



Appeal Decision

Site visit made on 30 October 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2024

Appeal Ref: APP/F1040/Q/24/3344164

**Poplars Grove, Unnamed Road from Long Lane to Dalbury Hollow,
Dalbury Lees, Ashbourne, DE6 5BE**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to modify a planning obligation.
 - The appeal is made by Mr Morley against the decision of South Derbyshire District Council.
 - The development to which the planning obligation relates is the "erection of two detached dwellings (outline application with siting and means of access to be considered)", under application reference 9/2000/0308/0.
 - The planning obligation, dated 12 April 2001 was made between the South Derbyshire District Council and the owners, defined then as Barbara Morley and Ernest Morley.
 - The application DMOT/2020/0961, dated 12 August 2020, was refused by notice dated 8 December 2023.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the planning obligation no longer serves a useful purpose and so should be discharged.

Reasons

3. The appeal site is a paddock which lies between the road and Poplars Grove Farmhouse, within the settlement boundary. It is a largely open space, visible from the road. The planning obligation subject to this appeal was entered into upon the granting of planning permission for two detached dwellings at the farm. The obligation required that the appeal site "shall forever hereafter be retained as open land for use as garden orchard... or for other reasonable uses associated with the use of Poplar Grove Farmhouse... and they shall not erect buildings..."
4. The obligation was entered into in order to preserve the overall pattern of development in the settlement and to ensure that the development of two houses would not have an unacceptable effect on the character and appearance of the area.
5. At the time the obligation was entered into it served a useful purpose insofar as it provided security and assurance that the land was retained as open space, given the value of that open space to the character and appearance of the settlement. The protection afforded by the obligation at that time would have

been in addition to that offered by the development plan and normal development management processes at the time.

6. The development plan context has changed, in that the settlement is now considered suitable for infill housing. However, the obligation continues to serve the same purpose as when it was entered into, protecting that open space within the village over and above the protection given by the development plan and development management processes.
7. If the obligation was discharged, then it would obviously no longer serve this purpose. Whilst the development plan context to the site has changed, to my mind that does not alter, remove or otherwise undermine the original reason for entering into the obligation. Without the obligation, any applications to develop the site under the new development plan context, would still be considered in light of their effect on the character and appearance of the area, and in accordance with the development plan. However, this was also the case when the obligation was originally entered into, so does not materially alter my reasoning. Even accounting for that, the Council considered it necessary to protect the land with a planning obligation in addition to the normal development management processes, and the applicant entered into that agreement at the time.
8. There is nothing before me to suggest that the obligation therefore no longer serves a useful purpose. Indeed, third party representations, both to the application and the appeal would tend to suggest that the obligation does, through its protection of the land, continue to serve a useful purpose. Whilst I of course acknowledge that the discharge of this obligation would not, in itself, result in a loss of currently protected open space, it would remove the additional protection provided by the obligation.
9. The appellant has identified in their submission that if planning permission for development of the land were to be granted, then the obligation may no longer serve a useful purpose. However, no such planning permission is in place.
10. Therefore, at the time of making this decision, and on the basis of the information before me, including those third-party representations which speak to the value of the land, the obligation does continue to serve a useful purpose. In this, it is important to reiterate that caselaw makes clear that the consideration of a useful purpose is not to be read as a useful planning purpose.

Other Matters

11. I note from the submissions that the appeal application took some time to be determined by the Council. Whilst this is unfortunate, that lengthy period, and the reasons for it, do not bear on my decision.

Conclusion

12. For the reasons given above, the obligation continues to serve a useful purpose, so the appeal should be dismissed, and the obligation shall continue to have effect.

S Dean

INSPECTOR