



Appeal Decisions

Site visit made on 30 October 2019

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2020

Appeal Ref: APP/D0840/Q/19/3220143 Woodsaws Farm, Lanreath, Looe PL13 2NT

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation in full.
 - The appeal is made by David John Wills, Angela Mary Wills and Michael John Wills against the decision of Cornwall Council.
 - The development to which the planning obligation relates is conversion of redundant barn into 2 dwellings and 2 holiday units. Installation of new septic tank.
 - The planning obligation, dated 24 November 2000, was made between Caradon District Council, David John Wills, Angela Mary Wills, Michael John Wills, Barclays Bank PLC and Lloyds Bank PLC.
 - The application Ref PA18/06911, dated 20 February 2018, was refused by notice dated 30 November 2018.
 - The application sought to have the planning obligation discharged in full.
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Decision

1. The appeal is allowed. The planning obligation, dated 24 November 2000, made between Caradon District Council, David John Wills, Angela Mary Wills, Michael John Wills, Barclays Bank PLC and Lloyds Bank PLC is discharged in full.

Preliminary Matters & Background

2. Cornwall Council is the successor in title to Caradon District Council in respect of the original deed of planning obligation.
3. Based on the submissions, it is clear that the appellants seek to discharge all three obligations within the Section 106 Agreement (the s106) concerned. The second schedule of the S106 states the owners agreed obligations are:
 - i) If either or both of the dwelling units numbered 1 and 2 on the Haulage Land are occupied by someone working in association with the haulage business not to sell lease or in any way part with possession of the whole or any part of the dwellings units numbered 1 and 2 separately from the Haulage Land.
 - ii) If either or both of the dwelling units numbered 1 and 2 on the Haulage Land are occupied by persons solely or mainly working in agriculture or last working in the locality in agricultural or in forestry not to sell lease or part with possession of the whole or any part of the dwelling units numbered 1 and 2 separately from the Farmland provided that the letting of the Farmland or any part thereof on a farm business tenancy for three

years or less under the Agricultural Tenancies Act 1995 shall not be a breach of this undertaking and covenant.

- iii) Not to sell lease or in any way part with possession of the whole or any part of the holiday units numbered 3 and 4 on the Haulage Land separately from the Farmhouse except that the letting of units 3 and 4 for holiday purposes shall not be a breach of this undertaking and covenant as long as no such letting shall exceed the period of 6 weeks in any one calendar year to any one individual.
4. The original permission¹ includes conditions (6 and 9) that restrict the occupation of the converted units with the following wording:
- 6. Units 3 & 4 hereby permitted shall be used for holiday purposes only and shall not be used as the only or main residence of any person.
 - 9. The occupation of Unit 1 & 2 shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act, 1990, or in forestry, or in association with the adjoining haulage business, or a widow or widower of such a person, and to any resident dependents.

Application for costs

5. An application for costs was made by David John Wills, Angela Mary Wills and Michael John Wills against Cornwall Council. That application is the subject of a separate Decision.

Main Issue

6. The main issue is whether the obligations no longer serve useful planning purposes.

Reasons

7. The refusal reason does not refer to the linking of the holiday accommodation units to the main farmhouse by the s106. The Council has recently found the use of units 3 and 4 as independent residential dwellings without any holiday use restriction as acceptable, issuing a permission to that effect in September 2018. The Council has not, therefore, objected to the discharge of obligation iii), as stated above, and I have no reason to disagree.
8. The Council contends, however, that if the s106 were discharged in its entirety, it would lead to the removal of the occupancy conditions and subsequently to further applications for residential development to serve the functional requirements of the haulage business and agricultural enterprise operating from the site. The Council goes on to state that it would have difficulty in refusing applications for additional rural workers' dwellings if a functional need is demonstrated. Any subsequent applications to remove the occupancy conditions would, however, be assessed on their own merits, as would any future applications for new rural workers' dwellings. The discharge of the obligations would not result in a carte blanche acceptance of further rural workers' dwellings in the locality.

¹ Planning Ref: 99/00018/FUL

9. The occupancy condition (9) of the original permission and the associated s106 serve different purposes. The planning history² of the original permission indicates that the s106 was proposed to prevent the sub-division of the agricultural holding and to ensure that the dwellings were to serve either business. The wording of the obligation does not, however, restrict the occupation of units 1 or 2 and that is achieved by condition 9. PPG7, which was in force at the time the s106 was agreed, advised that authorities may use planning obligations to tie a farmhouse to adjacent farm buildings or to the agricultural land of the unit, to prevent them being sold separately without further application to the authority. There is no such guidance in the current adopted development plan policies relevant to housing for rural workers, including Policy 7 of the Cornwall Local Plan(2016)(CLP) and Policy H1 of the Lanreath Parish Neighbourhood Development Plan (2018) (LNDP), or within the National Planning Policy Framework (the Framework) or the Planning Practice Guidance (the Guidance).
10. The current policy context recognises the need for rural workers to live at, or near, their place of work, but does not specify that dwellings for rural workers should be tied to the land or buildings through a planning obligation. The occupation of units 1 and 2 are limited by condition 9 of the original permission to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or in association with the adjoining haulage business, or a widow or widower of such a person, and to any resident dependents. There is no requirement, therefore, for the occupiers of units 1 or 2 to be employed on the 'the Farmland' or 'the Haulage Land' as defined by the s106. Economic development in rural areas is not, generally, dependent on ensuring specific land and/or buildings remain tied to a specific rural worker's dwelling. Indeed, long term inflexibility in terms of land ownership has the potential to hinder rural economic development. What is important is that the supply of rural workers' dwellings within rural areas is commensurate with need.
11. The Framework states, at paragraph 54, '...Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.' Condition 9 addresses the need to preserve the stock of rural workers' dwellings in the locality without being unnecessarily restrictive or onerous. I am not persuaded it is necessary, for planning reasons, for either 'the Haulage Land' or 'the Farmland' to be under the same ownership as units 1 and 2. Indeed, the s106 is worded in such a way that the obligation fails to restrict the sale of "the Farmland" if both units 1 and 2 are both occupied in association with the haulage business.
12. Whilst I have not been provided with full information of the cases cited, the appellants' evidence³ does indicate that, generally, the Council no longer requires planning obligations that tie rural workers' dwellings to land and/or buildings and, instead, relies upon occupancy conditions. I acknowledge that each case must be assessed on its own merits and that the adjoining haulage use is a material consideration not present in the appellants' cited cases. Nevertheless, it is not clear from the Council's statement why the adjoining haulage use necessitates the restriction of separate land sale as set out within the s106. The Council assert that the scale and nature of the adjoining haulage operations indicates that there may be a functional need for an associated

² Council's Statement – Appendix 3

³ Appellant's Statement – Appendices 5 to 15

dwelling. However, even at present, the combined restrictions of the occupancy condition and the planning obligations do not ensure that either unit 1 or 2 are occupied by a person solely or mainly working, or last working, in association with the adjoining haulage business.

13. I have had regard to the appeal decisions referred to by the Council including at Week St Mary⁴. I have not been provided with the full details of that appeal, however, in the Week St Mary appeal there appears to be clear evidence of the proliferation of dwellings serving the same agricultural holding. The Inspector noted that the appeal related to a large new build farmhouse and that the previous farmhouse occupied a separately owned enclave within the boundary of the farm. As such, the Inspector found that retaining the planning obligation served a useful purpose in that instance. The current appeal is materially different in that it relates to converted traditional barns that would have had limited use for modern agriculture and whose retention contribute to the distinct architectural vernacular and character of the area. As such I do not find the Week St Mary appeal wholly comparable to the current appeal and attach only limited weight to the decision. Notwithstanding the referred appeals and previous planning applications, I have considered the appeal on its own merits.
14. Whilst the Council objects that the appellants have not demonstrated that units 1 and 2 are not required to support the agricultural unit and/or the adjoining haulage business, I do not find such information necessary given that condition 9 secures their occupation for rural workers in the locality and/or in association with the adjoining haulage business. Consequently, I do not find conflict with CLP Policies 2,7 and 23 and LNDP Policy H1 which, taken together, permits housing for rural workers where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside and requires development to sustain local distinctiveness and character. Furthermore, I do not find conflict with the Framework or the Guidance which, taken together, requires that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I am not persuaded, therefore, that the planning obligations contained within the s106 serve any useful purpose.

Conclusion

15. For the reasons above, the appeal is allowed.

S D Castle

INSPECTOR

⁴ Appeal ref: APP/D0840/Q/15/3013856