

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 11 OCTOBER 2018  
REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING AND  
GOVERNANCE)

6/2018/1267/VAR

8-18 (INCLUSIVE) STANBOROUGH CLOSE, WELWYN GARDEN CITY, AL8 6XB

VARIATION OF CONDITION 10 (TENANCY RESTRICTION) ON PLANNING  
PERMISSION N6/1994/0338/FP

APPLICANT: Notting Hill Genesis

AGENT: Winckworth Sherwood LLP

(Handside)

**1 Site Description**

- 1.1 The application site is located at the end of a cul-de-sac, Stanborough Close, which is located off Stanborough Road towards the south west of Welwyn Garden City. The immediate locality consists of mixed land uses including residential, retail and leisure uses.
- 1.2 The application site contains 11x 2 bedroom bungalows located in three semi-detached or terraced blocks. Two blocks consisting of twelve flats located to the west of the cul-de-sac were also granted planning permission under the same planning reference number (N6/1994/0338/FP).
- 1.3 Car parking is provided for both the bungalows and flats.
- 1.4 The application site is located within the Welwyn Garden City Conservation Area.

**2 The Proposal**

- 2.1 Planning permission for the Demolition of existing garages, and erection of 12 No. flats in two blocks, and 11 No. elderly persons bungalows, car parking, landscaping, and alterations to highway was granted planning permission on 29 September 1994 (ref: N6/1994/0338/FP). Condition 10 of that permission stated:

*“The 11 no. elderly person bungalows forming part of the development hereby permitted shall be occupied by at least one person who is over the statutory age of retirement (including a widow or widower of such a person), at all times in the future.*

*REASON: Because the development has been designed to meet the needs of the elderly with a car parking provision and garden amenity areas which reflect the needs of the elderly, and which would not be appropriate if the bungalows were occupied by families or without any occupancy restrictions’.*

2.2 This application seeks to vary the wording of condition 10 to:

*'The 11 No. elderly person bungalows forming part of the development hereby permitted shall be occupied by at least one person who is over the age of 55 years old and/or is disabled'*.

2.3 All other aspects of the proposal are proposed to remain the same as previously permitted, it is only the proposed amendment to this condition that is being assessed under this application.

### **3 Reason for Committee Consideration**

3.1 This application is presented to the Development Management Committee because Councillor Bromley has called-in the application:

*'This would be a fundamental change to the use of these dwellings which needs to be considered by the DMC, in order that all the implications of any decision, may be fully discussed and understood by all'*.

### **4 Relevant Planning History**

4.1 Application Number: N6/1994/0338/FP Decision: Granted Decision Date: 29 September 1994

Proposal: Demolition of existing garages, and erection of 12 No. flats in two blocks, and 11 No. elderly persons bungalows, car parking, landscaping, and alterations to highway

4.2 Application Number: N6/1994/0337/CA Decision: Granted Decision Date: 29 September 1994

Proposal: Complete demolition and removal of existing garages

4.3 Application Number: N6/1994/0849/FP Decision: Granted Decision Date: 13 February 1995

Proposal: Installation of binstores and drying areas

4.4 Application Number: 6/2017/2294/VAR Decision: Withdrawn Decision Date: 7 November 2017

Proposal: Variation of condition 10 (tenancy restriction) on planning permission N6/1994/0338/FP, dated 29/09/1994

### **5 Planning Policy**

5.1 National Planning Policy Framework 2018

5.2 Welwyn Hatfield District Plan 2005

5.3 Supplementary Design Guidance, February 2005

5.4 Supplementary Planning Guidance, Parking Standards, January 2004

5.5 Interim Policy for Car Parking Standards and Garage Sizes, August 2014

- 5.6 Conservation Area Review
- 5.7 Equality Act 2010 (updated 9<sup>th</sup> July 2018).
- 5.8 Town and Country Planning Act 1990
- 5.9 Paragraph 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

## **6 Site Designation**

- 6.1 The site lies within the Welwyn Garden City Conservation Area. Numbers 8-15 (inclusive) Stanborough Close are located within Flood Zone Surface Water constraint areas as designated in the Welwyn Hatfield District Plan 2005.

## **7 Representations Received**

- 7.1 The application was advertised by means of neighbour notification letters, press notice and site notice.
- 7.2 Five representations have been received from 8, 11, 13, 15 and 18 Stanborough Close, which may be summarised as:
- These bungalows were built to accommodate OAP and disabled;
  - Families would be able to be accommodated here.
  - More bungalows like this should be built to accommodate older and vulnerable people and should not be taken away;
  - A statement from the ministry of housing by Caroline Dineage MP and Marcus Johnson MP committed to housing for OAP and disabled. If this allowed you are going against government policy.
  - (Have) lived in peace.
  - Would support over 55 years and under 55s who are disabled and want to live a quiet life with us. No householders with members under 18 years. It was very disturbing.
  - Not happy with the idea of a temporary variation that is open ended either.
  - Under 55's who have a disability and want to live in older community with no children.
  - If this proposal is as we were told, that the 11 Bungalows as and when they become vacant they will only be occupied by over 55 or over 55 disabled. Which means none of the current residents will be affected as we have been assured then that is fine. However if this not the case then we object on the grounds this application is still prejudiced and on those grounds alone will object.
- 7.3 One neighbouring property has also written separately to Grant Shapps MP. The objection is summarised as

*Issues with neighbouring property which includes noise complaints, and use of car park as nursery playground which has caused accidents to another resident.*

*Objection to allowing young families with disability needs to occupy these properties.*

*These properties to be left to be occupied by those over the ages of 55 and with disability needs.*

*Proposed a temporary limit on 12 Stanborough Close to remove the age restriction while another suitable property is sourced for the family.*

## **8 Consultations Received**

- 8.1 The statutory consultation responses received are summarised below, and where appropriate expanded upon in later sections of this report.
- 8.2 **Welwyn Hatfield Borough Council (Housing and Community Services) – No objection.**
- 8.3 The council has a significant demand for two bedroom bungalows and ground floor properties which are suitable for people with mobility needs and in particular people who need to use a wheel chair.
- 8.4 The demand is from households of all ages.
- 8.5 Considering the housing need locally and the lack of suitable properties, particularly to meet the needs of this client group, we would support the application to vary the planning condition on this site, to enable people who are younger than retirement age to be considered for the bungalows.
- 8.6 It will be very difficult to find appropriate alternative accommodation for the households who would be displaced if the application to vary the planning condition is not agreed.
- 8.7 We note that some of the issues of concern are in relation to the fact that a tenant has a child living at the property. The current planning condition does not prevent a child living in the property and we do have occasions where older people, for example grandparents, have dependent children living in their household. Therefore the current planning condition does not address this concern.

## **9. Analysis**

- 8.1 The main planning issues to be considered in the determination of this application are:
- 1. Principle of Development (NPPF 2018; Policies D1, D2, and GBSP1 of the District Plan 2005)**
  - 2. Impact on the living conditions of neighbouring occupiers and future occupiers (NPPF 2018; Policy D1 and D2 of the District Plan 2005; Supplementary Design Guidance 2005)**
  - 3. Impact on car parking (NPPF 2018, Policies M14, and D1 of the District Plan 2005, Supplementary Planning Guidance Parking Standards 2004 and Council's Interim Policy for Car Parking and Garage Sizes 2014)**

#### **4. Public Sector Equality Duty**

#### **5. Conditions**

#### **6. Other matters**

### **1 Principle of Development**

- 9.2 The homes are of course built and occupied and the stated reason for condition 10 is in relation to of the number of car parking spaces and external amenity space provided for the bungalows. At the time that planning permission was originally granted, it was perceived that a lower standard of parking and amenity space would meet the needs of a more elderly population. It is possible however that other persons of less than retirement age may have similarly reduced needs for parking and open amenity areas.

### **2 Impact on living conditions and the residential amenity of future occupiers**

- 9.3 Under planning application reference number N6/1994/0338/FP, condition 10 restricted to the occupation of the 11 no. elderly person bungalows to be occupied by at least one person who is over the statutory age of retirement (including a widow or widower of such a person), at all times in the future. The condition does not however require all members of the household to be over retirement age or prevent the occupation by much younger persons. The committee report at the time for planning application reference number N6/1994/0338/FP, provides little discussion to the amount of external garden amenity space required for this development but said that the amount of external garden amenity space shown ..'meet (s) the needs of the occupants of the (flats), and elderly person bungalows is acceptable and complies with the minimum standards set out in the District Plan'.
- 9.4 Since the approval of planning application N6/1994/0338/FP, the council has produced The Supplementary Design Guidance 2005. This also does not provide rigid standard sizes for gardens or for user groups such as the retired or disabled but it requires the design and layout of the garden in relation to the built environment ensures that the garden is functional and useable in terms of its orientation, width, depth and shape and elderly persons dwellings must include private rear gardens, however, they may be smaller.
- 9.5 Neither the District Plan nor national guidance includes external space standards but on this development each bungalow has a rear garden which measures approximately 100 m<sup>2</sup> in area. As there are no rigid standard sizes for gardens, and the rear gardens are considered to be private, functional and useable in accordance with the Supplementary Design Guidance 2005 they are considered acceptable even for user groups other than those of retirement age.

### **3 Impact on car parking**

- 9.6 The committee report at the time of the planning permission also provides little discussion on the number of car parking spaces required for this development, it stated that the car parking arrangements meet the Council's adopted car parking standards.
- 9.7 Since the approval of planning application the car parking standards have been revised and the interim policy for car parking standards 2014 states the Council will

treat all car parking standards set out in the Parking Standards Supplementary Planning Guidance as guidelines rather than maximums. Stanborough Close is located within proposed parking restraint area, zone 3 which allows for a reduction of between 50-75 of maximum car parking provision. Each bungalow has one car parking space. There are separate car parking spaces for the flats. A two bedroom bungalow for both general needs and elderly person's accommodation would have required 1.5 car parking spaces in accordance with the Parking Standards 2004. Therefore 16.5 car parking spaces were required for the bungalows. In applying the proposed parking restraint area, the bungalows would require between 8 and 12 car parking spaces. The number of car parking spaces therefore meets the Parking Standards 2004 and Interim Policy for Car Parking Standards 2014.

#### **4 Public Sector Equality Duty (PSED)**

- 9.8 Section 149 of the Equality Act 2010 (EA 2010) provides that a Local Authority must have due regard to certain matters "in the exercise of its functions". The determination of the variation of condition under planning application 6/2018/1267/VAR involves the exercise of a statutory function conferred by section 70 of the Town and Country Planning Act 1990 (TCPA 1990). The duty in section 149 of the EA 2010 applies to the function of determining the variation of condition planning application. The Public Sector Equality Duty (PSED) has been explicitly considered in the determination of this application as it is clear that there is the potential for effects to result which may affect individuals within the specified protected characteristics.
- 9.10 The Local Planning Authority must in the exercise of its functions have a duty with regard to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.11 The duty covers age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. The variation of condition 10 as proposed seeks to provide suitable flexibility so as to allow the current housing needs of the residents of 10, 11 and 12 Stanborough Close to be addressed, whilst also ensuring that those in need of housing are given adequate access to it, without unduly restrictive conditions being placed on the occupation thereof.
- 9.12 The variation or removal of condition as proposed would impact persons within the list of relevant protected characteristics and in the consideration of this variation of condition, the Local Planning Authority has sought to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- 9.13 Through the variation or removal of the condition as proposed, the occupation condition would allow access to housing for persons over the age of 55 years old

and those who are disabled as well as others. Therefore increasing equality of access to local housing to a wider population. In summary, it is considered that the Local Planning Authority has had due regard in certain matters “in the exercise of its functions”. An Equality Impact Assessment has been undertaken and is appended to this report.

## **5 Conditions**

- 9.14 If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when that power is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable. Conditions should only be imposed where they are both necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. In considering whether a particular condition is necessary, both officers and members should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification.
- 9.15 The application has been made under Section 73 of the Town and Country Planning Act 1990. This section makes provision for the variation or removal of planning conditions. As has been set out in the report, the requirements of the original condition, which was applied in 1994, have been found to be unnecessary. Further, no sound planning reason has been identified for the original condition to be varied or to be retained in any respect. In the circumstances, it is considered that neither the condition as originally drafted, nor the proposed variation to the condition, meet the tests of planning conditions that they are enforceable, precise and reasonable in all other respects. Having regard to this, it is considered that the original condition should be removed from the original planning permission. The effect of this would be that there would be no restriction on the occupation of the bungalows.

## **6 Other matters**

- 9.16 A number of neighbouring occupiers have objected to the proposal, However the objections raised do not relate to the reason for the imposition of the condition (parking and garden/amenity space) but instead focus on the potential change in the occupancy of the bungalows. The above assessment demonstrates that the garden sizes and parking provision are adequate for a wider range of occupiers in which case the current condition is not considered to meet all of the necessary tests for conditions. The National Planning Policy Framework 2018 states ‘Planning conditions should only be imposed where they are:

1. Necessary;
2. Relevant to planning and;
3. To the development to be permitted;
4. Enforceable;
5. Precise and;
6. Reasonable in all other respects’.

The removal of condition 10 would enable a broader range of user groups whose circumstances might mean that they require a bungalow.

9.17 The council's planning records do not confirm that all planning conditions were discharged in the 1990s but because of the age of the development any possible breaches of condition would by now have become lawful and so only ongoing conditions relevant to the development are recommended to be imposed once again.

## **10 Conclusion**

10.1 The removal of condition 10 of the planning permission (the occupancy condition) would not have a significant impact on car parking provision or garden amenity areas which was the stated purpose for the condition in the 1990s and is considered to accord with the National Planning Policy Framework 2018, relevant policies of the Welwyn Hatfield District Plan 2005 and other guidance documents.

## **11 Recommendation**

11.1 It is recommended that planning permission for the removal of the condition be granted subject to the imposition of the following conditions:

- 1 The parking, turning and loading space shown on the plan hereby approved shall be provided and marked out prior to the occupation of any buildings on the site, and shall be retained and kept available for those purposes thereafter.

REASON: To ensure that adequate parking facilities are available within the site and that there is no detriment to the safety of the adjoining highways.

- 2 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1988 (or any Order revoking or re-enacting that Order) the provisions of Part 1, Classes A, B, C, D, E, F, H and Part 2, Class A of Schedule 2 to that Order shall not apply to any dwelling constructed as part of this consent.

REASON: In order that the Local Planning Authority can consider the effect of such developments on the character and appearance of this part of the Conservation Area, and in particular, on the trees along the boundaries of the site.

- 3 The development/works shall not be started and completed other than in accordance with the approved plans and details:

Land surveys received 11/5/1994  
8065/018 Site plan: Garages to be demolished received 11/5/1994  
8065/020 Site plan: Existing Drainage and Mains Services received 11/5/1994  
8065/025 Rev C Housing Layout No.10 received 2/9/1994  
8065/031 Rev B Bungalow Plans received 25/5/1994  
8065/032 Rev B Maisonette Plans: Ground Floor received 25/5/1994  
8065/033 Rev A Maisonette Plans: First Floor received 11/5/1994  
8065/034 Rev A Bungalow Elevations: Plots 1, 2 and 8-11 received 25/5/1994  
8065/035 Rev A Bungalow Elevations: Plots 3-7 received

25/5/1994

8065/036 Rev A Maisonette Elevations Plots 18-23 received

25/5/1994

10113/03A Revised Landscape proposals received 29/9/1994

8065/037 Maisonette Elevations received 2/9/1994

8-18 Location plan 14/5/2018

## POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Louise Sahlke, (Development Management)

Date 13/09/2018

Expiry Date: 12/10/2018



# WELWYN HATFIELD

## Welwyn Hatfield Borough Council Equality Impact Assessment (EqIA)

Assessment completed by: Chris Carter, Development Management Service Manager

Name of policy/project/service to be assessed	Planning Application 6/2018/1267/VAR 8-18 Stanborough Close, Welwyn Garden City Variation of tenancy restriction condition – which requires that at least one occupant in each property is over statutory retirement age The application proposes to change this condition to at least one person in each property being at least 55 and/or disabled.
At what stage of consultation has this EqIA been prepared?	Pre-consultation <input type="checkbox"/> Post consultation <input checked="" type="checkbox"/> No consultation required <input type="checkbox"/>
Method of analysis undertaken and dates	Manager – desktop screening <input checked="" type="checkbox"/> Date: 24 Sept 18 Employee Forum <input type="checkbox"/> Date: Stakeholder review <input type="checkbox"/> Date:
Who does the policy or service affect?	Customers (public) <input checked="" type="checkbox"/> Internal (staff/members) <input type="checkbox"/> External (partners/contractors/agencies/etc) <input checked="" type="checkbox"/> Other <input type="checkbox"/>
What are the aims/objectives/purpose or outcome or intended effects of the policy, project or service?	Positive determination of this application would broaden the groups of people who could potentially occupy these properties. This would have a positive impact on people with a disability, as there is a lack of suitable properties in this vicinity and broadening the criteria will provide more opportunity for people with these needs to find suitable housing.  Negative determination of this application could mean that people currently occupying these properties not in accordance with the condition might have to leave them. It would be difficult to mitigate this as there is a lack of property which meets these needs in the vicinity.

	<p>Overall the outcome of a negative decision would be detrimental to people with disabilities, as it would limit occupation of the bungalows to people of a certain age.</p>
<p>What equality data is available relating to the use or implementation of the policy, project or service?</p>	<p>Applicant has advised that three properties are currently occupied by people who are under the statutory retirement age or have a disability. Therefore three occupiers could be affected by the decision.</p>
<p>What consultation has taken place in the development or review of the policy, project or service?</p>	<p>The Council has consulted on this planning application in the normal way, by writing to neighbours and putting it on the weekly list.</p>

Does the policy have a positive or negative impact on any of the protected characteristic groups covered by the Equality Act 2010?

	Positive	Negative	Neutral	Evidence & Comments
Age	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Positive impact for people between 55 and statutory retirement age, if application were approved.  Negative impact on three current occupants if refused.
Disability	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Positive impact for disabled people if application were approved. Negative impact on one current occupant if refused.
Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Gender re-assignment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Marriage/Civil partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Pregnancy & maternity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Religion or belief	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sex	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

Equality Impact Assessment outcome:

Low risk

Medium risk

High risk

Any other comments: There is a question as to how far this legislation, and the requirement for EqIA is applicable to the determination of planning applications, and the advice of the group on this point is also welcomed. As, notwithstanding the outcome of an EqIA, a planning application must be determined in accordance with statutory legislation and the development plan.

For Equality & Diversity Steering Group use only:

Comments:



 <p><b>WELWYN HATFIELD</b></p> <p>Council Offices, The Campus Welwyn Garden City, Herts, AL8 5AE</p>	Title: 8-18 (inclusive) Stanborough Close Welwyn Garden City		Scale: DNS	
			Date: 2018	
	Project: DMC Committee	Drawing Number: 6/2018/1267/VAR	Drawn: Ida Moesner	
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