Planning Inspectorate

Appeal Decision

Site visit made on 20 May 2025

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2025

Appeal Ref: APP/Y2430/Q/24/3355391
Land adjacent to Glebe Road, Asfordby Hill, Leicestershire

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a failure to determine that a planning obligation should be discharged.
- The appeal is made by Ironstone Development (East Midlands) Limited against Melton Borough Council.
- The development to which the planning obligation relates is Ref 17/00821/FUL for the erection of 16 dwellings.
- The planning obligation, dated 29 October 2018, was made between Melton Borough Council and The Stanton Housing Company Limited, Talavera Estates Limited, and Leicestershire County Council.
- The application Ref 24/00525/ENQ106 is dated 17 April 2024.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is allowed. The planning obligation, dated 29 October 2018, made between Melton Borough Council and The Stanton Housing Company Limited, Talavera Estates Limited, and Leicestershire County Council, no longer serves a useful purpose and is discharged.

Applications for costs

2. An application for a full award of costs was made by Ironstone Development (East Midlands) Limited against Melton Borough Council. This is the subject of a separate Decision.

Preliminary Matters

3. This appeal is made against the Council's non-determination of the application, with no putative decision issued. The Council subsequently did not meet the appeal deadline to submit its Statement of Case. This was explained as being due to personnel changes, but in line with the 'Procedural Guide: Planning appeals – England', this was not considered to be circumstances to warrant an extension of time in this instance. I therefore have only very limited information before me as to the Council's position.

4. I have thus analysed the appellant's viability evidence on its own merits. I have no evident concerns relating to its methodology and assumptions, and in the absence of any evidence to the contrary, I have accepted the appellant's viability conclusions as accurate and appropriate in this instance.

5. The Government published a revised version of the National Planning Policy Framework ('the Framework') in December 2024. The parties had the opportunity to

comment through the usual appeal timetable deadlines, and I have considered this revised Framework in my decision.

Main Issue

6. The application was made under Section 106A of the Town and Country Planning Act 1990 to enable the discharge of the planning obligations set out in the Section 106 Agreement dated 29 October 2018. 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; 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.

7. The application sought discharge of the planning obligations and did not propose modifications. The main issue is therefore whether the planning obligations continue to serve a useful purpose.

Background

8. In summary, the Section 106 agreement requires for 6 of the 16 dwellings to be provided as affordable dwellings, and for an education contribution of £47,729.37 to be paid for the purposes of remodelling or enhancing facilities at John Femeley College and/or Long Field Academy and/or any successor education facility that will accommodate pupil growth generated from the development. 50% of the education contribution shall be paid prior to first occupation of the first dwelling, and 50% prior to first occupation of the 8th dwelling.

9. All of the dwellings have been constructed, and the site was described in November 2024 as being close to completion, with ten dwellings being in occupation. None have been transferred on to a Registered Provider or provided as affordable housing, and no education contribution has been paid.

10. The appellant seeks to discharge the obligations on the grounds of viability. This would have the effect of allowing provision of the remaining 6 houses as open market housing, and for no education contribution to be provided.

Reasons

11. The Site is an allocated housing site (ASFH1) in the Melton Borough Local Plan 2011-2036 (LP). The LP Policy IN3 identifies that development that provides additional dwellings will be expected to help to deliver sustainable communities by making developer contributions to local infrastructure in proportion to the scale of its impacts.

12. The contribution towards two secondary schools in Melton Mowbray was based on the DFE cost multiplier for the deficit places which would be created by the development. The level of affordable housing was sought in accordance with its Policy C4, which sets targets for the minimum percentage of affordable housing in different areas, in order to balance the housing stock and meet the community's housing needs. The provision of 6 affordable dwellings complied with the Policy C4 target.

13. There is no evidence before me to suggest that there is no longer a local need for education contributions or affordable housing. Indeed, I note Leicestershire County Council's appeal representation that the education contribution would continue to serve a useful purpose, because both the relevant schools are still forecast to be oversubscribed during the current and forthcoming years.

14. However, the appellant does not seek to argue a lack of such need or that the obligations would no longer have the potential to serve a useful purpose in isolation. Instead, they identify specific material considerations relating to viability which have occurred since the S106 was signed, such that they consider this 'useful purpose' test has to be considered in a broader form.

15. No genuine interest for any market purchases was forthcoming since they were first placed on the market in May 2023. The appellant consequently decided to retain complete ownership of the site and rent the properties directly, in order to do all possible to facilitate the site's efficient use.

16. The appellant's Viability Statement appraises a variety of site outcomes for each dwelling, based on scenarios of market/affordable sale, market/affordable rent, market sale/shared ownership, 100% market sale, and 100% market rent. It incorporates evidence from a Red Book Valuation Report and current potential sale/rental figures for each of the dwellings. The scheme appraisal was largely based on the actual costs incurred in the process of construction of the development, and is therefore suggested to be as robust as it can be.

17. The evidence identifies that the likely best case outcome with the removal of the affordable housing obligations currently imposed would be a £941,807 deficit. This therefore shows that the unviability of the scheme even without provision of any affordable housing or education contributions, at a level which I agree is significant.

18. The LP Policy C4 states that the affordable housing targets required will have regard to market conditions, housing needs, housing mix (in regard to tenure, type and size), economic viability, and other infrastructure requirements. Its justification text Paragraph 5.8.13 identifies that on individual planning applications, regard will be given to the housing need at the relevant time, along with the projected level and mix of affordable housing needed, and that a viability assessment may be requested in the exceptional circumstance where an applicant considers the level of affordable housing provision being sought to be unviable.

19. I also take reference from the Planning Practice Guidance[1], which refers to the weight to be given to a viability assessment being a matter for the decision maker, and acknowledges that negotiation can take place. It also identifies that circumstances relevant to such negotiations could include where a recession or similar significant economic changes have occurred since the plan was brought into force[2]. The Framework paragraph 59 similarly references that the weight to be given to a viability assessment is a matter for the decision maker, which includes any change in site circumstances since the plan was brought into force.

20. On the evidence before me, the removal of all contributions to affordable housing and to education would therefore still comply with the provisions of the LP Policies C4 and IN3 in this instance.

[1] Paragraph: 010 Reference ID: 23b-010-20190315, Revision date: 15 03 2019
[2] Paragraph: 007 Reference ID: 10-007-20190509, Revision date: 09 05 2019

21. If I were not to discharge the planning obligations, their retention would restrict the efficient use of land, as the affordable dwellings would be very likely to remain vacant for the foreseeable future. This would keep 6 dwellings out of the housing market which would otherwise be imminently available. The Framework seeks to significantly boost the supply of homes. There would also be moderate economic and social benefits associated with the occupation of the dwellings. In considering the evidence before me, I therefore find that overall, the planning obligations no longer serve a useful purpose.

Other Matters

22. The Leicestershire County Council appeal representation refers that they have already incurred staff time costs in seeking payment of the education contribution prior to the appeal. As such, they also seek retention of the £300 monitoring compliance contribution in the S106, as linked to the education contribution. However, I find no differently for this element of the contribution as I found above, whereby any payment would only worsen the viability situation. Alongside that the education contribution will no longer be due, I find no specific justification for retaining this element in isolation.

Conclusion

23. For the reasons given above, I conclude that the planning obligations in the S106 Agreement no longer serve a useful purpose, and should now be discharged. I therefore allow the appeal.

L N Hughes

INSPECTOR