
ADVICE

1. I am instructed by Thrings Solicitors to advise in writing in respect of an application for the removal of an occupancy condition imposed in relation to Lettons House, Lettons Way, CF46 4BY (the 'Property').

Background

2. The background to this matter is set out in full in my instructions and I thank those instructing me for the concise and detailed nature of those instructions. My instructions should be read in conjunction with this Advice, along with the statement made by the owner of the Property, Mr Peter Hayman (enclosed with my papers,) for the full background to this matter.
3. As that background is known to those instructing me, a short summary will suffice for present purposes.
4. Planning permission was granted for the Property in 1980, following an appeal to the Secretary of State. An agricultural occupancy condition was imposed as part of the grant of planning permission, as set out at paragraph 9 of the 1980 appeal decision (Condition 3; enclosure 3 of my instructions).
5. Attempts were made to sell the Property in 2011 but no buyer could be found who complied with the agricultural occupancy condition.
6. Thereafter an application was made in 2011, to change the agricultural occupancy condition for a new rural enterprise condition, which had been introduced pursuant to TAN 6. The application was granted and the new rural occupancy condition (the 'Condition') was substituted, which restricted occupancy to persons working in a rural enterprise, or their survivors, and if there were no such eligible occupiers, to persons eligible for affordable housing, or their survivors. The full terms of the condition should

be read in conjunction with this Advice and it is set out in the 2011 application decision notice at enclosure 6 of my papers.

7. In October 2011, the Property was marketed again at a reduced price, following the death of Mr Hayman's wife. In February 2012, the price was reduced to £450,000 because despite strong interest, none of the potential purchasers could satisfy the Condition.
8. In November 2012, an application was made to remove the Condition. This was refused by the full planning committee of the Vale of Glamorgan Council (the 'LPA'), in April 2013 (enclosure 11 of my papers).
9. A further application was made to remove the Condition in December 2013. This was refused on a casting vote at a full planning committee meeting held in February 2014 (enclosure 12 of my papers).
10. Various attempts have been made to sell the Property in accordance with the Condition but without success.
11. In August 2014, another application to lift the Condition was made on behalf of Mr Hayman (the '2014 Application'). The 2014 Application emphasised the reduced price at which the Property has been marketed to reflect the need to comply with the rural enterprise and affordable housing parts of the Condition, and the fact that there has still been no firm interest in the Property and no offer to buy it.

Instructions

12. In the circumstances, I am instructed to advise on the following points:

- a) Whether the request by the LPA for payment of a financial contribution in lieu of onsite provision of affordable housing and in order to remove the Condition, is

- lawful in light of the Vale of Glamorgan UDP 1996-2011, Supplementary Planning Guidance (the 'SPG');
- b) Whether the 2014 Application accords with the development plan;
- c) Whether the request for a financial contribution accords with the requirements of Regulation 122 of the Community Infrastructure ('CIL') Regulations 2010 ('2010 Regulation');
- d) Whether the proposed planning obligation is lawful;
- e) Whether removing the Condition would have a significantly adverse effect on the supply of affordable housing in the LPA's area, in light of the 2 recent appeal decisions included in my papers (enclosure 16).

Analysis

13. On an application pursuant to section 73 of the Town and Country Planning Act 1990 (the 'Act'), an LPA has to consider only the question of the conditions subject to which planning permission should be granted-the whole planning permission is not open to redetermination. If it decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, it should grant planning permission. If it decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, it should refuse the application.
14. Regulation 122 of the 2010 Regulations provides that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. Regulation 122 applies to section 73 applications.
15. I turn the question of the SPG. In section 4 and section 6 of the body of the guidance, the SPG states that planning obligations will be sought where applicable for 'new development'. The instant case is not technically new development but an application to remove an existing condition (Page 7). The same point applies to the reference to

'substantial new developments' in 'Appendix 1', which follows the body on the SPG (in my papers).

16. Further, the SPG provides that planning obligations are most likely to be sought on 'major developments', or where the development will impact upon a particularly 'sensitive sites' (page 8). The section 73 application clearly does not fall within the definition of 'major developments' incorporated into the guidance (page 8). Nor could it now fall within the definition of a 'sensitive site'-the whole permission is not open for re-determination and the focus is on the continued acceptability of the Condition as it relates to the type of occupancy (page 9); landscape sensitivity is not the issue.
17. In light of the foregoing, in my view, there is no clear policy support in the SPG for the principle of a financial payment in relation to the loss of affordable housing in this case. To that extent there does not seem to be a lawful basis upon which the request for a planning obligation can be maintained, based on the LPA's own guidance.
18. The current development plan comprises the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011 (the 'UDP'). It is understood that very little weight should attach to the Vale of Glamorgan Local Development Plan 2011-2026 as it remains at a very early stage and is not due for adoption until autumn 2016.
19. The principle policy of relevance to the determination of the section 73 application, appears to be policy HOUS6, which relates to agricultural occupancy conditions. While it is not directly on point, it is relevant insofar as it provides that the approach to be taken is to consider such applications "on the basis of realistic assessments on the continuing need for their retention".
20. The Property is no longer tied to a rural enterprise. The Property has been marketed over several years and clear attempts made to sell it in compliance with the Condition. In my view, the lack of any genuine resultant interest from a potential purchaser, provides a realistic evidential basis for the conclusion that there is no continuing need for the retention of the Condition. In those circumstances, policy HOUS6 of the UDP provides support for the view that the application should be granted and the Condition removed.

21. Insofar as there is no clear support for the payment of a financial contribution in the instant case in the SPG, it is arguable that a planning obligation is not necessary to make the development acceptable.
22. Furthermore, the large financial sum sought by the LPA appears to be based on the formula set out in the SPG in relation 'substantial new residential developments'. This is clearly not such a case-it is an application pursuant to section 73 of the Act. Accordingly, the payment sought is as a result arguably not 'fairly and reasonably related in scale and kind to the development'. It follows, that the request for a planning obligation does not seem to comply with the provisions of Regulation 122 of the CIL.
23. From the above, it will be apparent that in my view, there is no clear basis for the proposed planning obligation in the instant case and the request for a payment is not supported by local policy, or national guidance on the issue.
24. The two appeal decisions included in my papers (enclosure 16) support the view that the Condition should be removed. The reasoning applied by the respective Inspectors in those cases largely applies to the instant case.
25. The Derwen Fach decision is particularly relevant as it involves the same occupancy condition. That decision supports the view that where there is a lack of demand for a property with a rural enterprise/affordable housing occupancy condition, the conclusion can be reached that there is no continuing need for the occupancy condition and no resultant prejudice to the supply of affordable housing in the LPA area.

Conclusion

26. I have sought to address the specific questions set out in my instructions in the foregoing section. It will be seen that, in my view, the request for a financial contribution through a planning obligation in the instant case is not supported by local or national policy. The lack of interest in the Property after extensive marketing supports the conclusion that there is no longer a need for the Condition and that it should be removed.
27. These points should be made (again) to the LPA at a meeting. In the event that the 2014 Application is ultimately refused, based not least on the Derwen Fach decision, there is clearly merit in appealing that decision.

28. If I can assist further in relation to this matter, those instructing me should not hesitate in making contact.

TIM SHEPPARD,
1 September 2015.

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