



Appeal Decision

Site visit made on 29 May 2014

by Phillip J G Ware BSc(Hons) DipTP MRTPI

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

Decision date: 1 August 2014

Appeal Ref: APP/P0240/Q/13/2201603

Land at Highways Depot, Stockbridge Road, Clifton, Shefford SG17 5HH

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by Mr Seamus Neville (WN Developments Ltd) against the decision of Central Bedfordshire Council.
 - The development to which the planning obligation relates is the erection of 40 dwellings.
 - The planning obligation, dated 24 July 2006, was made between Mid Bedfordshire District Council and Bedfordshire County Council and Aragon Housing Association.
 - The application Ref CB/12/04372/SECM, dated 7 December 2012, was refused by notice dated 28 May 2013.
 - The application sought to have the planning obligation modified by an amendment of the trigger for education payments.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is whether the obligation meets the tests set out in Planning Practice Guidance and serves a useful purpose, or would serve a useful purpose if it were modified.

Reasons

3. The appeal site is on the edge of the settlement adjoining open countryside. Planning permission was granted in 2006 for the erection of 40 dwellings and for related works on the site. This was accompanied by a Planning Obligation related to a range of matters, and included a trigger for the payment of an education contribution. This education contribution was to be paid before any of the approved dwellings were occupied.
4. The original signatory went into receivership, but the current appellant (who is continuing to develop the site) is bound by the provisions of the Obligation. The current proposal is to vary the trigger so that the education contribution is payable at the occupation of the 30th dwelling.
5. The Council has stated that all the approved units have been constructed, and that (as of April 2013) 22 dwellings were occupied. The appellant has not commented on these statements or given alternative figures. From my site visit it appeared that all the dwellings have now been built and, although this is

hard to accurately determine from an external site visit, it appeared that the majority of the 40 houses were occupied.

6. The development plan context is policy CS2 of the Core Strategy and Development Management Policies (2009). This provides that developer contributions will be expected from any development which would individually or cumulatively necessitate additional or improved infrastructure. The policy refers to the Council's Planning Obligations Strategy in relation to the nature and scale of the contributions. At the national level, the National Planning Policy Framework provides that where obligations are being revised, account should be taken of changes in market conditions over time and, wherever appropriate, there should be sufficient flexibility to prevent planned development being stalled.
7. The Obligation is therefore rooted in adopted policy and there is no dispute between the parties that a contribution towards educational facilities is acceptable in planning terms and is directly related to the development. I understand that there may be a disagreement about the amount of the contribution, and hence whether it is fairly and reasonably related in scale and kind, but this aspect is not before me.
8. Of direct relevance to this appeal is the provision in the 1990 Act that, if an obligation serves a useful purpose (which appears to be the case in principle), whether that purpose would be equally well served if it was modified. In this case, this modification would be by way of deferring payment of the education contribution until the 30th dwelling.
9. There is clearly a general need for a contribution from developments such as this towards the provision of educational facilities. However the authority accepts that there is currently a surplus of school places in the area, and the appellant has given more detail of the recent availability of places. The position of the Council is that the authority needs to be able to plan for school places ahead of the time when the demand actually arises, and that deferring the contribution until over half way through the occupation of the houses would not allow for proper planning of educational provision in order to mitigate the effect of the development. This argument, which has considerable weight, is somewhat diminished by the lack of detailed evidence from the Council which might have a bearing on the timing of the contribution. There is no way of comparing any detailed school capacity projections with pupil forecasts, so as to be able to identify when any shortfall might occur. Nevertheless the approach of the authority seems entirely rational.
10. I am conscious that a compromise position was apparently suggested by the Council's School Places Officer – namely that the contribution should be paid after the 20th dwelling. However I am not aware of the background to this suggestion, nor do I know if it represented the Council's formal position.
11. The key matter in this appeal is the lack of any evidence to indicate that the scheme has stalled, that the cash flow required to fund the education contribution has not materialised, or that flexibility is necessary to enable the development to proceed. I understand the general and local evidence submitted by the appellant which indicates the difficulties which the housing market has experienced. Although some of this evidence is somewhat dated

and there is little to reflect the current national or regional economic position, overall position recent market conditions are appreciated.

12. However what is lacking is anything to indicate the completion rate of the development, the effect on the developer's cash flow, or any sales information. The appellant is correct that neither the Framework nor the terms of the Obligation require the submission of any financial information. However the absence of evidence of the specific alleged effect of the Obligation on this development significantly weakens the appellant's position.
13. I am conscious that the development seems to have been completed, and appears to be substantially occupied. In that sense this appeal is academic because, assuming my assumption about occupation is correct, the payment is due now whether the appeal is allowed or dismissed. However I have to deal with the appeal before me.
14. Overall, the Council's approach towards the Obligation is well founded and reasonable. In the absence of more site specific evidence the case for flexibility to prevent planned development becoming stalled has not been made out. The Obligation continues to serve a useful purpose, and it would not serve a useful purpose in terms of the forward planning of educational services if it were modified.
15. For the reasons given above I conclude that the appeal should be dismissed.

P. J. G. Ware

Inspector