



Appeal Decision

Site visit made on 17 October 2023

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/M0655/Q/23/3317054

43 Chaise Meadow, Lymm, Warrington WA13 9NX

- 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 Simon Wood against the decision of Warrington Borough Council.
 - The development to which the planning obligation relates is application to modify or discharge the Section 106 Agreement attached to Proposal: A01/444111 in relation to affordable housing provision at 43 Chaise Meadow, Lymm, Warrington, WA13 9NX.
 - The planning obligation, dated 15 April 2003, was made between Warrington Borough Council and Hubert Jones Limited.
 - The application Ref 2022/42483, dated 4 October 2022, was refused by notice dated 25 January 2023.
 - The application sought to discharge a planning obligation.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Simon Wood against Warrington Borough Council. This application is the subject of a separate Decision.

Background

3. The S106 Agreement on the original permission included various obligations relating to education, healthcare and affordable housing. The affordable housing obligation (PO) required 10 one-bedroom apartments – which includes the appeal property – and 19 three-bedroom family houses to be provided as affordable homes. The PO required the apartments to be sold at 75% of market value. Any subsequent resale of the property must follow the same requirements. The affordable housing requirement is therefore intended to exist in perpetuity.
4. The PO is more than 5 years old. Section 106A of the Town and Country Planning Act 1990 (the Act) therefore allows its modification or discharge, including by application to the Council. In such circumstances, the scope of the determination can only be that the PO shall continue to have effect without modification; if the obligation no longer serves a useful purpose 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 modifications specified in the application, that it shall have the effect subject to those modifications.
5. The appellant, as successor in title to the property in question, wishes to remove the occupancy requirements such that the flat can be sold on the open market. Obligations relating to other properties would not be affected.

Main Issue

6. With regard to the above, the main issue is whether the PO continues to serve a useful purpose.

Reasons

7. The Warrington Core Strategy (WCS) (2014) seeks to secure a mix of housing types and tenures from new housing development. While the WCS post-dates the signing of the S106 agreement, it is still relevant in determining whether the PO serves a useful purpose. Policy SN2 specifically requires a mix of dwellings to balance the housing market and secure the delivery of affordable dwellings. The PO still helps to meet the policy's overarching requirements in principle. This is also consistent with the National Planning Policy Framework's approach to meeting housing needs. The discharge of the PO would reduce the local supply of affordable housing contrary to the clear objectives of the WCS.
8. The Council's Housing Team has confirmed that there remains an affordable housing need in the Borough. The appellant disputes in terms of one-bed flats and has provided evidence which suggests that demand for such units is not as great as it is for larger homes in the Lymm area. However, that there is *more* demand for one type of dwelling does not necessarily mean that there is *no* demand for another. Even if the demand is more limited in this area, I am not persuaded by the evidence that there would be no need to make provision for one-bed affordable dwellings in Lymm or in the Borough as a whole.
9. In this regard, it is important to note that the occupancy restrictions are not only for residents of Lymm. A 'qualifying person' is somebody employed, or with potential employment, in the Borough who cannot afford to rent or buy dwellings generally available on the open market. It therefore remains likely that the property can still serve a purpose in helping to meet any need or demand that continues to exist. Moreover, by retaining the PO in perpetuity, it allows the affordable housing supply to be maintained through various shifts and changes in the economy and housing market.
10. The PO requires the property to be sold for 75% of the market value. The Council agreed a figure of £135,000 for the value of the dwelling. It was then marketed at the discounted rate of £101,250 for over a year. Although it appears there was some interest in the property, there were apparently few viewings and no offers. During the marketing period, the details changed to allow 'offers in the region of' the asking price. This does not appear to have altered the situation.
11. The appellant has provided correspondence from their estate agent which suggests the lack of offers for the property is due to the restrictions, rather than the asking price or its size. I acknowledge there may have been changes to the housing market, affordable housing products and the economy since the agreement was signed. However, this still does not negate the possibility of there being a willing purchaser of a property with such a restriction in place. This still represents an opportunity for people in need of an affordable dwelling to purchase a property at less than market value and thus 'get on the housing ladder'. The property continues to provide part of the mix of opportunities that exist in the area. The estate agent's correspondence does not lead me to conclude that the PO serves no useful purpose in this regard.

12. The appellant has argued that the value of the property has not risen in line with the general property market. It is not clear why this is the case. Nevertheless, it is possible that a reduction in asking price to facilitate a sale could mean that it is sold for a similar price to what it was purchased for. The appellant has argued that it would be unfair to expect to sell the property to near or lower than it was purchased for.
13. However, there is no guarantee of profit when purchasing a dwelling and thus this does not add significant weight in favour of discharging the obligation. The PO does not contain any clauses to release the appellant from the affordable housing requirement as a result of any difficulty to sell. As the intention was to ensure the property remained an affordable dwelling in perpetuity, this is perhaps not surprising. Even if agreements drafted today would be different, the lack of a "get out" clause does not render the PO fundamentally flawed or unable to be implemented. The limitations of the agreement were presumably also understood when the property was originally purchased.
14. In this regard, I have been mindful of the apparent lack of offers on the property, the change in approach to 'offers in the region of' and the expectation that, if there were any interest, then people would still have tried to negotiate a lower price. Even if this were the case, it does not negate the useful purpose of the PO in seeking to maintain the supply of affordable housing in the Borough. Indeed, with regard to the apparent increase in house prices referred to by the appellant, the need to maintain a supply of affordable dwellings of all types and sizes would appear to a reasonable objective of the Council and one which the PO seeks to achieve.
15. The appellant has been critical of the Council for not finding a solution to the problem of not currently being able to sell the property and therefore being unable to move. However, the dwelling presumably provides a home and thus it is currently serving a purpose. The PO does not require the Council to facilitate the sale of the property at market value at any particular time or assist the occupant in moving to alternative accommodation. The Council also no longer nominates people for the purchase of homes. The fact it has not done so here therefore does not add to the appellant's case. It has been argued that, owing to the market value of the property, discharging the obligation would allow the sale to those who wish to get on the housing ladder. However, the point of the obligation is to target those who cannot afford a market dwelling. It therefore serves a different, and specific, purpose. Discharging the obligation would remove this purpose.
16. Unfortunately, there are always risks associated with the purchase of any property and there can be no guarantee of achieving a sale or profit on the original purchase price. Accordingly, I do not consider the current market situation, or apparent difficulty in selling the property, renders the PO to be without a useful purpose.
17. The PO originally required 10 of the one-bed flats on the estate to be affordable dwellings. The obligations on all but two of the properties have been discharged. These were all allowed by the Council at around the same time during the recession of 2009. I do not have the full details of those decisions before me. However, the Council have argued that the specific economic situation which led to those decisions no longer exists. Given the passage of time and the different economic context we now have, this is a reasonable

assertion. While it may be frustrating that other properties on the estate are no longer controlled in this way, these historic decisions do not mean that the PO serves no useful purpose now. Indeed, the reduction in the affordable housing supply may have served to strengthen the purpose of retaining the supply that remains.

18. I note that the PO includes a clause which allowed the developer to sell the properties on the open market if it could demonstrate there were no 'qualifying individuals' prior to or at completion of the development. There is no evidence to suggest that insufficient 'qualifying individuals' were identified and thus all properties were disposed of as 'affordable housing'. That there is no such clause for subsequent occupants of the dwelling further demonstrates the importance attached to ensuring the properties remain as affordable housing for the long term.
19. The Council has referred to the potential for the affordable housing strategy to be undermined if the PO were discharged in these circumstances. Whilst each application must be considered on its merits, I can appreciate the Council's concern that approval of this proposal could be used to support similar requests. This is not a generalised fear of precedent but a realistic concern. It is likely that there are many similar S106 agreements across the Borough. Allowing the appeal for the reasons given by the appellant would make it more difficult for the Council to resist further applications to discharge or modify such obligations. The cumulative effect on affordable housing provision could be severe.
20. The personal circumstances and situation of the appellant are noted. However, my determination is confined by the scope of the provisions of the Act, which are clearly set out. The personal circumstances of the appellant do not affect whether the PO serves a useful purpose or not.
21. Overall, it has not been adequately demonstrated that the PO would not continue to meet a useful purpose of providing an affordable home at discounted market value in line with the occupancy criteria. Furthermore, no other modifications to the PO have been proposed for me to consider.

Other Matters

22. The appellant has raised several concerns relating to how the Council considered the application. Unless referred to above, these issues are outside the scope of the appeal and have no bearing on my decision, which must be made in accordance with the requirements of the Act.
23. I note there have been no representations from interested parties in relation to the application or appeal, but this fact does not alter my decision.

Conclusion

24. For the reasons given above, the PO continues to serve a useful purpose. Therefore, the appeal should be dismissed.

S J Lee

INSPECTOR