
Appeal Decision

Site visit made on 9 August 2016

by Jonathan Bore MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 August 2016

Appeal Ref: APP/L3245/Q/16/3143661

Yew Tree Cottage, Bentlawnt, Minsterley, Shropshire SY5 0ES

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a failure to determine that a planning obligation should be discharged.
 - The appeal is made by Mrs A J Mumford against Shropshire Council.
 - The development to which the planning obligation relates is the erection of an affordable dwelling.
 - The planning obligation, dated 4 February 2008 and subject to deed of variation dated 6 February 2009, was made between South Shropshire District Council and Carl Edward Millington.
 - The application Ref 15/03389/DIS is dated 26 June 2015.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation, dated 4 February 2008, made between South Shropshire District Council and Carl Edward Millington, no longer serves a useful purpose and is discharged.

Application for costs

2. An application for costs was made by Mrs A J Mumford against Shropshire Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the planning obligation is required for the continued maintenance of an affordable dwelling in this location.

Reasons

4. Yew Tree Cottage was granted permission as an affordable dwelling at a time when the site was within South Shropshire District Council. Policy SDS3 of the South Shropshire District Local Plan 2002-2011 strictly controlled the development of open market housing, restricting it to certain urban areas and settlements, but Policy SDS7 of the same plan allowed for affordable housing throughout the district. A market dwelling would not have been permissible here, but the dwelling was granted planning permission as an affordable dwelling in accordance with Policy SDS7. The accompanying s106 planning obligation which is the subject of this appeal contained various mechanisms to ensure that, were the house to be sold, its price would be maintained at an affordable level below market rates.
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5. The prevailing policy has changed. Bentlawnt is within the administrative area of Shropshire Council; market housing is now permitted in the village under Policy CS4 of the Council's Core Strategy because it is within a "Community Cluster" designated by Policy MD1 and Schedule MD1.1 of the adopted Site Allocations and Management of Development Plan (SAMDev Plan). A number of planning permissions have been granted for small scale market housing in this particular community cluster. The site is within the village and is surrounded by development and it is clear that a planning application today for a market dwelling on this site would be in accordance with planning policy.
6. It is not in dispute that there is a continued need for affordable housing in Shropshire. Policy CS11 of the Council's Core Strategy Policy and Policy MD7a of the SAMDev Plan explain how it is to be delivered: through open market housing development and what are termed 'exception schemes'. The dwelling was not constructed as an open market housing scheme with a quota of affordable housing, nor is it a rural exception site. The latter are defined by the National Planning Policy Framework as small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Whether or not it could have been considered a rural exception site when it was granted permission, it would certainly not be a rural exception site now, given that open market housing would be acceptable here.
7. The fact that planning policy has changed to allow market housing is an important material consideration and is a clear indication of changed priorities towards housing mix in this particular location. Even though the dwelling is in existence and is subject to restrictions that currently retain it as a unit of affordable housing, it would be wrong to disregard the current development plan policy framework. In effect the scheme would create a new unit of unrestricted market housing which is allowed for by Policy CS4. Were a proposal to come forward now for a dwelling on the site it would be unnecessary and unreasonable to require a restrictive planning obligation of the sort currently applied to the dwelling. It would be inappropriate and inequitable to single out this particular dwelling for continuing restriction when others may be built nearby without such restriction and indeed where an unrestricted dwelling could be built if the site had remained in the condition it was before the 2008 planning permission.
8. In the circumstances the obligation is not required for the continued maintenance of an affordable dwelling in this location.
9. The Council are concerned about the precedent set by this proposal, but the change in policy will only affect a proportion of dwellings subject to similar obligations since many of these dwellings remain outside the built up areas where planning permission would still not be granted for market housing. It is also the case that the former South Shropshire policy regime was not common to the whole of the County so the issue is only applicable to part of Shropshire.
10. I have considered all the other matters raised but they do not alter the balance of my conclusions. For all the above reasons, the appeal is allowed.

Jonathan Bore

INSPECTOR