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Your Ref: NYM/2018/0368/FL
Our Ref: APP/W9500/W/19/3225783

Mrs J Cavanagh
North York Moors National Park Authority
Development Control Support Officer
The Old Vicarage
Bondgate
Helmsley
York
YO62 5BP

23 September 2019

Dear Mrs J Cavanagh,

Town and Country Planning Act 1990
Appeal by Mr T Outhart
Site Address: Hill View Barn, Downton Road, Scarborough, North Yorkshire,
YO13 0EL

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

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The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

<http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/>

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Natalie Durose

Natalie Durose

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Appeal Decision

Site visit made on 25 June 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2019

Appeal Ref: APP/W9500/W/19/3225783

Hill View Barn, Downdale Road, Staintondale, Scarborough YO13 0EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr T Outhart against the decision of North York Moors National Park Authority.
 - The application Ref NYM/2018/0368/FL, dated 4 June 2018, was approved on 2 October 2018 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling with holiday use at Hill View Barn, Downdale Road, Staintondale.
 - The condition in dispute is No 4 which states that:
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. 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.
 - The reason given for the condition is: In order to comply with NYM Core Policy J which seeks to restrict the occupancy of new residential development to those with a local links and an essential need to live in the locality.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling with holiday use at Hill View Barn, Downdale Road,

Staintondale in accordance with the application Ref NYM/2018/0368/FL dated 4 June 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr T Outhart against the North York Moors National Park (the Authority). This application is the subject of a separate Decision.

Procedural Matters

3. Paragraphs 170 - 172 of the Framework¹ require that, amongst other things, great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest status of protection in relation to the protection of valued landscapes, the intrinsic character and beauty of the countryside, and maintaining the character of the undeveloped coast.
4. Condition 5 of the planning permission refers to the development and a use incidental to the occupation of the main dwelling. I queried the intended purpose of the condition with the parties. They have responded that it relates solely to the use of the attached garage. The appellant is content that the condition would remain in place should the appeal be allowed.

Main Issues

5. The Framework requires planning conditions to be kept to a minimum and only applied where they satisfy the six tests of necessity, relevance to planning, relevance to the development permitted, are enforceable, precise and reasonable in other respects. The planning condition forming the subject of the appeal is demonstrably relevant to planning and the development, and precise in its wording. In light of the remaining three tests of necessity, enforceability and reasonableness, the main issues are:
 - i) whether it was *necessary* for the Authority to exclude use of the proposed dwelling for holiday use, having regard to the local development plan; and
 - ii) whether the occupancy limitations in the condition are *enforceable*, given that the description of the development includes reference to holiday use; and
 - iii) whether the granting of planning permission subject to the local occupancy condition and not the dual use sought in the application, was *reasonable* having regard to local and national policies and any other material considerations.
6. Bringing the above points together, whether it is acceptable to amend condition 4 to allow holiday use, having regard to the Development Plan, Framework and other material considerations.

¹ The National Planning Policy Framework February 2019

Reasons

Background

7. The site has a complicated planning history but in summary, the existing property, Hill View Barn, was granted planning permission in 2009 to replace a previous agricultural bungalow called Whitegates. In 2017 the appellant, the new owner of the property, obtained planning permission to allow the dwelling to become dual use, that is capable for use both as a local occupancy dwelling and also as a holiday let. The approval of the dual use was not strictly in accordance with Development Policy 21 (DP21) of the Core Strategy and Development Policies² (the Core Strategy) and the Park Authority says that it represented a pragmatic approach, given the poor condition and limited lifespan of the property.
8. The appellant sought planning permission to demolish Hill View Barn and replace it with a new dwelling in June 2018. The description of the development on the application form was 'Demolition of existing dwelling and all outbuildings and construction of new dwelling'. A discussion took place between the appellant's agent and the Park Authority so that when the application was registered the description changed to:

Application for demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling with holiday use at Hill View Barn, Downton Road, Staintondale

9. It appears that in discussions with the Park Authority the approach to scale, massing and design of the replacement dwelling were considered acceptable subject to some minor changes, although the Parish Council had strong objections. The appellant was informed around the first week in September 2018 that the planning officer had decided that she could not support the inclusion of holiday use as part of the proposal, although the application would otherwise be recommended for approval. The reason for the objection to holiday use was conflict with DP21 of the Core Strategy which required replacement dwellings to be subject to a local occupancy condition, in accordance with Core Policy J (CP J).
10. The application was decided at the meeting on 20 September 2018. The report considered by the Park Authority Planning Committee changed the description of the proposal in its header to omit reference to holiday use. The report acknowledged that the appellant wished to continue the dual use consented for the existing property but commented that there would be no justification for this under DP21.
11. The planning decision notice was issued on 2 October 2018. The development was described as at registration, including reference to holiday use and local occupancy. However, planning condition 4 was included which seeks to restrict the use of the new dwelling to local occupancy only.
12. Since the issue of the decision there have been discussions between the appellant and the Park Authority regarding the legality of the decision and the circumstances which led to the former realising that he did not have a sound planning permission for dual use. Those discussions have little relevance to my

² The North York Moors National Park Authority Local Development Framework Core Strategy and Development Policies Adopted November 2008.

decision, other than the point that the Park Authority maintains that the inclusion of holiday use in the decision notice was an administrative error and should not have been retained in the description.

Whether it was necessary to impose the restriction of use to local occupancy only

13. Policy CP J restricts, amongst other forms of housing, replacement dwellings in the countryside to residential occupation for local needs. The form of condition to be used is specified in the policy.
14. Policy DP21 sets out some more detailed requirements in relation to replacement dwellings and reinforces the point that when permitted such dwellings are to be subject to a local occupancy restriction.
15. The appellant argues that the 2017 planning permission to allow holiday use of the existing building created some existing use rights for dual use, and that as the proposal is for a replacement dwelling, those rights should be retained by the new property once built. A court decision is referred to in support of the point³. I understand that the circumstances of the case were very different from those in the appeal. In any event it is my view that upon the demolition of the existing building a new page will be turned in the planning history of the site, and any existing rights for holiday use would be lost.
16. The proposed dwelling is a replacement and the requirements of CP J and DP21 are applicable. Policy DP14, relating to new tourism development and the expansion or diversification of existing tourism businesses is also part of the policy context. The policy states, amongst other things, that proposals for new buildings will be expected to demonstrate that the facility cannot be satisfactorily accommodated within an existing building in the same location. The planning officer report noted the policy but assessed the application against policies CP J and DP21.
17. I therefore conclude on the first issue that the condition is capable of passing the test of necessity, if granting planning permission solely in accordance with Policies CP J and DP21. However, the development plan should be read as a whole, and there are other material considerations relevant to the case, including the planning history of the property, and the benefit to the area such as improving the visual appearance of the site. The Park Authority took the view that policies CP J and DP21 were of primary importance and decided that it was necessary to attach the local occupancy condition and exclude any reference to holiday letting.

Whether the condition would be enforceable in restricting the use of the building to local occupancy use

18. A planning condition may be used to impose a restriction on the development even though it may appear from the description of development that the limitation is inherent in the application. The circumstances in this case are different, but the same principle must apply, that is that by attaching a local occupancy condition a restriction has been placed on the property which will make the lawful implementation of the permission, with regards to holiday use, at the very least, difficult.

³ Allnatt London Properties Ltd v Middlesex CC (1964) 15 P & CR 288

19. The appellant questions whether the condition is enforceable. My understanding of the argument is that since both local occupancy and holiday let use come under the C3 use class, use for the latter should be lawful except if a planning condition specifically excludes that use. However, the wording of condition 4 intrinsically limits the occupation of the property in a way which would at least not permit an overt element of holiday use. Were such a use to commence I can see no good reason why the Park Authority could not take action to enforce the terms of the condition.
20. Whilst the appellant contends that the description of development in the planning permission should take precedence, they have made the appeal. In effect, this accepts the point that the permission, with condition 4, does not provide a sound basis to proceed with a development which is intended to allow a significant element of holiday use.
21. I therefore conclude that the planning condition is, theoretically, capable of restricting the use of the building for holiday use and therefore passes the test of enforceability.

Whether the granting of planning permission subject to the local occupancy condition was reasonable

22. The Park Authority considers that it was correct in its determination of the application, in part because of its understanding that the appellant appreciated the position and was agreeable to a consent which was, if necessary, limited to local occupancy use.
23. However, based on the appellant's statement the Park Authority was aware that there was no actual agreement to vary the description of the development. It was open to the Park Authority to refuse the application as being non-compliant with CP J and DP21, under which circumstances it would have been possible for the appellant to appeal against the decision under Section 78 of the Act.
24. The appellant maintains that the planning permission as issued led him to believe that it covered dual use and, on that basis, commercial decisions were taken.
25. The Planning Practice Guidance reaffirms the 6 tests which should apply when a planning condition is used. The PPG also sets out the circumstances where conditions can be used to modify the development for which permission is sought⁴. The PPG is clear that a condition should not make the development substantially different to that set out in the application.
26. The Park Authority has not acted in accordance with the advice in the PPG in issuing the permission with the local occupancy restriction as this effectively prevents the holiday use, even though that remained part of the development for which permission was sought. It may be the case that this was unintentional since the Authority misunderstood the strength of the appellant's wish to secure dual use. However, to that extent I conclude that the condition does not meet the test of reasonableness.

⁴ Planning Practice Guidance Paragraph 012 Reference ID: 21a-012-20140306

Other matters

27. The appellant draws my attention to a number of cases where he considers that the Park Authority has allowed dual use. Whilst it is reasonable to take account of other developments which may have similarities to the proposal, the appeal has to be decided on its individual planning merits. These other cases relate to conversions and not replacement dwellings and therefore I give them little weight in my decision.
28. The appellant has also supplied me with an appeal decision⁵ relating to a development of holiday cottages near to the appeal site. The appeal decision dates from 2006. Whilst the appeal was allowed I understand that only 2 of the approved 8 holiday lodges have been built. This appeal was determined under different development plans, and against policies relating to the development of self catering accommodation. I therefore see it as significantly different and having limited weight in the appeal.

Planning Balance and Conclusion

29. Bringing all of the above together, the appellant wishes a planning permission that would permit the dual use of the replacement dwelling, as sought in the application. The Park Authority opposes this for policy reasons but is content that the existing planning permission should be allowed to stand.
30. I have no power to amend the description of development which must remain as in the banner. I can vary the terms of condition 4 to include holiday use as sought by the appellant, even though this would be in conflict with Core Strategy CP J and DP21, which require that replacement dwellings should be limited to local occupancy.
31. The Framework seeks to control the development of housing in rural areas except in certain specified circumstances. In terms of isolated homes in the countryside, exception c) of paragraph 79 could apply if the existing dwelling was regarded as redundant or disused.
32. The Framework is also supportive of sustainable rural tourism development which respects the character of the countryside. It is not disputed by the parties that the proposed dwelling would, in visual terms, be an improvement on the existing situation⁶. Having regard to the need to conserve and enhance landscape and scenic beauty of the National Park, this is a material consideration to which I give substantial weight.
33. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise⁷. In this case I am persuaded that there are other material considerations that weigh in favour of allowing the dual use of the replacement dwelling, namely that the proposed dwelling will have an improved visual relationship with its landscape setting than the existing building; it will support sustainable rural tourism; and that the planning permission issued has modified the development for which permission was sought in conflict with national policy and guidance on the use of planning conditions.

⁵ APP/W9500/A/06/2018295 – Lowfield Caravan Park, Downland Road, Staintondale.

⁶ The Staintondale Parish Council object to the scale, design and volume of the proposal.

⁷ National Planning Policy Framework, paragraph 47 and Planning and Compulsory Purchase Act 2004 section 38 (6)

34. The conditions in the attached schedule are the same as those attached to planning permission NYM/2018/0368/FL, with the exception of condition 4 which is varied to permit holiday use. I have removed reference to a Note A, and inserted instead that guidance on whether there is an interest may be obtained from the Park Authority. The reasons for this variation are set out in the decision. The reasons for the other conditions remain as per the previous planning permission.
35. The circumstances which have led to the appeal are exceptional and should not be seen as undermining the importance of the development plan in future planning decisions relating to replacement dwellings within the National Park.
36. I therefore conclude that the appeal should be allowed.

Tim Wheeler

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall not be carried out other than in strict accordance with the following documents:

Location and block plan ref. D11350-01 Rev B dated 04 June 2018

Proposed floor plans ref D11350-04 Rev B dated 04 June 2018

Proposed elevations ref D11350-05 Rev C dated 22 August 2018

or in accordance with any minor variation thereof that may be approved in writing by the Local Planning Authority.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order), no development within Schedule 2, Part 1, Classes A to H Schedule 2, Part 2, Classes A to C and within Schedule 2 Part 14 Classes A to I of that Order shall take place without a further grant of planning permission being obtained from the Local Planning Authority.
- 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 (guidance on which may be obtained from the North York Moors National Park Authority) 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.

- 5) The development hereby permitted shall be used for domestic storage incidental to the occupation of the main dwelling on the site and for no other purpose. There shall be no alteration or conversion of the building hereby permitted to permanent residential accommodation and any such use or alteration will require a separate grant of planning permission from the Local Planning Authority.
- 6) No external lighting shall be installed in the development hereby permitted until details of lighting have been submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed in accordance with the details so approved and shall be maintained in that condition in perpetuity.
- 7) The development hereby approved shall not be occupied until the outbuildings shown on the approved plans to be demolished have been demolished and all materials removed from the site.
- 8) The external surface of the roof of the building hereby permitted shall be coloured and thereafter maintained dark grey/black and shall be maintained in that condition in perpetuity unless otherwise be agreed in writing with the Local Planning Authority.
- 9) The external elevations of the dwelling hereby approved shall, within three months of first being brought into use, be clad in vertical timber boarding and shall thereafter be so maintained unless otherwise agreed in writing by the Local Planning Authority.
- 10) The external timber cladding of the building hereby approved shall be stained dark brown and shall be maintained in that condition in perpetuity unless otherwise agreed in writing with the Local Planning Authority.
- 11) No work shall commence on the timber cladding of the development hereby permitted until details, including the design and fixing of the timber cladding including samples if so required have been submitted to and approved in writing by the Local Planning Authority. The materials used shall accord with the approved details and shall be maintained in that condition in perpetuity unless otherwise agreed with the Local Planning Authority.
- 12) All new window frames, glazing bars, external doors and door frames shall be of either timber construction and stained dark brown, or dark coloured powder coated aluminium and shall be maintained in that condition in perpetuity unless otherwise agreed in writing with the Local Planning Authority.
- 13) The rainwater goods utilised in the development hereby permitted shall be coloured black and shall thereafter be so maintained in that condition in perpetuity unless otherwise agreed in writing with the Local Planning Authority.

- 14) All flues associated with the proposed development shall be coloured matt black and maintained in that condition in perpetuity unless otherwise agreed in writing with the Local Planning Authority.
- 15) Prior to the first occupation of the dwelling hereby approved, details of the siting and design of a bin store to serve the dwelling shall be submitted to and approved in writing by the Local Planning Authority. The bin store shall be installed in accordance with those approved details within one month of the first occupation of the dwelling and shall thereafter be so maintained.
- 16) No external paraphernalia shall be installed in the development hereby permitted until details of paraphernalia have been submitted to and approved in writing by the Local Planning Authority. The external paraphernalia shall be installed in accordance with the details so approved and shall be maintained in that condition in perpetuity.
- 17) No trees, shrubs or hedges along the boundaries of the site shall be felled, uprooted, wilfully damaged or destroyed, cut back or removed without the prior written consent of the Local Planning Authority. Any work approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations. If any retained tree/hedge is removed, uprooted, destroyed or dies within five years of the completion of the development, it shall be replaced with trees, shrubs or hedge plants of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

END



Costs Decision

Site visit made on 25 June 2019

by **T A Wheeler BSc (Hons) T&RP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2019

Costs application in relation to Appeal Ref: APP/W9500/W/19/3225783 Hill View Barn, Downdale Road, Scarborough, YO13 0EL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr T Outhart for a full award of costs against North York Moors National Park Authority.
 - The appeal was against the granting of planning permission for demolition of existing dwelling and outbuildings and construction of replacement local occupancy letting dwelling with holiday use at Hill View Barn, Downdale Road, Staintondale, subject to planning condition 4.
-

Decision

1. The application for an award of costs is dismissed.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process.
3. Based on the information before me, central to the Applicant's claim is that at no time did he agree to amend his description of the development to omit holiday use. Despite this, the Park Authority proceeded to determine the application on the basis that a planning condition could be used to limit the use of the proposed dwelling to local occupancy only.
4. The Applicant only became aware of the planning officer's recommendation that planning permission should be granted on the basis that the dual use was excluded two weeks prior to the date of the Committee meeting. Up to that point, he had been unaware that the inclusion of holiday use in the proposal caused any difficulty for the Park Authority, including discussions at the pre application stage.
5. From the email correspondence I have seen between the planning officer and the agent, the Applicant did not seek to prevent the application going before the Committee. Neither the Applicant or his agent attended the meeting.
6. The other part of the costs claim relates to the Park Authority's actions in issuing a decision notice which referred to the description of development including the use of the proposed dwelling for holiday use. This caused some confusion and the Applicant only became aware that the planning permission did not, in the view of the Park Authority, allow holiday use when he saw a

letter sent to the Parish Council dated around one month after the decision, in which the description had been amended to exclude such use.

7. The Park Authority accepts that the issue of the planning decision with reference to holiday use in the description of development was an administrative error, but does not accept that, as a result, the planning permission permits such use of the property. The point is disputed by the Applicant, who says that commercial decisions have been taken on the understanding that planning permission had been granted for both local occupancy and holiday use.
8. The PPG states that costs cannot be claimed for the period during which a planning application was determined, but actions during this period are something which can be taken into account in deciding the merits of the claim.
9. The Applicant says that his claim is based on procedural grounds. The PPG is clear that procedural grounds should relate to matters concerning the local planning authority's behaviour during the appeal. I can see no reasons to take the view that the Park Authority has behaved unreasonably during the appeal.
10. The Park Authority accepts that it made an administrative error in issuing the planning permission including the reference to holiday use. In my view that error arose as a result of the failure to agree an amendment to the description of development with the appellant prior to the determination of the application.
11. Had the Park Authority understood the importance that the Applicant placed on securing holiday use of the proposed dwelling, it may have reached a different decision. Had that occurred, it may have been necessary for the Applicant to appeal in order to seek approval of the holiday use.
12. I have considered the other points raised by the Applicant, including the claim that the Park Authority did not adopt a helpful approach during the course of the application; that similar cases elsewhere in the National Park have been permitted dual use; no weight was given to the use of the existing property for holiday use; and the lack of reference in the minutes of the Committee meeting to any reasons why holiday should be excluded. However, these matters, all of which are disputed by the Park Authority, do not give me firm reasons to award costs.
13. In this case the Park Authority's ultimate decision was reasonably based on policies in the development plan and other material considerations. On that basis, it has not been demonstrated that the Park Authority has acted unreasonably. As such there can be no question that the Applicant was put to unnecessary or wasted expense in the appeal process.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Tim Wheeler

INSPECTOR