



Appeal Decision

Site visit made on 29 September 2020

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2020

Appeal Ref: APP/E2001/Q/20/3255906

Oak Tree Cottage, Owstwick, Hull HU12 0LH

- 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 Mr & Mrs C Peart against the decision of East Riding of Yorkshire Council.
 - The development to which the planning obligation relates is for the erection of a dwelling in connection with a vehicle repair shop.
 - The planning obligation, dated 11 October 2010, was made unilaterally between Christopher Colin Peart & Karen Peart and East Riding of Yorkshire Council.
 - The application Ref 10/00724/PLF, dated 2 December 2019, was refused by notice dated 27 January 2020.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed.

Procedural Matter

2. There is another appeal on the same site which is subject to a separate decision.

Background and Main Issue

3. The third schedule of the obligation states that the whole of the land shall be retained in the same ownership and neither red land nor blue land shall be sold or otherwise disposed of separately from the remainder of the land either by transfer of the freehold or grant of a lease for a term of years unless otherwise agree in writing with the Council's Director of Planning and Economic Regeneration for the time being or his authorised nominee.
4. The main issue is whether the obligation still serves a useful purpose.

Reasons

5. It was previously determined by the Council in 2010 that the occupants of the dwelling needed to be at the business premises adjacent outside of normal working hours to carry out urgent recovery and repair work as well as enabling on site security. These were the specific reasons accepted for allowing the dwelling under planning application 10/00724/PLF which would otherwise have been discouraged in the open countryside by the Council's development plan in force at the time.

6. The Council's current development plan as well as the National Planning Policy Framework (the Framework) continue to discourage isolated dwellings within the open countryside within specific parameters which include if there is a substantial link to rural worker provision. In light of that specific policy context, whether there are any changes in circumstances to set aside the original policy related purpose of the obligation lies the heart of the dispute between parties.
7. There is no conclusive evidence supporting the appellants assertion that a fixed period would be an appropriate feature of the terms agreed in 2010. Therefore, my decision on the obligation is on the basis as it is read presently which is binding.
8. The appellants have stated that the business no longer undertakes urgent recovery operations and therefore they do not need to be available for business call outs. Moreover, they have installed CCTV thus meaning the previous site security provided by occupation of the dwelling is now defunct. I give considerable weight to these current circumstances as they represent a significant shift away from the purpose of the obligation's original terms and the rationale employed to permit the appeal dwelling.
9. The dwelling erected lacks ready access to day to day services or public transport. I accept that without a link to a rural business the location of the dwelling would be out of step with the Council's current Development Plan and the Framework. But the Council's decision to allow what was originally a 'new' dwelling in the open countryside has already been determined and implemented. The dwelling is no longer new. Thus, revisiting the sustainability credentials of the appeal dwelling would not serve a useful objective as relevant policies are centred on new dwellings and uses. The dwelling exists, it is in use and as a result the changes in circumstances raised by the appellant against any material harm arising are significant factors to have regard to.
10. Since the original approval of planning permission, the dwelling has been substantially complete for some time, occupied and is an existing established physical feature within the open countryside. There is no evidence before me which demonstrates that the business would cease or that there is an essential need for occupants of the dwelling to be at the site to undertake recovery operations or site security. Bringing all of these points together it would be unreasonable to uphold that the obligation serves a useful function. No material harm would be apparent if it was discharged. I find the reasons given by the appellant override the planning policies related to the purpose of the obligation highlighted by the Council.
11. Accordingly, for the reasons set out above I conclude that the planning obligation should be discharged on the basis it no longer serves a useful purpose. The appeal therefore succeeds.

M Shrigley

INSPECTOR