The Planning Inspectorate

Appeal Decision

Site visit made on 9 January 2018

by David Richards BSocSci DipTP MRTPI

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

Decision date: 19th January 2018

Appeal Ref: APP/X1118/Q/17/3184192
Land at Dart Park, South Molton, Devon, EX36 4BP

- 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 David McLean Homes Limited (in Liquidation) against the decision of North Devon District Council.
- The development to which the planning obligation relates is the erection of 33 dwellings including roads, sewers and associated works (amended plans and description).
- The planning obligation, dated 16 November 2001, was made between North Devon District Council and others and J W Sharman Limited.
- The application Ref 62342, dated 12 January 2017, was refused by notice dated 17 March 2017.
- The application sought to have the remaining planning obligation, which relates to the provision of public open space, discharged.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the outstanding obligation continues to serve a useful purpose.

Reasons

3. The original developer of the site was David McLean Homes (South West) Limited (now in liquidation and formerly known as J W Sharman Limited). The Appellant is David McLean Homes Limited (in liquidation). In response to the suggestion by the Council that the property is in the hands of the receivers the Appellant has stated that the property has, at all material times, been vested in one of the two David McLean companies, and has never been vested with the receiver.

4. The grounds of appeal are as follows:

   'The public open space (POS) contribution has not been spent for the original purpose for which it was requires and a refund is requested.

   'The on-site POS has not been conveyed to the Council. The land is derelict and occupied by squatters. The release of the remaining obligations will allow development in accordance with the Council's planning policy.'

5. The Council's refusal reason states that the S.106 Agreement was required to make the development acceptable in planning terms. Its clauses directly relate to the development and secured contributions to infrastructure and affordable housing in line with adopted Local Plan Policies and adopted guidance relating to the provision of POS. The application did not provide full on-site POS to meet the needs of residents and hence there were requirements for off-site POS contributions. The third schedule [of the obligation] relates to on-site provision. The Council further states that no request has been made to the Council to adopt this land and no payment has been made to do so. The land has been laid out as approved and thereafter should be maintained by the developer (or successor in title) as POS. The Council has made repeated attempts over a number of years to enter into positive dialogue to resolve the future of this land. The uncertainty has limited the Council's ability to plan for recreational needs in the locality. The Council considers that the site is well maintained and used by residents on the estate.

6. With regard to the off-site contribution, the Appellant considers that any part of the off-site Public Open Space Contribution of £34,778.38 that remained unspent on the date five years after the date of payment should be returned in accordance with Paragraph 2 of the Third Schedule to the S.106 Agreement.' The Council states that it spent the full contribution on the skateboard park in the Town Park within the 5 year period.

7. It appears to me that this element of the obligation has been discharged and the money spent. I note that the Council has not provided records as requested by the Appellant, but there is no particular reason for me to doubt the Council's statement that it has spent the money within the five-year period, nor that provision of a skate park within the Town Park is an appropriate use of the money in a relatively small town. The Park is close to the appeal site and reasonably accessible by residents. Upgrading of facilities at an existing park is a common approach to providing for recreational need that cannot be met on site, and falls within the terms of Clauses 1 and 2 of the third schedule to the agreement.

8. Turning to consider whether the on-site provision continues to serve a useful purpose, the Appellant further states that it is over 15 years since the S.106 was entered into and the existence of the remaining obligations has effectively sterilised the land.

9. I saw on my site visit that the land appeared to be maintained in a reasonably tidy and usable state, though it was not clear who undertook the maintenance. Private property signs had been erected, though this does not recognise the obligation freely entered into by the original developer to make the land available for use as POS. A camper van was parked on the site, but there was no visible evidence of occupation by squatters as alleged by the Appellant.

10. The obligation makes provision for the adoption of the POS by the Council, but there is no requirement on the developer to transfer of the land to the Council for adoption, and no obligation on the Council to adopt the land. In such circumstances it would be usual for a commuted sum to be paid on transfer to recognise the transfer of the maintenance and management liability in accordance with Clause 6 of the third schedule to the obligation. This would be entirely separate from the off-site contribution to which clauses 1 and 2 refer. Under clause 5, the liability for maintenance rests with the Appellant company.

11. I accept that the company is now in liquidation it is not in a position to make a commuted sum payment to enable the on-site POS to be adopted or to pay for its maintenance pending adoption. However, to my mind, this should not be regarded as determinative of whether the remaining obligation continues to serve a useful purpose. The provision of on-site POS was accepted as being necessary at the time, in accordance with prevailing policy and advice at the time.

12. I understand why the Appellant considers release from the obligation to be a desirable solution to an apparent impasse, allowing the land to be developed (subject to planning permission being obtained). However, the provision of open space to serve residents of housing developments continues to be an important theme of planning policy, as set out for example in the NPPF, Saved Policy REC5 of the North Devon Local Plan and associated advice in respect of infrastructure provision. While the opportunity to provide connectivity with Brook Meadow no longer appears to be achievable, the land has potential to serve that need within the development itself. The current financial circumstances of the Appellant company are not material to whether the on-site provision was necessary to make the development acceptable. To my mind, it was and remains necessary to make the development acceptable.

13. I therefore conclude that the remaining obligations continue to serve a useful purpose and that the appeal should be dismissed.

David Richards

INSPECTOR