
Appeal Decision

Hearing Held on 16 October 2019

Site visit made on 16 October 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2019

Appeal Ref: APP/V2635/Q/18/3218994

South of The Firs, 68 School Road, Runcton Holme

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge planning obligations.
 - The appeal is made by Jeremy Lee Clarke and Claire Emma Clarke against the decision of King's Lynn and West Norfolk Borough Council.
 - The development to which the planning obligation relates is described as 're-development of existing caravan park to provide eleven permanent cabins with siting for thirty-five touring caravans/tents. Also, to replace the existing derelict clubhouse/toilets/showers and reception within a new building on the exiting footprint'.
 - The planning obligations, dated 8 June 2010, were made between Kings Lynn and West Norfolk Borough Council and Jeremy Lee Clarke and Claire Emma Clarke.
 - The application Ref 10/00327/VAR1B, dated 8 May 2018, was refused by notice dated 6 July 2018.
 - The application sought to have planning obligations (Clauses 5 and 6 of Schedule 3 of the Deed of Agreement) discharged.
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Decision

1. The appeal is allowed. The planning obligations in Clauses 5 and 6 of Schedule 3 of the Deed of Agreement, dated 8 June 2010, made between King's Lynn and West Norfolk Borough Council and Jeremy Lee Clarke and Claire Emma Clarke, do not serve a useful purpose and are discharged.

Preliminary Matters

2. Section 106(A)(3) of The Town and Country Planning Act 1990 (the 'Act') provides that an application to discharge a planning obligation must be made by a person against whom the obligation is enforceable. The appellant is identified on the relevant forms as J Clarke Builders Ltd, but this company is not party to the deed and therefore the planning obligations cannot be enforced upon it. That said, it was confirmed at the hearing that the appellants should have been identified on the application form as Jeremy Lee Clarke and Claire Emma Clarke, who are the owners of J Clarke Builders Ltd. The Council were content with me proceeding on this basis.
3. There is an error in Clause 5 as it states that the dwelling (The Firs) shall at all times be held and occupied *within the site* instead of *with the site* (the site being the application site). This error could have proven significant because the The Firs is outside the application site. However, the second part of Clause 5 is reasonably clear despite the error because it states that the dwelling should not be sold or let separately (from the application site).

Background and Main Issues

4. Planning permission was granted in 2010 (Ref. 10/00327/FM) for the re-development of the appeal site to provide eleven permanent cabins with thirty-five touring caravans/camping pitches and ancillary development including a reception/amenity building. It was approved pursuant to a suite of planning obligations secured through a deed of agreement under section 106 of the Act. The approved holiday leisure use is not up and running and the highway access remains incomplete. However, the appellant and Council confirmed at the hearing that a lawful commencement of the approved development has occurred, and I have no reason to disagree.
5. Two of the obligations, Clauses 5 and 6, tie the ownership and occupation of The Firs to the approved holiday leisure use. The appellants sought the removal of these obligations through the submission of application 10/00327/VAR1B, which the Council refused. In assessing such applications, s106A of the Act states that a planning obligation may be discharged if it no longer serves a useful purpose. Accordingly, and when having regard to the submissions before me, what I observed during the site visit and heard during the hearing, the main issue in this appeal is whether the planning obligations in dispute still serve a useful purpose, with particular reference to:
 - The living conditions of the occupants of The Firs, regarding the potential for noise and disturbance; and
 - Whether there is a need to tie the ownership/occupation of The Firs to the holiday leisure use in order to prevent a planning application being made in the future for manager's accommodation.

Reasons

The living conditions of the occupants of The Firs

6. The Firs is a sizeable detached dwelling with a frontage onto School Road. It is set behind a generous driveway and forecourt which leads to a large outbuilding and garage. This structure separates the rear garden of The Firs from the reception/amenity building. The garden is otherwise enclosed by close boarded fencing and landscaping. The property is currently in the same ownership as the holiday leisure site, which wraps around the southern and eastern boundaries of The Firs. The area directly to the rear is set out to accommodate eleven holiday cabins. The driveway into the holiday leisure use is *in situ* and passes the eastern boundary of The Firs.
7. Holiday units fall within the same C3¹ use class as conventional dwelling houses because the character of use is similar. I have seen nothing of substance to suggest holiday homes are more intensively used. With this in mind, the distance between The Firs and the holiday homes would not be unusually close for separate residences. The space would be large enough to safeguard the living conditions of the occupants of The Firs from any noise and disturbance caused by general activity at the appeal site.
8. More raucous or unsociable activity at the appeal site would be addressed through Condition 14 of planning permission 10/00327/FM, which requires a management plan to be approved by the Council. This would cover matters

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

such as opening hours, the timing of arrivals and departures, site rules, the provision of a staffed reception during most of the day and contact details for a manager or security guard out of hours. These measures would ensure that activity during the day and night is properly managed, thereby safeguarding the living conditions of the occupants of The Firs. It would also negate the need for a manager to live on site to supervise visitors.

9. The vehicular access could be used quite intensively as it would be the only way into the site once the existing access from The Firs is blocked off. However, once the site is operational The Firs would be separated from the access driveway by a wide forecourt and the main access into the site would be positioned further to the east. Therefore, the flank elevation of The Firs would not be directly adjacent to the access or driveway. The distance would provide some mitigation as vehicles pass.
10. In addition, there is solid boundary treatment between The Firs and the access driveway, which includes a large outbuilding and garage. This structure screens most of the rear garden from the driveway. The distance and intervening features would provide noise attenuation to both the dwelling and the garden. It would also prevent unreasonable light pollution from any headlights. Moreover, The Firs has only three double glazed windows facing the driveway, with the rooms served by these windows being a utility room and dual aspect kitchen. Accordingly, these windows would not need to be opened regularly. Vehicles would also be travelling slowly which would further soften any impact as they pass the side boundary of the property.
11. For the reasons set out above, primarily the distance and presence of intervening structures, I am satisfied the use of the access would not result in unreasonable levels of noise and disturbance and thus harm to the living conditions of the occupants of The Firs. It is also noteworthy that the Council's concerns are not supported by technical evidence, such as a noise impact assessment, or the views of an expert Environmental Health Officer. The Council's Community Safety and Neighbourhood Nuisance Team did not object to the 2010 application or provide comment upon the application to discharge the planning obligations.
12. For the reasons set out above I find that the obligations serve no useful purpose in respect of this matter as the living conditions of the occupants of The Firs would be acceptable regardless of whether they are imposed.

Whether there is a need to tie the ownership/occupation of The Firs to the holiday leisure use in order to prevent a planning application being made in the future for manager's accommodation

13. A previous planning application at the appeal site for a holiday leisure use with manager's accommodation was refused in 2009 (Ref. 09/01635/FM) because the Council was of the view such accommodation was not essential. The subsequent application, without manager's accommodation, was approved (Ref. 10/00327/FM). In so doing the planning obligations the subject of this appeal were entered into. The Council sought them because it believed the appellants had a latent intent for manager's accommodation given the application in 2009 and therefore an application could be made in the future. The planning obligations seriously limit the likelihood of a successful application being made for manager's accommodation as there would be no need with The Firs tied to the holiday leisure site.

14. However, if the planning obligations were removed and an application submitted for manager's accommodation, bearing in mind the latter occurrence cannot be guaranteed, the Council would have to assess such a proposal on its own merits. It would have the ability to refuse such an application, in the same way it did in 2009, if it was of the view that it is not essential for the proper running of the business for someone to live permanently at the site. It would be material to any assessment whether The Firs had been recently sold away from the holiday leisure site.
15. Therefore, it is unnecessary to impose planning obligations aimed at preventing an application from being made, as the Council can assess such an application and refuse it if not satisfied by any case made. The appellant's have not made a case that manager's accommodation is necessary and given what was outlined at the hearing in respect of the management plan required to satisfy Condition 14, it may prove difficult to make such a case, as the site can apparently be adequately managed without a member of staff living permanently on site to supervise customers.
16. Thus, in respect of this matter, the obligations serve no useful purpose as the Council has control over the presence or otherwise of manager's accommodation at the appeal site whether the obligations are imposed or not.

Other Matters

17. The Council's reason for refusal suggests that the removal of the tie would be contrary to Policy CS06 of the Core Strategy and Policy DM6 and DM15 of the Site Allocations and Development Management Policies Plan 2016. At the hearing the Council accepted that this was an error as the removal of the obligations in dispute would not result in a conflict with these policies. This is because the policies are concerned with proposals for rural workers homes and new dwellings in the countryside, neither of which were proposed in 2010 or would inevitably come about from discharging the obligations.
18. The Council's reason for refusal also states that the removal of the tie would be at odds with the National Planning Policy Framework, but this is not a point that has been expanded on and my attention has not been drawn to any specific part of the document the discharge of the obligation would offend.

Conclusion

19. In conclusion, I find that the planning obligations do not serve a useful purpose. Therefore, the appeal should be allowed and the obligations in Clauses 5 and 6 of the s106 Agreement discharged.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Ian Cable, of Ian J M Cable Architectural Design

FOR THE LOCAL PLANNING AUTHORITY

Natacha Osler, of Kings Lynn and West Norfolk Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

- Doc 1 – Indicative layout plan 812-03A showing approved housing scheme opposite the appeal site
- Doc 2 – Plan appended to the s106 legal Agreement showing the Firs in green and the rest of the site in red
- Doc 3 – Letters from the appellants' agent to the Council dated 23 April 2018 and 31 May 2018