



Appeal Decision

Site visit made on 25 July 2022

by Mr C J A Parker BA(Hons) PGCert MA MRTPI MCMI IHBC

an Inspector appointed by the Secretary of State

Decision date: 3 August 2022

Appeal Ref: APP/Y3940/Q/19/3238881

**The Old Stables, Hollyhouse Farm, Bushton, Swindon,
Wiltshire SN4 7PX**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (TCPA) against a refusal to discharge or modify a planning obligation.
 - The appeal is made by Mr Edmund Rudler against the decision of Wiltshire Council.
 - The development to which the original planning obligation relates to is referenced 99/00220/FUL – change of use and conversion of stables to provide additional residential accommodation.
 - The planning obligation, dated 3rd September 1999, was made between North Wiltshire District Council and Mr Edmund Rudler and Mrs Diana Rudler.
 - The application Ref 19/07293/106, dated 22 July 2019, was refused by notice dated 16 September 2019.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed and the planning obligation dated 3rd September 1999, was made between North Wiltshire District Council and Mr Edmund Rudler and Mrs Diana Rudler is discharged.

Background and Procedural Matters

2. The powers under S106A and S106B are to modify or discharge planning obligations. An 'obligation' is a formal legal instrument executed as a deed and authorised by S106 of the TCPA. In this case there is only one obligation, which, put simply, is a negative one as it restricts the use or occupation of the 'Additional Accommodation' to members of the Owner's family or friends in a manner incidental to the enjoyment of the 'Main Dwelling' as a single dwellinghouse, and for it not to be leased or sold separately from the main dwelling.
3. The Appellant's evidence is unclear as to whether they seek the variation or modification of the obligation¹ or its discharge². I have not been provided with an instrument executed as a deed (sometimes known as a deed of variation) as required under s106A(2). I have therefore proceeded on the basis that the appellant is seeking the discharge of the obligation set out in Paragraph 2 of the legal agreement in the 'Deed' section on page 1.

¹ See Appellant's Written Statement, (Statement of Case), page 5, paragraph 2.7 and page 18, paragraph 5.3

² See Page 2, Appellant's covering letter dated 22nd July 2019

4. At its heart, the dispute between the main parties is whether the discharge of the obligation would comply with development plan policies and those of the *National Planning Policy Framework* (the Framework). However, my considerations under the Act are clear as set out in Section 106A (6) (b), '*if the obligation no longer serves a useful purpose, that it shall be discharged*'. I have proceeded on that basis.

Main Issues

5. The main issue in this case is whether the Deed set out in Paragraph 2 of the Section 106 Agreement dated 3 September 1999, being a planning obligation, continues to serve a useful purpose.

Reasons

6. The Old Stables (the additional accommodation) is located in a separate building from Hollyhouse Farm (the main dwelling), albeit within its grounds and sharing access off the highway. The description of the original permission 99/00220/FUL indicates that planning permission was granted for '*change of use and conversion of stables to provide additional residential accommodation*'. This permission was not subject to any specific planning condition(s) that restricted its use.
7. Put simply, the planning obligation re-iterates this by indicating that the permission provides '*residential accommodation ... supplementary to the dwelling*'. As such, on plain reading the original permission did not authorise the creation of a second, separate dwelling in the curtilage or grounds of Hollyhouse Farm.
8. My attention has been drawn by the Appellant to caselaw³ known as '*I'm Your Man*'. However, the circumstances in that case are significantly different to that before me; concerning the extent by which the description of a proposal restricts (or does not) use continuing after a temporary period had past when not controlled through a planning condition. It does not alter my consideration of the s106B appeal before me where it is clear for what planning permission was granted for in 1999.
9. Therefore, even if the disputed obligation had not been agreed, to occupy it in a way that was not ancillary to the main house would have required a further planning permission. I note too that whilst in practical terms the obligation removes the ability to dispose of the building without the Council's approval, if the use remains in line with that permitted I am not convinced that ownership is a planning matter in this case.
10. The Appellant expressly stated he has submitted this current proposal under section 106A of the Act so the building can '*rent the property as an open market dwelling*'⁴. It is clearly a matter for the Council to determine whether or not planning permission would be required for however the building would be occupied. They are reminded though that by allowing this appeal under section 106 of the Act I am not authorising a change of use. Rather, I am allowing the development subject of permission 99/00220/FUL, (namely the change of use and conversion of stables to provide additional residential

³ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107

⁴ See covering letter dated 22 July 2019 from Simon Chambers, Director, of LPC Town and Country Planning Development Consultants to Wiltshire Council (North)

accommodation) but without complying with the requirements of the planning obligation. As such, if they wish to use the outbuilding in a way that does not fall under that description and is not authorised by that permission a fresh planning permission could be required. Accordingly, I find the obligation no longer serves a useful purpose and therefore should be discharged.

11. Furthermore, as I am not considering a material change of use I have not addressed the comments in the submissions about whether or not an independent unit here would be acceptable in planning terms, as those matters are not before me. I have been directed to Core Policies 1, 2, 48, 60 and 61 of the *Wiltshire Core Strategy 2015*, and also those of the Framework⁵ including Paragraph 80. However, whilst providing a helpful understanding of the parties views on their application, these are not determinative in themselves in this case on whether the obligation continues to serve a useful purpose.
12. My attention has been drawn to paragraph 80 d) of the Framework (previously 79(d) of the 2019 Framework) and the judgment in *Wiltshire Council v SSHCLG & Mr W. Howse [2020] EWHC 954 (Admin)*. Where the courts established that allowing the sub-division of residential units by permitting separate buildings to become separate dwellings is beyond the limited exception allowed for in national policy in the 2019 version of the Framework. However, my remit is to consider whether the planning obligation should be discharged under the powers of s106A and B of the *Town & Country Planning Act 1990* (TCPA) as amended, rather than whether planning permission should or should not be granted.
13. The main parties have also referred to other appeal and planning decisions in their submissions. These refer to different sites and generally under different Sections of the TCPA. Accordingly, I do not find that these alter my conclusions on the above matters.

Conclusion

14. I find that the obligation no longer continues to serve a useful purpose as it seeks to restrict occupancy of the additional accommodation to friends and family only, in a manner incidental to the main dwellinghouse as a single dwelling house. Given that the discharge of the obligation would not alter this position; as any subdivision to create a separate dwelling was not part of the original planning permission and is likely to require planning permission in itself, the obligation no longer serves a useful planning purpose.
15. Accordingly, in the light of the above, I allow the appeal and the planning obligation is discharged.

C Parker

INSPECTOR

⁵ The 2021 Framework replaced the 2019 version, which was extant at the time of the determination of the application to the Council. In terms of Paragraph 79 this is now Paragraph 80 in the 2021 version, albeit with similar wording.