



Appeal Decision

Site visit made on 22 March 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2023

Appeal Ref: APP/P2935/Q/22/3309863

Hawkshaw, Old Swarland, Swarland, Morpeth, Northumberland NE65 9HU

- 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 Mrs Susan Margaret Frith against the decision of Northumberland County Council.
 - The development to which the planning obligation relates is the erection of a dwelling planning application ref: A/2004/0323
 - The planning obligation, dated 3 February 2005, was made between Alnwick District Council and Mrs Susan Margaret Frith.
 - The application Ref 21/02696/S106A, dated 2 July 2021, was refused by notice dated 27 June 2022.
 - The application sought the variation of S106 Agreement relating to planning permission A/2004/0323 dated 3rd February 2005.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the legal agreement subject to this appeal was signed local government reorganisation has taken place and Northumberland County Council is the successor local planning authority. This change does not alter the terms or validity of the agreement.

Main Issue

3. The main issue is whether or not the planning obligation continues to serve a useful purpose and, if it continues to do so, whether or not it would serve that purpose equally well if it had effect subject to modifications specified in the application.

Reasons

4. The existing section 106 legal agreement subject to this appeal requires the appellant's property to remain as an affordable home at a discounted market value of 80% for an 80-year period and occupied in line with the occupancy criteria set out in its Third Schedule.
5. The planning obligation is more than 5 years old. Section 106A of the Town and Country Planning Act 1990 (as amended) (the Act) allows its modification or discharge, including by application to the Local Planning Authority. In such circumstances the scope of the Council's determination can only be that the planning obligation shall continue to have effect without modification; if the obligation no longer serves a useful purpose, that it shall be discharged; or if

the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

6. For the purposes of exercising the provisions of section 106(A) of the Act, legal precedent has determined that the term useful purpose in this context means useful planning purpose.
7. The discharge of this planning obligation would reduce the local supply of affordable housing. This would be set in a context where the Northumberland Local Plan (the Local Plan) continues the implementation of a policy approach which seeks to address the local housing needs of all, including affordability. This is consistent with the National Planning Policy Framework's approach to meeting housing needs.
8. The Council's Housing Team has confirmed that there remains an affordable housing need in the area. There may have been changes in the level of the area's affordable housing stock with the passage of time. However, the complete and specific details of that are not before me. Neither has the appellant adequately evidenced that there is not a continued local affordable housing need in line with the Third Schedule's occupancy criteria which could be met by this property if it became available to the market.
9. Policy INF 6 of the Local Plan recognises a section 106 legal agreement as a mechanism to secure affordable housing provision.
10. The appellant considers that the wording of the obligation is fairly onerous, open to interpretation and differs from the approach taken to more recent developments in the locality. However, I am satisfied that the content and wording of this planning obligation remains enforceable and therefore does not undermine its continued useful purpose. It is any signatory's responsibility to secure an understanding of the implications of any obligation before entering into it. There is nothing before me to indicate that the outcomes of other more recent planning proposals have not been based on their own individual merits in the context of the policy framework and any other material considerations.
11. Although the appellant's personal circumstances have led her to consider the financial implications of the obligation, my determination is confined by the scope of the provisions which are clearly set out in section 106(A) of the Act.
12. Overall, it has not been adequately demonstrated through this particular appeal submission that the planning obligation would not continue to meet a useful purpose of providing an affordable home at discounted market value in line with local occupancy criteria for its remaining term. Furthermore, no other modifications to it have been proposed that fall within the scope of this appeal.

Conclusion

13. For the reasons given above, the planning obligation continues to serve a useful purpose. I conclude that the planning obligation should continue to have effect without modification. Therefore the appeal should be dismissed.

C Dillon

INSPECTOR