The Planning Inspectorate

Appeal Decision

Site visit made on 1 May 2019

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2019

Appeal Ref: APP/H1840/Q/18/3202454
Coach House Farm, Cheltenham Road, Broadway WR12 7BY

- 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 & Mrs Maymon against the decision of Wychavon District Council.
- The development to which the planning obligation relates is erection of an agricultural worker's dwelling.
- The planning obligation, dated 20 December 2002, was made between Wychavon District Council, John Philip Lee-Woolf, Janet Mary Elizabeth Lee-Woolf and HSBC Bank PLC.
- The application Ref 17/01702/S106, dated 15 August 2017, was refused by notice dated 11 October 2017.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is allowed. The planning obligation, dated 20 December 2002, made between Wychavon District Council, John Philip Lee-Woolf, Janet Mary Elizabeth Lee-Woolf and HSBC Bank PLC is discharged.

Procedural Matter

2. Based on the submissions it is clear that the appellant seeks to discharge all three obligations within the Section 106 Agreement (the s106) concerned. Those are that: the Development will be inextricably linked and ancillary to the use and occupation of the Land as an agricultural holding; the Development shall not be sold leased or otherwise disposed of in any way separately from the Land; the Development shall not be occupied by anyone other than a Qualifying Occupier and any dependants of such a person residing with him or her. Reference to the Land relates to the area edged red on the plan within the s106 comprising Coach House Farm, a wider area than that edged red on the plan accompanying the application to discharge the s106. Reference to a Qualifying Occupier relates to a person solely or mainly working or last working in agriculture on the Land or a widow or widower of such a person.

Application for costs

3. An application for costs was made by Mr & Mrs Maymon against Wychavon District Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether or not the planning obligations referred to in paragraph 2 above serve a useful purpose.

Reasons

Main issue

5. I acknowledge that the definition of the Development in the s106 refers to the erection of an agricultural worker's dwelling on the land in the approximate location shown coloured blue on the Plan the subject of the planning permission. As such this provides some leeway as to where the dwelling could be built having regard to the plan attached to the section 106 Agreement. Nevertheless, it has been established through the approval of an application for a Certificate of Lawfulness (CoL) that the dwelling as built on the site is materially different to that approved under planning permission Ref W/01/01880/PN, and therefore does not rely on that permission, including a condition to secure agricultural occupancy. The Council also confirms in its submissions that the dwelling as built was not subject to the planning obligations as set out in the s106. The development subject to the original planning permission has therefore not been implemented.

6. The Council states that the question as to whether the original planning permission is still valid and could be implemented is beyond the scope of this appeal and has not been addressed by the CoL. However, it is clear from the CoL that the house as built does not rely on the original planning permission. It is also clear from the submissions that the original permission, on the basis that it was not implemented, is time expired as five years have expired since the date of that permission. I have received no substantive evidence to the contrary. The planning obligations, whilst still in place, could therefore not be triggered.

7. The Council also refers to reasons or circumstances where the owner might seek to establish if the planning permission is still valid, such as if the existing dwelling were to be destroyed by fire or if a site valuation were to be required. However, I have received no substantive evidence to demonstrate how these or any other reasons or circumstances would be likely to lead an owner to conduct such a search or of any scenario whereby the original permission could be implemented.

8. The Council also refers to another appeal case, Ref APP/M1710/Q/16/3157060, at Headley Down. However, the current appeal differs from that in terms of the original permission of the former having not been implemented and being time expired. There is therefore no practical basis for enforcing the s106 concerned should the Council choose to do so.

9. The above findings render irrelevant the question of whether or not the obligations remain necessary in respect of development plan policies seeking to control development in the countryside.

10. The appellant refers to another case at Penponds, Willersley Road, Badsey, claimed to be similar to that relating to this appeal, for which the Council agreed that the s106 was defunct and could be removed from the Local Land Charges Register in view of the terms of the Certificate of Lawful Use that had been issued. The Council has not provided any substantive evidence to dispute

any similarities between the two cases. However, I do not have the full details of that case to enable a full and proper comparison and so have afforded this factor little weight.

11. Notwithstanding that factor relating to the Penponds case, for the other above reasons, the planning obligations referred to in paragraph 2 above do not serve a useful purpose.

Other matter

12. I have had regard to a concern raised by an interested party that the nearby agricultural buildings could be used for industrial or other business uses were the planning obligation ties lifted. On the basis of my findings on the main issue, such concerns would not be able to be addressed in the context of this appeal, and would be a separate matter, including whether or not planning permission would be required for such uses.

Conclusion

13. For the above reasons, the appeal should be allowed.

Andrew Dawe

INSPECTOR