
Appeal Decision

Hearing Held on 10 January 2018

by Neil Pope BA (Hons) MRTPI

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

Decision date: 15 February 2018

Appeal Ref: APP/D0840/Q/17/3179021

The Old Malthouse, Ruan Lanihorne, Truro, Cornwall, TR2 5NZ.

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to discharge a planning obligation.
 - The appeal is made by Mr Donal Lucey against the decision of Cornwall Council.
 - The development to which the planning obligation relates is the provision of two affordable dwellings from a scheme of nine flats (changed from holiday use).
 - The planning obligation, dated 5/1/12, was made between Cornwall Council and Donal Finbarr Lucey and The Royal Bank of Scotland PLC.
 - The application Ref. PA17/03295, dated 4/4/17, was refused by notice dated 1/6/17.
 - The application sought to have the planning obligation discharged.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The disputed planning obligation forms part of an Agreement under section 106 of the above Act for the change of use of nine holiday units to nine residential flats. The application was accompanied by a Viability Study¹ (dated 12 January 2009), prepared by a Chartered Surveyor, on behalf of the appellant. Planning permission was granted in January 2012 (ref. PA11/05772).
3. Under the terms of the Agreement two of the units² are to be made available as affordable dwellings. The Agreement also includes provision for an off-site affordable housing contribution of £32,482. The development has been completed and the off-site affordable housing contribution³ was paid to the Council in November 2016.
4. A previous application was submitted in 2016 to discharge the affordable housing obligation (ref. PA16/02341). Following unsuccessful negotiations with the Council to convert the on-site provision to an off-site contribution of £256,500 that application was refused.
5. The principle of the development is not an issue before me in respect of this appeal and both main parties informed me that a site inspection was not required. It was therefore unnecessary for me to undertake a site visit.

¹ Amongst other things, the Study concluded that it would not be economically viable or practical to provide all of the units as affordable housing. It also calculated the developers profit "*in the region of 15%, however this should be discounted to reflect the difficult property market.*" In response to this Study the Council undertook its own viability assessment and reached agreement with the appellant in respect of affordable housing provision.

² These comprise one bedroom flats.

³ Due to changes in the Retail Price Index the eventual figure paid to the Council was £36,152.

Main Issue

6. The main issue is whether the planning obligation requirement in respect of the provision of two affordable houses serves a useful purpose.

Reasons

7. The Government attaches considerable importance to meeting the housing needs for both market and affordable housing. Amongst other things, the National Planning Policy Framework (the Framework) requires the planning system to perform a social role in providing the supply of housing required to meet the needs of present and future generations.
8. At the local level, the development plan⁴ recognises that there is a high level of affordable housing need throughout Cornwall. It seeks to provide an element of affordable housing in Designated Rural Areas and Areas of Outstanding Natural Beauty⁵. Whilst only in draft form and of limited weight, the Council's 2015 Affordable Housing Supplementary Planning Document (SPD) states that ensuring the housing market offers enough decent homes at a price which people can afford is one of the Council's highest priorities.
9. The section 106 Agreement was concluded prior to the adoption of the latest version of the development plan. It includes a cascade approach for the occupation of the two affordable units with a Primary Area (the parish of Ruan Lanihorne), Secondary Area (parishes of Philleigh, Veryan, St. Michael Penkivel and Tregony) and Tertiary Area (the former administrative area of Carrick District Council). The Council has informed me that there is a local housing need within the parish of Ruan Lanihorne of three households and this need increases considerably if applied to the cluster of adjacent parishes. Even allowing for some double counting, this need would undoubtedly be much higher if applied to the whole of the former district council administrative area.
10. The above evidence of need was supported by oral representations made by the local councillors at the Hearing. Amongst other things, I was informed that there was a need for one bedroom affordable units in the Roseland peninsula. Within its Statement, the Council has also informed me that in November 2017 approval was given to two eligible applicants to purchase the affordable units that are the subject of this appeal. On behalf of the appellant, it was accepted that there is evidence of need for these two affordable units.
11. The two affordable flats that are subject of this appeal are available to help meet the identified housing needs of the local community. If these properties were released onto the open market they would diminish the stock of affordable dwellings in this part of Cornwall. This would frustrate the objectives of the Framework and the development plan in creating sustainable, inclusive and mixed communities. The planning obligation requirement in respect of the provision of two affordable houses on the appeal site serves a useful purpose.
12. The Council has suggested that the section 106 Agreement could be modified to bring it in line with its current template for affordable housing obligations. However, given that the development has been completed, I agree with the

⁴ This includes the Cornwall Local Plan Strategic Policies 2010-2030 and the Roseland Neighbourhood Development Plan 2015-2030.

⁵ The appeal site lies within a Designated Rural Area and an Area of Outstanding Natural Beauty.

appellant that the changes would be unlikely to provide any meaningful benefit and would not resolve the dispute between them. Given my finding above in respect of the usefulness of the obligation such changes would be unnecessary.

13. With section 106BA of the above noted Act now repealed, both main parties agreed that whilst viability was a consideration it was not determinative to the outcome of this appeal. In this regard, the appellant has used the HCA Development Appraisal Tool to reveal that the development of nine flats on the appeal site would result in a loss of £264,391. This increases to £300,543 with the off-site affordable housing contribution already paid to the Council.
14. The Council is critical of the appellant's assessment and in particular the interest accrued⁶ over a period of eight years. It has argued that as the development was completed approximately nine months after entering the section 106 Agreement if the appellant had complied with the obligations he could have achieved sales of both the open market and affordable dwellings in a more timely manner. This would have introduced credit back into the scheme, reduced the level of capital being borrowed against and reduced the period of borrowing. Having modelled various scenarios the Council considers that an appropriate interest cost should be £25,000 - £30,000.
15. The appellant's interest costs appear very high for a scheme of this size and type. However, they are what they are. There is little doubt in my mind that with the development now completed the appellant, even if the section 106 obligation was discharged, will make a financial loss. It is unfortunate when any party incurs a loss but that is a risk the appellant knowingly took when he decided to commit to and undertake this scheme of development. The Council and the local community should not have to share the appellant's losses by discharging an obligation that serves a useful purpose. I note the comments of interested parties that this would be tantamount to subsidising a developer.
16. The Framework requires that where obligations are sought or revised, local planning authorities should take account of changes in market conditions over time, and wherever appropriate, be sufficiently flexible to prevent planned development being stalled. In this regard, the appellant has argued that retaining the disputed obligation is stalling the release of homes into the local supply of housing. In particular, four of the market dwellings cannot be sold⁷ until the affordable units have been disposed of. This type of trigger mechanism is common in section 106 Agreements of this type and provides a degree of certainty for the provision of necessary affordable housing.
17. I appreciate that many small businesses / developers have cash-flow issues. However, finance charges were included as part of the appellant's Viability Study and the Council's assessment of that Study. There is substance to the Council's argument that any stalling in the supply of housing is at least, in part, attributable to shortcomings in marketing the affordable housing units. In this regard, whilst all the units have been marketed since 2012, it was not until the end of 2016 and several years after the development was completed that the values for the affordable units were ratified. The Council informed me that over this period of time it contacted the appellant on numerous occasions to discuss and agree appropriate marketing for these affordable dwellings.

⁶ in excess of £220,000.

⁷ I understand that three market dwellings (2 bedrooms) have been sold to another of the appellant's companies at prices between £140,000 - £150,000. This is below the valuations obtained by the Council.

18. Whilst the appellant instructed estate agents to advertise these units that marketing exercise does not appear to have been targeted at those in need of affordable housing. I understand that these units were not advertised on Help to Buy South West's website or any other similar organisation promoting affordable housing until the end of 2016. It also appears that little, if any, communication took place with the Ward Member, parish councils or other members of the local community to raise awareness of the availability of these affordable units for purchase.
19. Whatever the eventual financial loss incurred by the appellant and the appropriateness of the marketing, these affordable units are available now, there is a need for them and prospective purchasers have come forward and have been approved. The appellant's arguments in respect of viability do not justify discharging the disputed obligation. Having regard to all other matters raised, I therefore conclude that the appeal should not succeed.

Neil Pope

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs H Nicholls MSc, MRTPI	Laurence Associates
Mr D Lucey	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Woodley BSc, BA, Dip Arch Con, MRTPI, IHBC	Principal Planning Officer
Mr D Webb MAPM	Principal Development Officer, Affordable Housing Team

INTERESTED PERSONS:

Cllr J German	Ward Member, Cornwall Council
Cllr G Pring	Ruan Lanihorne Parish Council
Cllr D Giles	Ruan Lanihorne Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1	Viability Study dated 12 January 2009
Document 2	The Council's assessment of the 2009 Study
Document 3	Copy of 2012 Section 106 Agreement
Document 4	Copy of updated s106 template used by the Council