The Planning Inspectorate

Appeal Decision

Site visit made on 28 October 2019

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 19 November 2019

Appeal Ref: APP/X1545/Q/19/3231222
The Walnuts, 61 Broad Street Green Road, Great Totham, Maldon, Essex CM9 8NX

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge/modify a planning obligation.
- The appeal is made by Mrs M Houlding against the decision of Maldon District Council.
- The development to which the planning obligation relates is the conversion of a garage to an annex and construction of a garage.
- The planning obligation, dated 27 January 2000, was made between Maldon District Council and Myra Susan Houlding.
- The application Ref MLA/MAL/19/00127, dated 31 January 2019, was refused by notice dated 28 March 2019.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is allowed. The planning obligations, dated 27 January 2000, made between Maldon District Council and Myra Susan Houlding, no longer serve a useful purpose and are discharged.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether the Agreement continues to perform a useful planning purpose.

Reasons

4. Planning permission was granted at the appeal site in 1990 for the conversion of an existing garage into a 'granny annexe' and construction of a new garage. This permission included a condition which prevented it being used other than as an annexe to the main house and not as a separate dwelling. This permission was varied by the removal of that condition by planning permission Ref FUL/MAL/98/0619 but this was subject to the S106 Agreement which is the subject of this appeal.

5. In summary, the obligations within the Agreement perform the following: 1) prevent the annexe building being sold separately from the main property, 2) prevent the annexe having separate services, 3) prevent the annexe being used as a separate and independent residence, ensuring it is occupied for

purposes ancillary to the main dwelling or for lettings of no more than 12 months for people working in the District. It is accepted that some of these obligations have not been complied with.

6. A Certificate of Lawful Existing Use or Development (CLEUD) was allowed on appeal (Ref: APP/X1545/X/17/3184314, dated 9 May 2018). This certified as being lawful, "the use of the building as a separate single dwelling house".

7. Within the reason for refusal the Council indicates that the proposal would be contrary Policies S8 and H4 of the Maldon District Local Development Plan (LDP) which seek to prevent the erection of market dwellings in the countryside and impose stringent criteria for backland or infill development. In relation to Policy H4, the section referred to by the Council relates to backland and infill development. Firstly, and of some importance, it is worthy to note that the building already exists and any effects that it has as a result of its physical presence on the local environment would not be altered by this proposal. Although it may be difficult to apply the first criteria of this section of Policy H4 which requires that there should be a significant under-use of land, the building is currently used as a separate dwelling and would continue to be. Additionally, I find that the other criteria are complied with and the S106 Agreement would have no effect on all of these criteria.

8. In relation to Policy S8, this seeks to direct development within defined settlement boundaries and other specified locations and seeks to protect the countryside. It states that outside these areas permission for development will only be granted where the character and beauty of the countryside is not adversely affected and provided it is for one of a list of specified uses; these do not include the use for which the annexe is put to. The Council indicates that the proposal involves a change of use and so would be development which is contrary to this policy.

9. I consider that it is an important consideration within this appeal that a CLEUD has been granted which certifies that the use as a separate dwelling is lawful. This was decided upon with the full acknowledgement that the services for the annexe were controlled via the main house. I conclude similarly, that such a requirement would have no determinative effect on whether the annexe is used as a separate dwelling.

10. The third obligation contained at paragraph 4(iii) of the Agreement requires that the annexe shall not be used as a separate and independent unit of residential accommodation and ancillary to the main house, or for local workers for lettings of no more than 12 months (it is noteworthy that the Council has reproduced this within its statement but has omitted the word "or"). In my judgement the latter part of this obligation is consistent with its use as a separate dwelling. In relation to the first obligation contained at paragraph 4(i) of the Agreement, this requires that the annexe shall not be sold or otherwise disposed of separately from the remainder of the larger site. This does not prevent its use as a separate dwelling and merely seeks to control ownership.

11. When taken as a whole, I consider that the proposed discharge of the Obligations within the Agreement would not have the effect of resulting in a material breach of the Council's planning policies. The building already exists

and can be occupied by a local worker with no family or other connection with the occupier of the main house. The arrangements for the services have no overriding effect on whether the annexe can be considered as a separate dwelling and the control over its sale or other disposal does not mean that it cannot be used as a separate dwelling.

12. Therefore, I conclude that the obligations serve no useful purpose and that they should be discharged.

S T Wood

INSPECTOR