



Appeal Decision

Site visit made on 25 February 2025

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/Z0835/Q/24/3354987

Prospect Lodge, Well Lane, St Mary's, Isles of Scilly TR21 0HZ

- 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 Simon and Samantha Nicholls against the decision of Council of The Isles of Scilly.
 - The development to which the planning obligation relates is referenced as P3450, dated 29 January 2015 restricting occupancy of dwelling to those with a specific local need.
 - The planning obligation, dated 29 January 2015, was made between Council of The Isles of Scilly and Nicola Marilyn Thompson.
 - The application Ref P/24/073/S106MO, dated 20 August 2024, was refused by notice dated 4 November 2024.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed.
2. The planning obligation detailed in the above header remain not discharged.

Procedural Matters

3. The appeal has been made by Simon and Samantha Nicholls, who I understand are the freeholders of the property. As such, they are logically the persons to whom the enforceability of the obligation could be made against. With no evidence to the contrary, and whilst noting the name of the original party to the s106 agreement, I have proceeded on the basis that Mr and Mrs Nicholls are able to seek the discharge of the obligation in this case.
4. I undertook a site inspection on Tuesday 25 February 2025, from which I was able to view the appeal site from the public realm in conjunction with the submitted evidence. I was also able to see the context of the site, including its location within Hugh Town.

Main Issues

5. The main issue is whether the obligation continues to serve a useful purpose.

Reasons

The legal parameters

6. Section 106A(3) of the TCPA sets out:

(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to [the local planning authority by whom the obligation is enforceable] [the appropriate authority] for the obligation—

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged.

7. Section 106A(6) of the TCPA sets out:

(6) Where an application is made to an authority under subsection (3), 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 had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

Background and considerations

8. The background of the case is set out in the respective cases of the main parties. I have not sought to replicate it here in great detail, beyond summarising the main points.
9. The Council refused to discharge the planning obligation. This is because they consider the obligation continues to serve a useful purpose in restricting the occupancy of the dwelling. Their reasons include that housing on the islands is highly valued and that removing restrictions on occupancy as sought would make it difficult for people working and living on the islands to afford the limited housing stock available.
10. As background, in December 1992 outline planning permission was granted for the 'conversion to dwelling of Barn adjacent to Prospect house' (Ref P3450). There was then a subsequent 'full planning permission' (Ref P3539).
11. As detailed in the s106 agreement subject of this appeal, (which is dated 29 January 2015), the original s106 Agreement dated 16 August 1993 was discharged and a new agreement (that dated 29 January 2015) was entered into. It is that dated 29 January 2015, and the obligation therein, which the Appellants wish to discharge.
12. The s106 agreement contains the obligation set out in the Second Schedule on pages 10 and 11. Put simply, this covenants that the dwelling shall not be occupied otherwise than as the sole private residence of the occupier and by two named persons. It then sets out certain criteria whereby a Qualifying Person could occupy the dwelling. Lastly, it sets out that any purchaser from a Mortgagee shall be deemed to be a Qualifying Person for the purposes of the deed provided on all subsequent occupations the restrictions in the deed as to the occupation of the dwelling will apply.

13. The Third and Fourth Schedules of the s106 agreement set out the criteria for Specific Local Need and the Key Worker Policy and Procedure Document.
14. In plainer English, in effect, it places restrictions on the occupancy of the dwelling so that it is not a traditional market dwelling in the sense that people may be more familiar with. That is, where it can be bought and sold to whomever the seller decides to sell it to at an agreed price, and to whomever decides to make such an offer.
15. The Appellants point to one interested buyer for the building, who has lived on the island for approximately three years. However, this person was not considered to have met the criteria set out in the Third or Fourth Schedules of the s106 agreement. Whether or not persons meet the criteria is a matter between the parties who entered into (or subject to) the legal agreement and is not before me.
16. I note that since 2015, the Council has adopted *The Isles of Scilly Local Plan Including Minerals and Waste, 2015 to 2030* (adopted 25th March 2021). This has resulted in a definition of local housing needs in Policy LC2. It has also led to the revocation in 2018 of the two documents; *Specific Local Need Criteria for Affordable Housing 2005* and the *Key Worker Policy and Procedure Document 2005*¹. I also note that in 2022, The Isles of Scilly Council declared a 'housing crisis' which further underscores the recent planning policy need to restrict occupancy in terms of new dwellings on the Isles.
17. However, whether the criteria within the s106 agreement should be modified through its replacement with more recent adopted planning policies is not before me. As such it is not within my scope in this appeal to modify it in this way. Rather, the application subject of this appeal seeks the discharge of the obligation so that it no longer would apply.
18. In terms of 'precedent setting' suggested if the discharge sought was allowed, each application for the discharge or modification of planning obligations would be considered on their respective merits. This is because each s106 agreement is specific to the planning permission it relates to and its context. In any case, my focus here is on the obligation sought to be discharged subject of this appeal.
19. With regard to affordable housing, the Appellant points to the fact that other housing on St Mary's is likely to come forward; including around 105 proposed in the Isles of Scilly Housing Strategy. It is also suggested by the Appellants that whilst they bought their dwelling for around £550,000 - with it listed on the market at £595,500 in May 2024 – the average house price is cited as being 'definitely above the £275,000 mark'. The Appellants, therefore, feel that with the purchase price it is '*clearly not affordable housing*'.
20. However, the obligation does not necessarily seek to require the dwelling to be 'affordable housing'. Instead, it seeks to restrict occupancy to people who meet specific criteria such as being born on the Scilly Isles, or who live there within the restrictions of the obligation, or who are working on the Isles; including key workers within the restrictions of the obligation.
21. I note that one of the occupiers works in nursing and has had to relocate to the mainland due to circumstances beyond their control. I have carefully

¹ www.scilly.gov.uk/planning/specific-local-need-policy

considered this fact within the context of the planning obligation agreed back in 2015 by a previous owner/occupier.

22. However, taking all of the above matters into account, I find that the obligation continues to serve a useful purpose as set out in the Act. If the obligation was discharged, and therefore no longer had legal effect, then this would enable the dwelling to be sold, in effect, on the open market with no occupancy restrictions; including persons not already resident on the Scilly Isles or not a key worker, for example.
23. Given that there is a scarcity of land on the Isles, and a resultant scarcity of housing stock, the obligation continues to serve a useful purpose. Otherwise, without the obligation, there is the realistic prospect that the dwelling would be sold on the open market unencumbered. This could potentially be to persons who would then move to the Isles and potentially displace others who have a specific need to live on St Mary's.
24. I note that the Appellants consider there is at least one other person on St Mary's who may be willing to purchase the dwelling. However, without the obligation, which I have found continues to serve a useful purpose, there is a risk that alternate purchasers who do not live on the Isles may purchase the dwelling in the future. Whilst I note that this is not the intent of the Appellants here, the discharge of the obligation in this case would remove the restrictions the obligation imposes on future occupiers who may not appreciate the importance of controlling housing stock on St Mary's or on the Scilly Isles more generally.

Conclusion

25. The planning obligation should not be discharged. This is because; it should continue to have effect without modification because this was not sought²; it continues to serve a useful purpose, for the reasons stated above; and, again, modifications are not sought. Accordingly, the discharge of the planning obligation sought under s106A, and appealed under s106B, should not occur in this case.
26. For the reasons given above, and taking into account all the evidence before me, the only conclusion I can come to is that the appeal should be dismissed.

C Parker

INSPECTOR

² I cannot be certain of the exact nature of the modifications sought were this so, and the application is clear that it is for the 'discharge' of the obligation.