



Penderfyniad ar Apêl

Gwrandawriad a gynhaliwyd ar 04/09/12
Ymweliad safle a wnaed ar 04/09/12

gan Emyr Jones BSc(Hons) CEng
MICE MCMI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/09/12

Appeal Decision

Hearing held on 04/09/12
Site visit made on 04/09/12

by Emyr Jones BSc(Hons) CEng MICE
MCMI

an Inspector appointed by the Welsh Ministers

Date: 11/09/12

Appeal Ref: APP/R6830/Q/12/2175832

Site address: Plas Derwen, Abbey Road, Llangollen

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 Belgrave Homes (Llangollen) Limited against the decision of Denbighshire County Council.
 - The development to which the planning obligation relates is the demolition of existing hotel and dwelling and redevelopment of land by the erection of 20 residential apartments and alterations to existing vehicular access.
 - The planning obligation, dated 2nd June 2006, was made between Denbighshire County Council, Belgrave Homes (Llangollen) Limited, Bridging Finance Limited and Tonic Leisure Limited.
 - The application Ref 03/2011/0696/OB, dated 8th June 2011, was refused by notice dated 15th February 2012.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The planning obligation, dated 2nd June 2006, made between Denbighshire County Council, Belgrave Homes (Llangollen) Limited, Bridging Finance Limited and Tonic Leisure Limited, no longer serves a useful purpose and is discharged.

Main Issue

2. I consider the main issue in this case to be whether the obligation continues to serve a useful purpose.

Reasons

3. The Obligation subject of this appeal provides for the payment by the owner of index linked commuted sums of £226,432 and £47,526 to the Council for the provision of affordable housing and public open space respectively. The former to be paid prior to the occupation of any dwelling and the latter to be paid prior to the commencement of the implementation works, although the Council subsequently agreed that both payments could be made prior to the occupation of any dwelling. Nonetheless, no payments have been received by the Council despite all the apartments having been completed and sold subject to 250 year leases with only limited landscaping and road works outstanding. At April 2012 the indexed combined total stood at £334,683.

4. The appellants accept that that the Obligation was justified when entered into and does not challenge the Council's evidence of a continuing high need for affordable housing and additional pressures on existing open spaces in Llangollen. In theory, the Obligation therefore continues to serve a useful purpose, in accordance with Council policies and strategies.
5. However, the development has incurred substantial losses with apartments being sold at prices which fall well short of recovering acquisition and construction costs. This is predominantly as a result of the site being purchased at the height of the housing boom and the subsequent dramatic fall in property values. The deficit is in excess of £3m, excluding interest charges and the commuted sums due under the Obligation. The appellants are a single purpose company who state that their only asset is the ground rent from the development which is valued at around £60-70,000. At the Planning Committee in February 2012, an interested person who spoke indicated that an internet search showed that the company has total assets of around £3.5m at the time, but this cannot be substantiated and could reflect out of date information.
6. The Council does not challenge the appellants' financial information, but its Hearing Statement suggests that there is a reasonable prospect of obtaining the sums due if the Obligation is not discharged. Nevertheless, the appellants are not in a position to pay these sums and the bank, which has to bear the bulk of the above loss, is not going to make any additional payments on its own volition. Neither is it likely to enter into possession of the site as a mortgagee given that the value of the asset would be significantly less than any legal charges running with the land.
7. It would be open to the Council to pursue a claim for breach of contract, but it recognises the difficulty of enforcing a Court Judgement if the appellants went into liquidation and obtaining any monies from subsequent owners. The Council could also pursue the sums due as a debt, but accepts that enforcement may be difficult given the appellants financial situation. Whilst a charge could be placed on the land in the event of the appellants going into liquidation, the limited value of the asset in comparison would dissuade any prospective purchasers effectively resulting in a stalemate which would benefit no one and probably have a detrimental impact on the occupiers of the apartments.
8. In the above circumstances, I am of the view that there is no real prospect of the Council recovering the commuted sums and its Principal Solicitor accepted that the chances of so doing were slim. As a result, adopting a pragmatic approach, it can be concluded that the Obligation no longer serves a useful purpose.
9. Although aimed at maintaining the delivery of affordable housing, the Welsh Government's September 2009 '*Delivering affordable housing using section 106 agreements: A Guidance Update*' mentions the need for such an approach. It also cites The Planning Inspectorate's view that it is not reasonable for local authorities to ignore economic realities and simply stick to a policy requirement that was drafted and approved in different times, which reflects the general principle that planning decisions should take into account all material considerations existing at the time of the decision.
10. The Council is concerned that allowing the appeal could set a precedent for other cases. Nevertheless, Parliament has made provision for planning obligations to be discharged where they no longer serve a useful purpose. My decision is based on the particular circumstances of this case, which includes all the apartments having been built and sold, the appellants being a single purpose company with no significant

assets, the extent of the deficit and the lack of any real prospect of the Council being able to secure any monies due. Any applications to discharge other obligations would need to be considered in the light of the particular circumstances pertaining to those cases at that time.

11. For the reasons given above I conclude that the appeal should be allowed.

E Jones

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr P Sedgwick DipTP MRTPI Sedgwick Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mr I Weaver Principal Planning Officer, Denbighshire County Council

Mrs S Cordiner Principal Solicitor, Denbighshire County Council

Miss M Lee Affordable Housing Officer, Denbighshire County Council

INTERESTED PERSONS:

Cllr S Davies Member Denbighshire County Council

Cllr Rh Hughes Member Denbighshire County Council

Cllr A Baker Member Llangollen Town Council

Mr G Read Llangollen Civic Society

Mr D Davies Llangollen Civic Society

Mr S Collinge Local resident

DOCUMENTS

1 Council's Notification of Hearing and list of persons notified