# Appeal Decision

Site visit made on 3 February 2020

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 February 2020**

**Appeal Ref: APP/Y3940/Q/19/3238516**
**4 Tangier Close, Warminster, Wiltshire, BA12 0FA.**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (the Act) against a refusal to discharge a planning obligation.
- The appeal is made by Mr R Denton against the decision of Wiltshire Council.
- The development to which the planning obligation relates is the erection of two dwellings (plot 2 only) with a financial contribution towards the cost of providing affordable housing elsewhere within the administrative area of the Council.
- The planning obligation, dated 25/11/11, was amended by two deeds of variation. The first, dated 10/1/13 (separated the site into two plots) and the second, dated 18/2/14 (different design) was made between Wiltshire Council and Robin Ian Denton, Svenska Handelsbanken AB and Leonard Clive Colliss and Patricia Marie Colliss.
- The application Ref.19/04757/106, dated 6/5/19, was refused by notice dated 8/7/19.
- The application sought to have the planning obligation discharged.

## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is whether the planning obligation continues to serve a useful purpose.

## Preliminary Matter

3. The site has a lengthy planning history. This includes permission for two detached dwellings that were allowed on appeal in 2014[1]. The appellant is seeking to discharge an obligation for a financial contribution of £30,448.80 towards the cost of off-site affordable housing provision pertaining to plot 2.

## Reasons

4. Since at least 2011, the development plan[2] has identified a need for affordable housing within Wiltshire. The need to make a financial contribution towards the cost of providing off-site affordable housing was accepted by the appellant when he agreed the deed of variation to the planning obligation, as well as the previous Inspector when allowing the appeal in 2014. In this regard, the Inspector was satisfied that the agreed financial contribution was *"reasonable and necessary to make the development acceptable in planning terms".*

[1] APP/Y3940/A/14/2212664.
[2] This now includes the Wiltshire Core Strategy (CS) adopted in 2015 and the 'saved' policies of the West Wiltshire District Plan (DP) adopted in 2004.

5. Since 2014, there have been changes to the development plan and national planning policy for seeking affordable housing in respect of developments involving 10 units or fewer. However, as recognised within the development plan[3], there is a continuing need for more affordable housing. A contribution of £30,448.80 towards the cost of providing affordable housing on a different site within Wiltshire would assist in meeting the housing needs of the community. It would help to create mixed, balanced and inclusive communities and would accord with the social objective of the National Planning Policy Framework. In so doing, the planning obligation continues to serve a useful purpose.

6. In determining this appeal, it matters not that the threshold for triggering off-site affordable housing contributions has changed or that the appellant was unaware of the now repealed provisions of section 106BA of the Act. It is also not for me to determine whether or not the remainder of the land allocated for housing under DP policy H3 is deliverable.

7. I note the Development Appraisal that has been submitted in support of the appeal and the loss of £165,504 that it is claimed has been incurred by the appellant in developing the appeal site. However, the higher build costs (in part, attributable to the affordable housing contribution) of developing this site would have been known to the appellant before he commenced construction. This did not prevent him from undertaking and completing the development and no doubt, with more than a keen interest as to future market conditions.

8. It is very far from certain that the appellant, in acquiring the site, did not pay 'over the odds' for the land. I also note that the gross development value in the Appraisal is based on a valuation (£460,000) from 2014. Given the passage of time, the standard of accommodation that has been provided (4 bedrooms, 3 bathrooms) in an attractive part of this popular market town, it would be very surprising if the value of the property is not considerably higher. In this regard, the appellant has not submitted any details of market conditions. In am unconvinced by the Appraisal.

9. The main thrust of the Government's objective for considering development viability is to unlock sites that have been stalled because of agreements that may no longer be economically viable. Whilst stalled developments are not the only type of economically non-viable development, no part of this development is incomplete and the gross development value in the Appraisal is based on a valuation that is over five years old.

10. On the basis of the information before me, discharging the obligation would be tantamount to offsetting some of the appellant's claimed loss. Protecting developers' profits is not a proper function of the planning system, which is intended to operate in the public interest. Even if the appellant's claimed loss is a fair assessment, I have found that the obligation continues to serve a useful purpose. I must therefore conclude that the appeal should not succeed.

*Neil Pope*

Inspector

[3] CS policy 43.