



Appeal Decision

Hearing held on 17 June 2026

Site visit made on 17 June 2026

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2026

Appeal A Ref: APP/L3245/Q/26/3378204

Orchard Cottage, Ashford Carbonell, Shropshire SY8 4BX

- 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 S Angell against the decision of Shropshire Council.
 - The development to which the planning obligation relates is Erection of an affordable dwelling and garage/store, alteration to existing vehicular and pedestrian access and siting of temporary caravan attached to planning permission reference 11/05428/FUL.
 - The planning obligation dated 20.06.2012 was made between Shropshire Council and Mr S Angell.
 - The application Ref 25/03204/DSA106, dated 28 August 2025, was refused by notice dated 27 November 2025.
 - The application sought to have the planning obligation discharged.
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Appeal B Ref: 6006022

Orchard Cottage, Ashford Carbonell, Shropshire SY8 4BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Angell against the decision of Shropshire Council.
 - The application Ref is 26/00102/FUL.
 - The development proposed is market value dwelling including detached ancillary office and alteration to existing vehicular access.
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Decision

1. Appeal A is allowed and the planning obligation dated 20.06.2012, made between Shropshire Council and Mr S Angell, is discharged.
2. Appeal B is allowed and planning permission is granted for market value dwelling including detached ancillary office and alteration to existing vehicular access at Orchard Cottage, Ashford Carbonell, Shropshire SY8 4BX in accordance with the terms of the application, Ref 26/00102/FUL, subject to the conditions in the attached schedule.

Preliminary matters

3. The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 set out the procedures for the modification and discharge of planning obligations under Sections 106A and 106B of the Town and Country Planning Act 1990 (the Act). An obligation can be modified or discharged if it predates 6 April 2010 or is over 5 years old. The obligation subject of appeal A meets this requirement.

4. The application subject of appeal B was submitted as a stand-alone planning application for a 'market value dwelling including detached ancillary office and alteration to existing vehicular access'. The Council amended the description of the development to 'Application under Section 73A of the Town and Country Planning Act for the erection of one (open market) dwelling, detached ancillary outbuilding (office) with alterations to existing vehicular access'.
5. The change in application type and description of development was not agreed by the appellant. It is necessary to ensure that the description of development and application type reflects what was applied for. I have therefore considered the appeal as a stand-alone proposal for a new dwelling, not one for planning permission for development already carried out, and I have taken the description of development from the application form. This is reflected in the banner heading above. Nonetheless, whilst this amended description was the subject of statutory consultation, given the similarities in the development description I am satisfied that no procedural unfairness to interested parties has occurred due to that amended description.

Application for costs

6. An application for costs was made by Mr S Angell against Shropshire Council. This application is the subject of a separate decision.

Main Issues

7. Appeal A- The main issue is whether the planning obligation serves a useful planning purpose, with particular regard to the affordable housing restriction.
8. Appeal B- The main issue is if the site is in a suitable location for the proposal having regard to the spatial strategy in the development plan and access to services.

Appeal A

Reasons

9. The site is located in the small settlement of Ashford Carbonell. Ashford Carbonell is not a community hub or part of a community cluster and thus is classified as being in the open countryside in which policy MD7a of the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev) and policy CS5 of the Shropshire Local Development Framework Adopted Core Strategy (2011) (CS) state that new market housing will be strictly controlled.
10. Planning permission was granted in July 2012 for the erection of an affordable dwelling¹. The submitted evidence indicates that this was granted under the exceptions approach outlined in CS Policy CS11 which allows single plot houses in locations that would not normally obtain planning permission on an exception basis that affordable housing for local people is provided.
11. The planning permission was the subject of an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 which sought to ensure that the dwelling is retained as affordable, essentially securing it in perpetuity as an affordable home for persons with a local connection whose needs are not met by

¹ Application 11/05428/FUL

the market at a defined rate 60% below the local market rent/value. This also included a restriction on the maximum floor area of the dwelling. The Section 106 agreement (S106) sets out that planning permission for the dwelling would not have been granted without the agreement having been executed. The appellant met the S106's exception criteria and construction of the dwelling commenced in July 2012. The dwelling is currently incomplete, and the appellant's case is that the S106 has failed to deliver an affordable dwelling. The appellant submits that the obligation no longer serves a useful purpose and so should be discharged.

12. The evidence indicates that in Shropshire there are more than 5,290 households in housing need on the housing register², in addition to which the Council submit that there is likely to be additional hidden need in the form of eligible households not on the register. Whilst the exact numbers of persons in the local area who would be eligible to rent or buy the dwelling in accordance with the terms of the S106 are not before me, I have been presented with no reason to find that there is not a need for affordable housing in Ashford Carbonell, in particular given the average house prices and affordability ratios in the area.
13. The property has not been marketed as an affordable dwelling and alternative providers have not been approached. Given this, there is no evidence before me demonstrating an inability to secure alternative tenants or purchasers that could rent or purchase the site under the terms of the S106. As the obligation restricts the use of the dwelling as an affordable unit in perpetuity, any reduction in the available affordable housing stock would have a lasting detrimental impact on affordable housing provision.
14. Notwithstanding this, regard has to be had to whether the S106 has/ is likely to fulfil its purpose as a mechanism for delivering a dwelling available to eligible persons in housing need. Some 14 years after it was granted and construction began, the dwelling remains substantially incomplete lacking, amongst other things, flooring, electricity, sanitary facilities, heating and a staircase. The main parties agree that the dwelling has not appeared on the housing register. To date, no affordable dwelling has been delivered which is available to eligible persons in housing need. Indeed, I note that the appellant and his family, the affordable dwelling's intended occupiers, currently reside on site in an annexe.
15. The fact that the dwelling has not been completed does not in itself mean that there is no affordable unit to protect or that it cannot contribute to affordable housing stock in the future. Nonetheless, the appellant states that the construction of the dwelling has stalled and there is no prospect of an affordable unit being delivered. This is due to reported difficulties in receiving mortgage funding for the construction of self-build affordable properties for self-employed borrowers which mean that the appellant is unable to get a mortgage for the construction of the dwelling. This has resulted in the financing of the construction of the dwelling through earnings and loans, resulting in a long build-out period and the eventual stalling of the development with an estimated further £75,000- £100,000 of additional works needed to render the dwelling habitable. At the hearing I heard that the discharge of the obligation would enable the appellant to access mortgage funding, allowing the construction of the dwelling to continue.

² Appeal Statement of the Local Planning Authority

16. I acknowledge that an alternative provider or eligible person satisfying the requirements of the S106 may, theoretically, be willing and able to take the dwelling on in its part-completed form. However, in this particular case the appellant submits that, if the dwelling were sold to another person or alternative provider at 40% below market value in line with the requirements of the S106, given the level of capital investment in the development, significant financial losses would be suffered. Given this it is clear that the appellant would be unwilling to sell the site. Consequently, completion of the development would still be unlikely, especially given the likely costs outstanding.
17. Additionally, the appellant indicates that the financial losses that would be suffered if the site were sold in line with the restrictions in the S106 would result in the risk of homelessness for the appellant and his family, pushing them onto the housing register in an area in which the main parties agree there is a shortfall in affordable housing provision. There would be no guarantee that an affordable dwelling of the size required to accommodate the appellant and his family would be found within the local area.
18. Drawing together the above, based on the evidence before me and all that I heard during the hearing, no affordable unit has been delivered and it appears that there is no reasonable prospect of the unit coming forward as an affordable dwelling. Given this, the obligation has failed to deliver an affordable dwelling with no indication that it will do so in the future. Thus, with regards to the affordable housing restriction, the S106 no longer serves a useful planning purpose.
19. The site is the subject of a recent appeal to discharge the planning obligation³ in which the Inspector concluded that the affordable housing restriction in the S106 continued to serve a useful planning purpose. In that decision the Inspector commented that the dwelling had been constructed. That decision appears to have been made on the basis that the dwelling was capable of contributing to the affordable housing stock. In light of my above findings regarding the dwelling's unfinished nature and the likelihood of it coming forward as an affordable dwelling, I have reached a different conclusion with regards to whether the S106 continues to serve a useful purpose with regard to the affordable housing restriction.
20. The S106 includes a size restriction which seeks to ensure that the internal floorspace does not exceed 100m². The basis for this appears to be to ensure that the dwelling remains affordable to the intended occupiers since larger properties are generally more expensive. In a 2025 enforcement appeal⁴ the Inspector considered that the appellant's family/ personal needs justified extensions creating 25m² of additional floor area which resulted in the dwelling's internal floorspace exceeding the 100m² normally allowed for single plot exception properties. At the hearing it was explained that these extensions would be excluded from any valuation, thereby ensuring that the rental or sale price reflected the size cap restriction in the S106. To that end, the size restriction serves a useful purpose in that it ensures that the property does not become a larger, and thus less affordable, dwelling. However, as the S106 is failing to contribute to the affordable housing stock with no indication that it will in the future, it follows that a restriction on the dwelling size to ensure it remains affordable serves no useful planning purpose.

³ APP/L3245/Q/25/3363603

⁴ APP/L3245/C/23/3333460

21. My consideration under Paragraph 106(6) of the Act requires me to determine whether: a) the 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.
22. The evidence indicates that the obligation has failed to deliver affordable housing and there is no indication that it will do so in the future. Were the obligation to remain without modification, the evidence before me, and all that I heard during the hearing, indicate that an affordable dwelling would not be delivered on the site and thus, as a mechanism to delivery affordable housing to serve persons in housing need, it is apparent that the obligation no longer serves a useful planning purpose. No modifications to the obligation which would enable it to serve that purpose have been put to me. It follows that, as the obligation no longer serves a useful planning purpose, it should be discharged, as set out in Paragraph 106(6)b of the Act. The consideration of whether the obligation serves a useful planning purpose in terms of its delivery of an affordable unit is not altered by the site's location in the open countryside and subsequent conflict with the spatial strategy in the development plan.

Conclusion- Appeal A

23. For the above reasons, I conclude that the Section 106 agreement in question serves no useful planning purpose with particular regard to the affordable housing restriction and should now be discharged. Hence, there is no justification for the existing obligation to continue and the appeal is allowed.

Appeal B

Reasons

24. The site is located in Ashford Carbonell, a small village. The proposal is for the erection of a market dwelling. Ashford Carbonell is not a community hub or part of a community cluster and thus is classified as being in the open countryside in which SAMDev policy MD7a and CS policy CS5 seek to control new market housing. The development would not meet any of the exceptions set out in CS policy CS11 and SAMDev policy MD7a. The proposed market dwelling would therefore conflict with the settlement strategy in the development plan.
25. The National Planning Policy Framework (the Framework) states that policies and decisions should play an active role in guiding development towards sustainable solutions and acknowledges that opportunities to maximise sustainable transport will vary between urban and rural areas, and this should be taken into account in decision-making.
26. Ashford Carbonell has some limited facilities including a primary school, play area, village hall, public house and a church and future occupiers of the proposed dwelling would have access to these basic services within walking distance of the site. Nonetheless, there are limited opportunities for employment within Ashford Carbonell, and access to secondary education, medical facilities, supermarket shopping and specialised services such as banking would likely result in additional vehicular movements to larger settlements including Ludlow, approximately 3 miles away.

27. Public transport in Ashford Carbonell appears to be limited and I acknowledge that such journeys are more likely to be undertaken by private vehicle than by walking or cycling. However, it is to be expected, as the Framework indicates, that some travel by private vehicle is likely in rural areas such as this and Ludlow is not so distant that long journeys would occur. Moreover, the distances involved do not preclude some journeys being undertaken by bike and it would be feasible to cycle to the facilities and services in Ludlow using the quieter rural lanes and I have no evidence before me that these routes would be unsuitable for such journeys. Additionally, the development would have the same level of accessibility to facilities and services as the consented affordable dwelling and would not therefore result in any greater reliance on the private vehicle or additional vehicular movements on the highway network.
28. Drawing together the above, the proposal would have access to some basic services and facilities in Ashford Carbonell and future occupants would have some opportunities to access facilities and services by sustainable modes of travel in Ludlow. Nonetheless, due to the site's location in the open countryside, the proposal conflicts with the Council's spatial strategy and therefore does not represent an appropriate location for the proposed residential development. There is therefore an identifiable conflict with those aims of CS policies CS5 and CS11.

Other Matters

29. I have determined this appeal on the basis of what was applied for and there is no indication that the proposal would be used as business premises. The Council raised no objection to the scale of the ancillary office and based on the evidence before me I see no reason to take a different view.
30. I see no reason to suppose that my decision in this case would set a precedent. Differing circumstances would represent matters to be considered were other similar proposals to be advanced elsewhere in the future.

Planning Balance

31. The Council accepts that it is unable to demonstrate a 5-year housing land supply. As the proposal involves the provision of housing, footnote 8 of the Framework indicates the most important policies for determining the appeal are deemed to be out of date and paragraph 11d) ii. of the Framework is engaged. This requires that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
32. I have found that the development conflicts with the settlement strategy and that the site's location would likely result in additional vehicular movements to access services and facilities. Nonetheless, future occupiers of the development would have access to some facilities in Ashford Carbonell and Ludlow is not so distant that long journeys would occur.
33. On the other hand, the proposal would support the Government's objective of significantly boosting the supply of housing. There would also be economic benefits arising from the construction of the development and ongoing economic benefits

from future occupiers spend in the area. The proposal would allow the appellant and his family to continue residing in Ashford Carbonell, bringing demonstrable social benefits for the appellant's family. These benefits attract substantial weight, in particular given that the spatial strategy is failing to deliver a 5-year housing land supply.

34. The consented dwelling has failed to contribute towards meeting local affordable housing need and in Appeal A I have concluded that there is no reasonable prospect of the affordable dwelling coming forward. Given this it follows that there can be no loss of a community asset/ affordable dwelling and no harm arising in this regard. The proposal is for the erection of a dwelling, and the associated benefits of this for housing delivery must be taken into account in the planning balance.
35. Cumulatively these benefits attract substantial weight in favour of the proposal and I find that the adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework taken as a whole. Therefore, the presumption in favour of sustainable development applies. Given this, material considerations indicate that the proposal should be determined otherwise than in accordance with the development plan. In this regard the appeal proposal differs from the appeal decisions to which my attention has been drawn⁵ in which the Council were able to demonstrate a deliverable 5-year supply of housing and in which the Framework's paragraph 11d balance did not need to be considered.

Conditions

36. The Council did not suggest any conditions. During the hearing the main parties were given the opportunity to comment on a list of suggested conditions. As construction of the dwelling has commenced through the implementation of application 11/05428/FUL there is no need to control the timescale for the implementation of the permission. It is necessary to specify the approved plans in the interest of certainty. In the interests of highway safety, it is necessary to condition the provision of the approved access and parking area.

Conclusion- Appeal B

37. The proposal conflicts with the development plan. However, material considerations indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

Conclusion on both appeals

38. For the reasons given above, I conclude that both appeals should be allowed.

N Robinson

INSPECTOR

⁵ APP/L3245/W/15/3024055 and APP/L3245/W/16/3155464

SCHEDULE OF CONDITIONS (Appeal B)

- 1.) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Site Location Plan dated 12 Jan 2026, Drawing number 650/24/1, Drawing number 650/24/2
- 2.) Prior to the first occupation of the dwelling hereby permitted the access shown on approved drawing number 650/24/1 shall be constructed.
- 3.) Prior to the first occupation of the dwelling hereby permitted, the car parking area shown on approved drawing number 650/24/1 shall be constructed, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and the parking space shall thereafter be maintained at all times for that purpose.

End of Schedule of Conditions

APPEARANCES

FOR THE APPELLANT:

Simon Angell, appellant

Verence Angell

Rob Mills, MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Emma Green, Area Planning Manager

Dunya Fourie, Planning Officer

Maria Howell, Housing Enabling Manager