



Wesley House, Bull Hill,  
Leatherhead KT22 7AH

01372 365064

07748 842025

[www.qedplanning.co.uk](http://www.qedplanning.co.uk)

SENT BY EMAIL

Camden Council  
5 Pancras Square  
London  
N1C 4AG

Our Ref 18196

13 December 2022

Dear Sir/Madam,

**Arthur West House, 79 Fitzjohn's Avenue, London, NW3 6PA**

**Request to Modify an Existing Section 106 Agreement**

**Planning Reference: 2014/7851/P**

I am writing on behalf of Pegasus Life (part of the Lifestory Group) (the applicant) in support of a request to modify an existing Section 106 Agreement relating to the above planning permission for 79 Fitzjohn's Avenue, London.

By means of background, planning permission was granted on 28 August 2015 for the demolition of a hostel building and the erection of a 3-6 storey building to provide 33 self-contained wheelchair accessible flats for the care & well-being of **older people** including ancillary extra-care facilities, cycle and mobility scooter storage and staff facilities with basement level car park, communal garden and associated landscaping [our highlighting].

The planning permission was accompanied by a Section 106 Agreement signed on the same date as the permission.

In accordance with Section 4 of The Town and Country Planning (Modification) and Discharge of Planning Obligations) Regulations 1992, this application to modify the existing Section 106 Agreement is accompanied by the following information:

- The name and address of the applicant (Pegasus Life, (part of the Lifestory Group), 105-107 Bath Road Cheltenham, Gloucestershire, GL53 7PR).
- A completed application form. The Planning Portal confirms that all applications to modify an existing section 106 Agreement should be made to the LPA directly and that a submission via the Portal is not currently possible. Please note that a specific Camden application form has not yet been provided as this is still awaited from the local planning authority.
- The address or location of the land and the nature of the applicant's interest (as provided above)

- Sufficient information to enable the authority to identify the planning obligation which the applicant wishes to have modified or discharged (this letter)
- The applicant's reasons for applying for the modification or discharge of that obligation (this letter)
- A map identifying the land to which the obligation relates (as attached)

A marked-up version of the Section 106 Agreement will be provided following validation and once the terms of the modifications have been agreed with the local planning authority.

The Scope of the Proposed Modification

The purpose of this request is to seek a modification to the existing Section 106 Agreement insofar as it relates to the definition of an '**Older Resident**' at paragraph 2.30.

As currently worded an 'Older Resident' is defined as:

*'a Resident who is 60 (sixty) years of age or older'.*

The applicant is seeking a variation such that the definition instead applies to:

*'a Resident who is 55 (fifty-five) years of age or older'.*

Should this modification be agreed, it is also proposed that 4.19.2 of the Agreement be amended to remove the minimum age requirement for any secondary occupants of the residential units, as follows:

*4.19.2 The owner agrees that at all times and in perpetuity the Development shall be restricted such that only Older Residents are permitted to Occupy the Residential Units SAVE FOR:*

- (i) a spouse, civil partner, cohabiting partner or dependent of an Older Resident who is residing with that Older Resident ~~PROVIDED THAT such person is 55 (fifty-five) years of age or older;~~*
- (ii) any carer or guest of an Older Resident who is residing with that Older Resident;*
- (iii) a spouse, civil partner, cohabiting partner or dependent of an Older Resident ~~who is 55 (fifty-five) years of age or older AND WHO was permanently residing with that Older Resident BUT WHERE that Older Resident no longer Occupies the Residential Unit due to ill-health or death AND FOR THE AVOIDANCE OF DOUBT this exception shall cease to apply once such person vacates the Residential Unit or has disposed of his or her interest in the Residential Unit (whichever event comes earlier).~~*

There is no definition of an 'Older Resident' within the decision notice or the accompanying planning conditions. No revisions to the existing planning permission are therefore sought.

The Justification for the Proposed Modification

As approved, the permitted development comprises an age-restricted general market housing scheme that falls within Use Class C3.

National Planning Practice Guidance defines age-restricted general market housing as 'generally' being for people aged 55 and over and the active elderly (Paragraph Paragraph: 010 Reference ID: 63-010-20190626 refers). Importantly, the suggested age restriction is not to be applied universally and instead refers to a general approach by housing providers.

This guidance is also consistent with advice set out in the London Plan which, under Policy H13 (paragraph 4.13.5) defines specialist older persons housing as that which is specifically designed and managed for older people with a minimum age of 55 years.

Most frequently, and in contrast to the current requirements of the Section 106 Agreement for this scheme, the minimum age restriction is applied to the primary occupant only.

In the case of the application site, the current wording of the occupancy criteria within the Section 106 Agreement is more stringent than the 55-year guideline set out in the NPPG and the London Plan and imposes a 60-year minimum age requirement upon the primary occupant. Moreover, a further age restriction is imposed on all secondary occupants of the residential units.

Having regard to enquiries received by prospective residents in recent months, an amendment in the wording of the condition is sought to allow for flexibility where the current wording may otherwise compromise the legitimate housing needs of future residents and to ensure that the approved development accords with the NPPG guidelines in respect of age restrictions. This in turn will allow other family housing in the local area to be freed up as residents moving into the extra care scheme.

By means of example, the current wording of the agreement would allow for occupancy of a residential unit within the development by two residents of 60 years. By contrast, the condition would preclude occupancy by a couple where one resident is aged 70 years and the other anything less than 55, even if only by a year.

Amending the agreement as proposed would therefore allow for occupation by a primary resident in accordance with the NPPG and London Plan guidelines and for occupation by spouses and cohabiting partners where there is a modest difference in age between the individual residents, and where this flexibility does not currently exist.

We note that a 55-year age restriction has been accepted on other extra care and assisted living proposals within Camden. This includes the most recently determined scheme by the Council relating a 50-unit assisted living development (Use Class C3) at 11-12 Ingestre Road, NW5 1UX (LPA Ref: 2018/4449/P).

The approach of applying the minimum age restriction to only the primary occupant has also been established in other retirement schemes in recent years. By means of the most recent appeal example, we refer to a scheme that was allowed by the Planning Inspectorate on 2 November 2022 for the provision of 128 extra care apartments at Coombe Road, Norbiton (Royal Borough of Kingston-upon-Thames) (LPA Ref: 19/02504/FUL) and where the Section 106 Agreement requires that qualifying persons are not less than 55 years or that they are the spouse/partner of the principal occupier.

The proposed change to the wording of the Section 106 Agreement as hereby proposed would not alter the nature of the accommodation in any way, nor would it mean that that the accommodation is less attractive to older people. By contrast, the flexibility will ensure that the accommodation is available to a broader mix of the active, elderly population in the local area.

#### *The Procedure for the Proposed Modification*

As noted above, the extant planning permission does not define the age of an 'older resident' (and neither do any of the planning conditions). As such, no revision to the existing consent is needed.

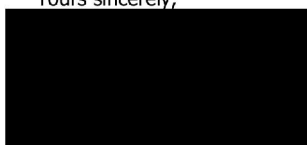
Having regard to the proposed modification to the existing Section 106 Agreement, the mechanism for agreeing the proposed modification is governed by s.106A of the Town and Country Planning Act 1990

("TCPA1990"). This allows an application to modify a planning obligation to be made only after the "relevant period", namely a period of five years beginning with the date on which the obligation was entered into. This five-year threshold has been passed in this case.

The procedure for making the application is set out in the Town and County Planning (Modification and Discharge of Planning Obligations) Regulations 1992 and the applicant has complied with the requirements for the submission and notification of the application set out in Sections 3 and 4 of the Regulations.

We trust that all is in order. However, should you have any queries in respect of this submission please do not hesitate to contact me.

Yours sincerely,



**Adrian Kearley**  
**Director**