
Appeal Decision

Site visit made on 18 November 2020

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 30th November 2020

Appeal Ref: APP/J1915/Q/20/3253992

The Cock Inn, Ginns Road, Stocking Pelham, Buntingford, Hertfordshire SG9 0HZ

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a failure to determine that a planning obligation should be discharged.
 - The appeal is made by Mr Shaun Savage, Winchmore Developments Ltd against East Hertfordshire District Council.
 - The development to which the planning obligation relates is the construction of two residential dwellings and a public house.
 - The planning obligation, dated 14 February 2012, was made between East Hertfordshire District Council and David Lyle Smith.
 - The application Ref 3/20/0201/SV is dated 15 January 2020.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed and the planning obligation is discharged.

Main Issue

2. The main issue is whether the planning obligation performs a useful function.

Reasons

3. The Cock Inn, a public house in the village of Stocking Pelham, was destroyed by fire in 2008. In 2012 outline planning permission (Ref. 3/10/1583/OP) for the construction of two residential dwellings and a public house was granted by the Council following a Section 106 agreement between the Council and then site owner David Smith.
4. Under this agreement, with the objective of securing construction of the public house, the third schedule specifies:

"The owner shall not suffer nor permit the occupation of more than one dwelling until such time as the public house has been constructed and put in to a state where it is capable of being granted a premises license under part 3 of the Licensing Act 2003 ("Operational State") to the reasonable satisfaction of the [Council's] director; and

The owner shall procure that the public house shall be constructed and put into an Operational State to the reasonable satisfaction of the [Council's] director not later than 12 months after the date of occupation of the first dwelling at the site".

5. The fifth schedule specifies:

"At the written request of the owner the Council shall provide written confirmation of the discharge of the obligations contained in this deed when satisfied that such obligations have been performed".

6. The two dwellings have been constructed together with the public house which, from an internal inspection, includes a large ground floor space suitable for a bar and dining area with a separate storage room at one end, layout for toilets at the other and kitchen space with stores to the rear. The first floor is divided by unfinished internal partitions into various rooms which could have a variety of uses. Whilst the two dwellings are now occupied, the public house building is unoccupied and requires considerable internal finishing and fitting out works.
7. The appellant, who now owns the public house building, states that both the dwellings and public house were constructed in 2015 with the first dwelling (Sweet Bay Cottage, still in their ownership) first occupied on 18 September 2015 and the second dwelling (Wild Cherry Cottage) sold and first occupied on 8 December 2015. In addition, on 21 July 2015, a Premises Licence No PL1067 was granted by the Council for "the sale by retail of alcohol for consumption on and off the premises" between 10am and 11pm daily with opening hours 10am to 12 midnight. A copy was provided with the appeal documentation.
8. Although the premises licence has since lapsed, the fact of its issue in July 2015 demonstrates that the building fulfilled the Section 106 agreement definition of being put into an "Operational State" at that time. The definition was that a premises licence could be issued. Furthermore, this requirement was met *prior* to the occupation of the first dwelling on 18 September 2015, so well before the deadline in the agreement of a year *after* this occupation date. The requirement was also met prior to the occupation of the second dwelling on 8 December 2015, the backstop date in the Section 106 agreement.
9. The Council, who failed to determine the current application, have confirmed in writing their view that the issue of the premises licence is determinative in this case and that the obligation has therefore been met. The obligation in the third schedule therefore no longer serves a useful purpose and it follows that the appeal must succeed.
10. Under the fifth schedule the owner is entitled to written confirmation that the obligation has been performed. This decision letter serves that function.
11. Local residents understandably wish to see the public house in the village reopen. It is important to note that this appeal decision does not affect the current planning or asset of community value status of the building, it only relates to the obligation within the Section 106 agreement.

Conclusion

12. Having regard to the above the appeal is allowed.

David Reed

INSPECTOR