

Planning Advisory Group: report to Walberswick Parish Council

07-11-2020

DC/20/4286/VLA

Alexandra Cottage, The Street, Walberswick, Suffolk IP18 6UG

Variation of Legal Agreement “Variation of Legal Agreement for S106 on Application - C09/1575 | Land North of Alexandra Cottage The Street Walberswick Suffolk”

1.0 Opinion

In the opinion of the Planning Advisory Group this variation of legal agreement should be **refused**.

2.0 Description

The application seeks to remove an existing covenant which forms part of a legal agreement which was the basis of the planning approval at Alexandra Place. Specifically, the removal of the requirement to pay an Affordable Housing Contribution to the district council upon the sale of the third dwelling.

3.0 Background

The original application to which this application refers is C/09/1575 which was granted planning permission on 10 January 2011. Permission was for three dwelling units, two have been built and are now occupied.

The date of the Section 106 Legal Agreement, to which this application refers, was dated 21 December 2010.

A Section 106 agreement is a legal agreement pursuant to section 106 Town and County Planning Act 1990 (as amended) between all those with a legal interest in the land (usually owner, any tenants and any mortgagees) and the local planning authority which puts in place measures which mitigate the impact of the development on the community and infrastructure.

Section 106 agreements sometimes make possible what would not normally be permitted. Agreements can deal with a diverse range of matters, such as ensuring visibility splays in perpetuity, providing for contributions to fund new schools or classrooms, providing for travel plans, ensuring that there is open space, recreation land, allotments, or new village halls where necessary. East Suffolk Council now uses a mix of s106 agreements and the charging of community infrastructure levy or CIL. It was anticipated when legislation on CIL was introduced in 2010 that CIL would replace the use of s106 agreements, but CIL legislation specifically excludes the use of CIL for the provision of affordable housing. However most local plans contain policies that require a certain percentage of housing in any planning permission to be used for affordable housing and where the site is too small to provide for at least one unit of affordable housing, for the developer of the site to pay to the council a sum of money to be pooled and used for affordable housing. Thus, s106 agreements are still entered into where the local plan requires a contribution to affordable housing.

This Section 106 agreement contained two covenants between the owners/developers and Suffolk Coastal District Council (SCDC). The first was for the provision of outdoor playspace, which was provided in 2012.

The second covenant concerns Affordable Housing:

'2.2.1 (b) to pay the Affordable Housing Contribution to the District Council on completion of the sale of the third completed Dwelling.'

This contribution would have been £101,301.00 if paid by 31 March 2011, calculated thereafter by multiplying the sum by the Index for the month of January that preceded the payment. This sum would have allowed affordable housing to have been provided off site by SCDC.

In 2016, planning policy changed so that the provision for affordable housing within a development was not required for housing developments of 10 units or less, but the policy change did not affect agreements that had been entered into before the change came into effect. At the time when this agreement was completed, developers had to provide 30% affordable housing within the development or pay a contribution calculated by the district council.

The applicants are applying to have this covenant removed due to this change in policy. However, the policy came into effect 6 years after the completion of the agreement.

In addition to the reason above, the applicants are applying to have this second covenant removed on the basis that they do not intend to build the third dwelling or allow one to be built.

4.0 Comment

Had this agreement not been entered into covenanting the Affordable Housing Contribution, the development would not have been granted planning permission. It is immaterial that the planning policy changed 6 years later.

It is noted that if the applicant does not wish to build, or permit the building of the third dwelling, then the removal of this covenant is not necessary as it will never be triggered by the sale of the third dwelling.

Whilst we believe that as the applicant is stating that he will never build the third unit, it is unnecessary for his purposes to enter into a deed of variation to remove the covenant from the agreement. If however the parish council would prefer to see the covenant removed then we suggest that the parish council asks the district, within the necessary deed of variation, to impose a new covenant to the effect that the third dwelling envisaged by the planning permission will never be built. This type of provision is provided for in the Town and County Planning Act.

5.0 Conclusion

It is not felt that a material reason has been presented to warrant the change to the agreement.