



Appeal Decision

Site visit made on 7 August 2019

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2019

Appeal Ref: APP/C3810/Q/19/3225490

Part of Bognor Regis School, Pevensey Road and Westmeads Drive

- 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 Farndell Builders Limited against the decision of Arun District Council.
 - The development to which the planning obligation relates is 2No. single dwellings on two separate sites on surplus land.
 - The planning obligation, dated 2 August 2011, was made between Arun District Council and West Sussex County Council.
 - The application Ref BR/146/18/PO, dated 24 May 2018, was refused by notice dated 5 October 2018.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation, dated 2 August 2011 made between Arun District Council and West Sussex County Council, no longer serves a useful purpose and is discharged.

Background and Main Issue

2. The Government's Planning Practice Guidance (PPG) sets out that planning obligations can be discharged where they are over five years old, and where it can be demonstrated that they no longer serve a useful purpose. Consequently, the main issue in this appeal is whether the disputed obligation continues to serve a useful purpose.

Reasons

3. The planning obligation in dispute relates to two parcels of land at the periphery of the grounds of Bognor Regis School. I saw at the time of my site visit that the development as described above has been completed and I note from the appellant's statement that the houses were built in 2013/14. The planning obligation requires the payment of an affordable housing contribution on the commencement of development; however, the specified contribution has not been paid. The Council has only relatively recently sought the contribution.
4. I note that the appellant considers their business to be the type of operation that the *Small-scale Developers* Written Ministerial Statement of November 2014 (the WMS) and related material in the PPG seek to support. The WMS sets out that "due to the disproportionate burden of developer contributions on

small-scale developers” for developments of 10 dwellings or less affordable housing contributions should not be sought. Furthermore, the relevant policies of Arun’s adopted Local Plan¹ do not seek affordable housing contributions from developments comprising 10 dwellings or less. Moreover, the National Planning Policy Framework, which post-dates both the Local Plan and the WMS, states that provision of affordable housing should not be sought for residential developments that are not “major developments”². These matters, taken together, carry very considerable weight against the disputed obligation in the overall balance, as the quantity of development to which it relates falls significantly below the relevant policy thresholds.

5. The Council has referenced two recent cases³ where it has discharged planning obligations relating to affordable housing where the number of dwellings permitted on the related site have been lower than the thresholds set out in local and national policies. I am mindful that the schemes those other obligations related to had not been commenced, and that their site owners would have been able to submit fresh planning applications, which would not be subject to an affordable housing requirement due to the change in policy since the original permissions. Whilst I am mindful of the distinction between those other schemes and the development before me in this appeal which has been completed, the cited decisions nevertheless demonstrate the Council’s approach to seeking contributions from smaller housing developments in the light of the adopted Local Plan and national policies.
6. I do, however, acknowledge the Council’s concern that to allow the discharge of an obligation such as the one before me in this case, which relates to a completed development, could be taken as a precedent in relation to other schemes where contributions have already been made and the Council has used the receipts to support affordable housing elsewhere in the District. In these regards, I have also taken into account the other Council decision drawn to my attention which refused to discharge an obligation⁴.
7. Nevertheless, s.106(A)(3) of the Town and Country Planning Act 1990 (as amended) (the Act) provides that an application to discharge a planning obligation must be made by a person against whom a planning obligation is enforceable. Consequently, if an obligation is not outstanding, such as in the case where an affordable housing contribution has already been made, there would be nothing to enforce against- and therefore no valid applicant in these terms for the purposes of the Act. Accordingly, this matter does not carry any weight in favour of the disputed obligation in this case.
8. For these reasons, I find that the matters advanced in favour of the disputed obligation do not outweigh its clear conflict with national policy and the policies of the Local Plan. Accordingly, I conclude on this main issue that the disputed obligation no longer serves a useful purpose. Consequently, for the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should succeed.

G J Fort
INSPECTOR

¹ Arun Local Plan 2011-2031 (adopted July 2018) Policies H DM1 and AH SP2.

² That is 10 or more homes.

³ Council references: AW/314/17/PO and WA/5/18/PO

⁴ Council reference: LU/78/18/PO