

North York Moors National Park Authority

Town and Country Planning Act 1990

Appeal by: Mr T Outhart

Against: Refusal of planning permission for demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling

Location: Hill View Barn, Downton Road, Staintondale

Statement by Local Planning Authority For Written Representations Appeal

Contents

- 1.0 Introduction
- 2.0 Appeal Site and the Surrounding Area
- 3.0 Relevant Site History
- 4.0 Proposed Development and the Decision
- 5.0 Planning Policy and Guidance
- 6.0 Local Planning Authority's Case
- 7.0 Comments on Grounds of Appeal
- 8.0 Conclusion

Appendices

A – Conditions

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For North York Moors National Park Authority
May 2019

1.0 Introduction

1.1 This statement refers to the granting of planning permission for the demolition of an existing dwelling and outbuildings, and construction of replacement dwelling with a condition restricting the occupancy of the dwelling to those complying with the National Park Authority's adopted local occupancy criteria. The application was approved by the North York Moors National Park Authority (NPA) as the Local Planning Authority (LPA). The decision notice was dated 2 October 2018.

2.0 Appeal Site and the Surrounding Area

2.1 The loosely scattered settlement of Staintondale lies around 10 miles south of Whitby and 10 miles north of Scarborough, close to the eastern coast of the North York Moors National Park.

2.2 The appeal site, Hill View Barn, is located within this loosely scattered settlement; surrounded by fields and visible from the C class road (C77) that leads from Cloughton to Ravenscar. Due to the loosely scattered nature of development and limited facilities, Staintondale is categorised as an "other village" in the Settlement Hierarchy set out in the spatial strategy of the adopted Core Strategy and Development Policies. However, due to the siting of this property, surrounded by fields, it is more akin to open countryside.

2.3 Currently the development on the site comprises the two-bed single storey timber clad dwelling, a single garage, a timber clad barn and a derelict timber building. The site slopes steeply down from the road and the buildings are at a significantly lower level than the road, but all are visible in the immediate landscape.

3.0 Relevant Site History

3.1 The original property on the appeal site was a late 1940's, one-bedroom timber bungalow known as Whitegates Bungalow. It comprised an unattractive and run-down one bed timber clad bungalow. Adjacent to the bungalow were a selection of outbuildings including a toilet and several dilapidated barns, stables and sheds.

3.2 Planning permission was granted in 2009 (NYM/2009/0699/FL) to demolish the original bungalow and most of the outbuildings and replace it with a 2-bedroom timber clad bungalow and single timber garage. The design of the replacement dwelling was very similar to the existing, being a very simple timber clad structure with dark grey artificial slate roof.

3.3 It was considered that the proposed replacement dwelling, which would be of a similar footprint and scale as the original, would enable an unsatisfactory dwelling to be replaced by one of similar character, but of more satisfactory construction and state of repair.

- 3.4 In accordance with Policy 21 of the Core Strategy and Local Development Framework (referred to in section 5 below), a Local Occupancy restriction was imposed on the replacement dwelling.
- 3.5 In 2017 (NYM/2017/0340/FL) a planning application was submitted to vary the local occupancy condition to allow holiday use of the dwelling. The appellant submitted this application when the property became empty because his tenant left following the liquidation of his business. Whilst this replacement dwelling had been occupied, the tenant who built the property had never entirely completed the construction works, with the approved dark grey profile sheet roofing not being installed.
- 3.6 A pragmatic approach was taken to the consideration of this application, due to the specific circumstances. The property was vacant and due to its small scale and poor quality (and unfinished) build, it was considered that whilst not in accordance with the NPA adopted replacement dwelling policy (DP21 – see paragraph 5.5 below) it would be more appropriate in this instance to be used for short term lets and consequently, the local occupancy restriction was varied to allow the addition of holiday letting.

4.0 Proposed Development and the Decision

- 4.1 The planning application was validated on 4 June 2018. Planning permission was sought to demolish the dwelling constructed in 2009 along with all the outbuildings and replace it with a single replacement dwelling with integral garage. It was proposed to site the replacement dwelling in a similar position to the existing dwelling but to set it approximately 2m further down the slope of the land. Whilst it was proposed that this replacement dwelling would have a significantly greater footprint than the existing bungalow, it was considered acceptable in this case as it would extend over the footprint of the existing garage and 2m into the footprint of the existing timber barn which is to be demolished. Internally, the proposed dwelling had improved space, comprising three bedrooms, two bathrooms, an open plan kitchen/dining area with a living room provided in a mezzanine floor above the kitchen.
- 4.2 The application sought permission for the occupancy of the replacement dwelling to allow the option of either local occupancy letting or short-term holiday lets.
- 4.3 Objections were received from Staintondale Parish Council, concerned with the design, amended siting, increased footprint and complete removal of any remnants of the original dwelling which had been retained in the previous replacement dwelling (such as the original chimney). The Parish Council took the view that replacing the existing property with one of a significantly different size, scale and design would have an adverse and detrimental impact on the character and appearance of the local area and would not accord with Development Policy 21, as it had not been demonstrated that the building was in an unsatisfactory state of repair or lacking basic amenities, that its replacement would enable an unsatisfactory dwelling to be replaced by one which would make a positive contribution to the landscape and character of the National Park; that it would not be in the same position/ similar floor area, volume and scale.

- 4.4 Additionally, and that it had not been demonstrated that the alternative position would be more suitable in landscape terms.
- 4.5 The application was considered by the National Park's Planning Committee at its Meeting on 20 September 2018. In accordance with the National Park's replacement dwelling policy (DP21), the application was approved with a local occupancy restriction attached.

5.0 Planning Policy and Guidance

- 5.1 This section covers both the statutory Development Plan and the general implications of the location of the appeal site within a National Park.
- 5.2 The **North York Moors National Park** was formally designated in 1952 under the National Parks and Access to the Countryside Act 1949. The two key purposes are *to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks* and *to promote opportunities for the understanding and enjoyment of the special qualities of the Parks by the public*. When it appears that there is conflict between these purposes the 'Sandford principle' confirms that greater weight should be given to the first purpose, the conservation of the landscape (English National Parks and the Broads Circular 2010), 'Environment Act 1995, part III: '*National Parks*' DoE, 11 September 1996'.
- 5.3 Section 62(2) of the Environment Act places a requirement for all 'relevant authorities, statutory undertakers and other public bodies' to have regard to the purposes of National Parks in exercising or performing any functions in relation to or so as to affect land in a National Park. The importance of National Park purposes is therefore given legal support in addition to government policy in the determination of this appeal.
- 5.4 The concept of maintaining the character of settlements in National Parks is set out in the English National Parks and Broads Circular 2010 which at paragraph 49 states:
- "Cultural heritage and landscape are fundamental to quality of place and, as they are central to attractiveness, distinctiveness, diversity and quality of place in the Parks, should be protected and enhanced"*.
- 5.5 **Local Development Plan.** At the time of decision, the Development Plan for the area formally consisted of the **North York Moors Core Strategy and Development Plan Document (CSDPD)** which was adopted by the NPA on 13 November 2008. (The Development Plan also consists of the Whitby Business Park Area Action Plan (2014) and the Helmsley Local Plan (2015), though these do not contain policies relevant to this appeal). The most relevant policies in the determination of this appeal are considered to be:

- **Core Policy J** – Housing
- **Development Policy 21** - Replacement dwellings
- **Development Policy 14** – Tourism and Recreation

Core Policy J seeks to ensure the provision of a mixture of housing types and tenure to maintain the vitality of local communities, consolidate support for services and facilities and support the delivery of more affordable housing. This is to be achieved through locating all open market housing to the Local Service Centre of Helmsley and the Service Villages, as well as other measures including restricting new housing development in the Open Countryside to that which is proven as essential for farming, forestry or other essential land management activities, replacement dwellings and conversion of traditional rural buildings for residential letting and local needs.

Development Policy 21 states that the replacement of existing dwellings outside the main built up area of villages will only be permitted where residential use has not been abandoned, the building is in an unsatisfactory state of repair or lacks basic amenities and its replacement would enable an unsatisfactory dwelling which is incongruous in the landscape to be replaced by one which makes a positive contribution to the character of the area, and where the replacement dwelling is in the same position and of similar floor area, volume and scale. **All replacement dwellings will be restricted to local occupancy as defined in Core Policy J.**

Development Policy 14 seeks to ensure that new tourism development and the expansion or diversification of existing tourism businesses will be supported where the proposal will provide opportunities for visitors to increase their understanding, awareness and enjoyment of the special qualities of the National Park; where the development can be satisfactorily accessed from the road network or by other sustainable modes of transport; where the development will not generate an increased level of activity; and where it will make use of existing buildings.

- 5.6 **The National Planning Policy Framework** - Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The **National Planning Policy Framework** (NPPF) does not change the statutory status of the Development Plan as the starting point for decision making but is a material consideration in the determination of an application. Development that accords with an up-to-date Local Plan should be approved, and conversely development that conflicts should be refused unless other material considerations indicate otherwise. The North York Moors Core Strategy and Development Policies Document (CSDPD) was adopted on 13 November 2008 under the provisions of the 2004 Act and for the purposes of housing policies is considered not to conflict with national policies in the NPPF (this has been concluded in previous appeal decisions by PINS) is therefore up-to-date and should be the starting point for any decision making in the North York Moors National Park.

5.7 The Government's commitment to the protection of National Parks is clearly set out in the NPPF (February 2019). **Paragraph 172** says that great weight should be given to conserving landscape and scenic beauty in National Parks, which have the highest status of protection in relation to landscape and scenic beauty. It goes on to advise that the conservation of cultural heritage is an important consideration and should be given great weight in National Parks.

Furthermore, whilst at the heart of the NPPF is a presumption in favour of sustainable development, **Paragraph 172** also confirms that the scale and extent of development within these designated areas should be limited. It is clear therefore that the NPPF expects a different approach to be taken in National Parks both to plan making and decision taking compared with other areas outside of designated National Parks.

6.0 Local Planning Authority's Case

6.1 The key issue is considered to be whether there are any material planning grounds in this instance to grant planning permission for a replacement dwelling in this open countryside location without a local occupancy restriction, contrary to adopted planning policies contained within the North York Moors Core Strategy and Development Plan Document (CSDPD).

6.2 The local occupancy condition is considered to be the cornerstone of housing policy within the National Park and was initially designed in 1992 to ensure that limited opportunities for development would meet local need rather than external demand for housing. The requirement to impose such restrictions on replacement dwellings also dates back to this time. These Policies have been examined at three subsequent Local Plan Inquiries and have been found to be sound.

6.3 The justification for the imposition of a local occupancy restriction on replacement dwellings, contained in Development Policy 21 of the CSDPD, is that the erection of a new dwelling in the open countryside or smaller settlements would normally be considered contrary to policy. Consequently, as such replacement dwellings constitute new dwellings; the local occupancy restriction is required in accordance with Core Policy J of the Local Development Plan.

6.4 With regards to the original replacement dwelling, granted planning permission in 2009 (3.2-3.4 above), it should be noted that this replacement was for a dwelling of the same size, footprint and level of living accommodation as the original dwelling it replaced. A local occupancy restriction was imposed on this permission, in accordance with Development Policy 21.

6.5 As set out in paragraphs 3.5 and 3.6 above, the local occupancy restriction on this existing sub-standard and very modest replacement dwelling was relaxed to include holiday letting use, due to the particular circumstances set out by the appellant at the time. This was a pragmatic approach adopted by the National Park Authority in relation to that situation, specifically due to the apparent light weight build quality and incomplete nature of the development.

- 6.6 The replacement dwelling granted conditional planning permission (NYM/2018/0368/FL) and the subject of this appeal, would result in a larger dwelling than the one it replaces. However, the Planning Committee considered that the replacement of the existing poor quality buildings would result in a significant landscape improvement and therefore, the proposal was acceptable in landscape terms, whilst not strictly in accordance with Development Policy 21 due to the increase in size.
- 6.7 However, it was also considered that the specific reasons that the holiday use had been allowed for the existing property would no longer exist, as the proposed replacement would be a better quality development, with three bedrooms and better quality living space, making it entirely suitable for permanent accommodation.
- 6.8 Consequently, whilst it was considered appropriate to allow a holiday use for the existing small poor quality building, there is now considered to be no justification to allow development contrary to Development Policy 21.
- 6.9 In summary, Development Policy 21 states clearly that all replacement dwellings will be restricted to local occupancy as defined in Core Policy J. Whilst this was relaxed to also allow holiday use of the existing dwelling, this was on the basis of the very small nature and poor quality of the existing building which lent itself better to short term accommodation. This justification would not exist with the proposed larger dwelling unit approved under the 2018 planning permission. Consequently, there is not any justification to permit development that is clearly contrary to the Authority's Adopted Planning Policies.
- 6.10 The National Park Authority is currently preparing its Draft Local Plan, which is at Pre-Submission Draft Stage (April 2019) and is likely to be subject to EIP later this year. Whilst the Draft Local Plan cannot yet be afforded any weight, it should be noted that one of the key aims of the plan is to seek to address rural depopulation and the proposed housing policies for the North York Moors National Park emphasise that priority should be given to local occupancy dwellings, to support vibrant communities and seek to address population loss. In summary, one of the aims of the current local plan review is to redress the abundance of holiday accommodation and provide housing for local people is more of an aim than providing more visitor accommodation

7.0 Comments on Grounds of Appeal

7.1 Reference is made to the error in the decision notice which didn't carry the description that was included on the committee report. The description of the development was amended during consideration of the application, and in the Committee report was as follows:-

“Demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling”

However, due to an error, this description was not corrected on the decision notice which was as follows:-

“Demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling *with holiday use*”.

The appellant's agent was advised when this was queried that there had been an administrative error between the committee report and the decision notice. This issue of the description of the development has been discussed with the Authority's Solicitor, and the legal advice provided is that the condition attached to the planning permission (i.e. Local Occupancy only) overrides what may be mentioned in the description of the application, which is merely how the proposal was described at the point of the application being submitted.

7.2 The limited local occupancy restriction was discussed with the planning agent and by email, at the time of the application, both before the application was considered at planning committee and immediately afterwards. The Committee report considered by Members clearly recommends permission for a Local Occupancy dwelling only and the report explains the reasons why; the Minutes of the meeting also reflect these.

7.3 Reference is made in the grounds of appeal to examples of planning permissions granted by this Authority for dual use permissions for local occupancy and holiday cottages. However, these are not relevant as they relate to barn conversions which are subject to different policy criteria than replacement dwellings. The Authority's "Barn Conversion" Policy (Development Policy 8) allows the conversion of barns to both local occupancy dwellings and holiday cottages so dual use is appropriate and in line with policy. As set out above, the Authority's "Replacement Dwelling" Policy (DP21) requires "local occupancy" restrictions to be applied to replacement dwellings.

8.0 Conclusion

8.1 In view of the above considerations, the NPA respectfully requests that the Inspector dismisses the appeal. However, should the Inspector be mindful to allow the appeal, the wording of a revised condition 4, which the NPA would wish to see imposed is attached at Appendix A

APPENDIX 1

Conditions

Proposed revised condition: -

4. The occupation of the dwelling hereby permitted shall be limited to:
- i) a qualifying person; and
 - ii) a wife or husband (or person living as such), licensee, dependant or sub-tenant of a qualifying person;

Or as a holiday letting unit.

For the purpose of the above, a person is a qualifying person in relation to the dwelling if he/she has an interest in the dwelling (see Note A) and, immediately prior to occupying the dwelling, he/she satisfied the Local Planning Authority that he/she was in need of local needs housing in terms of the criteria set out in Core Policy J of the adopted North York Moors Local Development Framework, namely that he/she:

- a) is currently living in and has permanently resided in the National Park for five years or more and is living in accommodation that no longer meets their requirements or
- b) does not currently live in the National Park but has a strong and long standing link to the local community including a previous period of residence of five years or more or
- c) has an essential need to move to live close to relatives who are currently living in and have resided in the National Park for at least the previous five years or more and require support for reasons of age or infirmity or
- d) requires support for reasons of age or infirmity and need to move to live close to relatives who are currently living and have resided in the National Park for at least the previous five years or more or
- e) needs to live in the National Park as a result of current sole employment within that parish or adjacent parishes within the National Park.

Prior to the occupation of the development the qualifying person shall have obtained confirmation in writing from the Authority that they satisfy the local need criteria outlined in points a - e above.

For the purposes of the holiday letting unit, the dwelling unit hereby approved shall not be used for residential purposes other than holiday letting purposes. For the purpose of this condition 'holiday letting' means letting to the same person, group of persons or family for period(s) not exceeding a total of 28 days in any one calendar year.