



Appeal Decision

Hearing Held on 13 July 2022

Site visit made on 13 July 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/D0840/Q/21/3278570

Windrush, Polhawn Fort, Rame, Torpoint, Cornwall PL10 1LL

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge planning obligations.
 - The appeal is made by Mr and Mrs Wicksteed against the decision of Cornwall Council.
 - The development to which the planning obligation relates is for the construction of a detached dwelling with integral garage.
 - The planning obligation, dated 3 November 1995, was made between Caradon District Council and Mr and Mrs J B Wicksteed, UCB Home Loans Corporation Limited, Western Trust & Savings Limited and National Westminster Bank PLC.
 - The application Ref PA20/10585, dated 19 November 2020, was refused by notice dated 21 January 2021.
 - The application sought to have the planning obligations discharged.
-

Decision

1. The appeal is allowed. The planning obligations, dated 3 November 1995, made between Caradon District Council and Mr and Mrs J B Wicksteed, UCB Home Loans Corporation Limited, Western Trust & Savings Limited and National Westminster Bank PLC no longer serve a useful purpose and are discharged.

Background and Main Issue

2. Windrush is a detached house with accommodation provided over two storeys. It is adjacent to the Grade II* listed Polhawn Fort (the Fort), a former gun battery but a structure that has subsequently been used as a hotel and more recently as a self-catering venue for weddings.
3. Planning permission¹ was granted for the construction of a detached dwelling as a replacement to a former single storey dwelling known as Windrush Bungalow. The position of the original dwelling close to the cliff edge was found to be unstable and unsuitable for habitation. The replacement dwelling approved was approximately 40 metres to the southwest. The permission was subject to a section 106 agreement dated 3 November 1995. This included three obligations summarised as follows:
 - (i) The property shall not be owned by any person other than the owner of the Polhawn Fort Hotel.

¹ Reference 595/0229/F

- (ii) That any dwelling on the property shall be occupied only by the owner or manager for the time being of the hotel with or without the family; and,
 - (iii) Requirements to demolish the original dwelling and make good the land.
4. The present dwelling at Windrush was constructed under a subsequent modification² to the planning permission granted in 1995. The appellants do not dispute that the planning obligations in the agreement dated 3 November 1995 apply to the dwelling built.
5. It was confirmed at the hearing that the third obligation was undertaken and effectively no longer subsists. Section 106A of the Town and Country Planning Act 1990 (the Act) provides that only a person against whom a planning obligation is enforceable may apply for the obligation to be modified or discharged. Hence, it is the first two obligations that are central to this appeal. The appellants are seeking to discharge both (i) and (ii). An appeal made under section 106B of the Act allows for the following outcomes where the appellant is seeking to discharge an obligation:
- (a) That the planning obligation shall continue to have effect without modification; or
 - (b) If the obligation no longer serves a useful purpose, that it shall be discharged.
6. Therefore, the main issue is whether the obligations to restrict the ownership and occupation of Windrush continue to serve a useful purpose.

Reasons

7. The appellants explained at the hearing how commercial circumstances and business practices have evolved since 1995 when they entered into the section 106 agreement. They have moved away from a hotel use and have been running a self-catering wedding business using the Fort exclusively since about 2000³, such that one client will book the entire venue for a specified time and make their own catering arrangements. This followed legislative changes that permitted wedding ceremonies to take place at the Fort. In addition, there have been improvements in communication technology since 1995 that have assisted the business operation.
8. Since 2006, the appellants have employed non-residential managers living locally to oversee the business and day to day operation of the venue. The Council accept that the appellants have successfully operated the business at the Fort in this way for a considerable period. There was also a consensus that the dwelling replaced by Windrush did not historically have any planning restrictions imposed on its ownership or occupation to bind it to operations at the Fort.
9. Policy 7 of the Cornwall Local Plan, Strategic Policies 2010-2030, Adopted November 2016 refers to housing in the countryside. It seeks to limit the development of new homes in the open countryside but specifies exceptions, including replacement dwellings of an appropriate design broadly comparable to the size, scale and bulk of the dwelling being replaced. Both parties considered it insightful to consider if similar circumstances to those advanced

² Planning reference 00/00316/FUL

³ Paragraph 3.13, Appellants' Planning Application Statement

to support the development of Windrush in 1995 had been presented today, whether obligations tying a replacement dwelling to the business at the Fort would meet the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework). However, having conducted the hypothetical exercise they ultimately came to opposing conclusions.

10. Paragraph 57 stipulates that planning obligations must only be sought where they meet three tests. Namely that they are necessary to make the development acceptable in planning terms, that they are directly related to the development and finally, that they are fairly and reasonably related in scale and kind to the development.
11. Nevertheless, a planning application for a replacement dwelling is not before me. Neither is a new planning obligation being sought. The parties agreed at the hearing that the threshold set out in the Act when considering the discharge of existing planning obligations is whether they serve a useful purpose. To my mind this is a lower threshold than those applicable when seeking new obligations. It is against this standard that I have made my determination and I consider the theoretical application of present development plan policies to past circumstances to be of limited assistance.
12. The Council contends that functional benefits provided to the business operation of the Fort arising from the occupation of Windrush by the owner or manager represent a useful purpose. This includes informal security to the Fort premises and the potential to respond to emergency maintenance or guest issues.
13. However, informal security derived from the occupation of Windrush would also be likely to result from the presence of other residents, even if they were not connected to the business. It is the proximate presence and surveillance of others that would be likely to be off-putting to intruders, rather than the specific status or job of those occupants. Moreover, the evidence presented at the hearing did not indicate that there was an out of the ordinary security risk to the Fort that would set it apart from many other rural premises.
14. The appellants described how a manager is typically present during the weddings and celebrations held at the Fort. Amongst other things this addresses the need to comply with licencing obligations. When not physically present, managers are on call 24 hours a day and contactable by mobile phone. Most such managers have lived within half an hour's drive of the Fort and so have been able to attend to matters in person reasonably promptly if they are unable to deal with guest issues over the telephone. To date there has been little difficulty in such managers finding accommodation within a suitable catchment area as it contains several towns and settlements. Notwithstanding general concerns regarding house prices and second home ownership in popular tourist areas, the Council had no substantive evidence to show otherwise.
15. It is possible that the present business practices at the Fort could change such that live-in accommodation might become desirable in the future. Pressure for additional such accommodation would be likely to be problematic given the high quality historic and natural context, which includes the Grade II* listed Fort and a prominent cliff top location within the Cornwall Area of Outstanding Natural Beauty (AONB). There are local and national development policies

- which seek to resist development that would harm such historic and natural assets.
16. However, it was common ground that removing the restrictions on the ownership or occupation of Windrush would not, of itself, make any difference to its existing physical impact on the character and appearance of the area, the setting of the Fort or the special qualities of the AONB. Essentially, the question is whether the avoidance of potential future pressure for essential accommodation connected to running the business at the Fort constitutes a useful purpose that justifies restricting the ownership and occupation of Windrush in the long term.
 17. For that to be the case, such a scenario would need to be reasonably likely to occur. The evidence indicates that the Fort has operated successfully as a wedding venue for a considerable period and is well established. The combination of its relatively modest scale, unique setting and built form make it particularly suited to the business model used. Hence, there is little reason to suppose that the general business model would be unique to the appellants, nor that the absence of on-site accommodation would make the Fort business unattractive to future owners. Whilst future owners of the Fort could employ different operational methods, the Council was unable to provide any substantive evidence at the hearing that future business needs would be likely to amount to an essential need to live permanently so close to the Fort. Overall, I find the concern to be tenuous and attribute greater weight to the firmer testimony of more recent lived experience.
 18. Reference was made to saved policy W1 of the Caradon Local Plan, August 2007. This policy refers to the Whitsand Bay chalet area and limits the improvement, extension or replacement of chalets. Although the appeal site is within the chalet area, the Council confirmed that this did not mean all structures are considered to be chalets. Neither is there a definition of what a chalet constitutes. Moreover, the evidence does not clearly show that the structure replaced by Windrush was a chalet. Nor was there any contemporaneous evidence provided that indicated that this was a contributory factor that led to the imposition of the obligations in 1995.
 19. Windrush has the appearance of, and has been used as, a conventional permanent dwelling for over twenty years. All parties accepted that the present structure is not a chalet. As such, policy W1 has little bearing on my determination as to the usefulness of the planning obligations restricting its ownership and residential occupants. It follows that the appeal decisions provided by the Council relating to the proposed development of chalets are of little relevance.
 20. The Council further consider that the proximity of Windrush to the Fort may affect the living conditions of the occupants due to disturbance arising from the use of the Fort. In turn, as residents unconnected to the business would be less likely to tolerate such activity this could result in pressure to close the business operation if the obligations were removed.
 21. The thickness of the walls at the Fort would generally be sufficient to prevent noise from activities within the building from disturbing other residents in the area. Hence, it is principally activity in the grounds or in accessing the Fort that hold more concern for the Council. I observed there to be a reasonable degree of physical separation in distance and levels between Windrush and the

external grassed area of the Fort. Such an arrangement would generally mitigate against unreasonable levels of disturbance.

22. In addition, parking for guests is mostly situated some distance to the west of Windrush. Furthermore, the wedding venue is moderately sized and therefore, unlikely to generate significant amounts of traffic. The driveway closest to Windrush bends such that traffic speeds would generally be slow, which would tend to constrain the extent of associated engine and movement noise. Moreover, Windrush, albeit closer, is not the only residential property in the vicinity of the Fort. Hence, it seems more likely that any future businesses at the Fort would seek to uphold management practices that act in the interests of good neighbourliness so as to avoid unduly noisy activity that could lead to justified complaints.
23. Taking these factors together, I am not persuaded that the configuration is such that the living conditions of the residents of Windrush are substandard due to unreasonable disturbance. This is reinforced by the experiences outlined by the appellants at the hearing. Consequently, the planning obligations to restrict ownership and occupation do not confer notable benefits as a noise protection mechanism for the Fort's business operation.
24. The balance of evidence provided points to the obligations to restrict the occupation of Windrush by the owner or manager of the Fort as being superfluous to the functional requirements of the business. This is likely to remain the case for potential future hospitality businesses at the Fort. Moreover, the obligations on ownership and occupation do not provide a useful purpose with respect to the security of the Fort, or as a means to avoid noise complaints from the occupants of Windrush. There are strong local and national planning policies that seek to safeguard the area from insensitive development proposals. Accordingly, I find that the obligations that restrict the ownership and occupation of Windrush no longer serve a useful purpose and consequently, should be discharged.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed, and the planning obligations discharged.

Helen O'Connor

Inspector

APPEARANCES

FOR THE APPELLANT

Mr I John	Bell Cornwell Chartered Town Planners
Mr J Wicksteed	Appellant
Mrs T Wicksteed	Appellant
Mr J Buss	Manager, Polhawn Fort
Ms G Cavell	Manager, Polhawn Fort

FOR THE LOCAL PLANNING AUTHORITY

Mr J Lee	Planning Officer, Cornwall Council
----------	------------------------------------

Documents handed in at the hearing

1. Photograph of appeal site dating from approximately 1986.
2. Extracts from a letter from John Grimes dated 1994 was read out at the hearing.