The Planning Inspectorate

Appeal Decision

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2020

Appeal Ref: APP/L3245/Q/20/3253112
The Old Chapel, Stretton Westwood, Much Wenlock, Shropshire TF13 6DF

- 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 Tristan Ralph and Dru Jagger against the decision of Shropshire Council.
- The development to which the planning obligation relates is the erection of a timber framed two storey extension and refurbishment of existing chapel to create a dwelling.
- The planning obligation, dated 7 February 2014, was made between Tristan Ralph and Dru Jagger and Shropshire Council.
- The application Ref 19/00860, dated 19 February 2019, was refused by notice dated 11 December 2019.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The planning obligation requires the payment of £11,700 as an Affordable Housing Contribution (AHC) to facilitate the delivery of affordable and/or supported housing elsewhere in the Council's administrative area payable within two years of the commencement of a material operation of the development in accordance with section 56(4) of the Act or within 9 days of practical completion of the development, whichever date shall occur first.

3. An application form was not completed as part of the submission to the Council. Instead, the application was made by way of email. I have considered the email correspondence and I agree with the Council that the application was submitted on the basis of discharging the obligation. There is some email communication between the appellant and the Council in respect of what appears to be the acceptability of reducing the AHC from £11,700 to £9,300 on the basis that *"the scheme is part conversion and had recognised different VAT regimes".* However, the applicant has not submitted the application on the basis of modifying the planning obligation in this way.

4. The main issue is therefore whether the planning obligation in relation to the AHC continues to serve a useful purpose, and hence whether it can be discharged.

Reasons

5. As part of the determination of this appeal, I afforded the main parties the opportunity to comment on the judgement of The High Court in R (Mansfield District Council) v Secretary of State for Housing, Communities and Local Government [2018] EWHC 1794 (Admin). In particular, the Court confirmed that the proper test to be considered when deciding an application under s106A(1)(b) involves the following four questions: what is the current obligation?; what purpose does it fulfil (i.e. planning or non-planning purpose)?; is it a useful purpose? and if so; would the obligation serve that purpose equally well if it had effect subject to the proposed modification (if applicable)?

6. The AHC is in place to fulfil a planning purpose. There is no evidence to indicate that there is no longer an affordable housing need in the area. Indeed, the evidence indicates that the development plan for the area requires the provision of additional affordable homes in the area. Consequently, the planning obligation fulfils a useful purpose. If the planning obligation was discharged it would no longer fulfil this useful purpose. Whilst national planning policy may have changed since the planning application was determined, this is not a determinative factor in respect of this kind of appeal.

Other Matter

7. Whilst it would appear that the Council may support a reduction in the AHC, as outlined in email correspondence, that is a matter that would need to be addressed separately between the main parties. A financial contribution of £11,700, as required in the completed planning obligation, serves a useful purpose, i.e. to make provision for affordable/supported housing.

Conclusion

8. I conclude that the planning obligation would not serve a useful purpose equally well if it were discharged as that would lead to less affordable housing in the administrative area. I therefore dismiss the appeal.

D Hartley

INSPECTOR