



# Appeal Decision

Site visit made on 4 October 2023

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 12 December 2023**

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## Appeal Ref: APP/L3245/Q/23/3317856

### Caus Farm, Vron Gate, Shrewsbury SY5 9RH

- 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 John Hurdley against the decision of Shropshire Council.
  - The development to which the planning obligation relates is erection of a detached three-bedroom dwelling following the demolition of existing building.
  - The planning obligation, dated 1 June 2009, was made between Shropshire Council and Mr John Hurdley.
  - The application Ref 22/02097/DSA106, dated 3 May 2022, was refused by notice dated 7 September 2022.
  - The application sought to have the planning obligation discharged.
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### Decision

1. The appeal is allowed. The planning obligation, dated 1 June 2009, made between Shropshire Council and Mr John Hurdley, shall have effect subject to the modifications as set out below.

### Background and Procedural Matters

2. The powers under Section 106A and 106B are to modify or discharge planning obligations (PO). In this case, the obligation restricts the occupation of the dwelling to the appellant, or their successor in title, as their main residence. If this occupation ceases, then the PO requires the dwelling to become an 'affordable dwelling', with several requirements about how this would be implemented.
3. The appellant has submitted a separate Section 106 agreement (s106), referred to as a 'deed of discharge' (the deed). The effect of this deed would be to require payment of a financial contribution in lieu of the original affordable housing requirement. As well as the financial contribution, once payment had been made, the deed would also discharge the original s106 agreement. As such, the deed does not technically vary or modify the original agreement. Rather, the two would need to be read alongside each other. Nevertheless, the *effect* of the deed would be to modify the original by allowing a financial contribution toward affordable housing instead of the occupancy restrictions. I am content that this is permitted under s106A. I have thus had regard to the deed in my decision as something that would effectively modify the original agreement.

### Main Issue

4. The main issue is whether the planning obligation continues to serve a useful purpose and, if so, would it serve that purpose equally well if it had effect subject to the modifications set out in the 'deed of discharge'.

## Reasons

5. The property in question is served off a long private road which also provides access to a small number of other dwellings and farm buildings. It is in what would be described as an isolated location in the countryside. National and local planning policy seek to resist housing development in such locations unless certain exceptions are met.
6. The evidence suggests that permission was granted for the dwelling exceptionally, having regard to the personal circumstances of the appellant. The PO does not provide any restriction based on the occupation or place of employment of the 'Owner'. The PO only requires that the dwelling is occupied by the Owner as their main residence.
7. Only if the Owner ceases to occupy the dwelling as their main residence shall it be offered on the open market for rent as an affordable dwelling, either by the Owner or a Housing Association (HA). My reading of the PO is that only if no HA is in a position to proceed with acquisition can it be offered for sale to the Council at the affordable housing rate and, if the Council do not wish to purchase, it may be offered for sale on the open market at the affordable housing rate as "defined in the Council's Local Plan".
8. Neither party has drawn my attention to anywhere in the Local Plan where the affordable housing rates are established. It appears therefore to be accepted by both parties that the agreement does not stipulate what the value of the affordable dwellings should be. This does not however negate the other requirement that the dwelling must be occupied by persons who are in need of affordable housing and who meet the other occupancy criteria, as set out in paragraph 5.3 of the Second Schedule of the agreement.
9. Policy MD7a of the Council's Site Allocations and Management of Development (SAMDev) Plan controls development in the countryside, including dwellings to house essential rural workers. Criterion 2c states that if a new dwelling is permitted and subsequently is no longer required as an essential rural workers' dwelling, it will be made available as an affordable dwelling, unless it can be demonstrated that it would not be suitable. It goes on to state that where unsuitability is demonstrated, a financial contribution to the provision of affordable housing will be required.
10. The property in question is not a rural worker's dwelling in the context of this policy. There is no restriction on the nature of the occupation or place of work of the occupants of the dwelling. Nevertheless, the evidence suggests that the dwelling was permitted on the basis of the appellant's local employment. The PO was consequently required because unrestricted market dwellings would not normally be permitted in this location. This is still the case now and the Council clearly seeks to secure an affordable housing 'fallback' position on dwellings it considers to be 'exceptional'. The situation here is therefore plainly analogous to what is set out in Policy MD7a, particularly in the Council seeking to ensure properties in such locations are retained as affordable dwellings in the longer term.
11. I have had regard to the perceived limitations of the PO in terms of not stipulating an affordable value. However, the PO still requires the dwelling to be made available to local people who are in need of an affordable dwelling. This is more than simply requiring a local connection; it relates to somebody in

affordable need and is, or is going to be employed, in the area. In this regard, while the onus would be on the Owner to sell at a price commensurate with the identified constraints. As such, I consider the PO could still continue to serve a useful purpose which is broadly consistent with the requirements of current local planning policy.

12. However, if Policy MD7a is of relevance to the issue of the principle of restricting occupancy of an 'isolated dwelling', then it also seems reasonable to also consider the provisions of the policy which allow for a financial contribution to be made in certain circumstances.
13. While there is no detailed evidence that any HA has been approached, the Council acknowledges that the property would not be suitable for transfer given its size, location and the lack of stipulation on values. In addition, there is no indication the Council would be interested in purchasing the property; indeed, the Council's Housing Enabling Team supported the removal of the obligation subject to the financial contribution. The Council also acknowledge that the dwelling is too large to be considered a 'single plot exception' under Council policy and that it is larger than what their own Type and Affordability of Housing SPD (2012) would consider suitable for an affordable dwelling.
14. Notwithstanding the lack of marketing, given the limitations set out above, I consider it would be still reasonable to conclude that the dwelling would not be considered as a 'suitable' affordable dwelling in the context of the policy. In these circumstances, the policy would allow a financial contribution to be made.
15. In this respect, I am content that the submitted deed meets the statutory planning obligation tests. It is necessary to make the development acceptable in planning terms. The financial contribution secured through the deed would assist in meeting the Council's affordable housing objectives and be compliant with current local policy. The contribution is clearly related to the development and appears to have been calculated in accordance with the relevant guidance. On that basis it is fairly and reasonably related in scale and kind to the development. The effect of the deed would be to ensure that the Council's policies in relation to dwellings in the countryside and affordable housing will continue to be met.
16. Therefore, I am content that the effect of the deed would effectively serve the same purpose as the original PO in terms of meeting policy requirements relating to homes in the countryside.

### **Conclusion**

17. Accordingly, I conclude that the PO would continue to serve a useful purpose and would serve that purpose equally well if it had effect subject to the modifications established through the submitted deed of discharge.
18. On this basis, the appeal should be allowed.

*S J Lee*

INSPECTOR