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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/08/19

gan Iwan Lloyd BA BTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 27.09.2019

## Appeal Decision

Site visit made on 29/08/19

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 27.09.2019

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**Appeal Ref: APP/T6850/Q/19/3231513**

**Site address: Pen-y-Cae, Greenfields Farm, Four Crosses, Llanymynech SY22 6RF**

**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 Philip Michael Pryce against the decision of Powys County Council.
  - The development to which the planning obligation relates is erection of a dwelling.
  - The planning obligation, dated 13/05/2008, was made between Powys County Council and Philip Michael Pryce.
  - The application Ref 19/0202/VAR, dated 31/01/2019, was refused by notice dated 3/06/2019.
  - The application sought to have the planning obligation discharged.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Philip Michael Pryce against Powys County Council. This application is the subject of a separate decision.

### The obligation

3. The obligation says that any dwelling built on the land shall initially be occupied by the applicant as his only dwelling. The subsequent disposal of the dwelling shall be to a resident living or employed in the District of Montgomeryshire for not less than three years or was last employed within the District or has come to the District to take-up full employment. This is with the proviso that the subsequent disposal of the dwelling would be to an occupier or their spouse or cohabitees that have not owned or were leaseholders of a dwelling for a term exceeding 7 years at the date before their first occupation of the dwelling. The subsequent disposal of the dwelling would be to an occupier or their spouse or cohabitees that have not owned a dwelling at any time during the period of five years before their first occupation of the dwelling. The dwelling size is limited by the obligation so that as constructed it does not exceed a gross floor space of 130 square meters.

### Main Issue

4. The main issue in this case is whether or not the obligation continues to serve a useful purpose.
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## Reasons

5. The constructed property the subject of this appeal is a detached two-storey dwelling with three bedrooms, kitchen, dining and living rooms on the ground floor. The dwelling has its own driveway which connects to a private road which in turn exits onto the county highway. The dwelling is situated close to commercial workshops and yard associated with a family run enterprise of selling and servicing of agricultural machinery/vehicles. The access to the yard/buildings exits onto the private drive and then the county road and the property driveway connects to the same shared track. To the south of the commercial yard is Greenfields Farm House which is occupied by the appellant's parents. This property has its own access to the south connecting to the A483.
6. The appellant seeks to discharge the obligation because it restricts any possible improvement/extension to the property for the appellant's family who wish to continue to reside there and run the associated enterprise. The appellant's case is that the dwelling is inappropriate as an affordable dwelling for qualifying occupants given the proximity to the commercial yard, the shared private access in which future occupants would be required to contribute towards its upkeep, and that future occupants would not tolerate the effects of the commercial business in terms of its impact on living conditions in relation to noise, disturbance, odour and fumes. The appellant argues that the proximity of the property to the business is self-regulating and that the obligation does not continue to have a useful purpose because the dwelling is unsuitable as an affordable dwelling for persons unconnected to the business. The appellant refers to the difficulty subsequent occupants would encounter in selling the property or acquiring a mortgage to purchase it from the appellant.
7. The access is used by lorries connected to the business and lorries turn into the driveway of the property in order to exit the enterprise. The appellant refers to issues of safety because vehicles entering the private drive may encounter lorries and as the appellant is aware of the delivery times the potential traffic conflict is usually avoided whereas this might not be the situation if the dwelling is occupied by a person unconnected to the business. The appellant also cites issues with pedestrian safety with children using the private drive and the associated conflict of lorries using the road which future occupants of the dwelling unrelated to the business may not tolerate.
8. It is not disputed that the planning policy applicable in 2008 was relevant and that the appellant complied with the local need/affordable housing criteria at that time. The Council sought to control the occupancy of the dwelling given that it was a dwelling which was located outside the settlement boundary and the appellant was willing to sign the planning obligation which controlled the subsequent sale of the dwelling.
9. The Powys Local Development Plan 2011-2026 (LDP) Policy H1 permits housing development in rural settlements for affordable housing in accordance with Policy H6 or where the development relates to a need for housing in the open countryside. Policy H6 considers affordable housing exception sites to meet a proven, unmet local need where the size of the development is commensurate with the defined need and that adequate arrangements are in place to ensure the benefits of affordable housing are secured for initial and subsequent occupiers in accordance with the requirements of Policy SP3. These policies refer to further guidance contained in adopted Supplementary Planning Guidance (SPG) on Affordable Housing and Planning Obligations. The SPG on Affordable Housing provides guidance on affordability, plot size and qualifying occupiers through the local need assessment process.

10. The appellant refers to the concern that the obligation states that subsequent occupiers require to qualify to be resident or working locally, and that the 'disposal or demise' of Pen-y-Cae does not restrict to whom the appellant can let or lease the property to, or control the sale price, rental cost or lease of the property.
11. The obligation states that 'Upon any subsequent disposal or demise of the said dwelling occupation thereof shall at all times be limited to a person (the occupier) who', followed by the restrictions on local occupancy and without formerly owning or leasing a property within a given period. In my view, the words 'shall at all times be limited to a person' who qualifies with the requirements precludes the appellant from renting or leasing the property to a person whom fails to meet the obligation restrictions on occupancy. Furthermore, I consider that when each obligation is read together this would result in a reduction in the value of the property below open market valuations such that it could be regarded as within the intermediate affordable housing category as defined by TAN2<sup>1</sup>.
12. Whilst no evidence has been presented on valuations the restrictions on the size of the dwelling and the occupancy restrictions and that subsequent occupiers would not normally hold equity in another dwelling has the effect of limiting the value of the property and the occupancy such that the obligation's purpose has a similar effect to the broad objectives of the LDP and SPG on Affordable Housing.
13. The obligation makes no reference to affordable housing, and I accept the obligation has no reference to affordability, the valuation of the property, a local need cascading arrangement and the size of the dwelling is above affordable housing thresholds as set out in the SPG. However, the suite of obligations when read together serves to restrict the property from becoming an open market dwelling in an area where open market housing is unacceptable in planning terms.
14. The obligation does not relate to the enterprise since it makes no mention of it. The obligation also has the effect of giving protection to local people and those who come to the area with full employment but does not differentiate from those who are less affluent and those who are affluent unless the occupant failed on the second and third proviso of paragraph 2 of the Second Schedule in relation to previous home ownership and leasehold interests. There could be circumstances where the subsequent occupant had owned/leased a property up to 7 years in duration, but not within 5 years of their occupation of the dwelling. These circumstances may be few, but it serves to illustrate that the obligation is not entirely consistent with the affordable housing provision in the LDP/SPG.
15. Nevertheless, the main provision when the obligation was instigated, and now, when it is sought to be discharged, is to prevent open market housing in an area where such housing would be unacceptable in planning terms, and it serves to restrict the value of the property below open market valuations. The obligation therefore continues to serve a useful purpose in the context of the LDP. In my view this is a legitimate aim in accordance with the adopted planning policy for the area.
16. The location of the dwelling does not preclude subsequent qualifying occupants to take residency such that the impact on them due to the proximity of the enterprise would be so severe as to be considered unacceptable in relation to their living conditions. The workshop building is separate from the dwelling and there is established landscaping on the boundaries of the site. Whilst there would be some impact in relation to deliveries and working on plant and machinery, qualifying occupants would

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<sup>1</sup> Planning Policy Wales Technical Advice Note 2: Planning and Affordable Housing Annex B

be aware of the situation before buying, and in any event the restrictions which are in place have not been tested in a meaningful way to demonstrate that the obligation has no useful purpose.

17. The size of the dwelling is regulated by the obligation and I note the appellant does not want to sell the property but rather to extend and alter it. These aspirations are entirely appropriate subject to general planning considerations but in this context the dwelling was granted as a justified exception to restrictive policies of building in the countryside, and to extend beyond the maximum threshold could make it an unaffordable dwelling. No evidence has been presented to indicate the cost and potential uplift in value of such an extension and no valuations have been made on the current property relative to the Council's affordability criteria as shown in the SPG. However, the maximum permitted size of the dwelling is above the plot size maximum of the adopted SPG, I therefore consider that the obligation serves a useful purpose.
18. I also note the appellant's argument over the difficulties of obtaining a mortgage although no evidence has been presented to demonstrate the point.
19. I am satisfied that the obligation continues to serve a useful purpose and does not conflict with the tests set out in The Community Infrastructure Levy Regulations 2010 and the tests in Circular 13/97 on Planning Obligations. The application sought to discharge the obligation, and for the reasons I have outlined above, I conclude that the appeal should be dismissed.

*Iwan Lloyd*

INSPECTOR