
Appeal Decision

Site visit made on 2 April 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 8 April 2024

Appeal Ref: APP/L3245/Q/23/3320693

Ashfield Cottage, Chapel Lane, Dudleston Heath, Ellesmere, Shropshire SY12 9LZ

- 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 G A Guilford and Miss K Pugh against the decision of Shropshire Council.
 - The development to which the planning obligation relates is the erection of an affordable dwelling and garden shed.
 - The planning obligation, dated 22 March 2013, was made between Shropshire Council and Guy Allan Guilford and Kaylee Pugh.
 - The application Ref 22/03538/DSA106, dated 27 July 2022, was refused by notice dated 3 November 2022.
 - The application sought to have the planning obligation discharged.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. 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.

Main Issue

3. 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

4. The appeal property is located in the open countryside and just outside of the development limits of the settlement. The Council indicates that planning permission was originally granted on 25 March 2013 (Ref: 12/02591/FUL) for the erection of an affordable dwelling, subject to the disputed S106 Agreement, pursuant to the provisions of the Council's Single Plot Affordable Housing Policy

as set out in the Type and Affordability of Housing Supplementary Planning Document (2012) (SPD). This provides for affordable dwellings to be constructed in locations that would not otherwise be supported. The Council suggests that this typically relates to development for affordable units outside of development limits, as is the case with the appeal property.

5. The SPD indicates that an affordable dwelling should not exceed 100 square metres (sqm) gross internal floorspace and that the plot size should not exceed 0.1 hectares. The appeal property aligns with these requirements.
6. In abridged terms, the disputed S106 Agreement requires the occupation of the property as an affordable dwelling. It further requires that when the owner, and their successors in title, cease to occupy the dwelling that it shall be offered on the open market to a qualifying person for an affordable rent or to sell the dwelling in accordance with an affordable formula price. The formula price is defined in the S106 Agreement as the sum which is 60% of the open market value of the dwelling (excluding any extensions, conversions or alterations). Any sale over the formula price requires that 50% of the excess is paid to the Council to facilitate the provision of affordable housing.
7. The Council indicates that the dwelling has been lived in by the original applicant since its construction. It further contends that planning permission for the construction of the dwelling would not have been received in 2013 without the applicant being willing to enter into the S106 Agreement to provide a "community benefit". Such benefit is explained as being the provision of the affordable dwelling in the first instance which is then "recycled" and continues to contribute to the stock of affordable housing.
8. The application has been made under Section 106A of the Town and Country Planning Act 1990 (the Act) to enable the discharge of the planning obligations set out in the Section 106 Agreement dated 22 March 2013. 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.

Reasons

9. The Appellants indicate that the primary reason for having the S106 Agreement discharged is to enable the dwelling to be extended as the 60% of open market value does not enable sufficient funds to be borrowed to enable this in order to meet the needs of a growing family. Furthermore, it is contended that there are several new developments in the locality that are making provision for affordable housing. In particular, a new development at St Martins has 8 affordable homes and another new development at Ellesmere is proposed to have 16 affordable dwellings. As such, the Appellants contend that there is no justifiable need for the dwelling to remain as an affordable unit.
10. The Council's Affordable Housing Team have identified that there are 4 affordable homes on a site in Dudleston Heath and a further 2 new affordable homes in the planning stages. However, these are all 'build your own' affordable homes that will have owner occupiers so would not be available to meet any local need.

11. The Council identifies that at present there are 9 persons needing a low-cost home to own and a further 9 that are on the Housing Register awaiting a rented home in Dudleston itself and that this increases to 17 if the search is broadened out to the Ellesmere Rural Parish Area. Furthermore, in Ellesmere Urban Parish there are currently 2 affordable homes on site with a further 34 with planning approval, but the need in Ellesmere is currently 97 households awaiting an affordable home. In St Martins there are currently 14 new affordable dwellings on a site, with a current need of 48. The Council considers that this evidence clearly shows that, even if all the current single plot dwellings and new build dwellings are completed, there would remain a need for affordable homes in the area.
12. I have no reasons to doubt the evidence provided by the Council in relation to the need for affordable housing in the locality and the fact that supply is not meeting the identified demand. I am satisfied that there remains an unmet demand for affordable housing in the locality. Any reduction to the affordable stock would likely have a detrimental impact on existing and future provision.
13. Against the above background, I consider that the obligations provided in the S106 Agreement continue to serve a useful purpose by ensuring that the dwelling contributes towards affordable housing. Were the S106 Agreement to be discharged, the uplift in property value would likely reduce its affordability significantly should the property be sold or let at a later date. This would have an unacceptable impact on the provision of affordable housing in the locality, particularly in circumstances where there is a defined unmet demand.
14. Taking the above factors into account, I am not persuaded that there are any compelling and justifiable planning reasons to discharge the S106 Agreement. In this regard, the retention of the obligations would continue to serve a useful purpose and meet the tests set out in paragraph 57 of the NPPF.

Other matters

15. In coming to the above view, I have taken into account the personal circumstances of the Appellants with regard to the reasons that contribute to the desire to extend their home. I also note the Council's view that this 3-bedroom property with a gross internal floor area of 100 sqm would be sufficient for a household of 6 persons based on the Government's Technical Housing Standards – Nationally Described Space Standard (2015).
16. Whilst I have some sympathy with the Appellants' circumstances, the evidence provided in this appeal demonstrates that there is a compelling local need for the property to remain as an affordable dwelling. Such circumstances do not provide justifiable planning reasons to warrant the discharge of the Agreement.

Conclusion

17. For the above reasons, based on the evidence before me and all other matters raised, I conclude that the S106 Agreement continues to serve a useful planning purpose in that it provides an affordable dwelling in the locality. Accordingly, the appeal is dismissed and the planning obligation shall continue to have effect without modification.

Stephen Normington

INSPECTOR