
Appeal Decision

Site visit made on 24 January 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 09 February 2017

Appeal Ref: APP/Y3940/Q/16/3160184

2 Fairfield, Upper Castle Combe, Chippenham, Wiltshire SN14 7HE

- 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 Mr John Eels against the decision of Wiltshire Council.
 - The development to which the planning obligation relates is the conversion and extension of existing garage to form a self-contained annexe.
 - The planning obligation, dated 20 May 2003, was made between North Wiltshire District Council and John Stephen Eels and Joyce Kathleen Eels.
 - The application Ref 16/01456/106, dated 3 February 2016, was refused by notice dated 27 April 2016.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation, dated 20 May 2003, made between North Wiltshire District Council, John Stephen Eels and Joyce Kathleen Eels, no longer serves a useful purpose and is discharged.

Procedural Matter

2. The appellant states that in determining the application to discharge the planning obligation, the Council considered the application against relevant planning policies rather than against the test in Section 106A of the Town and Country Planning Act 1990. This test being whether or not the obligation continues to serve a useful purpose. The Council accepts this is the case but argue that their evidence clearly demonstrates why in their view the obligation continues to do this. I have considered the appeal accordingly.

Main Issue

3. The main issue is whether the obligation continues to serve a useful and necessary planning purpose having regard to the intentions of national and local planning policy.

Reasons

4. The appeal property is located in the hamlet of Upper Castle Combe, a small settlement located within the open countryside.
 5. This appeal seeks the removal of the planning obligation associated with Planning permission reference 02/02695/FUL which gave approval to the conversion of an existing garage building at No.2 Fairfield to form a self-
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- contained annexe. The effect of the obligation was that the annexe should be held in the same ownership and could not be sold or leased separately from the principal dwelling.
6. It is the appellant's view that in the absence of any condition restricting occupation, the agreement was required in order to protect the amenity of the occupiers of the host property, No.2 Fairfield. However I note that the decision notice for this development makes reference to Policy RH14 of the North Wiltshire Local Plan 2001. This policy related to residential extensions. It therefore appears to me that the Council viewed the development as an extension to the principal dwelling. Accordingly, the purpose of the planning obligation was to ensure that the annex remained as an associated outbuilding to the house and did not become a separate independent unit of accommodation.
 7. The Council argues that the discharge of the obligation would in effect create a new dwelling in the countryside. Consideration must therefore be given to relevant national and local planning policies controlling development in rural areas. Paragraph 55 of the National Planning Policy Framework (the Framework) states that local planning authorities should avoid isolated new homes in the countryside unless certain special circumstances are met. The appellant has provided no evidence that any of these are applicable in this case.
 8. Saved Policy H4 of the North Wiltshire Local Plan 2001 permits new dwellings outside framework boundaries in the countryside provided that they are required in connection with the essential needs of agriculture, forestry or other rural enterprise or it is a replacement dwelling. Similarly Policy 48 of the Wiltshire Core Strategy 2015 (CS) supports dwellings in the countryside required to meet the employment needs of rural areas. This policy also considers the conversion and reuse of rural buildings and supports conversion to employment, tourism, cultural and community uses subject to a number of criteria being met. It also makes provision for affordable housing on rural exception sites in line with CS Policy 44.
 9. From the above it is clear that the policies of the development plan restrict open market housing in the countryside other than in certain circumstances. A new dwelling in the open countryside would therefore fail to comply with these policies.
 10. However, in this case, I am mindful that the annexe is self-contained and has no functional dependence on the principal dwelling. The appellant has provided a plan to show 2 car parking spaces in front of the annexe and a fenced rear garden area. I viewed on my site visit that this provision has already been put in place. It appears to me that the annexe, rather than being an associated building or extension to No. 2 Fairfield, currently functions as a separate unit of residential accommodation.
 11. As there is no planning condition restricting occupancy, the annexe could provide accommodation for a separate family, most likely related to the owner and provided that there was no commercial lease arrangement in place. In effect this would be no different to the annexe being a separate dwelling occupied by an independent household. This leads me to conclude that in practical terms a separate dwelling unit already exists. Therefore if the planning obligation was to be discharged, a new dwelling would not be created.

The policies of the development plan restricting development in the countryside would therefore in this case not be relevant. Accordingly I consider that the planning obligation no longer serves a useful purpose.

12. The appellant has brought my attention to the fact that the Council cannot demonstrate a 5 year supply of housing land. This is confirmed by the Council. However in light of my finding above, it is not necessary for me to consider this matter further.
13. In conclusion, I consider that on the basis of the evidence before me, and having regard to all other matters raised, including the support of the Parish Council, that the planning obligation no longer serves a useful purpose having regard to the intentions of relevant national and local plan policy. The appeal is therefore allowed and the obligation discharged.

Helen Hockenhull

INSPECTOR