

REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

PLANNING COMMITTEE – 1ST DECEMBER 2010

NO. 36 KALE CLOSE, WEST KIRBY: REQUEST TO GRANT CONSENT IN RESPECT OF THE OCCUPANCY OF THIS PROPERTY IN KALE CLOSE “OTHERWISE THAN BY ELDERLY PERSONS”

1. EXECUTIVE SUMMARY

- 1.1 This report deals with a request made to the local planning authority to grant consent for the above named property to be occupied “otherwise than by elderly persons”. Enquiries in relation to the local planning authority’s proposed attitude to granting such a consent have been submitted by solicitors acting on behalf of the vendor of the property. An enquiry has also been received from a prospective buyer, Mr Steven Smart. It is recommended that it would be appropriate to grant consent.

2. BACKGROUND

- 2.1 Permission for houses in Kale Close was originally granted in 1983. At that time, where proposals for elderly persons accommodation were applied for, it was the Council’s practice to require a legal agreement controlling occupancy of the accommodation in cases where car parking at less than the Council’s “normal” standard for dwellings was to be provided. In this particular case a legal agreement was entered into between Wirral Borough Council and Poco Properties Limited which restricted the occupation of the dwellings to “elderly persons” only, the assumption being that, as a group, the elderly have a lower incidence of car ownership than other sections of the population. This requirement could only be waived with the prior written consent of the Council.
- 2.2 Correspondence has been received from the solicitor acting in respect of the vendor of No.36 Kale Close, requesting the waiving of the requirement for the prospective purchaser, a Mr Steven Smart.
- 2.3 Clause 2 of the agreement states:
- “With the object of ensuring that car parking provision detailed in the said Application and shown on Plan B annexed hereto, is and remains adequate the developer hereby covenants with the Council that he will not, without previous written consent of the Council, cause, permit or suffer the dwelling to be erected on the land pursuant to detailed planning permission reference W/APP/21712/N to be occupied otherwise than by elderly persons”.
- 2.4 Unfortunately, the agreement does not go on to define what is meant by the word ‘elderly’, and as a consequence a number of enquiries have been received since the grant of planning permission, seeking clarification on the age that might be permitted. In 1999 members formally granted consent for no. 34 Kale Close to be sold to a purchaser other than an elderly person, following consideration of a report presented to Planning Committee. Further requests were granted in respect of no’s 31 and 47 Kale Close under delegated powers. The current report has been prepared since it is unclear under the current adopted Scheme of Delegation that delegated powers exist in respect of the consent sought.

3. PLANNING IMPLICATIONS

- 3.1 The wording of Clause 2 of the agreement makes it clear that the objective of the agreement was to ensure that parking problems were prevented within Kale Close. It is therefore considered that this should be the only issue to be taken into account when considering any application to grant consent.
- 3.2 This part of Kale Close has 29 dwellings of which 2 have two off street parking spaces and a further 16 have one dedicated parking space or garage each. In addition there are 11 communal spaces leaving aside the two dwellings with 2 spaces each. There are therefore a total of 27 spaces for 27 dwellings.
- 3.3 The Council's current parking standards, which are set out in Supplementary Planning Document 4, have a very different approach to those applied in 1983 when permission was granted, establishing *maximum* rather than minimum standards for parking. The Council's current objectives for parking reflect national planning policy objectives to encourage patterns of development that reduce the need to travel by private car, to promote the vitality and viability of town centres and to support the use of public and other means of transport.
- 3.4 By comparison, using the current parking standards, a development of 29 dwellings would be allowed a maximum of 37 parking spaces, whilst 29 units of sheltered accommodation would be permitted no more than 15 spaces. The current SPD makes it clear that lower levels of parking than this may be encouraged in accessible areas where alternative modes of transport are available that can meet the likely demand for travel generated by the development. For example, less parking might be encouraged where the development would be within easy walking distance of a regular bus service, rail station, or retail centre. In this instance, the development is well located for the regular no.77 bus service which passes along Banks Road and then Sandy Lane, 100m south of the site; the site is also less than 1km from West Kirby Key Town Centre, and 1km from West Kirby Train Station.
- 3.5 Given the above, it might be argued that it is appropriate to allow a lower provision of car parking. On this basis, the Director of Technical Services (Traffic Management) has raised no objection to the request.
- 3.6 Although originally granted permission as sheltered accommodation, the development cannot currently be classified as "sheltered" in the true sense. Although apparently No. 16 Kale Close was originally intended to function as a warden's house, it was in fact never so used and it was built and sold to a private individual.
- 3.7 There are no communal facilities characteristic of sheltered accommodation, and as this situation has existed since the development was built about 25 years ago this breach of the planning permission is immune from any possible enforcement action.

4.0 CONCLUSIONS

- 4.1 Given the above factors – i.e. the absence of a definition of "elderly"; the previous grants of consent with respect no's 31, 34 and 47; the change in the Council's standards and objectives for car parking; and the fact that the development built is not "sheltered" in the true sense – it is recommended that consent is granted for the occupation of no. 34 by a person other than an elderly person.

4.2 Further, it is recommended that the Director of Technical Services be authorised to consider similar future requests as might arise in relation to this legal agreement.

5.0 CONSULTATION

5.1 No public consultation has been undertaken. This paper is to be circulated to members of the Planning Committee and ward councillors to the affected ward.

6.0 FINANCIAL AND STAFFING IMPLICATIONS

6.1 There are no significant financial or staffing implications arising from this report.

7.0 EQUAL OPPORTUNITIES IMPLICATIONS

7.1 There are no equal opportunity implications arising from this report.

8.0 COMMUNITY SAFETY IMPLICATIONS

8.1 There are no community safety implications arising from this report.

9.0 LOCAL AGENDA 21 IMPLICATIONS

9.1 There are no LA21 implications arising from this report.

10.0 ANTI-POVERTY IMPLICATIONS

10.1 There are no anti-poverty implications arising from this report.

11.0 HUMAN RIGHTS IMPLICATIONS

11.1 There are no human rights implications arising from this report.

12.0 SOCIAL INCLUSION IMPLICATIONS

12.1 There are no social inclusion implications arising directly from this report.

13.0 ACCESS TO INFORMATION

13.1 The following background papers have been used in this report:

Section 52 agreement relating to land at Hilbre Road, West Kirby between Wirral Borough Council and Poco Properties Limited, 1983.

Planning Application W/APP/21712/N

All background documentation is available to the public as part of planning application files.

14.0 LOCAL MEMBER SUPPORT IMPLICATIONS

14.1 The proposed grant of consent will be of interest to Members within the affected ward of Thurstaston.

15.0 RECOMMENDATION

- 15.1 In respect of No. 36 Kale Close that consent be granted for occupation of the dwelling otherwise than by elderly persons.
- 15.2 That the Director of Technical Services be authorised (under delegated powers) to consider similar future requests as might arise in relation to this legal agreement.

DAVID GREEN, DIRECTOR
TECHNICAL SERVICES

This report was prepared by Matthew Rushton of the Development Control section of the Technical Services Department, who can be contacted on 0151 606 2245.