

North York Moors National Park Authority

Ryedale District Parish: Cropton	App No. NYM/2019/0681/FL
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Proposal: removal of condition 5 of planning approval NYM3/031/0010/PA to allow the occupancy of the dwelling to be unrestricted

Location: Paddock House, Sutherland Lane, Cropton

Applicant: Mr Simon Ashworth, 7A Welham Road, Malton, YO17 9DP

Agent: Planning Services Initiative Ltd, fao: Mr Chris Garner, Queensgate House, 48 Queens Street, Exeter, EX4 3SR

Date for Decision: 02 December 2019

Grid Ref: 476721 489991

Director of Planning's Recommendation

Refusal for the following reasons:

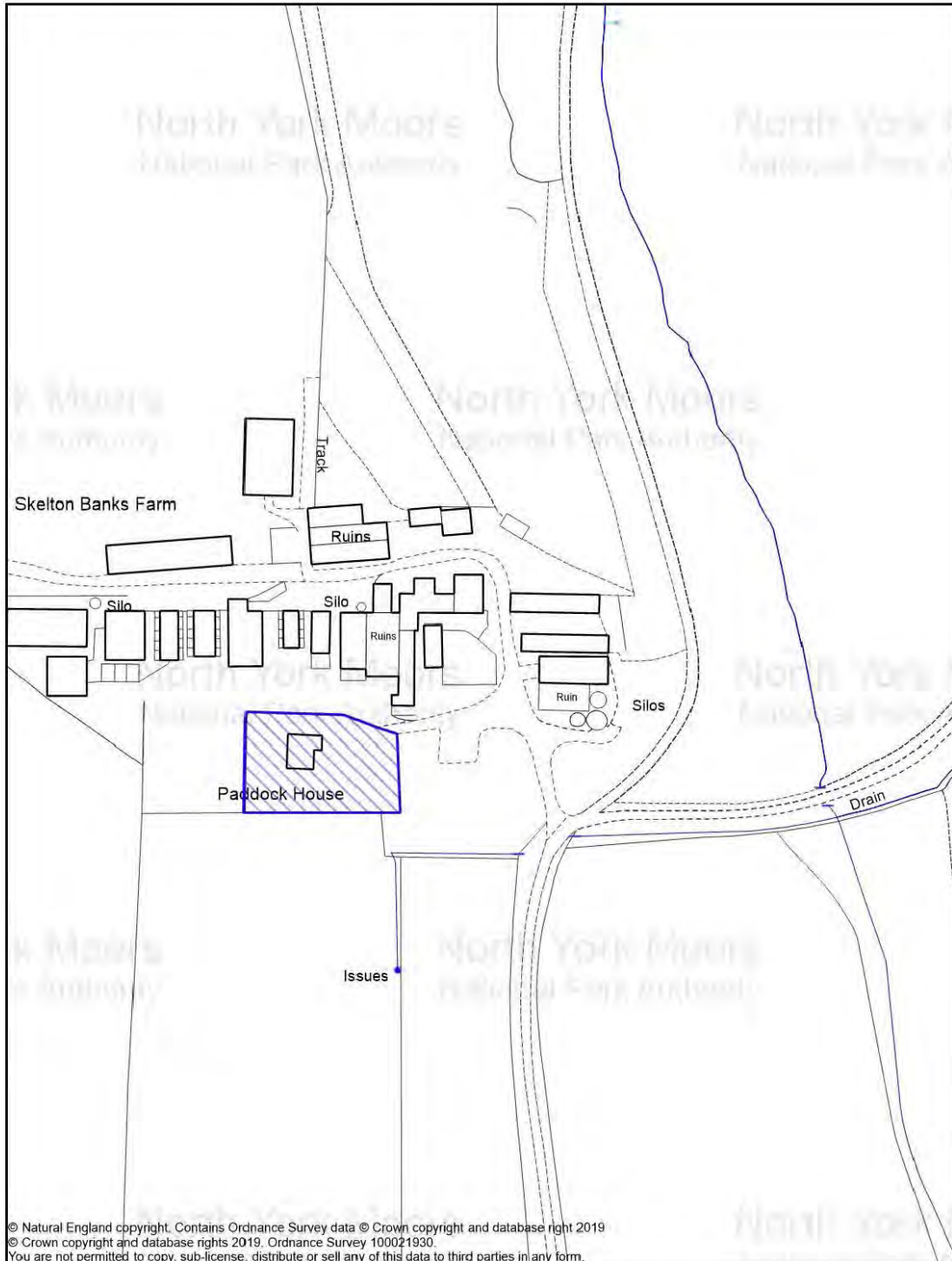
1. MISC00 It is considered that the existence of qualifying buyers for the property demonstrates that there is continuing need for the provision of this agricultural/forestry workers dwelling within the locality, and therefore the proposal is contrary to Development Policy 22 and Core Policies B and J of the NYM Local Development Plan.
2. MISC00 The removal of the agricultural occupancy condition would be contrary to the provisions of Core Policies B and J of the NYM Local Development Plan which state that new residential dwellings in the open countryside will be subject to an agricultural, forestry and essential land management occupancy restriction. If permitted, the proposal would undermine the Spatial Strategy which seeks to ensure that the limited opportunities for new development in the open countryside in the National Park cater for essential rural workers rather than external market demand.
3. MISC00 The removal of the agricultural occupancy restriction would result in the creation of an open market dwelling contrary to Development Policy 22 of the NYM Local Development Plan, which requires that if such a restriction were to be lifted it would be substituted with a local occupancy restriction to ensure the dwelling continues to provide housing for local needs, rather than meet external demand.



North York Moors
National Park
Authority

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Scale: 1:1500



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Consultations

Parish – 1/11/2019 – No objections

Site Notice Expiry Date – 14 November 2019

Others – 24/10/2019 & 11/11/2019 – **Andrew Keane and Emma Creaser, 31 Ruffa Lane, Pickering** – Object. We don't feel the restriction should be lifted as we have an agricultural and forestry need for the property in relation to our jobs. We have approval from the National Park Authority that we fit the restriction and have made numerous offers of the full asking price which have been declined by the seller. We have an agricultural and forestry need for the property in relation to our jobs.

I work for the Forestry Commission and Cropton Forest is my main place of work and I need to live in the area for various reasons from fires to timber protection. My main roles are species management for the protection of the growing timber stands. And completing environmental assessment forms for works to be carried out i.e. felling of trees, ground preparations for planting, and also planting trees and which tree species to be planted where. Emma is a farmer manager at Westfield Farm, Cropton where she runs the arable side as well as being responsible for all the alarms on the units which is why she also needs to live close to her place of work.

Paddock House is perfect for our agricultural and forestry needs.

1/11/2019 – **Ian Davison, Bilsdale Hall, Chop Gate** – I would like to object to the agriculture and forestry tie being removed as I feel there is a need for such properties in the area. I tried to view the house with the intention of making an offer only to be told by the seller's agent I did not meet the criteria, even though I am a farmer. As you can see I now live a lot further away than I wanted but even with my holding number the house in Cropton was taken off the market.

6/11/2019 – **Elissa & Alan Cummings, Sutherland beck, 5 Forestry Bungalows, Cropton** - Object – Strongly believe that this property should remain in the hands of agriculture, forestry workers etc. It is difficult enough for people who work in these industries to buy properties in this area, due to a number of properties being sold as second or retirement homes. The property should be sold to such a family.

Background

This application relates to "Paddock House", situated in a remote location adjacent to Skelton Banks Farm and Peat Rigg Outdoor Activity Centre, approximately 1km to the east of Cropton Village, 4km from the A170 and 6.5km North West of Pickering.

The property comprises a four-bed stone and pantile property constructed in 1976. It was granted planning permission at that time following a need being demonstrated for an extra agricultural worker's dwelling to serve Skelton Banks Farm. Such a need was, and is still, under current policies, a requirement for the approval of new dwellings in the open countryside. Consequently, the property is subject to the following agricultural/forestry occupancy condition: -

'The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person.'

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Background continued

The definition of agriculture as set out in both the 1971 Act and subsequent 1990 Town and Country Planning Act is as follows: -

'Horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land, the use of land as grazing land, meadow land, osier land, market gardens and nursery land and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes'.

There is no definition within the Act relating to forestry.

It should be noted that the condition refers to agriculture as defined in the relevant Act, OR forestry; that is including forestry as an independent occupation, not just ancillary to an agricultural activity.

The condition requires that an occupant is employed in either agriculture or forestry in the locality; but there is no "housing need" element to this condition, i.e. it does not prevent an existing home owner who is employed in agriculture/forestry from moving into this property. The need element applies to the construction of a new agricultural workers dwelling on a farm holding, rather than the subsequent occupancy of an existing agricultural workers dwelling. The condition also applies to last employed, thereby being available to local retired agricultural or forestry workers. As such these type of dwellings (not required on the original farm steading) to provide an important part of the Park's housing stock which particularly allow older generation farmers (or other essential rural workers) to find suitable accommodation whilst allowing younger farmers to take over farm houses/bungalows located within working farm steadings without the need for additional farm worker dwellings on the units.

This application seeks permission to remove the condition in its entirety to provide an open market dwelling because the farm has been inherited by the applicant who works in an industry outside of agriculture and does not require the property.

The property has been on the market for approximately 18 months, with the estate agents details clearly setting out the agricultural occupancy restriction. The property was originally marketed at £295,000 in March 2018, then reduced to £285,000 in August 2018 and then £275,000 in January 2019. It was also briefly offered for rent at £720 per calendar month. The property has been marketed by Rounthwaite and Woodhead Estate Agents and has also been advertised in the Gazette & Herald and Farmers Weekly.

In connection with the marketing of this property, a prospective purchaser submitted details to the Authority, in the form of a discharge of condition application, demonstrating that both partners were employed in either agriculture or forestry. This application was approved by the Local Planning Authority and the couple are still offering the asking price. However, this has been rejected because the applicant's agent has advised the Estate Agent and the vendor that he does not agree with the Authority's determination and does not consider they comply with the restriction.

In support of the application, the applicant's agent has stated that:-

It has been demonstrated that there exists no agricultural, forestry and or local occupancy housing need that would warrant the retention of the Agricultural Occupancy restriction or the imposition of a local occupancy condition. It is contended that the Authority's guidance on how to demonstrate that a need no longer exists is unclear, and that the Authority

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Background continued

appears to have no real substance or clarity within any NYM policies relating to the market assessment period or discount that should be applied to properties with restrictive conditions imposed upon them.

An agricultural tie should only be retained if there is an essential need to do so. Retention of an agricultural occupancy condition should therefore be based upon an assessment of the essential needs of agriculture within the locality, as set out in the National Planning Policy Framework. Locality, as found in many appeals is considered to be an eight mile radius or 20 minute drive time to and from a subject property.

No need remains for the dwelling in connection with the use applied for, 'specifically an extra agricultural worker's dwelling for the holding'. The original justification no longer exists, and with only 0.25 acres of land associated with the dwelling, the subject property is not agriculturally sustainable on its own.

A suitably qualified local Estate Agent (Rounthwaite & Woodhead) has been employed to conduct a thorough market assessment of the property at a value taking the agricultural occupancy condition into consideration and PSi Planning Law Ltd, a suitably qualified planning consultancy practice who specialise in onerous condition assessments and removal have been employed to implement all realistic assessments.

Having considered local housing statistics and planning statistics, it is clear that as there have been few applications approved in recent years for the construction of new agricultural workers dwellings there has been no need for new agricultural accommodation in the locality therefore Paddock House should not be reserved to meet a need that does not exist. Also, there has only been one application submitted in recent years to remove an Agricultural Occupancy restriction, which we feel is entirely due to the fall-back position of the imposition of a local occupancy condition which offers no real benefit. It seems that owners of such properties are likely to apply for Lawful Use Certificates year after a 10 breach period, as they prefer to keep their heads down.

During the marketing of the property, all interested parties were required to complete a housing needs questionnaire to ensure that all parties interested had a proven and genuine agricultural, forestry and local occupancy need. When reviewing the completed housing needs questionnaires provided by each enquirer, we considered the information they had provided against three fundamental tests to qualify as genuine housing need for Paddock House. These were compliance with the condition; housing need (does the enquirer possess an existing genuine agricultural housing need for Paddock House?) and whether there was alternative housing available (i.e. could the housing need claimed be equally or better met by other properties available within the locality?)

In conclusion it is evident that there is no reasonable planning justification to retain Paddock House to meet agricultural, forestry or local occupancy housing within the locality of Paddock House as no such genuine housing need exists for the following reasons:

- *Paddock House was granted consent in 1975 as an extra dwelling which was considered to be an agricultural need at the time of approval that now no longer exists.*
- *It is a four bedroom house standing on only 0.25 of an acre which would not be self-sustaining as an agricultural unit in its own right.*

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Background continued

- *Any agricultural, forestry or local occupancy accommodation requirements arising in the future can be fulfilled by the abundant supply of dwellings within the locality at a lesser value than Paddock House.*
- *No parties that have enquired possessed an agricultural, forestry or local occupancy need for Paddock House.*
- *The retention of the condition fails all the essential tests prescribed for conditions to be retained within the NPPF.*
- *Simply because a person or persons who may satisfy an occupancy restriction express an interest in purchasing a property with an occupancy condition, is not an indicator of 'Genuine Need', without proof.*

In conclusion, it is clearly proven that there has been no agricultural, forestry and or local occupancy need within the locality of Paddock House, accordingly the occupancy restriction has outlived its useful purpose for agriculture, forestry and or local occupancy housing, accordingly it is therefore considered to be unnecessary.

The supporting information also includes a letter from the Estate Agents confirming that although one viewing was arranged and offers put forward, their planning agent advised them that all interested parties failed the fundamental housing needs test and accordingly the offers were declined.

Main Issues

The main issue is considered to be whether it has been demonstrated that the property has been marketed at a reasonable price (reflecting the occupancy restriction) for a sufficient period of time without a reasonable offer being made by someone who complies with the restriction, and as such demonstrating there is no continuing need for the agricultural occupancy condition.

Local Development Plan Policies

Core Policy B of the North York Moors Local Development Plan (NYMLDP) sets out the strategy to meet the needs of people in the National Park based upon improving the sustainability of local communities by improving and consolidating existing services and facilities and includes a settlement hierarchy of local service centres, service villages, local service villages, other villages and the open countryside. This Core Policy sets out that in the open countryside housing development will only be permitted if it is related to an essential need to live in the countryside.

Core Policy J of NYMLDP 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 includes restricting new housing development in the Open Countryside to that which is proven as essential for farming, forestry or other essential land management activities.

Development Policy 22 of the NYMLDP permits the removal of agricultural occupancy restrictions only where it can be demonstrated that there is no longer a need for the accommodation either on the holding or the locality. It also requires that where permission is granted, the condition will be substituted with one which restricts occupancy to local needs as defined in Core Policy J, or if a local person cannot be found, a temporary holiday use or

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Main Issues continued

rented local needs use may be permitted. This is justified due to changing farm practices and the vulnerability of the agricultural sector which may result in dwellings which were constructed for agricultural workers no longer being required.

National Planning Policy Framework (NPPF) 2019

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 Local Development was adopted on 13 November 2008 under the provisions of the 2004 Act and is considered not to conflict with national policies in the NPPF. It is therefore up-to-date and should be the starting point for any decision making in the North York Moors National Park.

The Government's commitment to the protection of National Parks is clearly set out in Paragraph 172 and 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. 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.

Paragraph 54 of the NPPF sets out that Local Planning Authorities should only impose conditions where they are necessary, relevant to planning and relevant to the development to be permitted.

Paragraph 79 of the NPPF states that planning policies and decisions should avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

Draft Local Plan

Draft Policy CO16 relates to the removal of Agricultural Occupancy Conditions and states that the removal of such conditions will only be permitted where it can be demonstrated that there is no longer a need for the accommodation on the holding or from persons meeting the conditions in the locality. Where this has been successfully demonstrated the condition will be substituted with a condition restricting the occupancy to local needs. The further explanation contained in this Policy sets out that before considering an application for the removal of such a condition owners must demonstrate that they have actively marketed the dwelling at a realistic price reflecting the occupancy restriction for 12-18 months.

No objections have been received to this Policy, and the Examination in Public of the Draft Local Plan has taken place, without amendments being suggested to this Policy. Consequently, this Policy can be given some weight, particularly as it reflects the similar Policy in the current adopted Local Development Plan.

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Marketing, Value and Offers to Purchase the Property

The supporting information submitted with the application, sets out why the current owner doesn't require this dwelling and also sets out that extensive and satisfactory marketing has been carried out.

Officers have considered the valuation of the property and looked at other detached four bed properties on the market in the locality. It is considered that the asking price represents a satisfactory reduction in value to take account of the agricultural occupancy restriction.

As a Local Planning Authority, the National Park Authority is the statutory enforcing body in terms of enforcing planning conditions. The applicants planning agent has set out his considerable experience in the field of dealing with 'agricultural occupancy condition'. Notwithstanding the planning agents experience in this area, Officers consider the agent analysis of whether there is a continuing need for the condition is flawed in respect of: how the need should be addressed, the acceptability of forestry employment and not acknowledging potential continuing need for local retired workers who would comply. In terms of the level of interest, the applicant's agent has advised that whilst offers have been made, none of the interested parties demonstrated an agricultural or housing need to live in the property and consequently the offers were rejected.

However, one prospective purchaser who has offered the asking price on a number of occasions (most recently in August 2019) submitted a formal discharge of condition application to the National Park Authority in February 2019. This was approved as satisfactory evidence was submitted regarding the compliance of both partners with the agricultural occupancy restriction, one working in forestry and the other in agriculture, both in the locality (the Director of Planning has subsequently visited the farm where one of the partners is farm manager and is satisfied that this is an agricultural enterprise, albeit with a game breeding element to the business).

This offer verifies that an interested party who meets the restriction has attempted and is still attempting to purchase the property with the restriction in place. This recently rejected offer needs to be taken into consideration with this current application.

Given these circumstances, it is clear that there is a continuing need for this property to serve an agriculture or forestry worker in the locality. It needs to be taken into account that the original planning permission for the construction of this dwelling in the open countryside in the National Park was in response to a proven agricultural need, and the Authority's continuing and adopted Policies are to ensure that such development is retained for that purpose unless demonstrated that there is no need, to avoid unacceptable sporadic development in the open countryside, to the detriment of the special qualities of the National Park.

Requirements of the Agricultural Occupancy Condition

In the applicant's agents supporting information it is stated that there are three fundamental tests to assess if someone meets the occupancy restriction, these are listed as compliance with the condition; housing need and whether there was alternative housing available.

However, these second two criteria relate to evidence required when considering an application to construct a new agricultural workers dwelling on a particular farm holding. A new dwelling would only be permitted if these criteria (and others relating to financial and functional tests) were met.

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Main Issues continued

However, the occupancy restriction attached to such dwellings reflects the special circumstances under which a new dwelling in the open countryside was approved (as set out in both the Authority's adopted policies and the NPPF) and seeks to ensure that it continues to be available for this purpose even if the requirement on the holding it was originally to serve has changed.

Consequently, the condition does not require a person to be in housing need or to demonstrate that no other properties are available, just that the occupiers need to be 'solely or mainly employed, or last employed in the locality in agriculture... or in forestry.'

Furthermore, the Authority's adopted policies require that if satisfactory evidence is provided that is no longer an agricultural or forestry need in the locality, such a restriction would be replaced with a local occupancy restriction, in accordance with both Development Policy 22 and Core Policy J to ensure that the property continues to meet local housing needs.

Conclusion

In conclusion it is considered that whilst the property has been on the market for 18 months, at a reasonable asking price, the applicant has continued to refuse an offer of the asking price to purchase the property. In summary, the applicant has a current offer at the asking price from someone who complies with the agricultural occupancy criteria.

Furthermore, the applicant's agent has made it clear that even if the Authority accepted there was no longer an agricultural need, he would not accept a local occupancy restriction as a substitute, in accordance with adopted Policy. It is a principle of the planning system that planning conditions should not be placed on approvals which deprive an applicant of what they are seeking to achieve through an application.

In view of the above considerations, refusal is recommended.

Contribution to Management Plan Objectives

There are no relevant Policies in the Management Plan relating to this form of development.

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.