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## Appeal Decision

Site visit made on 26 February 2024

**by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 March 2024**

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**Appeal Ref: APP/P0240/Q/23/3333201**

**Land to the rear of 30a to 30c Station Road, Lower Stondon, Henlow, Bedfordshire SG16 6JP**

- 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 Sacha Wooldridge and James Hulme against the decision of Central Bedfordshire Council.
  - The development to which the planning obligation relates is the erection of one detached house and garage.
  - The planning obligation, dated 29 July 1998, was made between Mid Bedfordshire District Council and John Burgess and Company Limited.
  - The application Ref CB/21/04630/SECM, dated 7 October 2021, was refused by notice dated 13 January 2023.
  - The application sought to have the planning obligation discharged.
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### Decision

1. The appeal is allowed. The planning obligation dated 29 July 1998, originally made between Mid Bedfordshire District Council and John Burgess and Company Limited, no longer serves a useful purpose and is discharged.

### Procedural Matters

2. The application was not supported by an application form. Instead, the details of the application were included in a covering letter. Where appropriate, I have used the details submitted in the letter in the banner heading above.
3. Prior to my determination of this appeal, the Government published a revised National Planning Policy Framework (NPPF) on 19 December 2023 which replaced the previous version. I have taken into account the relevant provisions of the revised version in the determination of the appeal and any references to the NPPF in this decision relate to the revised document. In having regard to the matters that are most relevant to this appeal, there are no material changes to the NPPF of relevance to the substance of this appeal. Therefore, I am satisfied that no party to this appeal would be prejudiced by the changes to the national policy context.
4. The application has been made under Section 106A of the Town and Country Planning Act 1990 (the Act) to enable the modification or discharge of the planning obligations set out in the Section 106 Agreement dated 29 July 1998. Although the Council's Decision Notice refers to the application as being for the modification of the Section 106 Agreement (S106 Agreement), the Appellants' covering letter at the application stage and the Statement of Case makes it clear that the application sought the discharge of the S106

Agreement. I have therefore determined this appeal on the basis that the application was made pursuant to Section 106A(3)(b) of the Act.

5. Section 106A(6) of the Act provides that I 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 had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

### **Main Issue**

6. The application sought discharge of the S106 Agreement and did not propose modifications. Therefore, the main consideration in this appeal is whether the obligations provided in the S106 Agreement no longer serve a useful purpose.

### **Background**

7. The appeal site is comprised of a vehicular access and Parking Area, that fall within the curtilage of "The Hollow" which is a detached dwelling house located to the rear of Nos. 30a, 30b and 30c Station Road. The evidence suggests that the relevant planning permission for a detached dwelling, now comprising "The Hollow", was granted in 1998 subject to a number of planning conditions and the disputed S106 Agreement.
8. The hard surfaced vehicular access to "The Hollow" and the Parking Area is taken directly off Station Road to the northwest and is located between Nos. 30 and 30a. The access road also provides access to three private garages which the Council indicates belong to Nos. 30a, 30b and 30c. The owners of these properties maintain that they have a legal right of way over the access. Immediately adjacent to the garages, on the northwestern side, is an area of hardstanding which provides parking and is the predominant subject of this appeal.
9. The S106 Agreement contains two obligations:
- 1. The Owner shall provide and maintain a vehicular parking area for use by the public for the parking of private roadworthy cars excluding commercial vehicles at all times [on] the land edged red and hatched black on the plan comprised in this Agreement (Obligation 1).
  - 2. The Owner shall maintain a vehicular access for use by the public over the road edged red on the plan comprised in this agreement at all times to the vehicular parking area and existing garages (Obligation 2).

### **Reasons**

10. Before I consider the determinative issue in this appeal, it is necessary to set out a number of factors and initial findings that are relevant to my consideration of whether the obligations provided in the S106 Agreement no longer serve a useful purpose. In this case, neither of the main parties are able to provide any conclusive explanation why the S106 Agreement was

necessary and the reasons why it required public parking in this relatively small parking area. The Council identifies that there is no traceable planning history related to the parent permission (Ref: 47/97/1639) that could substantiate the purposes for the Obligations being included.

11. The Council contend that it is not unreasonable to conceive that the Obligations were included to benefit neighbouring residential occupiers to the site (at Nos. 30a, 30b and 30c) and their visitors, in order to facilitate the development of land to the rear of these properties to provide a single dwelling house. In this regard, I note the Appellants' evidence that the Parking Area appears to be exclusively used for parking by the occupants of the neighbouring properties (Nos. 30a, 30b and 30c) and their guests and the effect of this is that it is not possible for the Appellants and the public to use the Parking Area as the spaces would likely be occupied by vehicles connected to the neighbouring properties.
12. The Appellants' witness statements identify an arrangement between the owners of the neighbouring properties as to who parks where in the Parking Area. It is the Appellants' view that the obligations were likely created to protect a private benefit.
13. I observed at my site visit that chevron road markings are present on Station Road in the vicinity of Nos. 30a, 30b and 30c. These effectively prevent on-road parking at the front of these properties. However, the purpose of the chevrons appears to be to direct traffic away from unrestricted parking that occurs intermittently in defined parking areas along the southwestern side of Station Road. I also noted that there appears to be unrestricted parking in the vicinity of the commercial and residential properties on Brittain's Rise.
14. I have taken into account the views of the Council's Highways Officer that the Parking Area is an important facility for use by the neighbouring properties and the general public and as such it should remain. However, it appears to me that there is alternative on-road parking in the vicinity of the neighbouring properties. Moreover, there is no signage that would suggest that the Parking Area is available for public parking and, in these circumstances, it is highly likely that the general public, other than those visiting the neighbouring properties, would generally park along Station Road or Brittain's Rise.
15. The Council suggest that the former backland plot may well have been used as an area of informal unallocated parking for the neighbouring properties prior to the construction of the detached dwelling. As such, it is contended that the obligations could have been imposed in order to compensate for such loss and minimise the need for on-street parking. However, I have no compelling evidence to suggest that these were the circumstances that provided a justification for the S106 Agreement.
16. The Council has also drawn my attention to Policies T2 and T3 of the Central Bedfordshire Local Plan 2015 to 2025 (the Local Plan) that was adopted in 2021. Policy T2, amongst other things, requires that proposals for new development must not have a detrimental effect on highway safety and patterns of movement and must provide appropriate access. Policy T3 requires, amongst other things that developers of new residential, commercial and other trip generating developments, must have regard to the parking standards set out in the Council's Design Guide and Parking Strategy.

17. Although I have no evidence of the number of bedrooms in “The Hollow”, I have no evidence either to suggest that the car parking spaces provided at the property would fail to meet the requirements of the Council’s Design Guide and Parking Strategy. Therefore, there is no basis to determine any conflict with the provisions of Policy T3.
18. With regard to Policy T2, this does not identify that new development should provide parking for other residential properties. I have no evidence to indicate what the relevant development plan policies may have been at the time the planning application for the detached dwelling was determined in 1978. However, with regard to the current adopted Local Plan, I have no conclusive evidence to indicate how the proposed development may have been in conflict with the provisions of Policies T2 and T3 to the extent that a planning obligation would have been necessary and continue to remain necessary. In my view, the cited policies in the Local Plan have little relevance, if any, to my consideration of the determinative issue in this appeal.
19. I turn now to whether the obligations provided in the S106 Agreement no longer serve a useful purpose. There is an absence of any planning history that can demonstrate how the S106 Agreement was necessary to achieve compliance with the relevant planning policies at the time. Furthermore, given my findings above regarding the relevant policies cited by the Council in the adopted Local Plan, I have no compelling evidence to suggest how the agreement is likely to achieve compliance with those policies, or indeed any other policies in the Local Plan.
20. Consequently, there is no substantial evidence in this appeal to demonstrate a material planning connection, that is justified by national or local planning policy, between the development of the detached dwelling and the Obligations. In this regard, the retention of the Obligations would not meet the tests set out in paragraph 57 of the NPPF. There is no compelling evidence in this case to suggest that the S106 Agreement is, or ever was, necessary to make the original development acceptable.
21. I have also considered the enforceability of the S106 Agreement and taken into account the Appellants’ evidence regarding the issues associated with the parking of an alleged unroadworthy vehicle in the Parking Area, in particular, the difficulty that the Council faced in taking enforcement action. There is no definition in the S106 Agreement as to what roadworthy means, or indeed the definition of a commercial vehicle.
22. In my view, the recent issues of the Statutory Off Road Notification (SORN) vehicle that was parked in the Parking Area clearly demonstrates that the Council has real difficulty in enforcing the S106 Agreement due to the ambiguity contained therein in what may constitute an unroadworthy or commercial vehicle. In these circumstances, the Agreement, to some extent, places an unreasonable and onerous requirement on the Appellants to determine what may constitute a roadworthy or commercial vehicle and to take private actions to ensure compliance with Obligation 1.
23. The issue of the SORN vehicle provides evidence of the practical difficulty in enforcing the S106 Agreement, particularly as the Council found that it would not be expedient to enforce the requirements of Obligation 1. The difficulty in enforcing the provisions of the Obligation further adds to my concerns that the S106 Agreement does not serve a useful purpose.

24. I have also considered the Appellants' contention that the Obligations are merely for a private purpose that is not within the scope of "useful purpose". However, the Obligations are clear in that the Parking Area, and the access to it, are for public use. I understand the Appellants' view that, in a practical sense, the Obligations are purely for the private benefit of neighbouring properties. However, the evidence submitted does not confirm this beyond reasonable doubt.
25. I do accept that there is considerable available public parking in the area which could cater for the parking of vehicles belonging to the neighbouring properties if the Obligations did not exist. Furthermore, such vehicles could also park in the existing garages. Consequently, I agree that the use of the Parking Area serves no material highway benefit and I have no compelling evidence to clearly demonstrate how the public use of the Parking Area serves a useful purpose that is reasonably related to the development of the detached dwelling. Furthermore, in adhering to the Obligations this to some extent prevents the Appellant from parking on land in their ownership.
26. For the reasons set out above, I conclude that Obligation 1 serves no useful planning purpose and should now be discharged. Turning now to Obligation 2, the only purpose of this obligation is to facilitate Obligation 1. It is clear that Obligation 2 permits the public to use the Access Road to access the Parking Area and the existing garages. Therefore, having found that Obligation 1 serves no useful purpose then it must follow that Obligation 2 also does not serve a useful purpose.
27. Overall, the evidence provided in this case leads me to conclude that the Obligations do not serve a useful purpose and do not meet the tests set out in paragraph 57 of the NPPF. There is no evidence that the S106 Agreement is, or ever was, necessary to make the original development acceptable, nor that it was reasonably related to it. Furthermore, in discharging the Obligations the cited policies in the Local Plan referred to by the Council would not be undermined. In these circumstances, I accept the Appellants' view that the Obligations are unduly onerous.
28. I have had regard to the appeal decisions referred to by the Appellants. The circumstances in those appeals are very different to those in the appeal before me. In any event, I am obliged to determine this appeal on its own individual merits and the appeal decisions cited have no material bearing on my conclusions in this case.
29. In determining that the Obligations serve no useful purpose, I have also considered the extent to which any access to the existing three garages may be prejudiced. I have no reasons to dispute the fact that the owners of Nos. 30a, 30b and 30c already have a right of access over the Access Road to the existing garages. Therefore, my view that the S106 Agreement should be discharged does not prejudice the right of access to the three private garages.
30. I recognise that this decision may disappoint the occupiers of the neighbouring properties. However, I am obliged to consider the evidence presented in this appeal to determine if there is a demonstrable material planning connection, that is justified by national or local planning policy, between the development of the detached dwelling and the Obligations. Taking into account the guidance in the NPPF, I am unable to establish that such connection exists to the extent that the Obligations provide a useful purpose.

## **Conclusion**

31. For the above reasons, based on the evidence before me and all other matters raised, I conclude that the S106 Agreement in question serves no useful planning purpose, and should now be discharged. Accordingly, the appeal should be allowed.

*Stephen Normington*

INSPECTOR