
Appeal Decision

Site visit made on 4 June 2025

by H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2025

Appeal Ref: APP/L3245/Q/25/3363603

Orchard Cottage, Ashford Carbonell, Ludlow SY8 4BX

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to discharge a planning obligation.
 - The appeal is made by Mr Simon Angell against the decision of Shropshire Council.
 - The development to which the planning obligation relates is erection of an affordable dwelling and garage/store, alteration to existing vehicular and pedestrian access and siting of a temporary caravan.
 - The obligation, dated 20 June 2012, was made between Shropshire Council and Mr Simon Angell.
 - The application Ref 24/04864/DSA106, was refused by notice dated 5 March 2025.
 - The application sought to have the planning obligation discharged.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the planning obligation relating to the affordable housing restriction continues to serve a useful planning purpose.

Reasons

3. The powers under S106A and S106B are to modify or discharge planning obligations. In this case, the dwelling subject of the S106, described as an affordable dwelling in the description of the development, was granted permission in 2012. The obligations require the appellant to occupy the dwelling as his primary residence, but if he should wish to let or sell it, then to do so in the terms specified that require a reduction from open market rental values or sale prices and to person/s that qualify with a local connection.
4. The dwelling was granted under the exceptions policy approach outlined in Policy CS11 of the *Core Strategy* (adopted 2011). The appellant entered into the S106 on this basis and has constructed a dwelling on the appeal site¹. At the time that permission was granted, the village of Ashford Carbonell was not identified as a Community Cluster or Community Hub under the then adopted development plan. The Council's case outlines that the status of Ashford Carbonell remains similar under the current adopted development plan, also now comprising the *Site Allocations and Management of Development Plan* (adopted 2015). Essentially, the subject site would still be classed as countryside where new dwellings are not permitted unless under the exceptions policy approach, though the engagement of

¹ Albeit whether it has ever been occupied or built to accord with the approved plans are not matters addressed in the evidence or strictly relevant to my consideration of the appeal

paragraph 11 d) of the National Planning Policy Framework (the Framework) can affect the weight attributed to the development plan in some cases.

5. The appellant's position now is that Ashford Carbonell should be considered a sustainable settlement and that the development represents an infilling within the built limits of the village. The other points advanced by the appellant are that the Council is not now able to demonstrate a five year supply of housing land as required under the Framework, and that its development plan is out of date, leading to a different balance of considerations such that the permission would be granted without a S106. It is also suggested that permission was granted for another dwelling in Ashford Carbonell in 2014² which was not subject to the same requirement for a S106.
6. Though the submitted Planning Statement and Appeal Statement suggest that the consideration of this matter should be in the context of the development plan and other material considerations, my consideration under the TCPA is clear as set out in Section 106A (6) (b), *'if the obligation no longer serves a useful purpose, that it shall be discharged'*. An alternative consideration is if an altered obligation is proposed, whether the obligation would continue to serve that purpose equally well. No such modification has been proposed in this case. As such, my consideration of the matter under S106B is not a comparison of the planning merits and policies between the 2012 and present day scenario. The relevant question is whether the obligations contained within the S106 continue to serve a useful purpose.
7. The Council's case includes details that as of February 2025, there were 7,925 households on the housing register maintained and operated by Shropshire Homepoint and no available affordable homes in Ashford Carbonell. The thrust of the Council's evidence is that as rural house prices increase, the issue of affordability worsens. The purpose of the S106 is to maintain the available stock of affordable housing that could address these needs should the house come to be sold or let in the future.
8. The appellant's evidence does not detail a lack of need for affordable housing generally, or an inability to secure any tenants or purchasers that could either rent or purchase it under the specific terms of the S106. Therefore, at a basic level, the S106 continues to serve a useful purpose by prioritising the accommodation needs of those that require affordable housing in the context of a demonstrable need for such.
9. The Council not determining cases in a like manner, such as the appeal scheme and the other dwelling in Ashford Carbonell, appears to be explained by the absence of a five year housing supply at the time of consideration of the latter. In this regard, the circumstances appear to differentiate the balance of considerations relevant to each case at the time of their respective determination. In any event, as the dwelling has been constructed, the discharge of the S106 would not yield any greater contribution to the housing supply than the one dwelling that was permitted.

² Planning reference: 13/04981/FUL at New House Farm

Other Matters

10. Whilst I note from the evidence that an officer of the Council previously advised that the S106 would be discharged on the basis that the Council could not demonstrate a 5 year housing land supply, that did not occur and appears to have been a position adopted erroneously. In any event, any advice given by others of that nature does not constrain my consideration of this appeal under S106B of the TCPA.

Conclusion

11. Having regard to the evidence and points advanced by the appellant, I consider that the S106 continues to serve a useful purpose.
12. Accordingly, the appeal should be dismissed.

H Nicholls

INSPECTOR