

Appeal Decision

Site visit made on 16 October 2025

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2025

Appeal Ref: APP/L3245/Q/25/3364874

The Grange, Berrington, Shropshire SY5 6HB

- 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 Mr and Mrs Harris against the decision of Shropshire Council.
 - The development to which the planning obligation relates is Erection of an affordable two storey dwelling with detached garage.
 - The planning obligation, dated 22 July 2014, was made between Mark William Harris and Amanda Nadine Harris, Lloyds Bank PLC and Shropshire Council.
 - The application Ref 24/03427/DSA106, dated 5 September 2024, was refused by notice dated 29 October 2024.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed.

Procedural Matters

1. Section 106A(3) of the Town and Country Planning Act 1990 (as amended) sets out that 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 for the obligation— (a) to have effect subject to such modifications as may be specified in the application; or (b) to be discharged.
2. Section 106A(6) of the Act sets out that 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.

Main Issue

3. The appeal relates to an application to discharge the section 106 planning obligation (s106 agreement) associated with planning permission Ref 13/04651/FUL. No modifications to it have been proposed. Accordingly, the main issue is whether the planning obligation continues to serve a useful purpose.

Reasons

4. The permission Ref 13/04651/FUL describes the dwelling the subject of the s106 agreement as an affordable two storey dwelling with detached garage. Permission for it was granted under the exceptions approach outlined in Policy CS11 of the Adopted Core Strategy and Policy MD7A of the Site Allocations and Management

of Development Plan. Amongst other aspects, these essentially allow single plot houses in locations that would not normally obtain planning permission on an exception basis that affordable housing for local people is provided.

5. At the time, the appellants met the Council's relevant eligibility criteria, including by having a strong local connection to the area, needing to remain living there and, due to health reasons, having an unmet housing need. Health needs also justified the dwelling's internal floorspace exceeding the 100m² normally allowed by the Council for single plot exception properties, as per its Type and Affordability of Housing Supplementary Planning Document (SPD). That floorspace figure stems from the Council's aim to ensure affordability, since larger properties are generally more expensive and thus are likely to run counter to this. However, whilst the property is likely to be more expensive due to its size, this does not mean it is not a single plot exception dwelling.
6. The s106 agreement requires, amongst other aspects, the Owner (in this case, the appellants) to occupy the dwelling as their sole and/or principal residence unless otherwise agreed in writing by the Council in accordance with the terms specified in the Schedule. This relates to and stems from the above policy requirement; and the s106 agreement sets out that planning permission for the exception dwelling would not have been granted without the s106 agreement having been executed.
7. The relevant clauses in the Schedule include the Owner not letting the dwelling other than to a Qualifying Person and at no more than the Affordable Rent; and not selling it other than in accordance with the agreed Sale Marketing Plan at the Formula Price and to a Qualifying Person (or other such bodies as further specified). The s106 agreement defines these various terms.
8. In essence, the s106 agreement therefore allows the Owner, if they no longer need/wish to remain in the property, to let or sell it at a defined rate below the open market to people who are, broadly speaking, in housing need and have a connection with the local area. However, if it has not sold after a defined number of weeks, the terms in the Schedule allow the Owner to sell the dwelling to any person without restriction as to their eligibility. After a further period without a sale, the Owner can then apply to the Council for the Formula Price and all other provisions of the s106 to be removed. Following any subsequent sale, the Owner would then pay a defined amount to the Council for its use to facilitate the provision of affordable housing elsewhere in the district. As such, the s106 allows the dwelling to be sold on the open market subject to the various steps being taken in accordance with the Schedule.
9. The s106 agreement and the other submitted evidence indicate that the purpose of the obligation is to ensure that the dwelling, once the Owner no longer wishes/needs to reside in it, is made available at a reduced rent/sale price to certain eligible people who are in housing need. In accordance with local policy, this secures the dwelling as an 'affordable home', which the National Planning Policy Framework sets out is housing for sale or rent for those whose needs are not met by the market and which is essentially available at a defined rate below the local market rent/value.
10. Although it has not been confirmed that the location, size and value of the property would be appropriate or acceptable to those on the housing register, the submitted evidence shows that there is a significant need for affordable housing in the

district. There are also several households on the housing register seeking accommodation in the parish of Berrington. The letting of the property for a short period on an affordable basis to a qualifying person, in accordance with the s106 agreement Schedule, supports this; and the marketing process for the rental resulting in applications from six interested parties clearly indicates a demand.

11. Due to its rural location and lack of facilities and access to regular public transport, the suitability of Berrington for households seeking affordable accommodation (particularly this dwelling) has been questioned, especially compared to the settlement of Cross Houses for example. It is also questioned whether the housing register data is accurate and reflects current housing needs following the completion of a substantial residential development, including 12 affordable units, in Cross Houses. Nevertheless, the appellants do not dispute that there is a significant need for affordable housing in Shropshire as a whole or that at a broader level the obligation serves a useful purpose in supporting the provision of affordable housing across the district.
12. Accordingly, even if demand/need for affordable housing in Berrington may be less than other parts of the parish or district, there is little doubt that the planning obligation still serves a useful purpose as a mechanism ensuring the property is available to those in housing need. There having been no other dwellings built in Berrington since 2015 and the appeal property being relatively remote, large and expensive and only being part adapted (having been built without the lift and with conventional door and corridor widths) do not lead me to a different conclusion.
13. In coming to this view, I have taken account of the submitted valuation reports by well-established Shropshire-based firms; that the county is said to attract those looking to retire; and the contention that the property, particularly given its finish and size, would be unaffordable to a qualifying person and for most working people in the county given median salaries in the district and the monthly bills and mortgage costs even at the Formula Price. Nevertheless, these aspects do not mean that it is inevitably not a suitable affordable dwelling with respect to local policy. Whilst the term 'affordable housing' is frequently used and can be confusing, affordability/income is also not the only relevant factor when determining if someone is in housing need.
14. The appellants' circumstances have changed significantly since the original planning application was granted permission. Consequently, it is said that the dwelling, which lies vacant, no longer meets their needs and is not required for its original purpose. The appellants' circumstances at that time were also a significant factor in planning permission being granted, whilst the property's design was based on the appellants' then needs. Nevertheless, since the Obligation secures it as an affordable house for eligible people in housing need and neither relates to nor references the appellants' personal circumstances (as per the submitted Planning Statement, the s106 agreement is also not personal to the appellants), the change does not mean that the Obligation no longer serves a useful purpose.

Other matters

15. The appeal seeks to discharge rather than modify the obligation. Nevertheless, the submitted legal agreement¹ (UU) essentially seeks to cover sub-clause 2.11 in the

¹ Although it is referred to as a deed of variation, it actually appears to be a Unilateral Undertaking and is thus independent of the existing s106 agreement rather than seeking to modify it.

Schedule to the s106 agreement. The UU would in essence provide a financial contribution for the Council to use for other affordable housing; and it has been put to me that the contribution, in line with local policy, could be used more effectively, including by for example delivering affordable housing/purchasing an existing property for use as an affordable home in other priority locations which are more accessible and have more facilities than Berrington.

16. However, it seems to me that without the other prior steps in the Schedule having been gone through to ascertain if there is any eligible person interested and able to acquire the property as an affordable home, then the contribution alone cannot reasonably be considered as serving as useful a purpose as the dwelling being made available to people in housing need. With the clear housing need in the area and the property having been relatively recently rented on an affordable basis, it seems to me that there is also no reason why an eligible person wishing to rent/buy it would not transpire were the appellants to follow the full terms of the s106 agreement. Furthermore, irrespective of whether the UU meets the relevant tests, the weight it attracts is significantly reduced given that the lender has not signed up to it.
17. I recognise that the appellants no longer need to reside in the property and their preference is to dispose of it. However, if the property were to be marketed for sale in accordance with the Schedule to the s106 agreement and no eligible purchasers came forward within the specific period, then there is a route to sell it on the open market. As such, the Obligation remaining in effect does not leave the appellants unable to proceed with disposing of the property.

Conclusion

18. For the above reasons, the appeal is dismissed. The planning obligation detailed in the header above is therefore not discharged and shall continue to have effect.

T Gethin

INSPECTOR