



Appeal Decision

Site visit made on 20 May 2025

by H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal Ref: APP/X1118/Q/24/3354783

Primrose Cottage, Loxhore, Barnstaple EX31 4ST

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) (TCPA) against a refusal to discharge a planning obligation.
 - The appeal is made by Mrs L Babb against the decision of North Devon Council.
 - The development to which the planning obligation relates is change of use of one holiday unit/ancillary accommodation and associated works to provide one Local Needs Dwelling.
 - The planning obligation, dated 27 March 2018, was made between North Devon District Council and Lorraine Mary Babb.
 - The application Ref 78194, dated 16 January 2024, was refused by notice dated 19 August 2024.
 - 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 relating to the occupancy of the Local Needs Dwelling continues to serve a useful purpose.

Reasons

3. The appeal building, Primrose Cottage, was originally an outbuilding associated with the adjoining dwelling, Oakdene, both of which are situated within the rural hamlet of Loxhore. The planning history details that it became an ancillary unit of accommodation to Oakdene around 2011. In 2012, permission was granted to vary the ancillary occupancy restriction to also allow for it to be used as a unit of holiday accommodation. In 2018, permission was granted to change the mixed use of the holiday let/ancillary accommodation to a dwelling. This was granted subject to the obligations in the S106 to restrict it to a Local Needs Dwelling. In 2019, permission was granted to extend the dwelling through the creation of a ground floor bedroom and bathroom.
4. The powers under S106A and S106B are to modify or discharge planning obligations. An 'obligation' is a formal legal instrument executed as a deed and authorised by S106 of the TCPA. In this case, the obligations restrict the dwelling to a Local Needs Dwelling to be occupied by a person/s that qualifies under Schedule 1, (2), (3) or (4) and as per the accompanying definitions, i.e. by someone from within the parish of Loxhore (2), an adjoining parish (3), or any parish within the wider district (4). The cascade out to adjoining parishes or the wider district is dependent on no eligible occupiers coming forward within specified

time periods of marketing or advertising based on whether the dwelling is offered for sale or letting purposes.

5. The evidence details that to accord with planning policies relevant at the time, there was a need to secure the Local Needs occupancy restriction. Though the remit of this appeal is not to consider whether planning permission was necessary for the change of use, based on the lack of cogent evidence to the contrary, it appears that it was. Whether it would have been possible to sell the then unit of holiday accommodation separately of Oakdene is also a matter on which there is limited evidence. However, these aspects are of limited consequence, as planning permission was sought and it appears that since then, the appellant has occupied the dwelling in accordance with the terms of the S106.
6. Though the submitted Planning Statement suggests that the consideration of this matter should be in the context of the development plan and other material considerations, my consideration under the TCPA is clear as set out in Section 106A (6) (b), '*if the obligation no longer serves a useful purpose, that it shall be discharged*'. An alternative consideration under (c) is if an altered obligation is proposed, whether the modified obligation would continue to serve the purpose equally well. No such modifications have been proposed. As such, I have proceeded to consider whether the obligations continue to serve a useful purpose.
7. Firstly, the appellant alleges that she was invited to sign the S106 agreement containing the obligations without full awareness of its purpose. Be that as it may, a person entering into a legally binding deed ought only do so with a full understanding of the related implications. As such, any findings of the Legal Ombudsman or other civil proceedings in this regard attract limited weight in my consideration of this appeal.
8. A similar criticism is made by the appellant of the floor area measurements and the manageability of the garden stated by the original architect as reasons why the resultant accommodation would be suitable and desirable. These inaccuracies are being highlighted a long time after the event and whether they were stated knowingly or otherwise at that time, I cannot conclude that they would have materially affected the Council's decision to grant planning permission in 2018 based on the then relevant planning policies.
9. The issue of floor area measurements is subject of further scrutiny in the context of the minimum space standards¹. These standards existed from around 2015 and were not always replicated in locally relevant planning policies. If the dwelling would not have met the minimum housing standards as a 1 or 2 bed dwelling over 2 storeys goes more to the question about whether a change of use should have been granted in the first place, not whether the planning obligation continues to serve a useful purpose now. In any event, this specific attribute of the property did not deter the appellant from investing in it, subsequently extending it and making it a comfortable place to live.
10. Whilst a Local Needs Dwelling is not strictly a form of affordable housing tenure², it can ensure that a stock of housing is available to those that have local connections to the rural area and who may not have the same purchase power as someone relocating into the area. The effect of such a restriction can limit the range of

¹ Technical housing standards – nationally described space standard – DCLG March 2015

² i.e. Affordable Rent dwelling, Shared Ownership dwelling, Social Rented dwelling etc.

people that can apply to purchase or rent the dwelling, and thus, it has a limiting effect on its value. This point is exemplified in the evidence of the appellant³ that suggests that the achievable values for the dwelling with the obligation are around £15,000 - £75,000 lower than its value on the open market without such. However, these market appraisal valuations are distinguished as not being red book valuations prepared by a registered valuer.

11. The evidence in the Planning Statement suggests that the difference in values between the property with and without the S106 is '*negligible*'. However, other evidence offered by the appellant suggests that such a reduction in the asking price would materially affect her onward purchase, which contradicts the point about the negligibility of the difference in values. My view is that a purchase price reduced from typical open market value would be materially beneficial to those that are in need of homes at the lower end of the market.
12. The property has been marketed for sale since around late 2022⁴. It is admitted that the initial marketing approach was to price it without consideration of the S106 restriction. Despite much evidence having been submitted, it is unclear when the asking price was reduced to levels that genuinely took account of the S106 restriction. It is only after this point in time that a truer picture can be built of the saleability of the property with its restriction in place to the range of potentially eligible occupants.
13. The summary of marketing efforts that has been provided suggests that a limited number of potential purchasers have viewed or made offers on the property. One potential sale was close to exchange but fell through when it became clearer that the occupant/s did not qualify under the terms of the S106. The commentary also suggests that a number of potential purchasers have been deterred by other factors relating to its unsuitability to meet their needs, such as its small size. It is therefore unclear that the S106 is the sole reason why the property has not yet sold. A clearer evidence base of the marketing strategy, asking price/s sought relative to market conditions and interest/offers received with relevant detail over the period of marketing would have provided greater assistance to my understanding of the matter. What is also absent, despite inference to the contrary, is any clear evidence that the terms of the S106 would deter any lenders from offering a reasonably-priced mortgage for the property if sought by a prospective purchaser.
14. The Council's Housing Enabling Officer's evidence suggests that there are 1,791 households registered on the Devon Home Choice register as being in need of affordable housing for rent as of January 2024. Though there is less data on households in need of affordable housing specifically for sale, there is evidence of households registered with connections to rural parishes that may be able to purchase some form of lower priced occupancy-restricted dwellings. The Housing Enabling Officer's advice is also that the need for affordable forms of housing often exceeds the numbers on the register. Therefore, in the absence of robust evidence to the contrary, the S106 serves a useful purpose by prioritising the accommodation needs of those that have local connections to the rural parishes or district and who would benefit from the purchase price being lower than typical market values.

³ Including the Stags letter, dated 15 April 2024

⁴ Letter from Bond Oxborough Philips, dated April 2024

15. An example⁵ provided by the Council relates to the removal of a Local Needs restriction from a property following negotiation of an offsite affordable housing contribution through red book valuation comparisons. Though the detail on the nature of such a contribution is lacking, its purpose would have been to offset the loss from the local stock of affordable housing by allowing its reinvestment by the Council or nominated organisation into an alternative housing opportunity that would serve a similar purpose. Whilst there is a suggestion in the evidence that the appellant would have been amenable to such an approach, it does not appear to have been explored beyond an idea in principle.
16. Other examples have been provided by the appellant of the conversion of buildings to dwellings that have been granted permission without obligations more recently. However, the planning policy context is materially different given the passage of time since permission was granted for the appeal dwelling and I have no evidence on which to assume that the planning merits in those cases are so similar to the appeal case. In any event, they do not alter the finding about the usefulness of the obligation on an ongoing basis. I have also given consideration to the other personal circumstances of the appellant, but they do not alter my conclusion that the obligation continues to serve a useful purpose.

Conclusion

17. For the reasons given above the appeal should be dismissed.

H Nicholls

INSPECTOR

⁵ Planning reference – 64683 – Ilfracombe