

Subject:	Wellend Villas, Springfield Road, Brighton Request for a variation of s106 27 September 2002 signed in association with BH2002/00562		
Date of Meeting:	13 March 2013		
Report of:	Strategic Director, Place		
Contact Officer:	Name: Adrian Smith	Tel: 290478	
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Wards Affected:	Preston Park		

1. PURPOSE OF THE REPORT:

- 1.1 To consider a request for a variation to the s106 Agreement.

2. RECOMMENDATIONS:

- 2.1 That the Committee resolves to allow the completion of a variation to the s106 planning agreement dated 27th September 2002 relating to Wellend Villas, Springfield Road, Brighton to allow residents of the development to apply for residents' parking permits

3. BACKGROUND INFORMATION:

- 3.1 Application BH2002/00562 granted planning permission for the redevelopment of the site to provide three blocks of flats comprising 122 units (of which 49 were to be affordable) together with 24 parking spaces and a landscaped amenity area. Approval was subject to conditions and a Section 106 Obligation to include provision for, a car sharing scheme and transport initiatives. At the time the planning application was determined there was no controlled parking zone ("CPZ") in place in the relevant area. As part of the "transport initiatives" the report proposed that residents of the development should be excluded from any future residents' parking scheme in view of parking pressure in the area. Accordingly the concluded Section 106 Obligation contained a provision that the Green Travel Pack to be provided in relation to the development should inform residents that they would be ineligible for parking permits should a residents' parking scheme be introduced.

4. PROPOSAL

- 4.1 The applicant has requested a variation of the s106 attached to application BH2002/00562 to remove the requirement for occupants of the development to be ineligible for parking permits.

5. CONSULTATION:

- 5.1 **Sustainable Transport:** No objection.

The Highway Authority has no objections to the proposed variation of the Section 106 agreement signed in association with planning approval BH2002/00562. Given the length of time since the permission being granted and the consultation on a CPZ coming forward, it cannot be deemed that

making the residents ineligible for parking permits successfully mitigates the impact of the development as approved in 2002. Therefore in this case the Highway Authority has no objections to the proposed variation of the Section 106 agreement.

6. COMMENT:

- 6.1 The application was granted on 1st October 2002 following completion of a Section 106 agreement that, amongst other provisions, required the developers to produce a Green Travel Pack to promote sustainable modes of transport to residents and, as stated above, restrict the eligibility of residents for parking permits in the event a CPZ was established around the site. This requirement followed the advice of the Traffic Manager.
- 6.2 The rationale for the clause was based on the scheme providing only 24 onsite parking spaces (20 of which were disabled bays) for a development of 124 residential units in an area identified as already being under significant parking pressure. The applicant's Transport Assessment had sought to address parking concerns by promoting the sustainability of the site location (close to two railway stations, and on main bus and cycle routes) and incorporating a 'car club' scheme into the development. The establishment of the car club was also secured in the Section 106 Obligation.
- 6.3 The development comprised two phases. Records show that Phase 1 was completed in August 2004, whilst Phase 2 was completed in December 2006.
- 6.4 Currently the site remains outside the City's designated Controlled Parking Zones. However, it is understood that consultation has commenced on an extension to Zone J to encompass the site and adjacent streets. Two car club bays have also been established directly outside the site on Springfield Road.
- 6.5 The development at Wellend Villas remains outside a CPZ and contains onsite parking, albeit only 4 non-disabled bays. Further, it is noted that 6 years have passed since the completion of Phase 2, allowing parking conditions within the surrounding streets to 'bed down'. Given the degree of separation between the completion of the development and the potential establishment of a CPZ around the site, it cannot be reasonably argued that making residents ineligible for parking permits mitigates the impacts of the development as approved in 2002, as such impacts have already been dissolved into the area.
- 6.6 The Councils' Sustainable Transport Team have agreed that the removal of the clause requiring residents to be ineligible for parking permits in the event a Controlled Parking Zone is established around the site is appropriate in this instance given the information above.
- 6.7 Advice has been sought from the Head of Law on the proposed variation and the Senior Planning Solicitor has advised as follows:

"Section 106A of the Town and Country Planning Act 1990 provides that section 106 obligations may be modified or discharged either by agreement

between the parties at any time or by formal application in accordance with statutory criteria. There is no statutory guidance on what tests should be applied by a local planning authority when determining the less formal type of application to discharge or modify but the test on the more formal application is whether the obligation serves a useful purpose. It would therefore seem to be appropriate that the “useful purpose” test could be applied to the current application.

Moreover, legislation introduced in 2010, namely the Community Infrastructure Levy Regulations 2010, Regulation 122, requires, inter alia, that a planning obligation may only be imposed when it is necessary to make the development acceptable in planning terms. Although the obligation in question is now of course being reconsidered as opposed to being “imposed” it would be reasonable to consider the application to vary in the context of whether the obligation is “necessary”.

- 6.8 Given the intervening years following the completion of the development, and the mitigation of the impact of the development during that period, it is not considered that the restricting residents of the development from obtaining future parking permits in the event of a CPZ being established is now reasonable or supportable.

7. FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

None identified.

7.2 Legal Implications:

Lawyer Consulted: Hilary Woodward

Section 106A of the Town and Country Planning Act 1990 provides that section 106 obligations may be modified or discharged either by agreement between the parties at any time or by formal application in accordance with statutory criteria. There is no statutory guidance on what tests should be applied by a local planning authority when determining the less formal type of application to discharge or modify but the test on the more formal application is whether the obligation serves a useful purpose. It would therefore seem to be appropriate that the “useful purpose” test could be applied to the current application.

- 7.3 Moreover, legislation introduced in 2010, namely the Community Infrastructure Levy Regulations 2010, Regulation 122, requires, inter alia, that a planning obligation may only be imposed when it is necessary to make the development acceptable in planning terms. Although the obligation in question is now of course being reconsidered as opposed to being “imposed” it would be reasonable to consider the application to vary in the context of whether the obligation is “necessary”.

7.4 Equalities Implications:

None identified

7.4 Sustainability Implications:

None identified

7.5 Crime & Disorder Implications:

None identified

7.6 Risk and Opportunity Management Implications:

None identified

7.7 Corporate / Citywide Implications:

None identified.

8. CONCLUSION

8.1 The applicant has applied to vary the signed s106 agreement as set out at 4.1 of this report.

8.2 The proposed amendments are considered to be acceptable for the reasons as detailed above.

8.3 Therefore, the recommendation is for the s106 agreement be varied to allow residents of the development to apply for residents' parking permits.