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# Appeal Decision

Site visit made on 5 June 2017

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

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

**Decision date: 22 June 2017**

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**Appeal Ref: APP/L3245/Q/17/3169024**

**The Berries, Gravels Bank, Minsterley, Shrewsbury SY5 0HG**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
  - The appeal is made by Mr JR and Mrs PD Hilditch against the decision of Shropshire Council.
  - The development to which the planning obligation relates is the erection of an affordable dwelling.
  - The planning obligation, dated 20 November 2008, was made between South Shropshire District Council and Jonathan Robert Hilditch and Paula Diane Hilditch.
  - The application Ref 16/04252/DIS106, dated 19 September 2016, was refused by notice dated 18 January 2017.
  - The application sought to have the planning obligation discharged.
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## Decision

1. The appeal is allowed. The planning obligation, dated 20 November 2008, made between South Shropshire District Council and Jonathan Robert Hilditch and Paula Diane Hilditch, no longer serves a useful purpose and is discharged.

## Application for costs

2. An application for costs was made by the Appellants 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. Planning permission was granted in 2008 for the "Erection of an affordable dwelling and garage; installation of a sewage treatment plant; formation of a vehicular access" on the northern part of the field adjoining 5 Gravels Bank, Minsterley following the execution of an agreement (the planning obligation) made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). The dwelling is now known as "The Berries". The planning obligation restricts the sale and letting by the owner to a qualifying person at no more than the formula price or at an affordable rent, thus ensuring that the dwelling remains affordable and available to satisfy local housing need.
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5. A 'qualifying person' means a person who in the reasonable opinion of the Council is considered to be in Local Housing Need or complies with Other Considerations criteria. The Appellants qualified because they were able to demonstrate (a) they were in housing need (b) had a strong local connection (c) needed to live locally and (d) could not afford to buy locally.
6. Due to changing circumstances and in particular changing LPA policy the Appellants contend that the planning obligation has now outlived its usefulness with the result that it imposes an unreasonable and unfair restriction on the occupation and disposal of "The Berries".
7. Section 106A (6) of the Town and Country Planning Act 1990 (as amended) provides that on an application for modification, the determination may be that the obligation shall continue to have effect without modification; if the obligation no longer serves a useful purpose, that it shall be discharged; or if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications requested.
8. In the context of planning policy, "The Berries" was considered under the South Shropshire District Council Local Plan 2004-2011. The Local Plan identified that new housing development should take place in identified towns, main villages and within settlement boundaries in accordance with Policy SDS3. The Local Plan promoted a wide range of opportunities for new affordable housing throughout the District in accordance with Policy SDS7. Amongst other matters, Policy SDS7 indicates that outside the towns and main villages listed in Policy SDS3, affordable housing may be permitted on small sites not identified for development in the Plan, within and adjoining the specified villages. Importantly, the word *exception* does not appear in the policy.
9. However, the prevailing planning policy has significantly changed. The Core Strategy now provides the framework for Shropshire's rural areas. It was adopted in March 2011 and together with the Site Allocations and Management of Development (SAMDev) (2015) forms the statutory development plan for the area. Policy CS4 of the Core Strategy introduces the concept of Community Hubs and Community Clusters to be identified in conjunction with Parish Councils wherein new open market housing will be permitted.
10. The Hubs and Clusters are defined at Policy MD1 of the SAMDev. Relevant to this appeal Gravels (including Gravels Bank) is within one of the six Hubs and Clusters identified within the hinterland of the Market Town and Key Centre of Bishop's Castle under SAMDev Policy S2.2 (vii). Policy CS11 of the Core Strategy also proposes the provision of affordable housing through permitting exception schemes on suitable sites in and adjoining Community Hubs and Clusters thus including Gravels Bank. It also promotes a *Build Your Own Affordable Home* scheme which extends the scope for this type of housing beyond Hubs and Clusters.
11. The result of this significant change in planning policy is readily apparent at Gravels Bank where a series of outline planning permissions have been granted for a total of five open market dwellings all located within 100m of "The Berries". The appeal site is clearly within the hamlet and forms part of a concentration of properties around the road junction. It is clear to me that a planning application today for an open market dwelling on this site would be in accordance with planning policy.

12. The Council considers that the planning obligation continues to serve a useful planning purpose. It contends that there is a waiting list of approximately 1,737 households for affordable housing in rural areas in Shropshire. Moreover, it states that it must plan to meet objectively assessed needs for market and affordable housing, as far as is consistent with national policy and that "The Berries" forms part of the affordable housing stock which is restricted in size and onward sale. Policy CS11 of the Core Strategy and Policy MD7a of the SAMDev Plan explain how it is to be delivered: through open market housing development and 'exception site' dwellings. However, it is noteworthy that 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 NPPF defines rural exception sites as small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Plainly, whether or not it could have been considered a rural exception when it was granted permission, it would certainly not be a rural exception site now, given that open market housing would be acceptable here.
13. The fact that there has been a significant and relevant change in planning policy to allow market housing is an important material consideration. The previous relatively restrictive system of rural planning control operated by South Shropshire District Council has now been replaced with a more liberal regime which supports a much wider distribution of open market housing throughout the rural area. 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. As a result today the appeal site at "The Berries" would be an acceptable and appropriate location for new open market housing under Policy CS4.
14. 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 this dwelling. Furthermore, it would be unreasonable and manifestly unjust if the Appellants who are a young couple born and bred in the area and working locally were to be denied the benefit of the type of unencumbered home ownership which will be enjoyed by those households who move into the planned new dwellings in Gravels Bank. I conclude on the main issue that the planning obligation is no longer required for the continued maintenance of an affordable dwelling in this location.
15. The Council is concerned about the precedent set by this proposal. In my view, the discharge of the planning obligation will have no material impact on the local supply of affordable housing. The Appellants have indicated no intention of leaving "The Berries" so the property would not in any event come forward for disposal as an affordable unit for many years. In this context discussion of current housing waiting lists is not relevant as the property is unavailable for sale or rent. Moreover, Policy CS11, the detailed SPD on the subject<sup>1</sup> and the promotion of a scheme to *Build Your Own Affordable Home* collectively cater for any new demand for affordable housing on suitable plots/sites in this locality.
16. I have considered all other matters raised including the Council's legal interpretation and the appeal decisions referred to in the submissions. The two appeal decisions<sup>2</sup> referred to are not of a similar nature to the current appeal

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<sup>1</sup> Type and Affordability of Housing Supplementary Planning Document (SPD) Adopted 12 September 2012

<sup>2</sup> APP/T6850/Q/16/3151136 and APP/Q6810/Q/16/3142545

as there has been no intervening change in relevant planning policy since those decisions. I am also aware of the appeal decision relating to Yew Tree Cottage, Bentlawnt<sup>3</sup> but there is no evidence before me that this has led to a number of similar applications. The discharge of the planning obligation will only apply to sites which were not eligible for open market housing at the time when planning permission was granted for an affordable dwelling but which would now be eligible for open market housing as a result of a subsequent change in adopted planning policy. Each application must be considered on its own merits and in the light of the development plan unless material considerations indicate otherwise. None of the matters raised alter the balance of my conclusions. For all the above reasons, the appeal is allowed.

*Harold Stephens*

INSPECTOR

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<sup>3</sup> APP/L3245/Q/16/3143661