
Appeal Decision

Site visit made on 9 September 2020

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/L3245/Q/20/3254363

The Old Chapel, 71 Shropshire Street, Market Drayton TF9 3DQ

- 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 Miss Fiona Johnson against the decision of Shropshire Council.
 - The development to which the planning obligation relates is the conversion of the building to a single dwelling.
 - The planning obligation, dated 5 April 2013, was made between Shropshire Council and Brendan Ignatius Mark Champ under planning application reference number 12/01289/FUL.
 - The application Ref 19/04814/DSA106, dated 29 October 2019, was refused by notice dated 18 December 2019.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The Second Schedule of the obligation states that the owner shall within 60 days of the commencement of a material operation of the development in accordance with section 56(4) of the Act pay to the Council the sum of £7,722 as an Affordable Housing Payment (AHP) to be used by the Council to facilitate the delivery of additional affordable and/or supported housing elsewhere in the Council's administrative area.
3. The main issue is whether the planning obligation still serves a useful purpose.

Reasons

4. The Council contend that the commuted sum specified within the obligation is still required to pay for affordable housing provision needed within the conurbation. This position reflects the advice of the Council's affordable housing officer indicating a current need within the Market Drayton area for affordable housing, with 244 households currently on the register for such provision. The appellant does not dispute this identified need.
5. It remains the case that the money to be procured through the obligation would be spent on local affordable housing benefiting the area as the original basis for it being entered into. The obligation therefore retains a useful purpose as the heart of the issue.
6. I acknowledge the circumstances following the appellant becoming the landowner of the site which include: that the cost of the conversion scheme

exceeded the amount originally budgeted for and as a result it was not possible to pay the contribution; financial hardship; difficulties in obtaining advice about the s106 payment and that a timely invoice was not issued requesting the amount; that the conversion of the building has led to benefit in terms of the provision of a dwelling and the re-use of a local building inclusive of its historic value; she is not presently able to pay the amount. As well as negotiations for instalment payments leading up to the appeal which have been unsuccessful.

7. However, none of these are determinative points of my decision. Planning obligations run with the land and the appellant was aware of the agreement when the site was purchased. Viability issues are not a matter before me and there is no substantive evidence demonstrating parties agreed to waver payment before the trigger point specified in the s106 or following completion of the development.
8. I also note that the appellant has raised changes arising from ministerial advice, rulings¹ and national policy and the therefore related statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010. But the agreement has become binding.
9. I appreciate that there may be other schemes where an affordable housing contribution has not been requested but it does not alter the status of a binding agreement affecting the appeal property which enables a contribution towards alleviating an existing unmet need.
10. Accordingly, I conclude that the planning obligation should not be discharged.

Conclusion

11. For the reasons given above I dismiss the appeal.

M Shrigley

INSPECTOR

¹ Written Ministerial Statement's dated 28 November 2014 & 2 March 2015

¹ Secretary of State for Communities and Local Government v West Berkshire District Council & Reading Borough Council [2016] EWCA Civ 441