



## Appeal Decision

---

by **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 08/09/2023

Appeal reference: CAS-02444-B8F0H3

Site address: The Oaks, Trefeglwys, Caersws, Powys, SY17 5QY

---

- 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 Jonathan Williams against the decision of Powys County Council.
  - The development to which the planning obligation relates is the erection of a dwellinghouse.
  - The planning obligation, dated 5 April 2006, was made between Powys County Council and Jonathan Williams.
  - The application Ref 22/1407/VAR, dated 30 July 2022, was refused by notice dated 3 October 2022.
  - The application sought to have the planning obligation discharged.
  - A site visit was made on 31 July 2023.
- 

### Decision

1. The appeal is allowed. The planning obligation, dated 5 April 2006, made between Powys County Council and Jonathan Williams, no longer serves a useful purpose and is discharged.

### Main Issues

2. The main issues are whether the obligation meet the tests specified in Welsh Office Circular 13/97 Planning Obligations, 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.

### Reasons

3. The Oaks is a detached house in a large plot of 0.288 ha. The floor area is stated to be 233 m<sup>2</sup> over two floors. This includes a former integral garage that has been converted to a habitable room and a conservatory that has been added to the dwelling.
4. The planning obligation was entered into in connection with the grant of outline planning permission in 2005 for the erection of a dwelling (Ref: M/2005/1011) and the property has been occupied by the Appellant in accordance with paragraph 1 of the Second Schedule of the obligation. The application to have the planning obligation discharged was refused for a single reason related to evidence of marketing of the dwelling for sale and rent for a

reasonable period of time and at a price that realistically reflects the occupancy restriction had been submitted.

5. The restrictions on the occupation of the dwelling are set out in the second schedule as follows:
  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).

The Third Schedule states that "any dwelling constructed on the land shall not exceed a gross floor space of 130 square metres (excluding garages).
6. Paragraph 1 of the second schedule refers to initial occupation and so is no longer relevant. The Council's intention was that the property should be retained as affordable housing for local people. The appellant was the original applicant and met the initial terms of the section 106 agreement. The obligation was imposed because the site was outside the settlement boundary at the time. The site is now within the settlement limit of Trefeglwys (designated as a large village) in the Powys Local Development Plan (LDP).
7. The Council argues that the obligation continues to serve a useful purpose because the restrictions on the size of the dwelling and its occupancy by first time buyers with a local connection has a similar effect to the broad objectives of the relevant policies on affordable housing in the LDP and the associated Supplementary Planning Guidance (SPG).
8. I acknowledge that these restrictions on the occupancy and size of the dwelling could limit its market value. However, in this case the actual size of the dwelling and the plot are well in excess of the limits for affordable housing specified in the SPG, which are 115 m<sup>2</sup> in floor area for a 4-bed house with a plot size of 0.04 ha (as the site is in a large village). As noted above the floor area of the dwelling is 233 m<sup>2</sup> and the plot size is 0.288 ha. The dwelling was 130m<sup>2</sup> when originally constructed with the additional floorspace arising from the garage conversion and a large conservatory.
9. The Local Planning Authority states that the construction of the conservatory breached the terms of the s106 obligation. The appellant points out that there were no conditions restricting permitted development rights on the planning permission, even though the SPG states that such conditions will be applied. In the absence of these controls being in place I note that the Council has not taken any action to enforce the s106 obligation or given any indication of an intention to do so. I find this significant. In addition, I must deal with the facts of the case that apply at the time of this decision.

10. The property has been valued for sale and rental by Chartered surveyors/estate agents. Even if one applies a 28% discount in accordance with guidance in the SPG, the property is worth around 4.5 times the affordability level of the average household in Powys set out in the SPG. The Council argues that there has been an increase in house prices in the 5 years since the adoption of the LDP. No evidence of the increases in house prices in this area or of the increase in average incomes has been supplied. There is nothing to suggest that the property has become more affordable in the last 5 years.
11. The normal way to test whether the obligation continues to serve a useful planning purpose is to market the dwelling for sale or rent for a reasonable period of time and at a price that realistically reflects the occupancy restriction. The lack of marketing is the sole reason for refusal of the application. The property has not been marketed for sale or rent as the appellant considers the value is so far above the affordability level that it would not serve any practical purpose. I see no value in marketing the dwelling and do not consider that the affordability levels can have increased to such an extent in 5 years as to alter this conclusion.
12. I note that if planning permission were sought now there would be no requirement for an affordable housing contribution because the site is within the settlement limit of a large village as defined in the LDP.
13. Given all the circumstances in this case, I consider that the restrictions in the s106 obligation do not limit the occupation to an affordable dwelling. Therefore the requirement to market the dwelling does not apply. I find that the obligation is not necessary because it would not safeguard the supply of affordable housing. Given the circumstances of this case and the provisions of the Local Development Plan and the SPG I also find that it does not serve a useful planning purpose for the reasons given above.

## **Conclusion**

14. For the reasons given above I consider that the obligation does not satisfy the tests set out in Welsh Office Circular 13/97: Planning Obligations. Having taken all the evidence and circumstances of the case into account, I conclude that the appeal should be allowed.
15. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act:

*A L McCooey*

**Inspector**