

Appeal Decision

Hearing held on 21 December 2016

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 23 January 2017

Appeal Ref: APP/D0840/S/16/3144851

Former Royal British Legion, Gurneys Lane, Camborne TR14 8JP.

- The appeal is made under Section 106BC of the Town and Country Planning Act 1990 (as amended) against a refusal to modify a planning obligation.
 - The appeal is made by Hugafins Co Ltd against the decision of Cornwall Council.
 - The development to which the planning obligation relates is demolition and construction of 10 new flats.
 - The planning obligation, dated 12 December 2014 was made between Cornwall Council and Hugafins Co Ltd.
 - The application Ref PA15/11690, dated 9 December 2015, was refused by notice dated 21 January 2016.
 - The application sought to modify the planning obligation by the removal of the affordable housing provision.
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Background

1. The permitted scheme in this case is 10 flats. The planning obligation provides for the provision of 4 of those flats to be affordable. That aligns with the policy of requiring 40% affordable housing at the time permission was granted. No viability assessment was carried out at that time.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issue in the appeal is whether the affordable housing requirements in the S106 Agreement render the development economically unviable.

Reasons

4. There are some areas of general agreement between the Appellant and the Council in this case. In particular there is no significant dispute that the viability assessment for the scheme as submitted with the appeal uses reasonable assumptions and build costs. There is also no disagreement that the outcome of the viability assessment is that the scheme permitted would be unviable with or without the affordable housing element.
 5. Section 106BA of the 1990 Act is narrow in scope in that I can only deal with a single matter. That matter is whether the affordable housing requirement is stalling the bringing forward of the housing scheme, and if so whether the removal of the affordable housing would enable the scheme to progress.
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6. On the basis of the information supplied to me before the hearing that is not the case. Given the large deficit expected from the development even if the affordable housing is removed the figures plainly show that there would be no scope for the housing to be provided.
7. However, at the hearing the Appellant indicated that removing the affordable housing would give a fighting chance of the development proceeding, possibly in a phased manner. No figures were produced to justify this stance, and here I note that the advice given in relation to the S106BC appeal process sets out that "The viability evidence supporting the application should be submitted with the appeal to support the developer's assessment of a viable affordable housing requirement." I have been provided with no such viability evidence prior to the hearing. At the hearing the potential developer did no more than indicate in general terms that there was a chance of development proceeding if the affordable housing requirement was removed.
8. The Council has rightly pointed out that it is not the affordable housing element of the permitted scheme which renders it unviable, but the nature of the scheme as a whole. Even if costs are reduced and development value increased (by 20% in each case) the development would only make a very small profit. I am told, and it is not disputed, that the removal of the affordable housing makes a relatively small impact on gross development value.
9. I do not consider that it would be proper to proceed on the basis that the developer believes that some development can be brought forward when the evidence points to the opposite scenario. Without realistic figures to back up the assertion that some development would be likely to go ahead I can have no confidence that that would be the case. S106BA applications are designed to free up stalled sites. There is nothing in this case that persuades me that the site would be built out if the affordable housing were to be removed.
10. I understand that the policy background has moved on since permission was granted for this scheme and that if a new application were to be submitted on this site it may well not have any affordable housing requirement. The Council also acknowledges that point. I also acknowledge that the Appellant has indicated that there will be no further expenditure on this site and that it will either remain as it is or be sold.
11. From what I was told at the hearing the Council seems to me to be committed to being as positive as possible in seeking a resolution to the problem of redevelopment of this site. But I agree that the route chosen, of seeking to remove the affordable housing through the S106BA process, is not appropriate here. It is not likely to free up a stalled site and the evidence suggests it would not work.
12. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Dodge BSc(Hons) MRTPI	Business Location Services
Mr J Pascoe	Hugafins Co Ltd
Mrs D Pascoe	Hugafins Co Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr W Morris BA(Hons)	Affordable Housing Officer
Mr P Blackshaw BA(Hons)	Planning Officer
MRTPI	