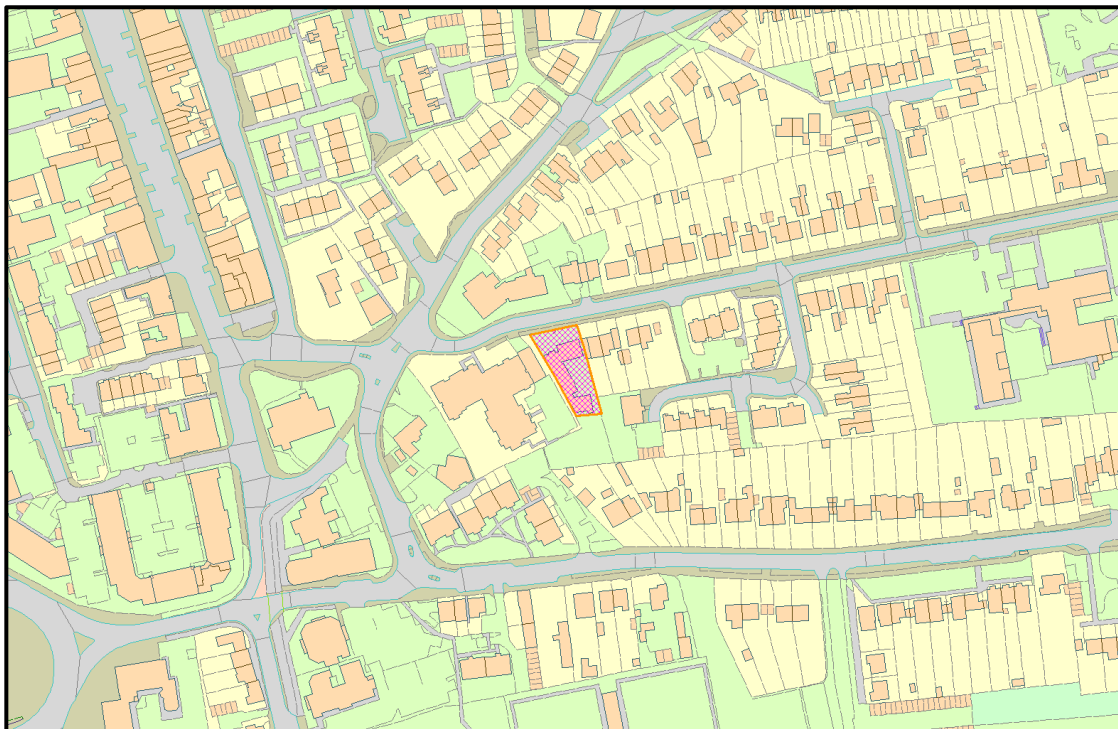


**Meeting:** Planning and Development  
Committee  
**Date:** 18 July 2023  
**Author:** Thomas Frankland-Wells  
**Lead Officer:** Zayd Al-Jawad  
**Contact Officer:** Thomas Frankland-Wells

Application No:	23/00324/S106
Location:	Lindon House, 2 Pound Avenue, Stevenage, Herts, SG1 3JA
Proposal:	Modification of Clause 2/3 of Section 52 Agreement (dated 22.12.1981) approved under planning permission reference number 81/2/0120/81
Drawing Nos.:	23069-0000
Applicant:	Lindon Property Ltd
Date Valid:	25 April 2023
Recommendation:	AGREE VARIATION OF S52 AGREEMENT



The above plan is for illustrative purposes only.

## **1 SITE DESCRIPTION**

- 1.1 The application site is an irregularly shaped plot of land, extending to approximately 700m<sup>2</sup> and located on the southern side of Pound Avenue. It is occupied by a two storey building which is now vacant but was most recently used as a care home with rooms to accommodate nine residents and one resident member of staff. This use was established following the grant of planning permission in 1981.
- 1.2 The building has an appearance typical of a link-detached dwellinghouse from the front but has been extended significantly to the rear, occupying almost the entire depth of the plot. It is of a brick and tile construction and topped by a hipped roof.
- 1.3 Pedestrian and vehicular access to the site is achieved via dual entrances on Pound Avenue which lead to private driveways occupying the majority of the site frontage. Together they provide sufficient space to park five cars.
- 1.4 The site is not subject to any relevant designations or environmental constraints.
- 1.5 Land use in the surrounding area is mixed, with residential properties to the east and more commercial uses to the west on the approach to the Old Town High Street, which is located approximately 150m from the site.

## **2 RELEVANT PLANNING HISTORY**

- 2.1 81/2/0120 – Home for elderly persons incorporating existing house for resident housekeeper and nine bedsit units with bathrooms and toilet facilities, car parking and landscaping – Planning permission granted on 30 December 1981.

## **3 THE CURRENT APPLICATION**

- 3.1 The application seeks to vary clauses (ii) and (iii) of Schedule 3 of the legal agreement associated with the permission which established the use of the site as a care home (reference 81/2/0120). The relevant wording is set out below.

*“The developer hereby covenants with the Council that the said land shall be subject to the restrictions and provisions regulating the development and use thereof specified in the third schedule hereto...*

*(ii) The five car parking spaces at the front of the house shall be laid out and surfaced to the satisfaction of the local planning authority before the flats are occupied and such spaces shall be reserved at all times for car parking purposes*

*(iii) The land and buildings being used only for the purposes of a home for elderly persons with a resident housekeeper and this permission shall be valid for no other purpose whatsoever without the prior written consent of the local planning authority”*

- 3.2 The applicant wishes to develop the site and the intention behind the proposed variation is to allow the site to be used for purposes other than a care home. The proposed variation would be the first (but not the last) step in achieving this as it would remove the restrictive covenants controlling the use of the land. Any proposed change of use would then need a separate application for planning permission at a later date.
- 3.3 In line with the Council's Constitution, all Deeds of Variation to Legal Agreements are to be determined by the Planning and Development Committee for its decision. As such, this application to vary the Section 52 Agreement under the Town and Country Planning Act 1971) (Now referred to as Section 106 Agreements under the Town and Country Planning Act 1990

(As amended)) attached to permission 81/2/0120 is before the Planning and Development Committee for its decision.

3.4

## **4 PUBLIC REPRESENTATIONS**

4.1 The application has been publicised by the posting of a site notice.

4.2 No representations were received.

## **5 CONSULTATIONS**

5.1 No other parties were consulted on the application.

## **6 RELEVANT PLANNING POLICIES**

### **6.1 Background to the Development Plan**

6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For Stevenage, the statutory development plan comprises the following documents:

- The Stevenage Borough Council Local Plan 2011-2031 (adopted 2019)
- The Hertfordshire Waste Core Strategy & Development Management Policies Development Plan Document 2011-2026 (adopted 2012)
- The Hertfordshire Waste Site Allocations Development Plan Document 2011-2026 (adopted 2014)
- The Hertfordshire Minerals Local Plan Review 2002-2016 (adopted 2007)

### **6.2 National Planning Policy Framework**

6.2.1 A revised National Planning Policy Framework (“NPPF”) was published in July 2021. This largely reordered the earlier 2012 version of the NPPF, albeit with some revisions to policy substance. The Council are content that the policies in the Local Plan are in conformity with the revised NPPF and that the Local Plan should be considered up-to-date for the purposes of determining planning applications. The NPPF provides that proposals which accord with an up-to-date development plan should be approved without delay (Paragraph 11) and that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted (Paragraph 12). This indicates the weight which should be given to an up-to-date development plan, reflecting the requirements of section 38(6) of the 2004 Act.

6.2.2 The Council is now commencing preliminary work into a review of its Local Plan, last adopted in May 2019. This is to ensure the policies within the Local Plan are up to date in accordance with the NPPF as well as ensuring the Council is delivering a sufficient supply of housing and employment.

### **6.3 Planning Practice Guidance**

6.3.1 The Planning Practice Guidance (“PPG”), with which Members are fully familiar, is an online resource containing guidance supplementing the NPPF. The PPG is a material consideration which should be taken into account in determining planning applications.

### **6.4 Stevenage Borough Local Plan**

6.4.1 The Local Plan policies most relevant to determining the application are as follows:

SP1 Presumption in Favour of Sustainable Development  
IT5 Parking and Access  
HO10 Sheltered and Supported Housing

## 6.5 Supplementary Planning Documents

6.5.1 The following supplementary planning documents are relevant to determining the application:

Developer Contributions SPD 2021  
Parking Provision and Sustainable Transport SPD 2020

## 6.6 Community Infrastructure Levy

6.6.1 Stevenage Borough Council adopted a Community Infrastructure Levy (“CIL”) Charging Schedule in 2020. This allows the Council to collect a levy to fund infrastructure projects based on the type, location, and floor space of a development. The proposal would be liable for CIL but would be zero-rated since it falls into the “all other development” category.

# 7 APPRAISAL

7.1 The sole determinative issue is whether the agreement would continue to serve its purpose equally well if it had effect subject to the modifications sought by the application.

## 7.2 Legislative and Policy Context

7.2.1 Section 106 of the Town and Country Planning Act 1990 (as amended) (Previously Section 52 of the Town and Country Planning 1971) allows local planning authorities to secure planning obligations from persons with an interest in land in their area. These can be used to regulate development or the use of the land.

7.2.2 Paragraph 55 of the NPPF states that planning obligations should be considered as a way to make otherwise unacceptable development acceptable. However, they should only be used where it is not possible to address unacceptable impacts through a planning condition.

7.2.3 Regulation 122 of the Community Infrastructure Levy Regulations 2010 sets out the tests that planning obligations must satisfy. These are that the obligations must be:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonable related in scale and kind to the development.

7.2.4 The Local Plan policy relating directly to planning obligations is Policy SP5. This sets out the circumstances in which the Council will seek planning obligations. The Developer Contributions SPD 2021 was produced to provide additional guidance on Policy SP5.

## 7.3 The Permission

7.3.1 In this case, planning permission was granted in December 1981 for the conversion of the property to a home for the elderly with a resident housekeeper. The permission was granted subject to four planning conditions, as follows:

- (1) *The development to which this permission relates shall be begun within a period of 5 years commencing on the date of this notice.*
- (2) *Samples of materials to be used for the external surfaces of the building shall be submitted to and approved by the local planning authority before development commences.*

- (3) *Before the flats are occupied the five car parking spaces at the front of the house shall be laid out and surfaced to the satisfaction of the local planning authority and the spaces shall be reserved at all times for car parking purposes.*
- (4) *The land and buildings shall be used only for the purpose proposed: that is a home for elderly persons with a resident housekeeper, and this permission shall be valid for no other purposes whatsoever, without the prior written consent of the Local Planning Authority.*

7.3.2 The reasons given for imposing the conditions, as stated on the decision notice, were as follows:

- (1) *To comply with the requirements of Section 41 of the Town & Country Planning Act 1971.*
- (2) *To achieve a satisfactory external appearance.*
- (3) *To ensure that the proposed development does not prejudice the free flow of traffic or the conditions of general safety by cars parking along the neighbouring highway.*
- (4) *In the interests of safeguarding residential amenity.*

#### 7.4 The Agreement

7.4.1 The permission was also subject to a legal agreement, which is now proposed for variation under this application. Schedule 3 of the agreement contains the developer's obligations and the first three of these effectively replicate conditions (2), (3) and (4) on the decision notice, as shown below.

- (i) The samples of materials to be used for the external surfaces of the building shall be submitted to and approved by the local planning authority before development commences
- (ii) The five car parking spaces at the front of the house shall be laid out and surfaced to the satisfaction of the local planning authority before the flats are occupied and such spaces shall be reserved at all times for car parking purposes
- (iii) The land and buildings being used only for the purposes of a home for elderly persons with a resident housekeeper and this permission shall be valid for no other purpose whatsoever without the prior written consent of the local planning authority

7.4.2 The schedule then continues with seven more obligations which are not present on the decision notice. Six of these relate to the diversion of a public sewer which ran under the application site, and the final obligation requires the developer to retain the fence on the boundary with 4 Pound Avenue.

#### 7.5 Intent

7.5.1 It is therefore considered that the primary purpose of the agreement was to ensure the diversion of the sewer. This could not have been achieved through the use of conditions, since it required the developer to enter into an agreement under other legislation, specifically the Public Health Act 1936.

7.5.2 The reason for regulating the materials, car parking spaces, and use of the land is unclear given that the decision notice contained conditions to the same effect. It is however possible that it was simply standard practice at the time to repeat any conditions on the decision notice within any legal agreement associated with the same application. The equivalent practice today is to append a copy of the entire decision notice (albeit in draft) to S106 agreements.

7.5.3 It is also possible, specifically in relation to the use of the land, that the Council sought an additional level of assurance that the terms of the permission would be complied with. This is because the Use Classes Order in force at the time, the Town and Country Planning (Use Classes Order) 1972, did not contain a class for residential uses let alone distinguish between different types of residential uses. This would have meant that the rooms within the development would have been viewed in the same way as any other residential

accommodation and there would have been no inherent planning restrictions on the manner in which they could be let. In these circumstances, it is plausible that the Council considered that a condition alone would not be sufficient to prevent the rooms being let out as bedsits on the open market.

## 7.6 The Proposed Variations

7.6.1 The applicant seeks to vary the agreement by deleting clauses (ii) and (iii) as set out above. They have stated that they wish to develop the site and that the relevant clauses are an impediment to this.

7.6.2 Officers concur with this assessment. The agreement is worded in such a way that it is very broad in scope, regulating the use of the land in perpetuity rather than for the duration of the development. As such, even if planning permission were to be granted for another use of the site, implementation of said permission would be in breach of the agreement. The proposed variations, if agreed, would therefore be the first (but not the last, as will be set out below) step in opening up the site to potential development for other uses.

## 7.7 Impact

7.7.1 It is considered that there would be no immediate impacts as a result of agreeing to the proposed variations, for several reasons. Firstly, it is considered that conditions (3) and (4) can be relied upon for retention of the car parking spaces and to restrict the use of the land. The wording of the conditions would likely differ slightly if drafted today however, they are considered to meet the “six tests” for planning conditions. The intention behind the conditions is also considered to be clear i.e. to keep five car parking spaces at the front of the space clear for the parking of cars and to prevent the rooms within the development from being let out other than as supported accommodation for the elderly with a resident housekeeper. Given this, it is considered that the Council could take enforcement action in the event that the conditions were breached.

7.7.2 Secondly, the Use Classes Order has been updated since permission was originally granted to cover residential uses. Now, under the 1987 version of the Order (as amended), there are five classes for residential uses and Classes C2 and C3, which are set out below, are of particular relevance to the application.

### *Class C2. Residential institutions*

*Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).*

*Use as a hospital or nursing home.*

*Use as a residential school, college or training centre.*

### *Class C3. Dwellinghouses*

*Use as a dwellinghouse (whether or not as a sole or main residence) —*

*(a) by a single person or by people living together as a family, or*

*(b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).*

7.7.3 As can be seen from the above, the use of the site would now be seen as a residential institution falling within Class C2 because it has capacity for more than six residents. This would prevent the rooms from being offered as typical bedsits on the open market in the absence of further permission for change of use.

- 7.7.4 Finally, the permitted development rights which might allow for changes to the car parking or the use of the site are extremely limited. There are no permitted development rights for extensions, alterations or hard surfaces for residential care facilities and the only potential change of use (aside from temporary uses) would be to a state funded school. The latter is not only considered to be an extremely unlikely prospect but would also be subject to an application for prior approval. In any event, condition (4) is considered to have effectively removed any permitted development rights for a change of use.
- 7.7.5 In light of the above, officers are satisfied that no changes to the parking arrangements or the use of the site could take place without an application for planning permission first being made to the Council. As such, clauses (ii) and (iii) of the agreement are not necessary to make the development acceptable in planning terms and the agreement would serve its purpose equally well if the clauses were removed. Furthermore, their removal would not result in any conflict with Policies IT5 or HO10 of the Local Plan, which concern parking and supported accommodation respectively.

## **8 CONCLUSIONS**

- 8.1 The proposal would result in the removal of clauses (ii) and (iii) from Schedule 3 of the agreement subject to which planning permission was granted for the site to be used as supported accommodation for the elderly. These clauses require the land to be used for this purpose in perpetuity and also require five car parking spaces to be retained at the front of the site, effectively preventing any other potential uses of the site, regardless of any planning permission.
- 8.2 Given that these restrictions are replicated on the decision notice, the clauses are considered to be unnecessary. This view is strengthened by the fact that the Use Classes Order has materially changed since permission was originally granted (such that the use would now be considered distinct from other residential uses) and that the property does not benefit from any relevant permitted development rights.
- 8.3 Having regard to the above, it is considered that the agreement would continue to serve its intended purpose with the clauses deleted. There would be no immediate impacts and consequently there would be no potential conflicts with Local Plan policies. Therefore, it is recommended that the proposed variations be agreed.

## **9 RECOMMENDATION**

- 9.1 That the Committee agree to the variation of clauses (ii) and (iii) of Schedule 3 of the S52 agreement and to delegate authority to the Assistant Director of Planning and Regulation in conjunction with the Council's appointed Solicitor to agree the precise wording of the variation to the agreement.

## **10. BACKGROUND DOCUMENTS**

- 10.1 The application file, forms, plans and supporting documents having the reference number relating to this item.
- 10.2 The Stevenage Local Plan 2011-2031.
- 10.3 Stevenage Borough Council Supplementary Planning Documents – Parking Provision and Sustainable Transport SPD (2020); Developer Contributions SPD (2021).
- 10.5 Central Government advice contained in the National Planning Policy Framework July 2021 and the National Planning Practice Guidance.