.2 This original planning application proposed that the accommodation was to be for 'elderly persons' and a Legal Agreement was entered into to restrict the use of the development by imposing the following covenants:
- (a) No dwelling or flat other than the accommodation for guests and a warden shall be occupied by any person under 50 years of age.
 - (b) A covenant was to be included in any conveyance, lease or document passing title of any dwelling or flat (other than the guest and warden accommodation), restricting the age of occupants.
 - (c) That the accommodation provided for guests in accordance with the permission shall not be used other than for bona fide guests of the occupiers of the dwellings and flats.

(d) That the accommodation provided for the Warden of the scheme shall not be used other than for the accommodation of such a Warden and (if any) his or her family.

- 1.3 The current application seeks to vary the Legal Agreement to remove the requirement to provide warden living accommodation at the site.
- 1.4 The Applicant has stated that the complex is for residents over the age of 55 who are able to live independently and do not need any care. Although at one time there was a warden on call 24/7 costs became prohibitive and now the standard in the industry is for part time wardens backed up by a careline who are able to provide any help needed at the press of a button. It is confirmed that this system has been in operation at this site for the past two years since the warden went part time.
- 1.5 It is stated that the costs are so high that it is unlikely that a full time warden will be provided at the site and therefore there is no longer any need for a dedicated wardens flat. The sale of the flat will reduce the costs for the residents at the site in maintaining it including the Council Tax, heating and services.

2.0 RELEVANT PLANNING HISTORY

- 2.1 The planning permission to which the Legal Agreement relates to is ref. 22758/07 granted on 16th August 1985 for the erection of 3 dwellings and 27 flats for elderly persons, and 2 garages, conversion of building into 4 flats with warden accommodation and communal facilities and alterations to vehicular access. The proposed alterations to the existing building and demolition of the coach house (ref. 22758/07/LBC) were also granted listed building consent on 12th June 1985 and 29th July 1985 respectively.
- 2.2 The earlier and subsequent history relating to the site can be summarised as:
- P/348/67** – Change of use from residential and kindergarten to residential and day nursery. Granted 1967.
- 03/EDP/335/77** – Alterations and extensions to form residential unit (coach house). Refused 1977.
- 03/EDP/1401/79** – (Outline) Erection of semi-detached houses and construction of estate road. Refused 1980.
- P/138/80** – (Outline) Residential development. Granted 1980.
- 22758/01** – Construction of an estate road and erection of five pairs of semi-detached houses. Approval of Reserved Matters relating to P/138/80. Approved 1983.

22758/02/OUT – (Outline) Erection of three pairs of semi-detached and one detached dwelling to the rear of 76 Hucclecote Road. Granted 1983.

22758/03/OUT – (Outline) Construction of access drive and erection of 28 elderly persons flats and one pair of semi-detached houses. Granted 1984.

22758/04/LBC – Demolition of 78 Hucclecote Road (Grade II Listed Building) – Refused 1984.

22758/05/OUT – (Outline) Revised application for the erection of 28 elderly persons flats incorporating the retention of 78 Hucclecote Road and construction of new vehicular access. Granted 1984.

22758/06 – Erection of 33 elderly persons flats and conversion of existing building to 4 elderly persons flats, warden flat and communal flats. Refused 1985.

22758/06/LBC – Erection of 33 elderly persons flats and conversion of existing building to 4 elderly persons flats, warden flat and communal facilities. Refused 1985.

22758/07/LBC – Alterations to existing building, demolition of coach house. Granted 1985.

22758/08/LBC – Re-roofing with asbestos slates. Refused 1985.

22758/09 – Erection of three blocks of private garages. Granted 1985.

22758/10/LBC – Re-roofing with natural slate on front elevations, asbestos slate on rear elevation and hips. Withdrawn.

22758/11 – Erection of two private car garages. Granted 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 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 20th 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.
- 3.5 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.
- 3.6 All policies can be viewed at the relevant website address:- Gloucester Local Plan policies – www.gloucester.gov.uk/planning; and Department of Community and Local Government planning policies - www.communities.gov.uk/planningandbuilding/planning/.

4.0 CONSULTATIONS

- 4.1 None.

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 39 properties have been notified of the application in writing.
- 5.2 One letter of representation has been received. The main issues raised can be summarised as:
- I do not agree. When I came to this house I understood we had a 24 hour warden and house provided for warden. I don't wish this to be changed.
 - I couldn't understand how the present warden could see the flat – it was not here to see.

- 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=15/01527/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 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.
- 6.3 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.

- 6.4 The applicants have indicated that there is no longer a full time warden at the site and therefore no need for a dedicated warden flat. This is a business decision with care now being provided in a different way and there are no

planning policy requirements to justify the retention of the wardens flat as set out in the original Legal Agreement.

6.5 If the application were to be assessed under current planning policies and advice no objection would be raised by Officers on the ground that no warden accommodation was provided. It is not considered that the requirement to retain warden accommodation would meet the tests for planning obligations set out in paragraph 204 of the National Planning Policy Framework in that it is not necessary to make the development acceptable in planning terms.

7.0 CONCLUSION

7.1 I do not consider that there is any planning reason or any local or national planning policies to object to the variation of the Legal Agreement to remove the requirement to retain a warden flat at the site.

8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER

8.1 To grant approval for the variation of the Legal Agreement thereby removing the requirement to provide any dedicated warden accommodation at the site.

Decision:

Notes:

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

15/01527/MOD

Hucclecote Mews
78 Hucclecote Road
Gloucester
GL3 3SR

Planning Committee 02.02.2016



THIS AGREEMENT is made the *Sixteenth* day of *August* One Thousand Nine Hundred and Eighty-Five **BETWEEN CLIFTON HOMES LIMITED** whose Registered Office is situate at 11 North Place Cheltenham in the County 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 owner in fee simple absolute in possession of the land and premises known as Number 78 Hucclecote Road in the City of Gloucester which is shown for identification purposes only edged red on the plan annexed hereto (hereinafter called "the land")
- (2) The Developer has by application number 22758/07 applied to the Council for permission to develop the land by the erection thereon of three dwellings and twenty-seven flats and the conversion of the existing premises thereon to four flats guest accommodation communal facilities and accommodation for a Warden
- (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 proposed dwellings and flats are designed to provide accommodation suitable for elderly persons and the Council on the 21st day of May 1985 being desirous of restricting the use of the same 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 16 of the Gloucester Corporation Act 1970 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) that no dwelling or flat other than the accommodation for guests ~~and a Warden~~ provided under or in accordance with planning permission granted in respect of application number 22758/07 or any subsequent application for development of a like kind shall be occupied by any person under fifty years of age

(b) that no Conveyance or Lease or other document passing title of any dwelling or flat other than the accommodation for guests and a Warden so provided shall be completed without there being included therein a covenant by the Purchaser or Lessee restricting the occupancy thereof as aforesaid

(c) that the accommodation provided for guests in accordance with the permission aforesaid shall not be used other than for the bona fide guests of the occupiers of the dwellings or flats provided in accordance with the permission aforesaid

~~that the accommodation provided for the Warden of the scheme in accordance with the permission aforesaid shall not be used other than for the accommodation of such a Warden and (if any) his or her family~~

To be removed.

To be removed.





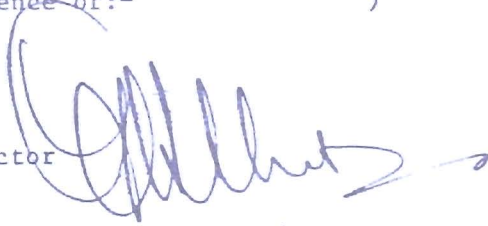
H.R. Shaw
Chief Executive Officer

SCALE 1:2500

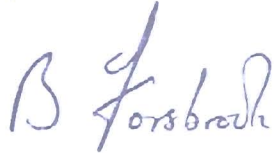
IN WITNESS whereof the parties hereto have caused their respective
Common Seals to be hereunto affixed the day and year first before written

THE COMMON SEAL of)
CLIFTON HOMES LIMITED)
was hereunto affixed in the)
presence of:-)

Director

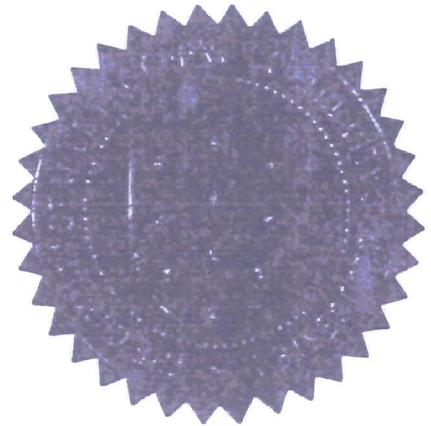
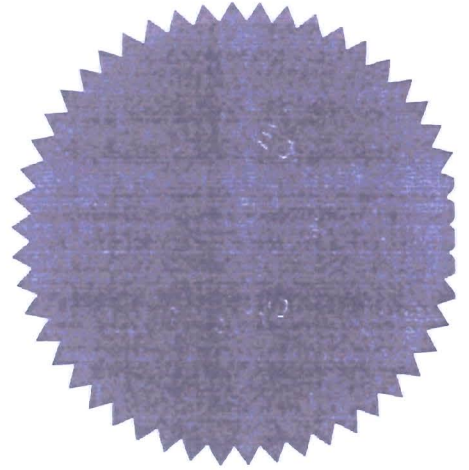


Secretary



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° 6208

MM 8 Pl. Sum 21/5/85

DATED 16th August 1985

CLIFTON HOMES LIMITED

- and -

THE COUNCIL OF THE CITY OF GLOUCESTER

- A G R E E M E N T -

relating to land at
76/78 Hucclecote Road,
in the City of Gloucester.

H.R.T. Shackleton, LL.B.,
Chief Executive Officer,
Gloucester City Council,
Guildhall, Gloucester

MM/CB/2/19.