
Appeal Decision

Site visit made on 9 October 2017

by **G P Jones BSc (Hons) MA MRTPI**

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

Decision date: 30 October 2017

Appeal Ref: APP/X1118/Q/17/3174212

Land off Raleigh Park South, Raleigh Park, South Molton, Devon EX36 4BT

- 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 David McLean Homes Limited (in liquidation) against the decision of North Devon District Council.
 - The development to which the planning obligation relates is the provision of residential development.
 - The planning obligation, dated 26 November 2003, was made between North Devon District Council and Devon County Council and JW Sharman Limited.
 - The application Ref 62154, dated 11 November 2016, was refused by notice dated 20 December 2016.
 - The application sought to have the planning obligation discharged.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the payment required can be discharged.

Reasons

3. The relevant clause is contained in paragraph 9 of the first schedule of the Agreement, dated 26 November 2003, made under Section 106 of the Town and Country Planning Act (hereafter referred to as the Agreement). Paragraph 9 reads as follows: "*Prior to commencement of the construction of any Dwelling on the land to pay to the District Council the Open Space Contribution towards the provision or equipping of open space within the vicinity of the Land subject to clause 7(vi) hereof*". In turn, clause 7(vi) made provision for the indexation of financial contributions. Furthermore, the Open Space Contribution is defined as being, "*the sum of (Four Hundred and Sixty Five Pounds and Seventy Five Pence (£465.75)(exclusive of VAT) for each dwelling to be constructed as part of the Development.*"
 4. The sum of £46,109.25 was paid to the Council on 12 April 2005 in connection with the requirements of paragraph 9 of the Agreement, which hereafter shall be referred to as the open space contribution.
 5. The Appellant contends that houses were being completed and sold from September 2005 onwards and I have no reason to dispute this. However, the Council contends that the development was not properly completed until later as, for instance, sewage treatment works were not in place until 2010 and
-

works to the highway network prior to adoption were being undertaken in 2011. I have not been provided with any conclusive evidence as to when the development was completed but in any event the Agreement does not contain any specific time limit or provision for payback. It is therefore different from the Agreement for the Dart Park development¹ that is cited and which contained a repayment clause after the expiration of 5 years.

6. The Agreement before me required a financial contribution towards either providing or equipping existing open space in the vicinity of the application site. The dwellings have now been constructed and as such it is likely that additional demands have been placed on open space nearby. The wording of the Agreement refers to the open space contribution being used towards the provision or equipping of open space but does not identify a specific project.
7. The Appellant has cited the Council's Supplementary Planning Documents (SPDs), namely the Provision of Public Open Space, Sport and Recreation Code of Practice (March 2004), and the Developer Contributions Code of Practice, (May 2007). However, both of the SPDs were adopted after the Agreement that is before me was completed. Furthermore, although the wording of the Agreement does not identify a particular project in my view it is sufficiently clear as for what and where the open space contribution is to be used. In terms of open space within the vicinity of the appeal site, there is open space near to the housing development at the eastern end of Livarot Walk within an easy walking distance for occupiers of the Raleigh Park development to make use of. Therefore the open space contribution would be in general accordance with these SPDs
8. Paragraph 69 of the National Planning Policy Framework (the Framework) refers to the need for planning decisions to achieve places which promote safe and accessible developments which contain high quality public space and which encourage the active and continual use of public areas. Furthermore, paragraph 73 of the Framework states that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.
9. Consequently, although the Council has not identified a particular project, nevertheless I consider that the original purpose of the open space contribution remains valid and it is reasonable to conclude that it could still be spent to deliver improvements in the vicinity of the appeal site in this regard.
10. Therefore, even though some time has now elapsed since payment, I consider that the open space contribution sought would be necessary, related directly to the development and fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and the tests for planning obligations in the Framework. In addition, and even though the Agreement pre-dates the CIL Regulations, I have not been presented with any evidence that the open space contribution would not comply with the requirements set out in Regulation 123.

Conclusion

11. For these reasons I conclude that the original purpose of the Agreement in relation to the open space contribution would still serve a useful purpose, and

¹ Agreement dated 16 November 2001 between North Devon District Council, Devon County Council, JW Sharman Limited and Lloyds TSB Bank plc

should continue to have effect without modification. Therefore the appeal should be dismissed.

GP Jones

INSPECTOR