Planning, Taxi Licensing and Rights of Way Committee Report

Application Number:	19/1519/VAR	**Grid Ref:**	E: 301020 N: 310664
Community Council:	Banwy Community	**Valid Date:**	10.09.2019

Applicant: Mr Huw Morgan

Location: Hesgog, Llangadfan, Welshpool, Powys, SY21 0PU

Proposal: Application to discharge the Section 106 Agreement attached to planning permission M2004 1348

Application Type: Discharge/Modification of S106

The reason for Committee determination
Cllr Myfanwy Alexander has called in the application for a committee determination.

Consultee Responses

Consultee	Received
Community Council	
No response received.	

Representations

None

Planning History

VAR/2018/0014 - VAR: Application to discharge Section 106 legal agreement attached to planning permission M20041348 (occupancy restriction) refused 18th Jun 2018

P/2007/0084 – Reserved matters application for siting, design, apperiance, access & landscaping in connection with proposed dwelling. Consent

M/2004/1348 - Erection of a dwelling, garage & alteration to vehicular access (outline). Granted subject to S106

Principal Planning Policies

National Planning Policy

Planning Policy Wales (2018)
Technical Advice Note (TAN) 2 – Affordable Housing (2006)
Technical Advice Note (TAN) 6 – Planning for Sustainable Rural Communities (2010)
Technical Advice Note (TAN) 20 – Planning and the Welsh Language (2017)

Welsh Office Circular 13/97 – Planning Obligations

Local Planning Policy

Powys Local Development Plan (2018)
DM1 – Planning Obligations
SP3 – Affordable Housing Target
H1 – Housing Development Proposals
H6 – Affordable Housing Exception Sites
DM12 – Development in Welsh Speaking Strongholds

Powys Local Development Plan (2011 to 2026) Supplementary Planning Guidance Planning Obligations Adopted October 2018

Powys Local Development Plan (2011 to 2026) Supplementary Planning Guidance Affordable Housing Adopted October 2018

Other Legislative Considerations

Crime and Disorder Act 1998
Equality Act 2010
Planning (Wales) Act 2015 (Welsh language)
Wellbeing of Future Generations (Wales) Act 2015

Officer Appraisal

This application seeks to discharge a planning obligation that was entered into in order to make the development of this individual dwelling acceptable in planning policy terms.

Background to the Case

The section 106 agreement, dated 20th November 2006, was entered into in connection with the grant of outline planning permission M2004 1348 for the erection of a dwelling, garage & alteration to vehicular access. The property as constructed is a two storey dwelling with integral garage.

The obligation reflected the Council's intention that a proposal of residential development at this particular location, as an exception site, should be retained as an affordable unit for local people in housing need.

The construction of the dwelling and future occupants of this property would be subject to the restrictions in the signed s106 legal agreement. In this instance the relevant obligations in the legal agreement state the following;

SECOND SCHEDULE

1. Any dwelling built on the Land shall (initially) be occupied by the Applicant as his only dwelling.

2. Upon any subsequent disposal or demise of the said dwelling occupation thereof shall at all times be limited to a person (the Occupier) who:

(a) At the date of the said disposal or demise have either been resident within the District of Montgomeryshire (the District) (as conclusively defined by the Council) for a period of not less than three years or are employed within the District or coming into the District to take up full employment or were last employed within the District, AND

(b) They or their spouses or co-habitees do not own a dwelling in fee simple or a leasehold interest for a term exceeding 7 years at the date immediately before their first occupation of the said dwelling built on the Land, AND

(c) They or their spouses or co-habitees have not owned a dwelling as aforesaid at any time during the period of five years immediately before the date of their first occupation of the said dwelling (whether or not subject to a mortgage or legal charge).

THIRD SCHEDULE

1. Any dwelling constructed on the Land shall not exceed a gross floor space of 130 square metres (excluding any garages attached to the proposed dwelling).

A reserved matters application was approved in April 2007 and the submitted plans indicated a two storey dwelling with integral garage. According to the approved plans the internal floor space of the dwelling is 127.7m² (excluding the garage space as required by Third Schedule) and therefore does not exceed 130m² specified in s106 obligation. The applicant has, by his own admission, been using the garage space as habitable accommodation in breach of the obligation.

Main Issues

The main issue is whether the obligation meets the tests specified in Welsh Office Circular 13/97 Planning Obligations (the Circular), particularly the tests of necessity and relevance to planning; and, if it meets the tests, whether the obligation continues to serve a useful planning purpose.

Planning Policy Wales states that there should be secure mechanisms in place to ensure that affordable housing is accessible to those who cannot afford market housing stock, both on first occupation and for subsequent occupiers. The Council sought to control the occupancy of the property given that it was a dwelling which was located outside the settlement boundary and the appellant was willing to sign the planning obligation which controlled the subsequent sale of the dwelling.

Current planning policy, through the Powys Local Development Plan 2011-2026 (LDP) and the Affordable Housing Supplementary Planning Guidance (2018) has not altered this position in relation to this site. The development is still located outside any defined settlement that would be able to justify open market housing.

The first clause relates to the dwelling being occupied by the applicant in the first instance as it was their circumstances that justified the dwelling against normal housing policy. The dwelling was built and is now occupied by the applicant. It is evident therefore that this clause has been fulfilled and could be discharged. The applicant has made reference to the position that they did not comply with the eligibility criteria at the time the development was granted. Nonetheless, it was their circumstances that justified the construction of the dwelling at this location and a section 106 was drawn up on this basis.

Clause 2 (a) of the second schedule relates to subsequent occupiers and requires them to have been resident of the district of Montgomeryshire for a period of not less than three years, or are employed within the district or coming to the district to take up employment, or were last employed within the district. Officers accept that the clause does not take into account the financial circumstances of occupants or their need for affordable housing. Rather it gives an unfair advantage to local people over people from outside the district in being able to buy a dwelling in this location. The clause is considered to be unreasonable and does not fulfil an aim that is relevant to land use planning. As such, this element of the obligation fails to meet the required tests set out in Circular 13/97 and officers do not seek to defend its retention. There have been successful appeals related to this specific clause which have been removed by Inspectors. However, the removal of this clause alone is not an option here, as the application seeks to discharge the obligation in its entirety and not modify it.

Clause 2 (b) and 2 (c) of the second schedule restrict occupancy to persons who do not own and have not owned a property for over five years from first occupation of the property. People who are in such circumstances are less likely to be able to compete on the housing market because they cannot carry equity from a previous home and therefore these clauses meet the planning policy objective of securing a type of intermediate affordable housing to meet local needs.

The third schedule restricts the gross floor space of the dwelling to 130sq.m (excluding garages). The size restriction imposed by the legal agreement is intended to restrict the value of the dwelling to ensure its affordability.

The restrictions on the size of the dwelling together with the occupancy restrictions that subsequent occupiers would not normally hold equity in another dwelling, has the effect of limiting the value of the property and the occupancy such that the obligation's purpose has a similar effect to the broad objectives of the LDP and SPG on Affordable Housing.

It is accepted that the obligation has no reference to affordability, the valuation of the property, a local need cascading arrangement and the size of the dwelling is above affordable housing thresholds as set out in the current SPG. However, the suite of obligations when read together serves to restrict the property from becoming an open market dwelling in an area where open market housing is unacceptable in planning terms.

<u>Assessment of Continuing Need</u>

In order to test whether or not the obligation continues to serve a useful planning purpose, it is necessary to assess whether there is a continuing need for the retention of this property as an

affordable dwelling. The usual way to test this is to market the dwelling for sale and rent for a period of 12 months at a price that realistically reflects the occupancy restriction. This is set out within the affordable housing SPG. The reason a marketing exercise is requested is because capturing existing need for intermediate forms of housing is difficult and possibly under represented within our current sources of information, especially at a particular local level.

In this instance no evidence of any marketing efforts either for sale or rent have been submitted. The essence of the applicants' argument on this is that the price of the house is far in excess of that which person in need of affordable housing could afford and as such, no useful planning purpose is served by the obligation. The applicant has sought to suggest this through a number of means.

The applicant has submitted a letter from a local estate agent's office which suggests that they would recommend an asking price for the dwelling in the region of £189,950. It is noted that this is not a valuation of the property and has not been undertaken by a chartered surveyor. It is also not clear if this figure takes account of the fact that the gross floor space of the house has been extended in breach of the section 106 agreement and any cost that may be incurred in rectifying the breach. Notwithstanding the above, however, it is noted that the letters suggests that this local company are 'confident in achieving a very satisfactory result' in the sale of the property. Such a statement would suggest that there is a demand and need for such developments if they were offered on the market. Referring to the Acceptable Cost Guidance (ACG) produced by Welsh Government and the updated Annex B from 2018, for a dwelling within Band 2, which the Community Council area of Banwy falls within, dwellings for occupation by families of between 4 and 6 people could have maximum purchase price limits of between £185,000 and £216,000 suggesting that an asking price of £189,950 would be within the realms of affordability.

The applicant has used this valuation combined with the affordability level set out in the SPG to seek to demonstrate that the dwelling no longer serves a purpose. Officers are concerned with the use of this figure for this purpose which it was never intended for and has significant limitations. For instance, the affordability level for the county is £126,676 based on the average wage for a full time worker at £24,884. It is used to calculate a percentage decrease from open market value on our more recent obligations in respect of sales. It certainly does not suggest that any valuation above £126,676 is not affordable. As it is based on averages from across the county, it has no benefit in demonstrating the specifics of a local area.

The applicant has noted that the dwelling does not accord with the restrictions currently placed upon affordable housing with regards to floor size and plot size in respect of the LDP and SPG. This matter is not disputed but it is not, on its own, sufficient to demonstrate that the obligation no longer serves a purpose.

The applicant has referred to previous decisions made by the Council including the number of obligations that have been lifted from individual properties. Members will be aware that there are certain obligations that the Council is unable to defend and thus have resolved to remove the restrictions, taking into account appeal decisions where the same wording is used. There are also decisions where the particular circumstances of the case have warranted the restrictions being removed or that those decision have been made based on the best available information at that time. Members must now consider this application in line with current planning policy and in light of the most up to date appeal decisions. In respect of this case, the Council has the benefit of a very recent appeal decision, where the wording of the obligation is the same and has been dismissed on the basis that the obligation does serve a useful planning purpose in line with the LDP and SPG objectives and in the absence of appropriate marketing, the application has failed

to demonstrate that there is no longer a continuing need for the development. (APP/T6850/Q/19/3231513 dated 27.09.2019)

The applicant has made reference to the presence of over 200 properties that are currently on the market with Rightmove in Montgomeryshire with guide prices ranging from £130,000 to £190,000, with the suggestion that there is an abundance of property available for buyers with affordability credentials without the ties of a section 106. Whilst this may be the case, this property search relates to open market housing with various scales, types and locations, it does not demonstrate a lack of need for this particular house type in this particular locality.

The applicant has suggested that a mortgage could not be secured against their property because of the section 106 restrictions attached to the sale in the event of a repossession. The current SPG states that the Planning Authority would be willing to add mortgagee in possession clauses to section 106 agreement at the request of the applicant. The applicant has been made aware of this provision but has not applied to date.

The applicant has suggested that failure of the Planning Authority to remove the obligation from his property would result in the loss of Welsh speakers from a community which the LDP identifies as an area where the Welsh language is a significant part of the social fabric of the community (more than 25% of the population speak welsh). Technical Advice Note 20 states that planning decisions should be concerned with the use of land rather than the identity or personal characteristics of the user. It goes on to state that in determining individual planning applications, considerations relating to the use of the Welsh language may be taken into account so far as they are material. Additional weight should not be given to the Welsh language above any other material considerations and decisions on all planning applications must be based on planning grounds only and be reasonable. In this instance, it is considered that the assertion made by the applicant is not a reasonable planning ground and should not be given weight in the determination of this application. A similar argument has been made regarding the loss of the applicant's business which is considered to relate more to the applicant's personal circumstances than it does to a material planning matter.

RECOMMENDATION

Officers do not consider that the evidence is sufficient to demonstrate that there is not a continuing need for the retention of the property as a restricted dwelling and the discharge of the agreement to which the application relates has not been justified.

Having taken into account all the matters raised in the submission, Officers conclude that the obligation meets the tests of the Circular and continues to serve a useful planning purpose. As such this application should be refused for the reason specified below.

Refused

The obligations in paragraphs 2(b) and 2(c) of the Second Schedule and paragraph 1 of the Third Schedule of the Planning Obligation dated 20th November 2006 meet the tests of Welsh Office Circular 13/97 and serve a useful planning purpose. The application has failed to demonstrate that there is no longer a continuing need for the obligation to be retained.

Case Officer: Louise Evans, Principal Planning Officer
Tel: 01938 551127 E-mail: louise.evans1@powys.gov.uk