

**North York Moors National Park Authority**

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<b>Hambleton District</b> <b>Parish: Faceby</b>	<b>App No. NYM/2019/0226/FL</b>
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**Proposal:** removal of condition 4 of planning approval NYM/2007/0791/FL and condition 2 of planning approval NYM/2016/0569/FL to allow the occupancy of the dwelling to be unrestricted

**Location:** House on the Hill, Bank Lane, Faceby

**Applicant:** Mr and Mrs Brian and Linda Parrish, House on the Hill, Bank Lane, Faceby, TS9 7BW

**Date for Decision:** 04 June 2019

**Grid Ref:** 449710 502976

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**Director of Planning's Recommendation**

**Refusal** for the following reasons:

1. The removal of the local occupancy condition would be contrary to the provisions of Core Policies B and J of the Local Development Plan which states that new residential dwellings within settlements such as Faceby will be subject to a local occupancy restriction. If permitted, the proposal would undermine the Spatial Strategy which seeks to ensure that the limited opportunities for new development in the National Park cater for local needs rather than external demand.
2. It is considered that insufficient evidence has been produced to adequately demonstrate that there is no continuing need for this dwelling to meet the local housing needs of the existing park community and therefore the proposal is contrary to Core Policies B and J of the NYM Local Development Framework.

**Consultations**

**Parish –**

**Ward –**

**Site Notice Expiry Date –** 10 May 2019





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**Background**

This application relates to "House on the Hill", situated on the east side of Bank Lane which leads south from the centre of Faceby. It is a four bed detached property constructed of brick under a pantile roof and occupies a sizeable plot. Planning permission was originally granted for the dwelling in October 2005 with later amendments in December 2007. The property is subject to a local occupancy condition as required by the planning policies in place at the time. The applicant purchased the property in 2006 for £325,000.

Planning permission is sought to remove this occupancy condition to allow the property to be sold as an open market dwelling with no occupancy restriction. Supporting information has been submitted setting out the marketing history, the applicant's financial situation and health issues, with reference made to the neighbouring property known as "Howkelt" (part of the same original development) which had its occupancy restriction removed in 2012. Confidential information relating to the applicant's personal circumstances is set out in a separate appendix which is not part of the public agenda.

The original consent (condition 4) restricted occupancy of the approved dwelling in line with Local Plan Policy H1 at the time which sought to restrict occupancy of new residential development to those with a local need to live in the village (other qualifying criteria also apply). As this application was granted under the previous Local Plan, the time criterion in the condition is a previous three years of residency.

Two planning applications were submitted in 2016, seeking to remove the occupancy restriction. Both applications were refused.

The second application in 2016 was accompanied by a Supporting Statement from the applicant's agent stating that the property had been marketed on 'Your Move' for 75 weeks with just three viewings, although 41 interested parties requested further details and 4 parties requested that Your Move contacted them if the occupancy restriction was removed. The asking price for all of this time period had been £599,950. Of the three parties who viewed the property there was one serious expression of interest from someone who was unable to sell their own property, one informal offer of £500,000 which was not pursued as the applicant would not consider it and the third did not return the estate agent's phone calls.

With the second application a third-party report was undertaken to assess the marketing which had taken place and also to provide an independent valuation of the property. This was undertaken by Sanderson Wetherall on 17 May 2016 who expressed the opinion that the market value of the property **without a local occupancy restriction** would be in the region of £650,000. However, they concluded that on the basis of what they estimated to be a 25% discount to reflect the local occupancy restriction, an appropriate market value, with the restriction would be £485,000. Sanderson Wetherall advised that the greater the value of the property in the first instance, the greater the impact the local occupancy restriction would have on the value; hence the reduction in this case would be at least 25%.

Following this independent report it was considered that the property was on the market for too high a price, and with no mention of the local occupancy restriction in the estate agents particulars, it was not considered to have been adequately marketed and the application was refused.

The applicant's submission made reference to an application (NYM/2012/0474/FL) approved in August 2012 for the removal of the occupancy condition from one of the other original houses in the development (Howkelt). That application was approved by the Planning Committee following the submission of a detailed Supporting Statement with regard to the

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## Background continued

issues surrounding the marketing and sale of the house. This was supported by a Valuation Report from the District Valuers Office. The property had not been occupied and the builder/owner was waiting for a purchaser before he finished fitting out the interior. The property was first put on the market in the middle of 2006 and at the end of 2010 the price was reduced to £545,000. The report from the District Valuer valued the property (on an open market basis, without the condition) at £675,000 as of May 2012. The District Valuer considered that a reduction in the value of the property by 20% would be reasonable, reducing the value to around £540,000. It was considered that the property had been marketed at a reasonable price for an appropriate time period and consequently the restriction was lifted. However, it does not seem that the property was ever sold, so no comparison of sale price can be made.

With regards to House on the Hill (the property to which this application relates), following the 2016 refusals a further planning application was submitted in August 2016 to vary the condition to widen the number of Parishes included within the restriction. This application was approved and the occupancy condition was extended to include the parishes of Potto, Hutton Rudby, Rudby, Skutterskelfe, Sexhow, Seamer, Stokesley, Great Ayton and Great and Little Broughton along with a mortgagee in possession clause.

Since then, the property has been marketed at £570,000, and was reduced to £540,000 on 3 April 2019 and has still received little interest (this represents a 40% increase in value from 2006. However, an offer of £520,000 was rejected in August 2018 from a prospective purchaser who complied with the local occupancy restriction (a discharge of condition application was submitted and approved by the National Park Authority). The reason given by the applicant for rejecting that offer was that the applicant couldn't afford to accept that price due to his adverse financial circumstances.

In June 2019, the Estate Agent marketing the property advised that the asking price of £520,000 does not include the land to the rear of the house, which is an extra £30,000 (although this is not made clear on their website). They also advised that an offer has been received for the House on the Hill and the land to the rear, by someone who appears to comply with the local occupancy restriction, at the asking price for both, i.e. £550,000. The Estate Agent has advised that the vendor has not accepted the offer as he is awaiting the result of the planning committee decision on the application to remove the condition.

The prospective purchaser has submitted details to the Authority demonstrating their local connection to the area.

With regards to the asking price, Officers had been working on the basis that the asking price was £520,000, which represents a 7.5% increase from the Sanderson Wetherill valuation the Authority had undertaken in 2016. The Sanderson Wetherill valuation however, was undertaken on the basis that the 1.5 acres of land to the rear was included and valued the house and the land at £485,000. Sanderson Wetherill has advised that you could expect a 3-5% increase in value from 2016. Officers were of the view that whilst £520,000 was slightly above this, it could be considered to be reasonable. However, it transpires that the asking price is actually £550,000, a 13.5% increase in value from that done by Sanderson Wetherill in 2016. Consequently, it is considered that the asking price for the property is too high and does not reflect the reduction in value that results from the Local Occupancy Restriction.

Furthermore, whilst the estate agents particulars make a very brief mention that there is an occupancy restriction, no details are provided regarding the wider area covering the parishes

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**Background continued**

of Potto, Hutton Rudby, Rudby, Skutterskelfe, Sexhow, Seamer, Stokesley, Great Ayton and Great and Little Broughton along with a mortgagee in possession clause.

Sanderson Wetherall has been contacted for an updated valuation and has advised that the 2016 valuation will still be fairly up to date, although it may be that the value has increased between 2-5% which would value the property with the LOC at around £510,000 (£10,000 less than the rejected offer made in August 2018).

The application was considered by the Planning Committee at its meeting on 6 June 2019 and deferred the application to seek more details of special circumstances referred to by the applicant relating to his financial and medical circumstances.

Consequently, the applicant was advised that if he wishes his application to be considered taking account of his exceptional personal circumstances he must provide full evidence of his personal financial and medical situation which should include documentation showing the following, which will be considered confidentially:

- Bank Statements over a period of a year up to the present
- Statements of any savings accounts/ISAs or other financial assets, including any other property (UK and overseas)
- Details of income, including pensions
- Up to date Mortgage Statement
- Current debts – including loans and credit card statements, and outstanding bills
- Personal Credit Score Rating
- A health report from your doctor setting out your specific medical conditions which are directly related to the consideration of the planning application

**Main Issues**

The main issue is considered to be whether it has been demonstrated that the property has been marketed at a reasonable price for a sufficient period of time without a reasonable offer being made and as such demonstrating there is no continuing need for the local occupancy condition.

**Local Development Plan Policies**

Core Policy J of the NYM Local Development Framework 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, including new build and converted units to the Local Service Centre of Helmsley and the Service Villages, as well as other measures including supporting the development of local needs housing within the main built up area of the Local Service Villages and Other Villages, and restricting new housing development in the Open Countryside to that which is proven as essential for farming, forestry or other essential land management activities.

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 that occur in smaller settlements would meet local need rather than external demand for housing.

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**Main issues continued**

The House on the Hill was permitted under the previous Local Plan Policy H1 which allowed for the development of infill gaps with up to two houses, there was no limit on size nor any requirement to be 'affordably' priced. This approach proved to encourage speculative development where there was no defined local need and the speculative aspect was rescinded at the 2008 revision of housing policies under the Local Development Framework. The number of properties was also revised through the Local Development Framework such that the restriction is now one unit on infill gaps where need is identified up front.

The current applicants have lived in the property from new and the Authority's research has found that they purchased the property on 6 Feb 2006 for £325,000.

**Marketing, Value and Offers to Purchase the Property**

The marketing of the property was considered by an independent agent in 2016 who found the market value with the local occupancy restriction to be £485,000. The same independent agent has advised that the value now would be fairly similar, possibly with up to a 5% increase in value, which would value the property at around £510,000.

The property was originally on the market for £599,950, then reduced to £570,000, and then reduced again on 3 April 2019 to £540,000. An offer was received in 2016 for £500,000 which the applicant did not entertain and another offer was made in August 2018 for £520,000. This offer of £520,000 was also rejected because the applicant says he couldn't afford to accept it due to his financial situation.

These offers verify that interested parties have attempted to purchase the property with the restriction at a price reflecting the property's value. The most recently rejected offer was only in August 2018, and needs to be taken into consideration with this current application. The applicant was advised of this at the time of the offer by the Director of Planning as part of ongoing Authority advice on how to deal with the applicant's difficult personal circumstances.

The prospective purchasers in 2018 submitted a formal discharge of condition application to the National Park Authority which was approved as satisfactory evidence was submitted regarding their compliance with the occupancy restriction. These prospective purchasers have again confirmed that they took in a written formal offer to the estate agents in person and gave the estate agents proof of their compliance. This has been confirmed in a telephone conversation between the estate agent and the Case Officer. They had also accepted an offer on their house so were in reasonable position to proceed. The prospective purchaser's parents have also written to the National Park Authority confirming their address in Faceby, where they have lived for many years.

With regards to the estate agents particulars, whilst a very brief mention is made that there is an occupancy restriction in place, no details are provided setting out that in 2016 (NYM/2016/0569/FL) planning permission was granted to extend the area to which the local occupancy restriction applied, as follows:-

**Within the National Park and including the parishes of Potto, Hutton Rudby, Rudby, Skutterskelfe, Sexhow, Seamer, Stokesley, Great Ayton and Great and Little Broughton along with a mortgage in possession clause.**

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**Main Issues continued**

It is considered that these details should be made clear on the front page of the estate agents sales particulars, as it is a much wider area than the National Park's normal local occupancy restriction. The mortgagee in possession clause also means that a prospective purchaser is more likely to be able to receive a mortgage offer. The omission of this information is considered to deter interested parties from enquiring about the property. In view of the above considerations I would advise you that it is unlikely that the above application would be recommended for approval.

**Personal Circumstances**

The application was deferred by the Authority's Planning Committee on 6 June in order that Members be fully appraised of the applicant's stated personal circumstances. These were stated to relate to the applicant's serious financial situation and medical conditions.

It is very important in terms of the legality of a supportive decision for it to be based on sound and genuine evidence otherwise the decision may be unlawful. Government advice on this matter is clear that in some instances, issues of personal need may override restraint policies and constitute 'very special circumstances' in national planning policy terms.

Guidance however also makes it clear that such circumstances will need to be exceptional - the personal circumstances of an occupier, personal hardship, or the difficulties of businesses that are of value to the welfare of the local community, may be material to the consideration of a planning application. However, such arguments will seldom outweigh more general planning considerations and ministerial advice does not favour much weight being given to personal considerations, but should be considered only where other issues are finely balanced.

In this instance the marketing of the property over a period of time and the resultant offers that we are aware have been made by prospective purchasers who do comply with the local occupancy condition reflects the fact that there is still an ongoing need for the condition and that there is no policy justification for its removal. This was accepted by Members in the resolution which only deferred a decision to enable them to consider whether the specific hardship of the applicant is of such weight to set aside planning policy.

**Conclusion**

In conclusion it is considered that whilst the property has been on the market for a number of years, the asking price does not reflect that of the value of the independent valuation. Furthermore, the applicant has refused three reasonable offers to purchase the property, the second as recent as 2018 and the third made in June of this year. In summary, the applicant has a current offer from someone who appears to comply with the local occupancy criteria, at a value which is substantially more money than the Authority's independent valuation would suggest is reasonable.

On the basis of previous valuations, and the value of other similar properties on the market, the offer in 2018 of £520,000 was a reasonable offer and the current offer of £550,000 even more so. This demonstrates that someone was and is available to purchase and occupy the property with the restriction.



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The application has been brought to Members for consideration, which includes the personal health and financial circumstances of the applicant. Whilst Officers sympathise with the position the applicant is in it is not considered that these personal circumstances, of financial difficulties, with ailing health, is justification for relaxing the restriction, when they have had two opportunities to sell the property at a reasonable price, approximately at a 40% increase in value to what they purchased the property for. This view is taken with the benefit of assessing the full financial details supplied by the applicant which are set out in the private appendix to this report.

In view of the above considerations, refusal is recommended.

**Explanation of how the Authority has Worked Positively with the Applicant/Agent**

The Authority's Officers have appraised the scheme against the Development Plan and other material considerations and concluded that the scheme represents a form of development so far removed from the vision of the sustainable development supported in the Development Plan that no changes could be negotiated to render the scheme acceptable and thus no changes were requested.