

Variation of s106 obligations



Kate Olley

How to modify a s106 obligation

- S106A Town and Country Planning Act 1990
- *Not* s84 Law of Property Act 1925 (see s106A(10))
- Previously- ss106BA-C
- Agreement or application?
- Between the LPA/Secretary of State/Mayor of London and “the person or persons against whom the obligation is enforceable”

When can a s106 obligation be modified

- Agreement- at any time
- By Deed (s106A(2))
- But needs agreement of all parties against whom the obligation is enforceable
- Application- after the expiry of the 'relevant period' (s106A(3))
- 5 years (s106A(4)(b))
- Avoids requirement for *all* parties to sign
- But can't place additional obligations on another party (s106A(5))

Procedure

- Modification and Discharge Regulations (s106A(9))-
 - Form and content
 - Publication of notice of the application
 - Procedures for considering any representations about the application
 - Notice to the applicant of the determination
- Application- on form provided by the LPA
 - Applicant's name and address
 - Address/location of the land to which the application relates, and applicant's interest in it (and a map)
 - Information to identify the planning obligation to be modified/discharged
 - The reasons for applying
- Determination within 8 weeks unless a longer period is agreed

Applicable principles

- s106A(6)
- The authority may determine:
 - The planning obligation shall continue to have effect without modification
 - It no longer serves a useful purpose and should be discharged
 - It continues to serve a useful purpose, but would serve the purpose equally well if it had effect subject to the modification sought = it will have effect subject to those modifications
- *R (Mansfield DC) v SSHCLG* [2018] EWHC 1794- the correct approach in considering a s106A application (Garnham J)

(contd)

- *R (Garden and Leisure Group Ltd) v North Somerset Council* [2003] EWHC 1065
 - “there are four essential questions to be considered: what is the current obligation? what purpose does it fulfil? is it a useful purpose? and if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications? [Counsel] lays stress on the words ‘equally well’ and describes them as ordinary English words importing a principle of equivalence...”
- A precise and specific statutory test
- Not the full range of planning considerations (like in an ordinary decision whether to grant PP)

Meaning of ‘*useful purpose*’?

- Characteristics of the purpose delimited by s106A?
- *R (Batchelor Enterprises Ltd) v North Dorset DC* [2003] EWHC 3003 (Sullivan J) and *R (Renaissance Habitat Ltd) v West Berkshire DC* [2011] EWHC 242 (Ouseley J)
 - Useful *planning* purpose or just a useful purpose?
- Garnham J’s 4 reasons:
 - 1) qualification in the statute itself?
 - 2) help from the Planning Encyclopaedia?
 - 3) Effect of reading-in the word ‘planning’
 - 4) Influence of the precise character of the useful purpose served by the obligation?
- LPA therefore needs to point to “a” subsisting purpose for the obligation

Thank you for listening

kolley@landmarkchambers.co.uk

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
🌐 Landmark Chambers