The Planning Inspectorate

Appeal Decision

Hearing Held on 18 September 2019
Site visit made on 18 September 2019

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/C1760/Q/18/3216236
Land at Picket Piece, Ox Drove, Picket Piece, Hampshire

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
- The appeal is made by Wates Developments Limited & David Wilson Homes Southern against the decision of Test Valley Borough Council.
- The development to which the planning obligation relates is a mixed use development comprising up to 530 dwellings, a local centre offering community facilities and retail units, public open space, access and landscaping.
- The planning obligation, dated 3 May 2011, was made between Test Valley Borough Council and Wates Developments Limited and others.
- The application Ref 18/01891/OBLN was refused by notice dated 12 September 2018.
- The application sought to have the planning obligation modified by deleting paragraphs 48, 49 & 50 in Schedule 1 Part 2 (the disputed paragraphs) concerning the reserving of land for a Junior Sports Pitch.

Decision

1. The appeal is allowed. The planning obligation, dated 3 May 2011, made between Test Valley Borough Council and Wates Developments Limited and others shall have effect subject to the following modifications:

   a) *Operative Provisions; Section 2 Interpretation* – Delete the definition of 'Junior Sports Pitch Land' in its entirety.

   b) *Schedule 1 Part 2* – Delete paragraphs 48, 49 & 50 in their entirety.

Application for costs

2. At the Hearing an application for costs was made by the Council against Wates Developments Limited & David Wilson Homes Southern. That application is the subject of a separate decision.

Main Issue

3. The main issue in this case is whether, with the disputed paragraphs, the planning obligation continues to serve a useful purpose.

Reasons

4. In 2011 planning permission was granted for a mixed-use development comprising up to 530 dwellings with various associated facilities (the 2011 permission). This was subject to the planning obligation at the heart of this appeal. In the accompanying submissions the 2011 permission was described

as 'Phase 1'. Subsequent development (which I shall call 'Phase 2') was intended to provide a further 270 dwellings and was to lie outside the application site of the 2011 permission to the north.

5. The planning obligation addressed many aspects, one of which was the provision of recreation. To this end it laid down the requirements to provide various recreation areas and facilities. For each of these conditions for its transfer and future maintenance were stated, and a threshold or thresholds were given when, during the evolution of the development, a commuted sum had to be paid to the Council or it otherwise had to be transferred to and maintained by the Council.

6. Although also included in the planning obligation, the Junior Sports Pitch was handled in a different way to these other facilities. The disputed paragraphs broadly required the pitch's location (which I shall term the appeal site) to be agreed, the land to be reserved for that purpose and the land then to be kept in a clean and tidy condition. However, there was no requirement for it to be made publicly accessible or available for public use, and the obligation does not say for how long the land must be reserved. It also did not state that the land had to be handed to the Council, and it gave no mechanism for such a transfer.

7. The Officer Report for the 2011 permission appeared to confirm the Junior Sports Pitch was not needed for that development as it said

> *'Space within the site for a junior sports pitch, which would form part of a subsequent phasing application, is to be retained…'* (my emphasis).

As a consequence, the 2011 permission resulted in an over-supply of recreation land in the development to which it related, with the amount of over-supply roughly equating to the size of the appeal site. Indeed, it was accepted at the Hearing that had the 270 houses not come forward in 'Phase 2' then there would be no need for the Junior Sports Pitch.

8. Permissions have now been granted for housing in all of the area identified as 'Phase 2'. In particular there have been 3 applications for schemes granted or permitted outside the site of the 2011 permission, plus a further permission for housing on an intended school site, and on-site recreation provision has not been sought on any of these schemes due to the presence of the Junior Sports Pitch. However, none of those decisions were subject to an obligation requiring the provision of that facility.

9. The appeal site has been levelled and grassed, and to date there has been compliance with all the disputed paragraphs. The site is next to the larger sports pitch, pavilion, tennis court and play area that had to be provided under the planning obligation. I understand these are in the process of being handed over to the Council and being made available for community use.

10. The appellants questioned whether a Junior Sports Pitch could in fact be fitted onto the appeal site. The obligation gave no definition as to the size of this pitch or the specific sports it should serve. Taking football as an example though, the Football Association does not describe any of its stated pitch dimensions as suitable for 'juniors'. However, it identifies a pitch size for children under the age of 8 that is small enough to be accommodated on the appeal site, and I consider such a pitch can be reasonably defined as a Junior

Sports Pitch. As such, the requirements of the planning obligation can be fulfilled in this regard.

11. Although the Act says that in assessing this appeal, I am to consider whether the obligation *'continues to serve a useful purpose'*, it does not define what this means. While the meaning of the words taken at face value is noted, the parties accepted that regard must also be given to the 3 tests that relate to the provision of planning obligations found in the *Community Infrastructure Levy Regulations 2010* (the Regulations). Indeed, as the Regulations say the obligation may only constitute a reason for the grant of planning permission if it complies with these 3 specific tests, it seems reasonable to assume that, once an obligation is signed and permission granted, the useful purposes it serves cannot then be broadened beyond those tests.

12. The Council confirmed that any consideration of a useful purpose served by the obligation should be confined to needs arising from those placed upon it by the residents of 'Phase 1' and 'Phase 2' of the Pickets Piece development. Although information had been submitted about wider recreational needs across the ward and the Borough, those were not to be the pressures and purposes against which the appeal should be assessed. Given the scale, nature and location of the appeal site this is a view that I share, as there is nothing before me to show that the site was to address needs of residents elsewhere in the Andover or beyond.

13. On the evidence submitted it would appear the open space provided by the appeal site was not necessary to render the 2011 permission acceptable, as it not only resulted in the amount of such space exceeding the accepted standard, but it was also not required to be delivered as part of that development. In this respect it conflicted with the tests in the Regulations.

14. Notwithstanding this, many local residents currently use the appeal site for informal games, for social events, and for casual recreation such as walking, jogging and just sitting out. They contended the site supplements the small gardens at their surrounding houses. The owners of the land have not authorised such activity although, through the absence of fencing, signage and so on they have chosen not to prevent it either. Moreover, as the site is overlooked from houses on 2 sides it no doubt offers those residents an improved outlook. These are purposes to which the appeal site is being put. However, unless the owner took proactive steps to the contrary, informal recreation is likely to be taken up on any maintained piece of open space that remained within an otherwise developed area, even if it was in excess of the level of provision required by that development. Therefore, to my mind that in itself cannot be sufficient to justify dismissing the appeal. Indeed, although the landowners could not use the appeal site for other purposes without the approval of the local planning authority, such informal usage could be readily stopped if, for example, they chose to erect a fence around the site - a course of action the planning obligation could not prevent.

15. Turning to its use as a Junior Sports Pitch, as there is no requirement in the obligation for the appeal site to be handed over to the Council or for it to be made available for public use, the obligation cannot ensure that purpose is achieved. The Council nonetheless contended the obligation resulted in the retention of the land while alternative means of securing the pitch, that lay outside of the obligation, were pursued.

16. Two such ways were cited. The first was to encourage the owners to hand the site over voluntarily. This had been explored but proved unsuccessful as, for whatever reason, the owners withdrew late-on in negotiations. In the light of this withdrawal, I have no reason to consider that avenue would be successful if explored again in the future. Alternatively, it was said the land could be acquired through a Compulsory Purchase Order or similar powers. That is a path that has not yet been taken (partly no doubt because of seeking to secure the owner's voluntary consent) and so whether it will be pursued and, if it is, how successful it is likely to be are, as yet, unknown.

17. The ability of these approaches to deliver the pitch is therefore open to question. In any event, neither of these options appear to be dependent upon the disputed paragraphs, but either or both could still be followed if this appeal was allowed.

18. In the light of the above these options for acquiring the appeal site appear to have only an indirect link to the obligation. To my mind it is most unlikely that the obligation had been drafted with the specific intention of facilitating such approaches, and these alternative methods of acquisition do not flow directly from the obligation. Rather the opportunity to pursue such avenues appears to arise from the lack of progress created by the need to reserve the appeal site on the one hand but the inability of the obligation to bring it into public use on the other.

19. Therefore, I conclude the planning obligation does not comply with the tests in the Regulations as the disputed paragraphs were not necessary to make the development acceptable. Putting that aside, of itself, the obligation does not and cannot actually secure the appeal site as a Junior Sports Pitch for the use of the residents of either 'Phase 1' or 'Phase 2' of Picket Piece. I consequently find it does not '*continue to serve a useful purpose'* in this regard.

20. In coming to this view, I acknowledge the health benefits of recreation land. As there is an adequate supply of such land for the 2011 permission without the Junior Sports Pitch these benefits are afforded only limited weight in relation to that development. I accept the land is needed to meet the requirements of the 4 other schemes and so would bring health benefits to those residents. However, the failure to deliver the land through the obligation before me, the absence of other obligations and the uncertainties that exist concerning securing it through other methods that lie outside the obligation, mean that benefit cannot justify the retention of the disputed paragraphs.

21. Early on in the consideration of application 18/01891/OBLN the appellants had offered to provide compensatory open space behind a property called Lan Clipper. However, that offer was subsequently withdrawn and was not before me.

22. Many also objected about the possible impacts of a housing scheme on the site. That though is not before me either, and, if any such application is forthcoming, no doubt its implications in relation to outlook, traffic, wildlife, services and so on will be considered. Residents also said they were sold their properties on the basis that they would overlook open space, but that is not a matter that can justify dismissing this appeal. In any event, allowing this appeal does not permit any alternative proposals on the appeal site.

23. Finally, mindful that the proposal is not to be assessed primarily against the development plan, any conflict with the policies in the *Test Valley Borough Revised Local Plan* do not constitute material considerations sufficient to lead me to a different view.

24. Accordingly, I conclude that the appeal should be allowed and the obligation modified by the deletion of the disputed paragraphs. Moreover, as it would then be no longer necessary, the definition of Junior Sports Pitch Land should also be deleted from the obligation.

J P Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Ms B Gascoyne	Solicitor
Mr N Paterson-Neild	Agent
Mr C Pettit	Agent

FOR THE LOCAL PLANNING AUTHORITY

Mr K Harrington	Parks & Countryside Officer
Ms E Jones	Senior Planning Officer
Mr M Lowe	Development Manager
Ms K Wardell	Sports & Recreation Officer

INTERESTED PERSONS

Councillor L Banville	Deputy Mayor, Andover Town Council
Mr G Atkins	Local resident
Mr C Downs	Local resident
Mrs H Flynn	Local resident
Mrs H Neate	Local resident
Mr D Rainey	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1 Letter of notification of the Hearing date submitted by the Council
2 Statement of Common Ground submitted jointly by the Council and the appellants