



Appeal Decision

Site visit made on 24 April 2025

by **Darren Hendley BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2025

Appeal Ref: APP/V4630/Q/24/3358297

197 Aldridge Road, Streetly B74 3TR

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to discharge a planning obligation.
 - The appeal is made by Mrs Pauline Richards against the decision of Walsall Metropolitan Borough Council.
 - The development to which the planning obligation relates is a dwelling house for agricultural use attached to permission reference BC42913P.
 - The planning obligation, dated 7 December 1995, was made between Walsall Metropolitan Borough Council and David Michael Richards and Pauline Frances Richards and Barclays Bank PLC.
 - The application Ref 23/1218, dated 8 November 2023, was refused by notice dated 28 June 2024.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation, dated 7 December 1995, made between Walsall Metropolitan Borough Council and Mrs Pauline Richards no longer serves a useful purpose and is discharged.

Applications for Costs

2. An application for costs was made by Mrs Pauline Richards against Walsall Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. While the discharge of the planning obligation is being sought by only one of the parties who entered into the obligation with the Council, I am satisfied that the appellant as that party has the authority in order for the appeal to proceed. The details of solely the appellant are set out in my decision paragraph as it is that party who applied to the Council to have the obligation discharged and subsequently made the appeal. It is understood that it is only that party against which the obligation could be enforced.
4. The revised National Planning Policy Framework (Framework) has been published since the Council made its decision. The parties have had the opportunity to comment through the usual appeal timetable deadlines and I have considered the revised Framework in my decision.

Main Issues

5. The main issue is whether the existing planning obligation should continue to have effect without modification, or whether the obligation no longer serves a useful

purpose and so should be discharged, with particular regard to the Green Belt and the need to link the dwelling with the agricultural land.

Reasons

Background

6. 197 Aldridge Road gained planning permission¹ as a dwelling house for agricultural use. There are 2 areas of agricultural land associated with the dwelling. The land immediately adjacent to the dwelling is the smaller parcel. It is pasture land and contains an enclosed steel framed barn close to the dwelling and a more distant pole barn. I also observed a smaller shed-like structure on my site visit. It is sub-divided into separate fields by post and rail fencing, together with some planting. Apart from where vehicular access is taken to the dwelling, there is also a field access onto Aldridge Road. The larger parcel of land is found to the south of Bridle Lane. It is largely set back from Aldridge Road and extends up to Doe Bank Lane. It is mainly arable in use and is sub-divided into fields by hedgerows. It does not contain buildings and there is an access off Doe Bank Lane. The two parcels of land originally formed a 42 hectare farming unit.
7. The side of Aldridge Road where the dwelling and the land parcels are found has a countryside character. It consists of predominantly agricultural fields, with occasional development along Aldridge Road itself and the narrow country lanes. There are 2 power transmission lines and associated pylons which cross this area, including the corner of the larger parcel of land. The opposite side of Aldridge Road has a different character as it forms the edge of a large residential area, and so is urban in nature. The site lies in the Green Belt, and also in the Great Barr Conservation Area. The Barr Beacon Local Nature Reserve (LNR) lies to the west.
8. The permission for the dwelling house for agricultural use was subject to a planning condition which restricted the occupancy to persons employed in agriculture. Subsequently, a Certificate of Lawful Use was granted² for its use as a private dwelling house without complying with that planning condition. The planning permission was also the subject of an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 which sought to ensure that the land and the site remained in single occupation and not to be subdivided to form 2 or more units in separate occupation and with no sale of the land or site except as an entire unit to be retained in single occupation.
9. In wishing to remove this obligation, the appellant contends there is no longer a need for this agreement as it is no longer practice to use such means to control occupancy. As the requirement for the condition has disappeared, so has the justification for the obligation. The appellant also considers that as no form of development is proposed, it cannot be inappropriate development in the Green Belt and nor would discharging the obligation have any direct effect on protecting and preserving the openness.
10. In addition, the appellant's Assessment of Potential Agricultural Viability (January 2024) (the assessment) considers that the farming unit is not viable for a full time worker. This is said to be due to its scale and insufficient profit levels, amongst

¹ Council ref:: BC42913P

² Council ref: 11/1037/LE

other factors. As such, the obligation prevents the use of land for agriculture and needs to be incorporated into a greater unit. The appellant has leased the land to principally one other farmer and has no intention of returning to agriculture.

11. On the other hand, the Council contends that the obligation is still necessary and so should continue to have effect without modification. It serves a different purpose from the planning condition in that it ties the land and the dwelling together, notwithstanding that the condition has not been removed from the permission. As this part of the Green Belt is particularly sensitive to development pressures, there is a need to protect the land from encroachment. The Council is concerned the discharge of the obligation could lead to a new dwelling serving the agricultural land that would be inappropriate development in the Green Belt and so harmful, including to openness.
12. The Council also consider the assessment is not sufficiently detailed as it fails to consider agricultural enterprises that might be suitable to farmland of this size, and as it acknowledges there may be the potential for a small arable enterprise. That the person who occupies the dwelling is not currently engaged in agriculture does not mean that would be the case in future.

Green Belt

13. Paragraph 153 of the Framework sets out that substantial weight is to be given to any harm to the Green Belt and that very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Paragraph 154 sets out that the construction of new buildings is inappropriate in the Green Belt unless it meets an exception which is listed in that paragraph. The Framework also confirms that openness is an essential characteristic of the Green Belt and its purposes include to assist in safeguarding the countryside from encroachment.
14. Saved Policies 3.2 to 3.5 of the Council's Walsall Unitary Development Plan (2005) (UDP) concern the countryside and the Green Belt, including countryside character, the character and function of the Green Belt, agriculture and recreation. Saved Policy GP2 includes the effect on the Green Belt as a consideration to be taken into account. Policy GB1 of the Walsall Site Allocation Document (2019) (WSAD) sets out that the boundary and extent of the Green Belt is shown on the Proposals Map and reaffirms provisions in the saved UDP policies and the Framework.
15. The effect of discharging the obligation to tie the land to the dwelling would not in itself result in an act of development that would require planning permission. No physical development would result and nor would a change in use as the respective residential and agricultural uses would remain. As a consequence, inappropriate development in the Green Belt would not occur. For the same reason, there would not be an adverse effect on the openness of the Green Belt or on the purpose to assist in safeguarding the countryside from encroachment.
16. While the Council is concerned over the potential to create a need for an additional dwelling, this in itself would require planning permission. If such a situation arises, the Council as the Local Planning Authority would have the opportunity to decide whether permission would be granted. It would no doubt have regard to the Green Belt, amongst other policy considerations, in coming to its decision. This also

applies more generally to development pressures in this part of the Green Belt. In addition, the obligation does not in itself prevent further development taking place on the land.

17. The purpose of deciding whether the planning obligation should be discharged is not to pre-empt any decision for future development and nor should it be influenced by it, even though it is understandable why the Council would seek to protect the Green Belt location. The determination of any future application would be dependent on the submitted evidence and the circumstances at that time. Similarly, discharging the obligation would not fetter the Council in making any future decision on such an application.
18. I agree with the Council that the obligation serves a different purpose from the planning condition, as there is a distinction to be made from tying the land to the dwelling and the occupancy control of the dwelling itself. I also agree that regardless of the Certificate of Lawful Use, the planning condition remains extant. The purpose of the Certificate of Lawful Use is simply that it establishes that the dwelling had been occupied by persons not engaged in agriculture for sufficient time for the use to be regarded as lawful, so as to prevent potential enforcement action. Nonetheless, this has a limited bearing over whether tying the land to the dwelling through the obligation still has merit concerning the protections that are afforded to the Green Belt. For the reasons that I have set out, I am not persuaded this would be the case.
19. I conclude that the obligation no longer serves a useful purpose with particular regard to the Green Belt. Accordingly, there would not be conflict with paragraphs 153 and 154 of the Framework, and with Saved Policies 3.2 to 3.5 and GP2 of the UDP and Policy GB1 of the WSAD.

Agricultural Need

20. The Council consider that for the planning obligation tying the dwelling to the agricultural land, the dwelling would not have been granted planning permission. However, that relates to the agricultural circumstances back in 1995. If the obligation is to serve a useful purpose it must be considered on the basis of the present circumstances. It would be unrealistic for this to depend on what was agreed 30 years ago. The most up to date position is that provided in the assessment submitted by the appellant.
21. This assessment has considered the holding, its historic use, the Section 106 Agreement, the possible enterprises and the economics of potentially feasible enterprises. Its scope is therefore sufficient for establishing agricultural need. The author of the assessment reviewed the potential viability of the holding in 2007 and then again in 2023 for the current assessment. As a result, there is some knowledge of the functional and financial viability of the site, notwithstanding these tests no longer form part of national policy in these terms. It also utilises the John Nix Pocketbook for Farm Management, a well-established source for agricultural costings, and no alternatives have been provided.
22. That the site is in agricultural use does not mean it would support an agricultural worker's dwelling. The assessment, including the costings, satisfactorily establishes that only the arable land would generate a profit, but this would not be sufficient to justify a dwelling. As the Council has pointed out, agricultural need has historically been dependent on livestock related matters to provide sufficient

planning justification. The assessment firmly establishes that livestock on this site would no longer generate profit. While this may not have been the case when permission was granted, clearly circumstances have changed significantly and the appellant has detailed how the livestock operation declined due to disease and beef bans that led to the beef herd been sold off.

23. The assessment does point to the potential for a small scale arable enterprise, but it is not evident why this would require the dwelling. Such activities could be carried out by a farm worker who lives remotely and there is not the same obvious requirement to be on-site as for livestock. What smaller agricultural use would support the dwelling is also unclear. As the assessment ably demonstrates, this would not be the case for livestock.
24. Nor would it be reasonable to withhold discharging the obligation on the basis of the potential for an essential need for an agricultural worker's dwelling in the future. It has to be based on a consideration of the totality of the evidence as there is at the present time. The appellant's assessment attracts significant weight in this regard and there is limited corroborated evidence to the contrary. The land would in any event not cease being in agricultural use if the obligation is discharged. Whilst it has been queried whether the activities on the land are entirely agricultural in nature, I saw no evidence of uses that would fall outside of agriculture on my site visit.
25. In taking these factors together, I also conclude that the obligation no longer serves a useful purpose with particular regard to the need to link the dwelling with the agricultural land.

Other Matters

26. The Council's reason for refusal also includes Policy ENV1 of the Black Country Core Strategy (2011) and Policy EN1 of the WSAD. Both these policies are largely centred on nature conservation matters. The discharge of the obligation would not have an obvious adverse effect in this regard and so it would not result in a conflict with these policies. There is no compelling evidence before me of a harmful effect on the LNR.
27. The Council has made reference to a breach of the planning obligation through the current leasing of the land. However, whether or not the obligation is being adhered to is not for my consideration. There are other regulatory mechanisms that would have been available to enforce the planning obligation. Reference has also been made to the tests under paragraph 58 of the Framework which must be passed if planning obligations are sought. However, the tests that are for my consideration are those under Section 106A(6) of the Town and Country Planning Act 1990 (as amended). Of most relevance to my findings is the test which sets out that if the obligation no longer serves a useful purpose, that it shall be discharged.
28. The significance of the conservation area is largely derived from the remains of a Hall and an associated landscaped parkland. The conservation area also contains the surrounding agricultural land to Barr Beacon Hill. As the discharge of the obligation would not change the agricultural use, and as the land and dwelling are well away from the Hall and its parkland, discharging the obligation would preserve or enhance the character or appearance of the conservation area.

Conclusion

29. The obligation no longer serves a useful purpose and so should be discharged, with particular regard to the Green Belt and the need to link the dwelling with the agricultural land. For the reasons given above and having regard to all matters raised, the appeal should be allowed.

Darren Hendley

INSPECTOR