

KEN/20447 – Mr J Eekelaar

Variation of condition 3 of planning permission KEN/7664 to exclude number 5 Perkins from age restriction.

5 Perkins, Upper Road, Kennington, OX1 5LN

1.0 The Proposal

- 1.1 This application seeks to vary condition 3 of planning permission KEN/7664 which granted planning permission for the erection of 7 old person bungalows in March 1984. The condition requires the occupation of the dwellings to be restricted to persons over the age of 55 years unless otherwise agreed in writing by the District Planning Authority.
- 1.2 The condition was imposed for the following reason: “because the scheme was designed specifically for elderly persons”. The application originally sought to lower the age limit to 30 and to impose a single occupancy restriction. This has since been amended to vary the condition on the basis of excluding no. 5 from the age restriction.
- 1.3 A copy of the plan showing the location of the property and the applicant’s supporting statement are attached at **Appendix 1**.
- 1.4 The application comes to Committee at the request of Councillor Jerry Patterson and because Kennington Parish Council objects to the application.

2.0 Planning History

- 2.1 See above.

3.0 Planning Policies

- 3.1 *Vale of White Horse Local Plan 2011*
Policies DC1, DC5 and DC9 (quality of new development) are relevant and seek to ensure that all new development is of a high standard of design / landscaping; does not cause harm to the amenity of neighbours; the development is acceptable in terms of highway safety.

4.0 Consultations

- 4.1 Kennington Parish Council has objected to the application and their comments are attached at **Appendix 2**.
- 4.2 The County Engineer has no objections to the variation proposed stating:

“Typically lower levels of trip generation and parking demand are associated with care and nursing homes for the elderly. However no such data is held for private housing for those over 55. The spirit of the condition was to provide for the elderly who, perhaps at that time, were likely to be less active in terms of car use and ownership. However I doubt this would be applicable now and indeed would not necessarily describe someone over the age of 55 as elderly. For example it is quite probable a couple, meeting this criterion, would both be in full-time employment and would travel to work by car. Therefore, whilst there may have been some merit to the condition at the time of granting planning permission, it is now, in highway terms, considered of little significance.

- 4.3 With regard to the provision of off-street parking; there would be some potential for an overspill of parking, however, this would be most likely to take place at the end of a cul-de-sac and would not significantly impact upon highway safety. Please note; the potential for the aforementioned overspill of parking would be no greater than currently exists with the condition imposed.
- 4.4 Therefore the Local Highway Authority has no objection to this application.”
- 4.5 5 letters of objection have been received, which are summarised as follows:
- Neighbouring residents are very concerned that unrestricted occupation could give rise to noise nuisance from younger occupants.
 - The proposal will set a precedent.
 - There is no need to remove this property from the restriction in order to sell it.
 - Altering the age limit to 30 is not acceptable to neighbouring residents.
 - Restricting the property to single occupancy would be impossible to enforce.
 - There are few properties in Kennington with an age restriction and there is a demand for such property. 2 other bungalows at Perkins have been sold recently, which proves there is a demand for these retirement bungalows.
 - There is at present a problem with car parking in this development. Lowering / removing the age restriction will most likely increase the number of residents needing car parking spaces.

5.0 **Officer Comments**

- 5.1 The main issue in this case is whether the proposed variation to the condition to effectively enable general needs housing at No.5 Perkins would have any appreciable impact on the whole development or on the character of the surrounding area that could be detrimental to neighbouring residents.
- 5.2 The original development in 1984 created 7x1 bed units which were designed for elderly occupancy (i.e. easy access with a single ground floor). The condition was imposed as a result of this tailored design, as evidenced by the reason given on the decision notice (see section 1 above).
- 5.3 Since the planning permission was granted in 1984, Government advice on the imposition of conditions has changed, whereby if one were considering the imposition of such a condition today, the condition would need to comply with the six tests for the validity of conditions as set out in Circular 11/95 – Use of Conditions in Planning Permissions. Paragraph 92 of this Circular covers the issue of occupancy conditions and states:
- “Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission.”
- 5.4 As a general rule age restriction conditions are only imposed where normal planning standards (parking, privacy etc) are reduced to a level that would render a general housing scheme to be unacceptable or where a site lies within an area where general

residential development would not normally be permitted. This is normally based on the fact that such conditions are not readily enforceable and are often unnecessary.

- 5.5 The site clearly lies within the built up area of Kennington whereby new residential development, in principle, would be allowed, and sufficient amenity space exists on site for each dwelling whereby the overall layout of the existing development would be acceptable for general housing needs.
- 5.6 Your Officers, therefore, have considered relevant case law in consideration of this application as to whether there would be any other reason to withhold permission for the proposed variation.
- 5.7 One legitimate concern that is apparent is that reducing / relaxing the age of occupancy could give rise to additional car parking demand which may result in a reduction of residential amenity and highway safety. However, the development was constructed in the mid 1980s where parking standards were more generous than the standards today. Under current maximum standards only 1 parking space would be required for this 1 bedroom dwelling, and this currently exists on site. The County Engineer has commented that the imposition of the condition in today's climate has 'little significance'. It is also worthy to note an appeal on a similar case where a reduction in age was allowed on the grounds that 'car parking requirements were unlikely to be different'. Your Officers, therefore, consider withholding permission on highway grounds would not be defensible on appeal.
- 5.8 The only other issue for consideration is whether harm would arise from occupancy of No.5 by a younger person. In this respect your Officers consider that such occupation would not be harmful, as evidenced from relevant appeal cases. In the first case, it was argued that young couples were likely to lead a more active lifestyle than the elderly. An Inspector accepted that young people were likely to have a higher per capita car ownership and that the extra vehicle movements would lead to more noise and disturbance. The inspector thought it wrong, however, to assume that the young would behave unduly noisily, and if they did the remedy was outside planning legislation. It was also stated that some peoples hearing impairs with age and so many elderly need to listen to the radio etc at a higher volume than others. In the second case an Inspector concluded that persons under the age restriction imposed would not be likely to make greater use of the grassed areas within the development such as to cause a nuisance. Nor was their lifestyle likely to disturb more elderly neighbours.
- 5.9 In the light of all of the above, your Officers do not consider that planning permission could reasonably be withheld.
- 6.0 **Recommendation**
- 6.1 *That planning permission to vary condition 3 of KEN/7664 to exclude No.5 Perkins be granted.*