Planning Inspectorate

Appeal Decision

Site visit made on 31 July 2025

by P Burley BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2025

Appeal Ref: APP/L5810/Q/25/3364169
Manor Farm Riding School, Petersham Road, Petersham, Richmond TW10 7AH

- 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 P McCormack against the decision of the Council of the London Borough of Richmond Upon Thames.
- The development to which the planning obligation relates is described as 'demolition of existing staff accommodation, caravans and storage barn and erection of replacement grooms' accommodation'.
- The planning obligation, dated 18 April 2018, was made between the Council of the London Borough of Richmond Upon Thames and Peter John McCormack.
- The application Ref 17/3667/S106, dated 24 January 2025, was refused by notice dated 26 March 2025.
- The application sought to have the planning obligation modified as follows: Amendment of the affordable housing contribution.

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr P McCormack against the Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the amendment of the planning obligation has been satisfactorily justified.

Reasons

4. The replacement grooms' accommodation was granted planning permission (17/3667/FUL) subject to a section 106 agreement which secured a financial contribution towards affordable housing.

5. The appellant does not dispute that a contribution towards affordable housing provision should be made in respect of all forms of residential development according to Policy LP 36 of the Council's 2018 Local Plan (LP), a policy which is justified on the basis of there being a substantial need for affordable housing in the borough.

6. The planning permission for the grooms' accommodation restricts its occupancy to workers employed in the associated business. According to the appellant this reduces the value of the accommodation by at least 20%, means that the

development should be classified as affordable housing, and that LP Policy LP 36 is satisfied without the need for a financial contribution.

7. I do not consider that the occupancy condition and any effect of this on the value of the development results in the accommodation meeting any of the definitions of affordable housing as set out in the Glossary to the National Planning Policy Framework, including 'discounted market sales housing' as suggested by the appellant. Discounted market sales housing is defined as housing that is sold at a discount of at least 20% below local market value. However, I have not been provided with any evidence to demonstrate that there are any controls (for example by way of a legal agreement) relating to the price at which the grooms' accommodation could be sold. Therefore, I consider that, in and of itself, the grooms' accommodation does not amount to affordable housing under LP Policy LP 36 and therefore the planning obligation should not be amended on that basis.

8. LP Policy LP 36 allows for matters such as economic viability and individual site costs to be taken into account in determining any affordable housing contribution. The appellant has explained that at the time of the grant of planning permission in 2018 it accepted the affordable housing contribution but, between that time and the commencement of development, build costs have significantly increased and this is the principal reason which has led the appellant to seek to amend the affordable housing contribution.

9. It is clear that there is wide-ranging disagreement between the appellant and the Council in relation to data used and assumptions adopted in the viability appraisal that was submitted in support of the application to modify the planning obligation. The appellant has also contended that the Council should have appointed an assessor to review the viability appraisal, but the Council has stated that as the appellant had not submitted a full viability review, such an analysis could not be undertaken.

10. Based on the information that has been provided to me I consider that the viability appraisal does not provide sufficient information to enable a sound conclusion to be reached.

11. A key example of this is the approach taken to build costs. The Council has said that given the stage of development of the subject site – which has been partially constructed – a full cost plan, fully-priced tender, or build contract should have been submitted. However, the appellant has stated that there is no statutory or specific policy requirement to provide receipts or tenders, that these would not necessarily indicate standard costs for the development, and that the appellant's valuer has based its assessment on the tender prices index which is a recognised, robust and reliable costing index.

12. The Planning Practice Guidance's advice on viability assessments[1] supports the use of appropriate build cost data, such as from the Building Cost Information Service. However, this guidance relates to assessments which are undertaken at the planning application stage and where costs may not be known. It is reasonable, therefore, to base such an assessment on the best available information such as a tender prices index.

[1] https://www.gov.uk/guidance/viability

13. The appeal application is seeking to modify a planning obligation because of a specific, known change in circumstances – an increase in build costs that has been experienced by the appellant. During my site visit I saw that construction activity was taking place, and it appeared that the project was at a relatively advanced stage – cladding had been added to the external elevations of the building and glazed windows had been installed. I would not expect that a project would have reach such a stage without build costs having already been agreed.

14. The Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017 has been referred to by the Council as one of the publicly-available sources to assist with preparation of an affordable housing viability appraisals. This document discusses the use of review mechanisms to, amongst other things, address the economic uncertainties which may arise over the lifetime of a development proposal. It states that review mechanisms should be based on the most robust data available and that this generally will be evidenced build costs.

15. I consider that similar principles should apply in this case; if it is being argued that a planning obligation cannot be discharged because of an actual change in circumstances then it is reasonable to expect that some evidence of that change in circumstances would be provided rather than reliance being place on generic information that is derived from a national price index.

16. Accordingly, I do not consider that the submitted viability appraisal sets out all relevant and available evidence in order to facilitate a considered judgement and, therefore, I do not consider that it has been robustly demonstrated that the development cannot viably sustain the agreed affordable housing contribution. As such I do not consider that the amendment of the planning obligation has been satisfactorily justified.

Other Matters

17. Whilst the appellant has raised issues in relation to the Council's handling of the application and the expertise of those who have commented on its submissions, these are outside of the matters that I can consider in this appeal which are constrained by legislation.

Conclusion

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

P Burley

INSPECTOR