



Appeal Decision

Site visit made on 13 April 2026

by **Martin Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 June 2026

Appeal Ref: APP/D0121/Q/25/3377000

20-28 Miles Close, Pill, Bristol BS20 0LH

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a failure to determine whether a planning obligation should be discharged.
 - The appeal is made by Lauren Herring against North Somerset Council.
 - The development to which the planning obligation relates is the comprehensive redevelopment of the Land comprising demolition, residential, employment and commercial development, the construction of roads and sewers, cycle paths and footways, associated landscape works, laying out and provision of two football pitches and the provision of accolated car parking facilities.
 - The planning obligation, dated 30 September 1998, was made between North Somerset District Council and The Secretary of State for Health and Redrow Homes (SW) Limited.
 - The application Ref 25/P/1892/MOD is dated 5 September 2025.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed. The planning obligation, dated 30 September 1998, made between North Somerset District Council and The Secretary of State for Health and Redrow Homes (SW) Limited, shall continue to have effect.

Preliminary Matters

2. 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.
3. 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.
4. The "useful purpose" in s106A(6)(b) and (c) may, but need not necessarily be, the same as the original purpose for entering into the planning obligation. Moreover,

the issue is whether the obligation now serves any useful purpose, not just any useful planning purpose.

Background and Main Issue

5. The planning obligation, dated 30 September 1998, (the Principal Agreement) imposed a restriction on a number of units within the development, the “Affordable Housing for sale” units, which restricted these units to not be disposed of in excess of 80% of their market value, and that these units should only be sold to “Nominated Purchasers” in order of priority pursuant to the “Cascade Criteria” and provided that these persons have insufficient income and capital to purchase a property locally at an open market value. This obligation is subject to a Deed of Variation, dated 29 June 2001, and a Supplemental Agreement, dated 21 June 2002. The appellant argues that the obligation should be discharged in its entirety, citing various matters.
6. As such, the main issue in this case is whether or not the obligation continues to serve a useful purpose.

Reasons

7. The National Planning Policy Framework (the Framework) supports the delivery of affordable housing, stating that where there is a need for affordable housing, planning policies should specify the type that will be required and that it should be met on-site, unless otherwise justified. It also outlines that a mix of affordable housing should be required, across tenures.
8. The Glossary to the Framework sets out a definition of affordable housing as
“housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions.”

One of those definitions outlines discounted market sales housing, defined as:
“is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.”
9. The provisions of the planning obligation secure the relevant properties as discounted market sales housing, in that it provides a subsidised route to home ownership. Eligibility is determined, in part, by the inability of the purchaser to purchase a property locally at open market value, due to insufficient income and capital. The ability to purchase a unit is also governed by cascade criteria. The provisions of the obligation also apply to subsequent purchasers.
10. On this basis, the obligation undoubtedly secures the units as a form of affordable housing that is outlined and endorsed by the Framework. Policy CS16 of the North Somerset Core Strategy also requires the provision of affordable housing within residential development. There is thus a well-defined purpose to it, and it should not be discharged. No modifications to the obligation have been suggested.

Other Matters

11. I am conscious that the appellant as part of the application, included an extensive submission to support their position that it is appropriate to discharge the obligation. The entire focus of the submission is the discharge of the obligation, and it is repeatedly asserted that modification would not be appropriate. Within it, they outline what are contended to be various grounds supporting discharge of the obligation. The first of these is that the obligation does not support the delivery of affordable housing within “contemporary planning frameworks.” However, as I have set out above, discounted market sales housing is a form of affordable housing defined in the Framework. As such, this ground is simply not borne out.
12. It is also contended that the obligation no longer meets the statutory tests of necessity, proportionality, or relevance. These matters reflect the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, which states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

These tests are also reflected in paragraph 58 of the Framework.

13. However, these are the tests to consider when granting planning permission, a situation that occurred sometime ago. I am not considering whether or not to grant permission, only whether in accordance with the above, the obligation continues to serve a useful purpose, which I have found that it does.
14. There is reference to there being a conflict with the terms of the lease, with reference to there being no entitlement to the “missing 20% share”. The details of the leasehold of the property are in my view unrelated to the restriction imposed by the planning obligation and are enforceable separately. Moreover, there is no “missing 20% share”. The obligation requires sale at 80% of market value, which equates to the total value of the properties and there is no value to the properties above that level that is “missing”.
15. There is reference to there being no “pathway to ownership” and no staircasing mechanism. However, these are not shared ownership properties where these matters are relevant. In this case, the purchaser owns the entirety of the property on purchase. As such, these issues have little bearing on my decision. There is also reference to the “agreement’s indefinite duration.” However, the obligation is intended to secure the units as affordable housing for subsequent occupiers in the future, and therefore it is entirely appropriate for it to be for an indefinite duration.
16. The appellant points to alleged difficulties in prolonged sales delays, equity suppression, and difficulties in securing mortgage finance. These are not of themselves matters that demonstrate that the obligation no longer serves a useful function. The obligation will inevitably impose some limit to the number of individuals that will be able to purchase the properties, however that is one of its inherent purposes, to ensure that only those persons complying with the eligibility criteria purchase them. The same can be said for the contended equity suppression. The explicit aim of the obligation is to ensure that the value at which

properties are purchased is kept below that which the market may ordinarily dictate. Purchasers would be fully aware of the mechanism that is in place when undertaking their purchase.

17. Mention is made that there are no available mortgage lenders that offer mortgages under the terms of the obligation. However, this is little more than a contention and given that the form of housing is outlined in national planning policy, while there may be a smaller number of lenders which would offer mortgages, there is no substantive evidence to show that it is impossible to obtain such a mortgage.
18. It is also contended that there is no public benefit and the obligation fails to achieve its purpose. However, the availability of housing at below market value, thereby comprising an affordable housing unit as set out in the Framework, is a public benefit and the obligation continues to serve this purpose.
19. I am conscious that there are allegations relating to procedural and administrative matters in respect of how the Council handles and enforces the obligation, including how the relevant property values are derived. However, the enforcement of the obligation is a matter for the Council and not one which influences my consideration of its useful purpose.
20. The appellant points to different valuations for two specific units yet admits that the units are “near-identical” therefore not actually identical, and there is no detailed comparison of what led to each of the valuations. I am also particularly conscious that should there be a disagreement in respect of the value of the properties that it is possible to refer this to an independent valuer, which appears to be a reasonable method of tackling any such disagreements.
21. With regard to different sales values being applied to differing units, the obligation caps the amount at which a unit can be sold, i.e., this is a maximum. This does not prevent a unit being sold at an amount less than this maximum, if for example a vendor wished an expedited sale. That is a matter for each individual seller, but it does not undermine the legitimate purpose of the obligation itself.
22. A substantial part of the appellants submissions in support of this application seek to show that the basic model of affordable housing in this instance is untenable or unsuitable. However, as I have covered above, the model of discounted market sales housing is endorsed by the Framework and is thus a legitimate method of securing affordable housing for planning purposes. That other forms and tenure of affordable housing exist does not undermine the contribution that units in this case make to affordable housing provision.
23. The appellant refers to rights under the Human Rights Act and the European Convention on Human Rights, specifically Article 1 of the First Protocol, which refers to the peaceful enjoyment of possessions. However, I find nothing that results in interference with these rights, given the knowledge of the restriction that the purchaser would have when first purchasing the property and the legitimate purpose of the obligation to provide affordable housing. There is also reference to the Public Sector Equality Duty, but I do not find that there is any breach of this duty in the obligation itself.
24. There is reference to the obligation no longer being actively enforced, yet a large part of the appellants case sits on the alleged difficulties of having to comply with it. As such, it appears that the obligation is being enforced and adhered to.

25. There is no indication of units remaining empty or unsold for unreasonably protracted periods, which could indicate that the obligation prevents sale and occupation. I note the example of one specific property referred to by the appellant, but consideration of this isolated situation does not show that there is a structural problem with the obligation, or that there is a failure to serve a legitimate purpose.
26. The appellant draws my attention to plans for substantial new residential development within the area, which would deliver additional affordable housing. This is contended to show that the obligation in this case is “unnecessary and duplicative.” However, there is nothing to show that there is an over provision of affordable housing within the district. Furthermore, the appellant states that this new affordable housing will be secured through different mechanisms involving registered providers and nomination agreements. This would add to a diversity in the form and tenure of affordable housing in the area but does not compensate for the loss of the discounted sale units subject to this obligation.
27. I acknowledge that the appellant contends that the obligation creates difficulties for sellers. However, as I have said above, the entire focus of the submission is the discharge of the obligation, it repeatedly asserts that modification would not be appropriate. Yet, I have found that the obligation continues to serve a useful purpose, this means that discharge of the obligation is not acceptable. Should there be credible issues identified with the mechanics of the obligation itself, then it should be explored whether these can be improved by modification. This however does not indicate that the obligation must be discharged as this would negate the useful and legitimate purpose of it. In any event, this is a matter that the appellant should explore with the Council before seeking discharge, and there are no modifications before me to consider.
28. The appellant refers to various appeal decisions throughout the submission. The Council highlights that there are significant errors in these examples, with little or no relevance to the current appeal. This has not been addressed by the appellant within their final comments. I therefore have significant concerns over the accuracy and reliability of the supporting information that the appellant has submitted. Notwithstanding, I have ultimately determined that the obligation continues to serve a useful purpose, and this cited information does not convince me otherwise.
29. The appellant states that the Council’s position against the discharge of the obligation is driven by administrative constraint, rather than “lawful planning judgement.” I find nothing to persuade me of this. While the Council’s statement is brief, it clearly outlines that it opposes discharge of the obligation as it would result in the loss of affordable housing. This outlines the useful purpose that the Council considers the obligation to have, and I have agreed with this view.

Conclusion

30. The obligation secures the properties as units of affordable housing as envisaged by the Framework and local planning policy. There is therefore a clear purpose, which is a planning purpose and also a useful purpose, served by the obligation. The various other matters that are referenced by the appellant throughout their submission do not, in my view, undermine or detract from this primary consideration. They do not show that a mortgage is unattainable for the units, that

they are inherently unaffordable for purchasers or that they are not being purchased and remaining empty.

31. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR