
Appeal Decision

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2020

Appeal Ref: APP/L5810/Q/20/3245045

1B Burlington Avenue, Kew, Surrey TW9 4DF

- 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 Knights PLC against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The development to which the planning obligation relates is the erection of a 2 storey residential dwelling.
 - The planning obligation, dated 20 August 2009, was made between the London Borough of Richmond-upon-Thames and Lothbury Ventures Ltd.
 - The application Ref 19/3678/S106, dated 2 December 2019, was refused by notice dated 30 December 2019.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation dated 20 August 2009, made between the London Borough of Richmond-upon-Thames and Lothbury Ventures Ltd, no longer serves a useful purpose and is discharged.

Preliminary Matter

2. In response to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

Main Issue

3. The main issue is whether the planning obligation serves a useful planning purpose.

Reasons

4. The appeal site comprises a 2 storey dwelling which provides no off street car parking. The short front gardens of other properties in the vicinity mean that there is limited off street parking within Burlington Avenue. The site is located within a Controlled Parking Zone and the Council has identified that a Traffic Management Order prevents residents of Burlington Avenue from being eligible for on street resident parking permits.

5. The Section 106 agreement which is the subject of the appeal notifies purchasers of 1B Burlington Avenue through the land charges searches that parking permits will not be granted except for the stated exception.
6. The appellant has contested the extent of any parking pressure in the road, stating that there are parking spaces readily available. Nevertheless, the Council has provided evidence of high car parking demand in Burlington Avenue and identified additional parking pressure generated by residents of the neighbouring Mortlake Road. They therefore contest that the Section 106 agreement serves a useful purpose.
7. A planning permission that is granted, and by association any Section 106 agreement that it may be subject to, runs with the land or building and not an individual. Whilst the circumstances of the case before me differ to the legal decision¹ referred to by the appellant, it remains the case that the Section 106 agreement as worded is a restriction on the actions of an individual and not a restriction on the land. This is because it prevents the owner from disposing of the property without advising the incoming occupier of the position in relation to the parking permit. As such it does not meet the relevant tests set out in Section 106(1) of the Town and Country Planning Act 1990 (as amended).
8. In addition, the Council's Traffic Management Order would prevent an occupant from obtaining a permit in any event, irrespective of whether or not they have been informed about it. On this basis the Section 106 agreement does not serve a useful purpose.

Conclusion

9. I conclude that the Section 106 agreement in question serves no useful planning purpose and should now be discharged. Accordingly, the appeal is allowed.

K Ford

INSPECTOR

¹ R Khodari v Royal Borough of Kensington and Chelsea and Cedarpark Holdings Inc [2017] EWCA Civ 333