The Planning Inspectorate

Appeal Decision

Site visit made on 15 December 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 December 2020

Appeal Ref: APP/Y3805/Q/20/3255730
79-81 Brighton Road, Shoreham-by-Sea, West Sussex BN43 6RE

- 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 W N Developments Limited against the decision of Adur District Council.
- The development to which the planning obligation relates is a mixed-use development of 132 dwellings, foodstore and ancillary commercial floorspace with parking, accesses and improvements to the river frontage.
- The planning obligation, dated 7 October 2013, was made between Adur District Council, West Sussex County Council, W N Developments Limited and Sussex Yacht Club Limited.
- The application Ref AWDM/0501/12, dated 31 January 2020, was refused by notice dated 7 April 2020.
- The application sought to have the planning obligation modified by the deletion of the requirement for a highway contribution of £87,500.

Decision

1. The appeal is dismissed.

Background

2. In 2013, planning permission was granted for the '*demolition of existing warehouse to facilitate new mixed-use development of 132 dwellings (Use Class C3)(comprising 32 x 1-bed flats, 87 x 2-bed flats and 13 x 3-bed flats of which 27% are affordable units), a 1265sqm foodstore (Use Class A1) and 121sqm of ancillary commercial floorspace (Use Classes A1, A2, A3, A5 and B1) in a 5-7 storey building with 150 parking spaces plus cycle spaces at basement level and at the front of the site, new vehicular access to serve the foodstore from Brighton Road, access to residential units via Surry Hard, improvements to the existing river wall, public hard and boathouse and new landscaping'*. The development has been implemented with the residential accommodation for sale and partially occupied. The retail and ancillary space has yet to be occupied.

3. Pursuant to that permission, the appellant entered into an agreement under section 106 of the Town and Country Planning Act 1990 ('section 106 agreement') containing a number of obligations, one of which was '*to pay the County Council the Highway Contribution Index Linked towards the provision of sustainable highway improvements relating to the Site*'. The Highway Contribution of £87,500 was paid by the appellant to the County Council on 4 July 2017.

Main Issue

4. The main issue is whether the highway contribution continues to serve a useful purpose.

Reasons

5. The appellant seeks the repayment of the highway contribution on two grounds: firstly, that some highway works associated with the development are being carried out as a separate agreement under section 278 of the Highways Act 1980 ('section 278 agreement') and therefore payment of the highway contribution constitutes 'double dipping'; and secondly, that the highway contribution is earmarked for highway schemes which post-date the grant of planning permission and therefore does not meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I consider these arguments below.

6. In 2012, to aid discussions on the planning application the Highway Authority drew up a list of potential highway schemes that needed funding. The appellant considers that it is these schemes which the highway contribution was intended to fund. The Highway Authority says that they were just examples of highway schemes in the local area and were used as a guide to determine the scale of the contribution rather than being explicitly associated with the development.

7. The appellant has since entered into a separate section 278 agreement with the Highway Authority to carry out highway works. I note from email correspondence between the appellant and Highway Authority that some of these works relate to some of the schemes listed in 2012, although I have been given no details of what the section 278 agreement contains or the degree to which it overlaps with the schemes discussed in 2012.

8. It is common for larger developments to include both section 278 and section 106 agreements. That is the case here where works to form new access points and improvement to Surry Hard Junction were necessary highway works to enable the development to take place but not part of the wider highway improvements intended to be part funded through the section 106 agreement.

9. Had the appellant intended the later section 278 agreement to have been a substitute for the highway contribution in the section 106 agreement, I would have expected that to have been made explicit at the time. The Highway Authority says there is no understanding between the two parties that this was the case or that there was any agreement that it would replace the highway contribution. I have seen no evidence to contradict that statement. On that basis, I am not persuaded that the highway contribution does amount to 'double dipping'.

10. The wording of the obligation in the section 106 agreement allows the use of the highway contribution for the '*provision of sustainable highway improvements relating to the site*'. This wording provides for a much broader scope of use than that reflected in the list of schemes discussed prior to the decision on the planning application. Furthermore, what matters in this appeal is whether the obligation continues to serve a useful purpose, rather than what may have been its original purpose.

11. The Highway Authority has allocated the highway contribution towards the Shoreham High Street Access Improvements and the Norfolk Bridge

Improvements. These schemes form part of the Shoreham Harbour Transport Strategy. Although the Transport Strategy was adopted after the grant of planning permission for the scheme, it was being developed with the Planning Authority and other partner organisations as part of the Shoreham Harbour Joint Area Action Plan at the time the application was being considered. The Area Action Plan, and the Transport Strategy that is associated with it, forms the basis for current planning of the area including the appeal site. It is to be expected that some 7 years after the grant of planning permission the needs of the highway network in the local area may have changed, and that the allocation of funding may need to change accordingly. Consequently, I consider it reasonable that the highway contribution has been allocated towards current highway schemes.

12. Regulation 122 of the Community Infrastructure Levy Regulations 2010 requires that planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

13. In this case the obligation to make a highway contribution is necessary to address the demands the development will put on the local highway network. That demand has started to be realised with the implementation of the planning permission. The Highway Authority has a strategy to upgrade the local highway network. The development forms part of the area covered by the strategy and is therefore directly related to it. The schemes to which the highway contribution has been allocated are required in part to directly address the impacts of the development. I have no evidence to suggest that the contribution is anything other than fairly and reasonably related in scale and kind to the development irrespective of other works being carried out under the auspices of the section 278 agreement.

14. I conclude that the highway contribution complies with the tests set out in Regulation 122 and as repeated in paragraph 56 of the National Planning Policy Framework. There continues to be a need to improve the local highway network and therefore the contribution continues to serve a useful purpose.

Conclusion

15. I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR