The Planning Inspectorate

Appeal Decision

Hearing held on 10 January 2023

Site visit made on 10 January 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Appeal Ref: APP/N4720/Q/22/3308110
Land on the south side of Green Road, Meanwood, Leeds LS6

- 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 Edward Arvley against the decision of Leeds City Council.
- The development to which the planning obligation relates is Application to discharge planning obligations of s106 agreement dated 30 June 1997 planning application 26/93/96/FU pursuant to s106a Town and Country Planning Act 1990.
- The planning obligation, dated 30 June 1997, was made between Leeds City Council and Country & Metropolitan Homes (Northern) Limited and Barker & Hird Limited.
- The application Ref 22/01017/S106, dated 6 February 2022, was refused by notice dated 6 April 2022.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is dismissed.

Applications for costs

2. The appellant has made an application for costs against Leeds City Council. This application is the subject of a separate decision.

Background and Main Issue

3. The powers under S106B are to discharge planning obligations. An obligation is a formal legal instrument executed as a deed and authorised by S106 of the Act. My considerations under the Act are clearly set out in Section 106A (6)(b), 'if the obligation no longer serves a useful purpose, that it shall be discharged'. The interpretation of 'useful purpose' as 'useful planning purpose' is a well-established principle in caselaw and it is a reasonable basis for me to consider the discharge of the obligation sought. I have proceeded on this basis.

4. The main issue is therefore whether the planning obligation, in relation to the relevant clause, continues to serve a useful purpose.

Reasons

5. The disputed obligation requires, in clause 2.22, that the Landowner and Developer not cause, permit or allow the Cricket Pitch to be used other than as a cricket pitch. The area of the Cricket pitch is indicated on a plan attached to the obligation.

6. It is clear that the intention of the obligation was to allow the continued use of the site in connection with the sport of cricket. I saw at the site visit that currently the site is unused, overgrown and generally had the appearance of a state of disrepair.

7. It is not at dispute between the parties that the obligation contains a drafting error. The relevant clause states ′not the cause permit or allow the cricket pitch to be used other than as a cricket pitch′. I do not consider the erroneous 'the' to be such a significant drafting error in itself as to render the clause unenforceable or prevents the obligation serving a useful purpose.

8. Furthermore, the clause refers to a 'Cricket Pitch'. The Appellant has argued that the use of the term 'Cricket Pitch' is incorrect and renders the obligation unenforceable, detailing 'the clause should have used the term 'field' as this is the correct classification of the land' making reference to The Town and Country Planning (Development Management Procedure) (England) Order 2010. I note that the dictionary definition of pitch, with regards to cricket, refers to 'the strip of ground between the two sets of stumps' which I have also heard referred to as the wicket.

9. As such, it appears that the obligation, as written, refers to a specific part of what would correctly be referred to as a cricket field. However, only a small degree of reasonableness is required to understand that the intention of the obligation is nonetheless clear with regards the use of the land for cricket. As such I am not persuaded that the reference to 'Cricket Pitch' rather than 'cricket field' renders the obligation unenforceable and thus prevents the obligation serving a useful purpose in this regard.

10. The area identified in the obligation is relatively small in relation to a cricket field. Indeed, at the hearing the appellant detailed that it is too small for competitive cricket to be played there and that this was a factor that caused the cricket club that once played matches at the appeal site to leave. The consultation response from Sport England confirms that the site would not meet the normal minimum England Cricket Board size standards, but suggests it would be suitable for junior cricket.

11. Furthermore, the size of the site has not reduced since the obligation was agreed and there is evidence from the Council and local residents that there is still some demand for the area to be used for cricket. Therefore, while the limited size of the area may limit its use for competitive cricket matches, I am not satisfied that the site, and thus the obligation, cannot serve a useful purpose for playing cricket.

12. I note that Sport England objected to the application. In addition to the comments on the size of the site referred to earlier reference is made to the Yorkshire Cricket Board's opinion that there is a shortfall of cricket facilities in the Local Authority area. The appellant refers to the varied use of terms for the appeal site including cricket ground, ground, playing field and cricket pitch in the consultation response. I do not find that this undermines the objection from Sport England but further reinforces my earlier finding regarding definitions.

13. The appellant has not argued that there is not a need or demand for the site to be used for cricket and evidence heard at the hearing from local residents and the Council suggests that there is still a demand for land, particularly for junior cricket and/or practice of cricket which could be undertaken at the site if it were made available by the landowner. Therefore, on the basis of the evidence before me I am satisfied that there is continued demand for the site to be used for cricket and it has not been demonstrated that the loss of this site would not lead to a shortfall of cricket facilities in the area.

14. The Appellant detailed at the hearing that the obligation does not obligate the landowner to make the land available for use, and they consider that this is a significant flaw in the obligation which greatly diminishes the usefulness of the obligation. However, upon plain reading of the obligation it clearly states that the parties entering the obligation understood that the parcel of land indicated could not be used other than as a Cricket Pitch. What is clear is that there is a freely entered into obligation for the land which I have found continues to serve a useful purpose through restricting the use of the land for a specific recreational use. What is more, this is a use which could benefit, in particular, junior cricket facilities in this local area, even if the area is not large enough to accommodate a standard size field.

15. I also note that there are not any obligations for the landowner to maintain the ground and associated facilities. But that does not detract from the need that the area secured through the obligation would make to sports ground provision for cricket in the area. Moreover, the nature of amateur sports and associated grounds and facilities are that there is a large element of voluntary contributions made by club members to maintain and support the ground. This is evidenced by the fact that the land area in question was used at some point for cricket by a former club.

16. To conclude, the obligation places no requirement on the landowner to provide access to the site or to maintain the site for purposes of cricket, but it nonetheless is clear that the area can only be used as a 'cricket pitch'. In this respect, there is an ongoing demand for cricket playing and training space in the area which the appeal site, although small, could fulfil. I am not satisfied that it has been demonstrated that clause 2.22 is rendered unenforceable as a result of the drafting error or the reference to 'cricket pitch'. As such I find that the obligation continues to fulfil a 'useful purpose'.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Edward Arvley

FOR THE LOCAL PLANNING AUTHORITY:

Mr Glen Allen

INTERESTED PARTIES:

Mrs Janet Matthews

Mr Andrew Omond

Mr Julian Oxley