



Appeal Decision

Site Visit made on 26 October 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2021

Appeal Ref: APP/P3610/Q/20/3264135

Langley Bottom Farm, Langley Vale Road, Epsom KT18 6AP

- 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 Fairfax Properties against the decision of Epsom and Ewell Borough Council.
 - The development to which the planning obligation relates is the removal of an agriculture occupancy obligation.
 - The planning obligation, dated 15 August 1995, was made between Epsom and Ewell Borough Council and Cromwell Farms Limited.
 - The application Ref 20/00211/S106A, dated 4 February 2020, was refused by notice dated 22 June 2020.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed and the planning obligation, dated 15 August 1995, made between Epsom and Ewell Council and Cromwell Farms Limited no longer serves a useful purpose and is discharged.

Main Issue

2. The main issue is whether or not the obligation continues to serve a useful purpose.

Reasons

3. Planning permission was originally granted¹ for the "*erection of a farm manager's house following the demolition of the existing farm building*". This permission was the subject of an obligation (the obligation) under section 106 of the Town and Country Planning Act 1990 (the Act) which limited the occupancy of the dwelling, together with those properties listed within the first schedule, to persons solely or mainly employed at the land in agriculture as defined in section 336 of the Act or a dependent of such persons residing with them.
4. The Council initially objected to the request to discharge the obligation as the appellant had failed to robustly demonstrate that the dwelling had been marketed as an agricultural workers' dwelling and refused permission on this basis. However, following the submission of the appeal, which included a legal opinion² (the opinion), the Council withdrew its objection³ to the discharge of the obligation and no longer wishes to contest the appeal.

¹ EPS/94/0732 dated 18 August 1995

² Legal Opinion, Landmark Chambers dated 9 November 2020

³ Letter from Epsom and Ewell Council dated 18 August 2021

5. The opinion consider the wording of the obligation, and in particular the sentence "*employed at the land in agriculture*" and argues that the land in the second recital refers to the attached plan which specifically identifies dwellings listed in the First Schedule of the obligation. As the obligation refers to "*at the land*" and uses the definite article, this cannot be construed to mean any land in agricultural use, but only the land identified within the First Schedule. Furthermore, the obligation does not offer any other definition of an area of land under the agreement. Therefore, the obligation does not require the dwellings to house agricultural workers outside of Langley Bottom Farm.
6. The appellant confirms that Langley Bottom Farm is not a working farm and has not been farmed in-house since 1998. Therefore, as no agricultural activities take place at Langley Bottom Farm, it would not be possible for anyone residing within the properties to comply with the terms of the obligation. Furthermore, the majority of the site has been purchased by the Woodland Trust who have confirmed that it does not require on-site residential accommodation.
7. Thus, in the absence of any contradictory evidence, I place significant weight on the opinion that the appellant provided in support of the appeal. It is a logical conclusion, and one that the Council accepts, that as agricultural activities no longer exist at Langley Bottom Farm, and that the obligation does not specifically require the dwellings to be occupied by anyone other than persons occupied in agriculture at Langley Bottom Farm, the obligation no longer serves a useful purpose. Consequently, there is no requirement for the obligation to remain in force.

Conclusion

8. Therefore, having regard to the above the appeal is allowed.

Graham Wyatt

INSPECTOR