The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 22/11/18

gan Hywel Wyn Jones BA (Hons) BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/12/18

Appeal Decision

Site visit made on 22/11/18

by Hywel Wyn Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 11/12/18

Appeal Ref: APP/T6850/Q/18/3210595

Site address: Penarth, Llidiartywaun, Llanidloes, SY18 6JT

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Miss J Stacey against the decision of Powys County Council.
- The development to which the planning obligation relates is a dwelling house, garage and sewage treatment plant.
- The planning obligation, dated 30 January 2004, was made between Powys County Council and Joanna Margaret Stacey and was varied on application (ref: VAR/2014/0050) by notice dated 30 October 2014.
- The application (ref: VAR/2018/0019), dated 16 April 2018, was refused by notice dated 9 July 2018.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is allowed. The planning obligation, dated 30 January 2004, made between Powys County Council and Joanna Margaret Stacey, no longer serves a useful purpose and is discharged.

Main Issue

2. The main issue is whether the planning obligation continues to serve a useful purpose by controlling the size of the dwelling.

Reasons

3. Penarth is a 3 bedroom dwelling which includes en-suite facilities, dining room and kitchen, sitting room, utility, and an integral garage. It is set in expansive grounds in an attractive landscape which, for the purposes of planning policy, is open countryside.

4. The subject agreement was entered into in connection with the grant of permission in 2004 for the dwelling which is now the appellant's home and originally contained 3 obligations. In 2014 the Council varied the agreement to omit 2 of the obligations, which restricted the occupation of the dwelling to the appellant and, thereafter, to persons with a local connection. The remaining obligation, which is the subject of this appeal, restricts the dwelling (excluding garages) to a gross floor space of 130m^2.

5. The Council explains that its intention when granting permission for the dwelling was that it would contribute to the local supply of affordable housing. It considers that, in the absence of evidence to the contrary from the appellant, the obligation ensures that the dwelling makes a useful contribution to the supply of affordable housing.

6. As the appellant points out since the variation of the original agreement there is no restriction on the occupancy of the dwelling and no means of restricting its resale price. Planning Policy Wales explains that an affordable house is one subject to a mechanism that ensures that it is accessible to those who cannot afford market housing. This is reflected in policy SP3 of the Powys Local Development Plan. In the absence of such a mechanism the property is an open market dwelling.

7. I acknowledge that the restriction on the size of the dwelling influences its market value but that does not, on its own, ensure its accessibility as an affordable dwelling. Moreover, in this case the size of the dwelling[1] and the plot materially exceed the limits which are set out in the Council's recently adopted supplementary planning guidance (SPG): Affordable Housing. The property has been valued with the size restriction by a local surveyor on behalf of the appellant at a figure which is almost twice the value that the average household in Powys are able to afford according to the SPG.

8. The Council contends that there is an onus on the appellant to demonstrate that the dwelling is no longer required as an affordable dwelling. However, I consider that such a justification cannot apply in this case given that the subject property is not an affordable dwelling.

9. As the restriction does not facilitate the property's potential contribution to the supply of affordable housing I find that it is not necessary. As a result it does not satisfy tests set out in Welsh Office Circular 13/97: Planning Obligations and in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Furthermore it serves no useful purpose and, accordingly, I shall discharge the obligation.

10. I note the 2 appeal decisions[2] referred to by the Council, one in 2012 the other in 2016, where it was found that limiting the size of a dwelling served a useful purpose by limiting its value. I have reached my findings on the specific circumstances of this case and the evidence provided, and in the light of the current local planning policies and guidance, which have been adopted after the cited appeal decisions.

11. In reaching my decision I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle, through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

Hywel Wyn Jones

INSPECTOR

[1] The SPG sets out a notional space standard of 88m^2 and 94m^2 for a 3 bed house on the basis of Welsh Government's Acceptable Cost Guidance and provides that the maximum should be 115m^2 (which is the standard for a 7 person 4 bed house). It also states that calculation should include integral garages.

[2] APP/T6850/Q/12/2181358 & APP/T6850/Q/15/3137226