

Appeal Decision

Site visit made on 6 December 2016

by C J Ball DArch DCons RIBA IHBC

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

Decision date: 23 December 2016

Appeal Ref: APP/D0840/Q/16/3158673

The Blue Place, Chywoone Hill, Newlyn, Penzance TR18 5NW

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
 - The appeal is made by Mrs E Patterson against the decision of Cornwall Council.
 - The development to which the planning obligation relates is the replacement of a carpenter's workshop with a dwelling.
 - The planning obligation, dated 22 October 2003, was made between the District Council of Penwith, Ellen Marie Patterson and Lloyds TSB Bank plc.
 - The application Ref PA16/02845, dated 23 March 2016 was refused by notice dated 25 May 2016
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation, dated 22 October 2003, made between the District Council of Penwith, Ellen Marie Patterson and Lloyds TSB Bank plc no longer serves a useful purpose and is discharged.

Preliminary matters

2. The planning obligation was made by agreement between the parties. Cornwall Council is the successor in title, in the terms of the Agreement, to Penwith District Council.
3. The Cornwall Local Plan was adopted on 22 November, after the appeal was submitted. I asked both parties to comment on how this might affect their respective cases and their comments have been taken into account.

Application for costs

4. An application for costs was made by Mrs E Patterson against Cornwall Council. This application is the subject of a separate Decision.

Main issue

5. The main issue is whether the obligation still serves a useful planning purpose.

Planning history

6. A carpenter's workshop previously stood on the site, with vehicular access from Chywoone Hill. Permission was granted in 2002 to convert the workshop to a dwelling, with a condition restricting on-site parking. In 2003 an application for an amended design was refused for highway safety and residential amenity reasons. A subsequent 2003 application for a dwelling was approved subject to a s106 Agreement. That Agreement is the subject of this appeal.
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Reasons

7. The Agreement requires the developer not to allow or permit vehicles of any description to park on any part of the property at any time. The purpose of the Agreement appears to be the prevention of the use of the sub-standard access onto Chywoone Hill for the reason that it would create a danger to highway users due to restricted visibility.
8. The access was formerly used in association with the carpenter's workshop. This factor was an important material consideration in the assessment of the first application for the new residential use. Officers considered the proposed residential use preferable to the existing use and accepted that, while the use of the access would be hazardous, the site had an established commercial use with associated traffic movements so that it would be difficult to resist the proposal, including parking provision, on highway safety grounds. Approval was recommended on that basis. However, in approving the scheme, members added a condition preventing the area shown for parking being used for parking, in the interests of highway safety. That influenced subsequent decisions.
9. Members are not obliged to take the advice of officers and it could be argued that local knowledge of site conditions can override that advice. However, I am not convinced that in considering that first application members gave the necessary and appropriate weight to the existing commercial use of the site and its access. The approved scheme did not involve any additional traffic using an existing access so in that respect nothing changed. Redevelopment did not make the pre-existing position worse so the new use did not in fact create danger in highway safety terms. For that reason I believe the added condition was unnecessary and unreasonable, and went beyond the Council's powers, potentially making it *ultra vires*. That condition was relied upon in future decisions, including the requirement for the s106 Agreement in the 2003 permission. In these circumstances I am not convinced that the Agreement was a necessary and reasonable measure to make the development acceptable in planning terms.
10. Be that as it may, circumstances have changed somewhat since 2003. There has been an increase in traffic using Chywoone Hill. The speed limit on the hill has been reduced from 30 mph to 20 mph. The Council has permitted several more dwellings where access and parking, although similarly difficult, are considered acceptable, not least immediately next door to the site. I saw that traffic is generally slow-moving because of the combination of the speed limit, on-street parking and a nearby single-width pinch point, where traffic has to stop and give way – all informal but effective traffic-calming measures.
11. New guidance on street design and access visibility has also since been published in 'Manual for Streets' (MfS 2007 and MfS2 2010). The guidance acknowledges that the advice given for new residential development has to be tempered for development within existing historic built-up areas, where it is not unusual for highway access to be from the back of the footway. MfS2 notes that this type of access encourages drivers to emerge more cautiously and that, in slower moving traffic, visibility measured 2 m back from the carriageway edge is acceptable. In these conditions drivers will tend to cautiously nose out into traffic, the so-called 'peep and creep' approach. MfS2 also concludes that a reduction in visibility below the recommended 22 m will not necessarily lead to a significant highway safety problem.

12. I saw that, from the existing access to The Blue Place and about 2 m back from the edge of the carriageway, visibility to the carriageway edge is no more than 5 m in either direction. I noted that approaching vehicles became visible at about 10-12 m away. While this is well below the recommended standard, as the exiting vehicle creeps into the road, visibility would rapidly increase so that the driver would be well aware of approaching vehicles before safety problems could arise. The road width here is about 5.5 m and there would be a clear view from vehicles approaching from both directions of a vehicle emerging from the site. This would allow time and space for approaching vehicles to brake and pass slowly or let the emerging vehicle out.
13. Pedestrians using the footway would be well aware of the open gates, signalling the potential for vehicle movement, and would be able to see, and be seen by, a creeping vehicle at the entrance in time for both parties to avoid conflict. While pedestrians might be delayed during this manoeuvre, this is not at all an unusual occurrence on Chywoone Hill and is an acceptable inconvenience in closely built-up historic towns like Newlyn where the street layout predates motorised traffic. In these circumstances I do not consider that the use of the existing access at The Blue Place would result in a significant highway safety problem.
14. Accordingly I consider that the use of the existing space as a parking space with vehicular access to Chywoone Hill would comply with Policy 27 of the Cornwall Local Plan, which requires that all developments provide a safe and suitable access for all people.

Conclusions

15. On that basis I find that, while it is doubtful the Agreement was necessary and reasonable in the first place, in the light of more recent guidance and current conditions, the obligation is no longer necessary to make the development acceptable in planning terms. It therefore no longer serves a useful planning purpose. For the reasons given above I conclude that the appeal should be allowed.

Colin Ball

Inspector