
Appeal Decision

Site visit made on 16 June 2015

by John Chase MCD DipArch RIBA MRTPI

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

Decision date: 22 July 2015

Appeal Ref: APP/R3325/Q/14/2215390

Apple Tree Lodge, Blackwater, Buckland St Mary, Chard, Somerset, TA20 3LD

- 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 Stuart and Alison Collier against the decision of South Somerset District Council.
 - The development to which the planning obligation relates is a change of use from a garage/workroom to a holiday letting.
 - The planning obligation, dated 5 September 2007, was made between South Somerset District Council and Stuart and Alison Margaret Collier.
 - The application Ref 13/02142/DPO, dated 13 May 2013, was refused by notice dated 12 September 2013.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the issue of the Council's decision notice, the South Somerset Local Plan (2006-2028) has been adopted, and attention has been drawn to new policies SS1, SS2, EP8, and EQ2. The appellants are aware of this change and have had the opportunity to make representations about it.

Reasons

3. The subject of this appeal was formerly an outbuilding within the curtilage of the adjacent house at Castle Cross. Following permission for a change of use to holiday accommodation the building was extended and converted as a residential unit, with the use limited to occupation as a holiday unit, or as ancillary to the existing house, by a planning agreement under Section 106 of the Town and Country Planning Act 1990. It is now the appellants' intention to remove this restriction so that the building may be used as a separate dwelling.
4. Section 106A of the Act makes provision for the removal or modification of an obligation which no longer serves a useful purpose. It is clear that the agreement was originally formed in order to comply with Local Plan policies permitting tourist development, but restricting housing outside settlement boundaries. The main issue, therefore, is whether the obligation continues to serve a useful purpose, with particular reference to the requirement for holiday

- accommodation in the area, and the need for a sustainable form of development in the context of policies of restraint.
5. On the first point, there is no compelling evidence that there is a surplus of holiday accommodation in the area, nor that circumstances have significantly altered since the planning permission was granted. Indeed, the Council have produced figures to show a rise in both the number of visitors and the level of spending in recent times. It may be that the enterprise does not return substantial profits, and would not support a paid employee to manage the operation. However, this scale of holiday accommodation could not be expected to provide more than a supplementary income, and the appellants' representations indicate that this was the basis on which they set up the business. Their present desire to close the operation does not, of itself, indicate that there is no longer a need for holiday accommodation to justify the removal of the restriction.
 6. Turning to the question of sustainability, the original planning decision was made in the context of Policy ST3 of the South Somerset Local Plan, adopted 2006, which strictly controls development outside settlements to that which benefits economic activity, maintains or enhances the environment, and does not foster the need to travel. It is probable, as claimed by the appellants, that the occupants of a holiday cottage would use private vehicles as much or more than permanent residents. However, it is also the case that holiday makers would seek a rural environment, and that attracting a tourist trade assists the economic sustainability of the area. There is a reasonable expectation that, in balancing these conflicting demands, greater weight was given to the economic benefit when permission was granted. That potential advantage would not apply to a permanent dwelling, and there is no indication that the property is accessibly located with respect to local services, sources of employment, or public transport. It forms part of a small group of buildings, but isolated from any larger rural settlement, which diminishes the likelihood that its residential occupation would significantly influence the vitality of a rural community. Again, there are not grounds to consider that the obligation no longer serves a useful purpose.
 7. Reference is made to the need for housing in the area, and the Council acknowledge that they are not able to demonstrate a five year land supply, referring to the implications this has for development plan policies concerning the supply of housing, as set out in the National Planning Policy Framework. However, the Framework also contains policies which limit the development of isolated homes in the countryside, whilst promoting tourism and the rural economy. There is not a substantial case that the need for housing is such as to render the restrictions in the obligation obsolete. Reference is made to changes in permitted development rights concerning the conversion of rural buildings to residential use, but such rights apply to agricultural buildings, and do not establish a general principle which may be applied to other types of development in the countryside.
 8. The Council's decision notice refers to former Local Plan policies ST3, considered above, and ME10 concerning tourist accommodation outside settlements. Identified policies in the new South Somerset Local Plan (2006-2028) include SS1 and SS2, which, amongst other matters, make provision for housing development in rural settlements which have access to specified services. Policy EP8 supports tourist development of an appropriate scale, and

EQ2 is a general policy intended to secure high quality development. Whilst there are changes in emphasis from the previous policies, including omission of specific reference to the need for restrictive conditions to prevent residential use in policy EP8, overall there is no indication that the policy position has changed so radically as to make the requirements of the obligation unnecessary.

9. In terms of the main issue, the obligation continues to serve a useful purpose, having particular regard to the requirement for holiday accommodation in the area, and the need for a sustainable form of development in the context of policies of restraint. No other factors indicate a different conclusion, and any alleged curtailment of the appellants' human rights is outweighed by the need to serve the wider public interest.

John Chase

INSPECTOR