The Planning Inspectorate

Appeal Decision

Site visit made on 30 November 2016

by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 December 2016

Appeal Ref: APP/J9497/S/16/3155749
Site address: Dartmoor Inn, Merrivale, Princetown, PL20 6ST.

- The appeal is made under section 106BC of the Town and Country Planning Act 1990 (the Act) against the refusal to discharge the affordable housing requirement in a planning obligation.
- The appeal is made by Mr and Mrs Cloke, (the Appellants) against the decision of the Dartmoor National Park Authority (the Authority).
- The planning obligation, dated 24 February 2014, was made between the Dartmoor National Park Authority, Richard Anthony Cloke and Gaynor Elizabeth Cloke and Barclays Bank Plc.
- The development to which the planning obligation relates is to convert part of the building on the land to a dwelling including an affordable dwelling for local persons in housing need. (Application Ref. No: 0439/13).
- The application to modify the planning obligation is Ref. No. 0121/16, was dated 11 February 2016 and refused by notice dated 24 March 2016.
- The application subject of this appeal sought to have the planning obligation in respect of the affordable housing requirement discharged, submitting that unless the dwelling became an open market dwelling the development would not be viable.

Decision

1. The appeal is dismissed.

Policy overview

2. Section 106A of the Act (as amended) recognises the need for flexibility and provides the facility under s.106BA for applications to modify or discharge obligations. The key parameters for decision makers include whether the obligation continues to serve a useful purpose (if not, the obligation must be discharged) or whether that purpose would be served equally with the obligation discharged or modified. Accordingly, it is necessary to examine whether the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind (Paragraph 204, National Planning Policy Framework).

3. National guidance on Development Viability in Decision Taking is set out in the Planning Practice Guidance (PPG), with specific advice on s.106B applications and appeals contained in the Government document Section 106 Affordable Housing Requirement: Review and Appeal (April 2013). This says that assessments should be based on clear, up-to-date and appropriate evidence, with the

starting point a review of the original viability assessment. Reviews should apply a similar methodology, with any changes explained and justified.

4. The intention of the modifications to s.106 (BA, BB and BC) is to permit discharge of or variation to the level of affordable housing required under an extant permission, but which was negotiated under different economic conditions. The key aim has been to unlock stalled developments, while affording the landowner a reasonable return when selling the site and the developer a reasonable level of profit. This provision within the Act has now been withdrawn.

5. Although not referred to in the submissions, there is a number of additional supplementary planning policy and professional documents to inform parties of appropriate process to the desired outcome. These include the Development Control Toolkit and in the professional world the RICS Financial Viability in Planning and RICS Valuation Paper No.3, which evince process and methodology for various scenarios. A key point to draw out is that there are few hard and fast rules, with the decision maker left to view viability assessments in the specific context of the site and development under review.

6. For this case, development plan (DP) policies in both the Dartmoor National Park Authority Development Management and Delivery Plan (LP) and the Dartmoor National Park Authority Local Development Framework (LDF) are cited. Taken in the round, these look to preclude development in the National Park outside Local Centres and Rural Settlements, with a caveat in LP Policy DMD23, which allows the conversion of an existing building to an affordable dwelling subject to compliance with Policy DMD9. This again requires residential development to provide affordable housing for local persons or accommodation for agricultural, forestry or rural enterprise workers.

7. This framework sits comfortably alongside LDF Policy COR15 that accepts the appropriate conversion of rural buildings to meet identified local needs for affordable housing. LDF Policy COR2 does accept a slightly wider range of development in locations outside Local Centres and Rural Settlements, including small scale development for the growth of existing businesses, to promote National Park purposes or to sustain buildings or structures that contribute to the distinctive landscape or special qualities of the Dartmoor National Park.

8. The Appellants draw attention to the adopted Affordable Housing Supplementary Planning Document (SPD), which, at paragraph 4.7 says that "*In the majority of development we would expect affordable housing to be provided on site. In a very limited number of cases we may consider a 'commuted sum' contribution i.e. a financial contribution towards affordable housing elsewhere rather than provision on the site. The National Planning Policy Framework (NPPF) states off-site provision or a financial contribution of broadly equivalent value should be robustly justified and contribute to the objective of creating mixed and balanced communities. We will only consider a commuted sum in lieu of on-site provision of affordable housing where:*

A. The proposal is for the conversion or change of use of an existing building which the Authority considers would be acceptable for use as a dwelling in line with Local Plan policies, but inappropriate for use as an affordable dwelling by virtue of:

- *its anticipated market value; or*

- *the feasibility of converting or adapting the building for the purposes of affordable housing; or*
- *the impact of the conversion or adaptation for the purposes of affordable housing upon the building (for example where it is a heritage asset); or*
- *the sustainability of its location (i.e. it is in a very isolated rural location).”*

9. Returning to the Framework, paragraph 55 advises that “*To promote sustainable development in rural areas, ……. local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling.”*

Main issue

10. From the representations made and my visit to the site and surroundings, it follows that the main issue to be decided in this appeal is whether the affordable housing provision contained in the signed s.106 Planning Obligation meets the relevant tests for planning obligations and, if so, would the affordable housing obligation render the development unviable.

Reasoning

11. In the national context, the s.106B procedure was introduced to reassess proposals caught up in a changing, and by implication a worsening, economic climate. However, this proposal followed the economic turmoil between 2008 and 2012 and was submitted, when the financial regime was well on the way to recovery. This is a point acknowledged by the Appellants and so there would not seem to be any convincing reason to justify a change pertaining to the wider economic climate.

12. Turning to the more local arguments, it is clear to me that the Authority would not have been entertained a proposal for residential development in this location had the intention, supported by the s.106, not been for a dwelling for affordable use. Thus, when assessing whether the tests of the s.106 are met, I agree with the Authority that it is necessary to make the development acceptable in planning terms.

13. In supporting the Council’s position on this, I have considered the possibility that allowing this appeal could deliver appropriate enabling development to secure the future of a heritage asset. Although the Dartmoor Inn is not a Listed Building and neither does it lie within a Conservation Area, it is a traditional structure and the Council is clearly of a mind to avoid its loss as a key service feature in the Dartmoor National Park. However, none of the submissions deal objectively with the viability of the public house and so it has been impossible to factor this into the equation in anything more than very general terms.

14. Moving on to what seems to be the crux of this case, namely the asking price of the property in its present state, there are several points made by the main parties. Starting at the beginning, the original valuation was for a market price of some £175,000, with the occupancy restriction in place. The Authority seems to accept this and has provided evidence to the effect that at least one prospective purchaser has offered this price and above, which was rejected by the Appellants as not close enough to asking price of £195,000.

15. Moving forward, in the Appellants' appeal statement it is said that the current open market value of the property is somewhere between £260,000 and £275,000. As the Authority says, with the deduction in value for the local occupancy restriction (15%) and the further 25% reduction for affordability, this brings the maximum sale price down to £165,000-£175,000, which is exceeded by the offer referred to above. Whatever figure is taken, this still does not suggest that an asking price of £195,000 is justified.

16. Next, it is not entirely clear how the property was marketed, but it did attract 44 expressions of interest, even with reference made to the local occupancy condition on the sales brochure. This shows that there is considerable interest and the only problem was an asking price above the market expectation. Keeping the asking price at an artificially high figure of £195,000 is clearly a disincentive to prospective purchasers and, thus, can be said to be an unrealistic valuation in the present market conditions.

17. Incidentally, I note that in the grounds of appeal, it says that the open market price of £260,000 has been reduced by 25% as set out in the s.106 Agreement. However, this would seem not to take into account the initial 15% reduction of £39,000 for the occupancy restriction.

18. Moving on to the market conditions, there is nothing of an objective nature in the Appellant's submissions to demonstrate that the market has had a 15% uplift since 2014. It is not appropriate to apply a regional increase factor, where distinctly local conditions would seem to pertain. In my view, therefore, the Authority's assessment is fair.

19. The next point is the requirement for an injection of capital into the public house business. As I understand it, the business is currently running at a loss. What I am unclear about is how any profit from the sale of the 'residential' part of the public house would be used and to what expected outcome. There are no figures to support the intention and it seems to me the Authority has been generous in allowing this to proceed without figures to back this up. I assume this is because of its strong wish to see the pub retained as an amenity feature in the National Park.

20. I have also looked at the Appellants' points drawn from paragraph 4.7 of the SPD. This says that a commuted sum in lieu of on-site provision of affordable housing will only be considered where the proposal is for the conversion or change of use of an existing building which the Authority considers would be acceptable for use as a dwelling in line with Local Plan policies. It is quite clear that the project would not accord with the national or local policy directives for housing development in remote rural locations in the National Park.

21. Moreover, this option is only granted on a case by case basis, with the supporting information independently validated. This has not been undertaken so far and so an application following this route would have to return to square

one. As far as this appeal is concerned, there is no draft change to the s.106 submitted, though it is clear that the Authority would have objections to this without further information. Without stronger, objective submissions I see no reason to differ.

22. As for the suggestion that the Authority is working contrary to its own policy in regard to the floor area of the converted property, I do not find this argument carries weight. Yes the Authority has granted permission for a larger property than it normally seeks. However, it points out that this is essentially the conversion of part of a public house to its former residential use and that the division chosen was the most appropriate to minimise the internal works and costs. Moreover, as it also points out, this was agreed and signed up to in the original s.106. Thus, it is difficult to see an objection relating to scale and kind.

23. Even taking all these factors into account, there remain two insurmountable problems. This first is the lack of an audited Economic Viability Assessment for 2013/4, including a breakdown of building costs. This should be the starting point. Moreover, it should be followed by a similar Assessment updated for the present day to use for comparison. Without these, I do not consider that the evidence demonstrates that the situation has deteriorated significantly since the s.106 was signed in February 2014. I accept that there may be some ups and downs in property prices, build costs and financing. Even so, from the information provided, it is not possible to draw a firm conclusion.

24. The second point is that I am clear that without the submission of a s.106 Obligation to provide the appeal property as intermediate housing the permission would not have been forthcoming. Thus, this is not a case of a development being stalled by economic changes. All the pointers are to this being a case where the property has been placed on the market at an unrealistic price, after deduction to reflect the occupancy restrictions and intermediate housing discount. With some 40+ expressions of interest it is difficult to reach any other conclusion.

25. I conclude, therefore, that based on the information provided, the s.106 is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. Moreover, with a sensible asking price, the s.106 requirement does not render the scheme unviable. Finally, I have taken into account all other matters raised in the evidence and representations, but none carries sufficient weight to alter the balance of my conclusions or decision to dismiss this appeal.

J S Nixon

Inspector