



Appeal Decision

Site visit made on 23 January 2024

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/H5390/Q/22/3323336
39-41 Margravine Road, LONDON, W6 8LL

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by Sam Berekdar (Berekdar Developments Limited) against the decision of London Borough of Hammersmith and Fulham.
 - The development to which the planning obligation relates is for the demolition of the existing light industrial buildings (Class B1c) and redevelopment of the site to include the erection of a three storey building (Blocks A and B) on the Margravine Road frontage to provide 2x three bedroom dwellinghouses; and the erection of a part two, part three storey building to the rear of the site (Block C) to provide 1 x one bedroom and 5 x two bedroom self-contained flats; and associated landscaping.
 - The planning obligation, dated 10 February 2016, was made between London Borough of Hammersmith and Fulham Council and Sam Berekdar (Berekdar Developments Limited).
 - The application Ref 2022/02502/VAPO, dated 30 August 2022, was refused by notice dated 26 October 2022.
 - The application sought to have the planning obligation modified as follows: The proposed modification to the S106 agreement relates to 'highway works' and are detailed as amend clause 5.4 to 5.5 inclusive (and associated definitions) to remove the requirement to "Removal of vehicular access off Margravine Road and associated alterations to the highway including reinstatement of the kerb, making good of the pavement and alterations to existing on-street parking bays".
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site is located at Margravine Road in a predominantly residential area, albeit the Charing Cross Hospital is located near to the site further along Margravine Road. The site was previously used for light industry.
3. Planning permission was granted on 10 February 2016 for the development described in the third bullet of the banner heading above. The permission is accompanied by the extant S106 agreement dated 10 February 2016 which contains a number of planning obligations. This includes clauses 5.4 to 5.5 which relate to highway works and the obligation requires the removal of an existing vehicular access and reinstatement of the kerb, making good of the pavement and alterations to parking bays.
4. At the time of my visit, the development appeared to have been largely completed. However, there is no evidence of any of the highway works have been commenced.

5. The appeal has been made under S106B of the Town and Country Planning Act (1990) (The 1990 Act). However, S106A sets out the process that should be followed.
6. S106A(1) states that a planning obligation may not be modified except by agreement between the appropriate authority (in this case the local planning authority) and the person against whom the obligation is enforceable, or in accordance with S106A and S106B.
7. S106A(6) sets out that the authority may determine:
 - (a) that the planning obligation shall continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
 - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it has effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
8. The Council refused the application on the basis that the proposal to vary the original obligation would fail to ensure the scheme creates an acceptable pedestrian environment which promotes active travel and removes conflict between pedestrians and vehicles.
9. Based on the above, the main issues are:
 - (i) whether the obligation relating to highway works continues to serve a useful purpose;
 - (ii) if the obligation serves a useful purpose, whether it would serve that purpose equally well if it was modified as proposed; and
 - (iii) Whether the obligation should continue to have effect without modification.

Reasons

Useful purpose

10. The 1990 Act does not provide a definition of the phrase 'useful purpose' in relation to S106A(6). The useful purpose can be a different one from that which led to the S106 agreement in the first place. Therefore, what matters is whether the obligation continues to serve a useful purpose.
11. The Hammersmith and Fulham Local Plan (2018) (the HFLP), the Planning Guidance Supplementary Planning Document (2018) (the SPD) and the London Plan (2021) have all been adopted since the obligation was signed. Policies T1 and T3 of the HFLP seek to improve transportation provision, accessibility and air quality and promote opportunities for cycling and walking.
12. The existing crossover is located directly in front of a short underpass at the appeal site which provides access to the flats to the rear of the site. To the rear of the site is an outdoor courtyard area containing a range of planters, cycle storage and other domestic paraphernalia. The underpass is narrow and whilst a small car may be able to fit through it, there is very limited space in the courtyard even if a car were to make it through the underpass successfully. The underpass is accessed via a pair of metal gates which, combined with the

narrow width discussed above would preclude the rear of the site being accessed by a motorcar. Due to the extent of domestic paraphernalia, the ability to fit a car within this area would be highly unlikely. However, the crossover could nonetheless be used by residents with bicycles or motorcycles crossing over the pavement to access the flats to the rear of the development.

13. The appellant considers that the retention of the crossover would allow helpful access for deliveries to residents of the development and aid access to the rear of the site for disabled residents and those with bicycles. However, the crossover would become an attractive point for delivery vehicles to stop in the area due to the absence of bollards in the footpath in front of the crossover and also as the nearest crossover is located around 60 metres from the site. The presence of the dropped kerb would increase the likelihood of delivery vehicles stopping and mounting the pavement. Furthermore, the crossover could be utilised as an informal turning point on the street. Whilst the appellant considers a collapsible bollard could be positioned in front of the crossover, there is no modification to the S106 to this effect before me.
14. My attention has been drawn to occupiers of one of the units with disabilities who currently use the crossover for access with a disability scooter. The crossover aids access to the site to and from the road not just the footpath. However, residents with disability scooters using the crossover to cross the road could result in unsafe crossings due to the presence of parked cars restricting visibility. Therefore, the retention of the crossover would not reduce the conflict between pedestrians and vehicles in this regard.
15. The appellant has indicated that an agreement could be entered into to ensure the gates remained shut except for deliveries to the appeal site. However, whilst the width of the underpass and presence of gates would serve to ensure no motorcars could enter the site, motorcycles or bicycles could still use the crossover directly from the road resulting in conflict with pedestrians using the footpath. Furthermore, no such covenants, modifications or a Deed of Variation has been submitted with the appeal and is therefore of limited weight.
16. Notwithstanding the above, even if I had found that the retention of the crossover would not have any adverse effect on pedestrians, the obligation would still serve a useful purpose by securing the reinstatement of the footpath, kerb and the alteration of parking bays and enhancing the pedestrian environment in the area.
17. The S106A process allows developers to seek modifications to obligations once 5 or more years have elapsed since the S106 was executed, as is the case here. However, based on the evidence before me, I find that the obligation would continue to serve a useful purpose and is in compliance with Policies T1 and T3 of the HFLP and key principles TR12 and TR13 of the SPD and paragraph 116 of the Framework which seeks to, amongst other things, minimise the scope for conflicts between pedestrians, cyclists and vehicles. Consequently, the proposed modification to the obligation would not serve the useful purpose and would not accord with the provisions of S106A(6)(c).

Would the obligation serve the useful purpose equally well if modified as proposed?

18. The proposed modification would result in the abovementioned clauses in the S106 being removed. This would result in the highway works described above not being carried out. No alternative clauses have been proposed, and as a

result, it follows that the useful purpose would not be able to be served equally well if the obligation was modified as proposed.

Whether the obligation should continue to have effect without modification

19. On the basis that the proposed modification would not serve the useful purpose equally well, I consider that the existing obligation in clauses 5.4 through 5.5 inclusive of the S106 agreement should continue to have effect without modification in accordance with S106A(6)(a).

Conclusion

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

Philip Mileham

INSPECTOR