



The Planning Inspectorate

3M Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Email:
north1@

www.gov.uk/planning-inspectorate

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

Your Ref: NYM/2019/0681/FL
Our Ref: APP/W9500/W/20/3253018

28 August 2020

Dear Mrs Strangeway,

Town and Country Planning Act 1990
Appeal by Mr Simon Ashworth
Site Address: Paddock House, Sutherland Lane, Cropton, PICKERING, YO18 8EX

I enclose for your information a copy of the appellant's final comments on the above appeal(s). Normally, no further comments, from any party, will now be taken into consideration.

Yours sincerely,

Darren Cryer
Darren Cryer

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Appeal by: Mr Simon Ashworth

Against: Refusal of planning permission for 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, YO18 8EX

Reply to Statement by Local Planning Authority for Written Representations Appeal Ref: APP/W9500/W/20/3253018

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Contentious Issues within the Authority Statement

In an effort to fully respond to the Statement made by case officer Saunders, I have set out my replies below, and on occasions where necessary, interceded within each block paragraph where numerous contentious remarks and statements have been made.

1.0 Introduction

1.1 This Statement refers to the refusal of planning permission for the removal of condition 5 of planning approval NYM3/031/0010/PA to allow the occupancy of the dwelling to be unrestricted at Paddock House, Sutherland Lane, Cropton, near Pickering, North Yorkshire. The application was refused by the North York Moors National Park Authority (NYMNPA) as the Local Planning Authority (LPA) on 5 December 2019.

2.0 Appeal Site and the Surrounding Area

2.1 The appeal property, "Paddock House", is 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.

2.2 The site is in an open countryside location within the North York Moors National Park. The immediate area around the property is largely forested, being located towards the southern edge of Cropton Forest, which is a largely coniferous forest, with some deciduous trees on the fringes and which is owned and managed by the Forestry Commission.

3.0 Relevant Site History

3.1 The property to which this appeal relates was granted planning permission 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 adopted local development plan and national planning policies; a requirement for the approval of the construction of new dwellings in the open countryside. Consequently, the property is subject to the following agricultural **or** 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.'*

4.0 Proposed Development and the Decision

4.1 The application to which this appeal relates was validated on 7 October 2019 and sought consent for the removal of condition 5 of planning approval NYM3/031/0010/PA to allow the occupancy of the dwelling to be unrestricted.

4.2 The application was considered by the Planning Committee at its Meeting on 5 December 2019 and refused for the following reasons:

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.

1. 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.

2. 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.

Our Reply

*The reason for refusal provided at 1 above is ambiguous, as it is unclear what is meant by 'qualifying buyers' however, if it is that case officer Saunders means 'a person or persons who possess the wherewithal to comply with the AOC imposed upon Paddock House, then it is clear that case officer Saunders attempted to link compliance and need together as if one and the same, in ignorance of NPPF Guidelines and Circulars along with Case Law and the opinions held at appeal confirming that compliance does not constitute **Genuine Agricultural Need** which is the test applied in all cases of this nature.*

The above reply is borne out by the criteria set out in Development Policy 22 and Core Policies B and J of the NYM Local Development Plan which is highlighted no less than eleven times in Red below, clearly indicating that Agricultural, Forestry and/or Local Housing Need is the applicable test that the Authority should apply when considering applications of this nature, and not simply the wherewithal to comply or a personal preference as case officer Saunders attempts to impose within her flawed and misleading Appeal Statement.

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 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 B – Spatial Strategy

This Policy 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 new housing development will only be permitted if it is related to an [essential need](#) to live in the countryside.

Core Policy J – Housing

This Policy 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 – Removal of Agricultural Occupancy Restrictions

This Policy seeks to permit 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 rented local needs use may be permitted.

The explanatory text for this Policy sets out that proposals for new dwellings will only be permitted in the open countryside where it is required to meet the [needs](#) of a person employed in agriculture, forestry or other essential land management activities, but that due to changing farm practices and the vulnerability of the agricultural sector there may be occasions where dwellings constructed for agricultural workers are no longer required. In such circumstances it is accepted that such properties should not be kept vacant, nor should the present occupants be unnecessarily obliged to remain in occupation simply by virtue of the agricultural occupancy condition. Consequently, if it is demonstrated that there is no longer an [agricultural need](#) for the accommodation the Authority may consider allowing the owners to find an alternative use for the accommodation such as holiday use or rented accommodation for people who meet the local occupancy condition criteria. However, if the owner wishes to dispose of the dwelling and has demonstrated to the satisfaction of the Local Planning Authority that they cannot find a suitable buyer, then the agricultural occupancy condition will be replaced with a **local occupancy condition** as set out in Core Policy J to ensure the dwelling serves a [local housing need](#).

It should be noted that both local policy and national planning advice refers to the need for National Park Authorities to focus on delivering housing for local needs rather than the unrestricted market housing. Paragraph 78 of “English National Parks and the Broads UK Government Vision and Circular 2010” specifically states that National Park Authorities “have an important role to play as planning authorities in the delivery of affordable housing. Through their Local Development Frameworks they should include policies that pro-actively respond to local housing needs.”

Our Reply

As the case officer points out, Policy J seeks to ensure the provision of a mixture of housing types and tenure to maintain the vitality of local communities, however as we know Paddock House is already built, and should the inspector be mindful to allow this appeal without a Local Condition being subsequently imposed, Paddock House will form part of the mixture of housing types available to ensure community vitality is maintained.

It is evident that case officer Saunders lack of experience in dealing with applications under S73 for the removal of AOC or Local Housing Needs conditions leads her to conclude that ‘qualifying buyers’ whatever is meant by this, is the test that should be applied, as opposed to genuine need as is repeatedly emphasised in NYM policies, NPPF guidelines and appeal decisions supplied with the application and this appeal.

Although the explanatory notes include the needs of a person employed in agriculture, forestry or other essential land management activities, the latter is not included within the scope and limitations of the AOC imposed upon Paddock House and is therefore irrelevant.

The Government recognises that the Parks are not suitable locations for unrestricted housing and does not therefore provide general housing targets for them. The expectation is that new housing will be focused on meeting affordable housing requirements, supporting local employment opportunities and key services.

Our Reply

The above would be relevant if Paddock House served a genuine affordable housing need solution, but as we know it does not.

It is evident by what has been written to this point that Mrs Saunders clearly does not understand the meaning of the word ‘Need’ which as far as I’m concerned the precise definition is; ‘A person or persons who require (something) because it is essential rather than just desirable’ as was the case with all parties who expressed interest in Paddock House during the market assessment of the property.

5.3 Draft Local Plan

The Inspector's Report was received on 15 May 2020 which brought the Examination in Public to an end. A version of the draft Local Plan incorporating the Inspector's modifications has been produced and the Authority is planning to adopt the Plan at its National Park Authority/AGM Meeting on 27 July 2020. The relevant Policy in this Plan, which should now be given substantial weight is: -

Policy CO16 - Removal of Agricultural Occupancy Conditions

This Policy states that the removal of occupancy conditions relating to agriculture, forestry or other essential land management activity 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 occupancy to local needs in accordance with Policy CO13 (Policy CO13 restricts the occupancy of dwellings to those who meet the local connection for Local Needs Housing (Note A below). Such a condition is set out in Annexe A of this statement. Policy CO13 also states that subsequent applications to remove a local connection condition will only be permitted if it is clearly demonstrated that the property has been adequately marketed at a suitable price and for an appropriate period of 12-18 months and that in such circumstances the Authority will apply a *principal residence* condition (Note B below) as set out in Strategic Policy M of the Draft Local Plan.

The explanatory text for this policy sets out that as new dwellings are only permitted in the open countryside to meet the needs of people employed in agriculture, forestry or other essential land management activities, an agricultural occupancy condition will be attached to the planning permission to ensure that such dwellings remain available for use by agricultural or other workers in the local area for the long term and the Authority will only permit removal of agricultural occupancy conditions in exceptional circumstances. However, it is recognised that changes in farming, forestry or land management practices may in certain circumstances mean that a dwelling constructed for agricultural workers is no longer required. Before considering an application for removal of the agricultural occupancy condition, owners must demonstrate that they have actively marketed the dwelling at a realistic price reflecting the occupancy restriction for 12-18 months, in order to find an occupant who Satisfies the Condition. Within this marketing period the Authority is likely to support a temporary permission to allow the dwelling to be let on a temporary basis to persons satisfying the local connection criteria. Once it can clearly be demonstrated that the dwelling has been adequately marketed at a suitable price for an appropriate period with no persons meeting the criteria, the Authority is likely to grant consent for the condition to be replaced with a local connection condition, in accordance with Policy CO13.

Note A Local Needs Housing.

Since 1992 the Authority has used local occupancy conditions to ensure that new housing is used to meet the needs of local people or people with a social or employment need to live in that locality. In comparison with previous policies, however, the criteria used to determine local occupancy have been widened and are now referred to as 'local connection' criteria. The aim is to ensure that new housing developments in some areas are for the benefit of existing and future residents who make a contribution to the National Park community and economy.

Note B Principal Residence Housing.

This is a form of market housing controlled by a mechanism which ensures it can be lived in by anyone but only as their main residence. Its aim is to provide housing for permanent residents rather than housing which can be used intermittently as a second or holiday home.

Our Reply

*Very much like the previous policies, the relevant test applied in NYM newly adopted policies is that of 'Need' which I have highlighted in Red no less than fourteen times above, accordingly nothing has changed insofar as the Need Test is concerned, however it is noted that certain language has been created to expand the scope to include **other essential land management activities**, which as far as I'm concerned is a transparent attempt to cover the flawed Keane-Creaser CVC decision that case officer Saunders approved within two working days of submission without any form of due diligence being undertaken by her.*

Although the Authority have made efforts to rewrite the policies relevant to this type of application in a more precise fashion with less ambiguity, regrettably the above explanatory notes introduce ambiguity, inasmuch, as it is not clear if NYM mean 12 months or 18 months bringing rise to potential argument over interpretation of the market assessment period needed.

Further to the above ambiguity and although Need is continually repeated within the new policies, this is changed to persons who satisfy the AOC which means something totally different thus creating yet another point of ambiguity and potential argument.

5.4 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 significant 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.

Our Reply

The material considerations that applied to the Application and subsequently to this Appeal, are that substantive evidence was and has been supplied that proves there exists No Genuine Agricultural, Forestry or Local Housing Need within the locality for Paddock House upon which grounds the Application should have been approved.

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.

Our Reply

The application submitted to the Authority does Not conflict with the Authorities previous and newly adopted policies, nor does it conflict with NPPF guidelines, which is substantially supported by all appeal decisions and evidence supplied with the application for the removal of the AOC imposed upon Paddock House, without the subsequent imposition of a Local Needs Condition.

However, the North York Moors Draft Local Plan is due for adoption on 27 July 2020 and it may be that when this appeal is being considered by the Planning Inspectorate that the Draft Local Plan has been adopted and will therefore be the up-to-date plan.

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.

The need to control unrestricted housing in the open countryside is therefore of even greater significance within a protected landscape and it is important that exceptions to this to allow for housing to meet agricultural needs should be retained as a stock for ongoing and future needs of the agricultural community within the National Park.

In specific context of this Appeal, **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 and **Paragraph 79** 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.

5.5 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.

6.1 Local Planning Authority's Case 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.

6.2 Marketing, Value and Offers to Purchase the Property - The supporting information submitted with the application and this Appeal, sets out why the current owner (appellant) doesn't require this dwelling and also sets out that extensive and satisfactory marketing had been carried out. Officers considered the valuation of the property and looked at other detached four bed properties on the market in the locality. It was considered that the asking price represented a satisfactory reduction in value to take account of the agricultural occupancy restriction.

6.3 The Assessment of Need and Enforcement of Planning Conditions - As a Local Planning Authority, the National Park Authority is the statutory enforcing body in terms of enforcing planning conditions. The appellants planning agent has set out his considerable experience in the field of dealing with 'agricultural occupancy conditions'.

Notwithstanding the planning agents experience in this area, Officers consider the appellant's agent's analysis of whether there is a continuing need for the condition flawed in respect of:-

1. how the compliance with the condition should be assessed;
2. considering that the Occupancy Condition requires someone to be in Housing Need;

3. considering that it needs to be proven that no other affordable accommodation is available in the locality;
4. the acceptability of forestry employment and
5. not acknowledging potential continuing need for local retired workers who would comply

Our Reply

1. *Our method of compliance assessment has been successfully employed in hundreds of applications, and on the rare occasions we have had the need to appeal, our assessment methods have been upheld as being realistic and in line with RICS guidelines.*
2. *The lack of genuine housing need is fundamental in all applications of this nature.*
3. *Proving that a property is not unique by virtue of its value and location is also fundamental to applications of this nature.*
4. *A person who is mainly employed as a Deerstalker and Pest Controller (AKA Gamekeeper) is not considered to be employed in Agriculture or in Forestry, and would therefore not satisfy the AOC imposed upon Paddock House, nor would a person who is mainly employed in a farm enterprise who mainly rear game birds for sport and leisure, accordingly the Keane-Creaser CVC decision issued by the Authority is flawed and thereby unsafe.*
5. *Although a person who is last employed in agriculture would meet the AOC imposed upon Paddock House, retirement is not indicative of an existing agricultural need, particularly where persons who are retired from agriculture already own their own home and/or if the parties are last employed outside the locality.*

Further to the above, if our analysis is flawed, it follows that case officer Saunders believes that all other Authority decisions to remove restrictions based upon our realistic assessment are equally flawed as are the numerous appeal decisions we supplied with the application, it is more likely than not that case officer Saunders evident lack of knowledge is the singular causation of the flawed Keane-Creaser CVC decision that she was responsible for and now attempts to cover up by distorting fact regarding Keane-Creaser employment duties.

6.4 In terms of the level of interest and assessment of need, the appellant's agent has advised that whilst offers were made, none of the interested parties demonstrated an agricultural or housing need to live in the property and consequently the offers were rejected.

However, the Local Planning Authority was not given the opportunity to assess whether prospective purchasers would comply with the restriction as they were told by the appellant's agent that they didn't comply, rather than advising them to contact the National Park Authority, as the statutory enforcing body in terms of enforcing planning conditions, to confirm whether or not they did comply with the occupancy condition.

Our Reply

Although we recognise that the Authority are the statutory enforcing body, the Authority has no right to involve itself in the sale or assessment of any property they do not own unless invited so to do, which in this case and all cases we have dealt with over the years they were not as we possess the necessary knowledge and expertise to assess need and compliance, and despite being formally instructed not to make direct contact with our client, or meddle in the marketing of Paddock House, case officer Saunders took it upon herself to do so by attempting to persuade the selling agent to encourage the vendor (the appellant) to sell his property at its agricultural value to Keane-Creaser who do not satisfy the AOC imposed upon it, which resulted in the first of six stage 2 complaints being served upon the Authority as set out below,

- 1) Processing and decision of Keane Creaser CVC Ref: NYM2019/0103/CVC 28/06/19
- 2) Planning officer conduct in relation to CVC application NYM 2019/0103/CVC 05/07/19
- 3) Conduct of Head of Planning Mr France in regard to complaint responses 08/07/19
- 4) Questionable processing of application Ref: NYM/2019/0681/FL, which prejudiced the application and caused a gross injustice to the Applicant 04/12/19 .
- 5) Defamatory statement posted online 07/12/19
- 6) Planning committee decision making procedures 07/12/19

*Contrary to what case officer Saunders claims, the Authority were provided with the opportunity to consider all interest expressed in Paddock House, as we supplied the Authority with a copy of all Housing Need Questionnaires that were completed by the interested parties, which is information that is insisted upon within NYM Guidance Circular, **Conversions and the Economic Use Test**, which asks an applicant to provide written details of all enquiries received and the reasons why potential buyers/offers were not accepted', and despite this policy requirement, case officer Saunders refused to consider the content set out within the Housing Need Questionnaires, instead choosing to redact this crucial evidence from the application resulting in yet another stage 2 complaint which was also whitewashed and rejected out of hand.*

6.5 It did however come to the Authority's attention that prospective purchasers had offered the asking price on a number of occasions (most recently in August 2019), but had been advised by the appellant's agent that they didn't comply with the restriction and therefore could not purchase the property. Nevertheless, this prospective purchaser 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 the locality in forestry (confirmed in writing by the employer at the Forestry Commission to be a wildlife ranger responsible for the area of Cropton Forest); and the other in the locality in agriculture (Assistant Farm Manager at Westfield Farm Cropton, with her employment confirmed in writing by the owners of Westfield Farm, stating that her work responsibilities were within all areas of the farm, including the food production unit, the arable farm, maintenance and hatchery work).

Our Reply

*When Mr Keane first expressed interest in Paddock House, he completed an Agricultural Housing Need Questionnaire, within which he confirmed working as a 'Wildlife Ranger' for the Forestry Commission and subsequently confirmed by email that his **Main Role (Main Employment)** was as a **Deerstalker** at which point he was informed that Deerstalking is not considered as employment in Agriculture or in Forestry, and therefore suggested that his partner Ms Creaser should complete a questionnaire to enable this firm to further explore the potential of compliance and need as a couple, however upon receipt of Ms Creaser's completed Agricultural Housing Need Questionnaire, we noticed that the information contained therein conflicted with that supplied by Mr Keane, which necessitated further investigation into the veracity and truthfulness of the claims both parties had made, the results of our due diligence investigations concluded as follows:-*

Mr Andrew Keane

- I. *Apart from operating his own Deerstalking business throughout North Yorkshire, Mr Keane also works for the Forestry Commission (Pickering Office) as a 'Wildlife Ranger' who's main role is Deerstalking, as the Forestry Commission will attest, which in essence is no different to the duties of a Gamekeeper whose employment would not satisfy an Agricultural or Forestry Occupancy Condition.*
- II. *Mr Keane's operational area for the Forestry Commission (Pickering Office) is not limited to Cropton as case officer Saunders incorrectly claims, but includes Wheeldale, Dalby and Goathland forests according to the letter Mr Keane sent to the Authority with his CVC application on the basis of which the application was approved within two working days of submission, without reasonable due diligence being undertaken by case officer Saunders to verify the truthfulness of the claims made by him, leading me to question the decision that had been made.*
- III. *Apart from providing the Authority with a copy of the a 'Wildlife Ranger's' duties by the Forestry Commission we also provided an area proximity map for the areas within which Mr Keane operates which was unnecessarily and unreasonably redacted as material evidence from the application by case officer Saunders.*

- IV. As case officer Saunders is no doubt aware, Mr Keane was relocated to the Cropton area as a result of being filmed and reported to The Forestry Commission for 'Lamping Deer' in the Helmsley area which as the planning inspector will know is a criminal offence which calls into question the reliability of the information Mr Keane has provided regarding his work duties which have now been reinvented by him; **Witness and film footage available if required.**
- V. As case officer Saunders is aware Mr Keane is also a sole trader of a business known as Premier Deer Stalking UK in which capacity, he is Solely Employed as a Deerstalker and Trainer of Deerstalking Skills. Please see Facebook <https://www.facebook.com/premierdeerstalkinguk>
- VI. As case officer Saunders is aware Mr Keane is Not Solely or Mainly Employed in Agriculture or in Forestry within the Locality and therefore as an individual would Not Satisfy the AOC imposed upon Paddock House;
- VII. By virtue of the work proximity mapping we provided, case officer Saunders is totally aware that Paddock House offers no logistical benefit to Mr Keane's operational work areas for the Forestry Commission and his own Deerstalking business when compared with his current home at Ruffa Lane Pickering.
- VIII. Case officer Saunders is altogether aware that Mr Keane does not possess a Genuine Agricultural, Forestry or Local Housing Need for Paddock House, Cropton.

Ms Emma Creaser

- I. According to the Council Tax records, Ms Creaser does not live with her Grandparents some 18 miles away from her place of work as was claimed within the Agricultural Housing Need Questionnaire that Ms Creaser signed as being truthful.
- II. Ms Creaser works as a manager at Westfield Farms, who's main core business activity is breeding game bird for the gun (**Sport & Leisure**) and therefore Ms Creaser does not satisfy the AOC imposed upon Paddock House
- III. Rearing game for sport and leisure is not read into S336 definition of agriculture as case officer Saunders is patently aware, and whilst Westfield Farms owns land that is used for arable crops, we understand that such crops are grown and tended by other local farmers and not by Ms Creaser as has been claimed, further to which, this arable growing activity is subordinate to Westfield Farms core business of breeding game birds for the gun which is Sport & Leisure.
- IV. Case officer Saunders is altogether aware that Paddock House offers no material logistical benefit to Ms Creaser's place of work when compared with her current home at Ruffa Lane Pickering as was proven by the Employment Proximity Mapping evidence we supplied with the application that was unnecessarily and unreasonably redacted by case officer Saunders.

Keane-Creaser

- a) *As case officer Saunders is aware, according to Council Tax records, Mr Keane and Ms Creaser live at Ruffa Lane Pickering, which is located within easy reach of Keane-Creaser's places of work, accordingly, neither party possess any Genuine Agricultural, Forestry or Local Housing Need for Paddock House.*
- b) *As case officer Saunders is fully aware, neither Mr Keane or Ms Creaser are employed in Agriculture or in Forestry and therefore would Not Satisfy the AOC that is imposed upon Paddock House.*
- c) *As case officer Saunders is aware, both parties live in suitable accommodation within the locality and therefore do not possess any form of Genuine Local Housing Need for Paddock House.*
- d) *For all the above reasons, the Keane-Creaser CVC decision Ref; NYM/2019/0103/CVC is flawed and thereby unsafe.*
- e) *Despite being aware of the above, case officer Saunders has inappropriately championed Keane-Creaser interest in Paddock House throughout the market assessment and application process.*

The NPA's Director of Planning has visited Westfield Farm which is evidently an extensive arable farm, in addition to the pheasant rearing aspect, and he is satisfied that this is an agricultural enterprise, albeit with a game breeding element to the business.

The Authority is not aware that the appellant's agent has visited the farm itself, rather is purely relying on the website advertising for the game breeding element of the business (it would be unusual and unnecessary for the arable side of the business to be advertised in the same manner).

6.6 This offer verifies that an interested party who clearly meets the restriction has attempted and until recently was still attempting to purchase the property with the restriction in place.

This recently rejected offer needs to be taken into consideration with this current appeal.

The points raised in sections 6.5 and 6.6 above were further demonstrated by objections received in relation to the planning application to which this appeal relates (full copies of which were attached with the initial appeal questionnaire documents).

Our Reply

The above brings rise to a number of observations; as follows:-

If case officer Saunders had exercised reasonable due diligence when processing the Keane-Creaser CVC application, there would have been no need for the Director of Planning to take the extraordinary step of personally visiting Westfield Farm.

Further to the above it must be noted that Mr France (Director of Planning) is not qualified MRICS, or MAAV, despite which we are expected to believe or take at all seriously the opinion of a person who claims to have visited Westfield Farm, simply looked over the hedge and determined what the farm comprise and how it is operated, without applying any form of standard man day calculations relating to acreage, stock and crops that is unknown by Mr France.

Case officer Saunders attempts to shed doubt upon our knowledge of Westfield Farm and suggest that we only relied upon that which appears on their website, in answer to which we confirm that we are aware of the following:-

According to Land Registry Westfield Farm Comprise 157.3 acres which is mainly put to the breeding of game birds for sport and Leisure within buildings and breeding pens upon the land they own which are rotated to ensure the land remains in good heart. The rearing pens and footprint scars can be seen on the Google Map we provided with the application.

- 1) Westfield Farm grow their own feed for their game birds upon land at the farm as shown upon the Westfield Farm Google Map we provided with the application.*
- 2) Westfield Farm is renowned nationwide to be a substantial breeder of game birds for the gun (Sport & Leisure) since 1953.*
- 3) The arable land at Westfield Farm is de minimis by comparison to the game bird breeding business as can be seen on the Google Map we provided with the application and amplified by information available on the Westfield Farm website.*

6.7 Objections were received from two separate parties who unsuccessfully attempted to purchase the property. One party was the couple referred to in 6.5 above, one of whom works for the Forestry Commission and the other being the Assistant Farm Manager at Westfield Farm, Cropton.

The Forestry Commission worker has Cropton Forest (the forest immediately adjacent the application site) as his main place of work and he explained that he needs to live in the area for various reasons, including dealing with fires and timber protection, species management for the protection of the growing timber stands, completing environmental assessments 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. The Assistant Farm Manager explained that she runs the arable side of the farm business, 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.

Our Reply

It is noted that case officer Saunders has reinvented the duties of a 'Wildlife Ranger' to fit with the flawed CVC decision that both she and Mr France, (the Director of Planning) were responsible for, and by virtue of what case officer Saunders has written, it is blatantly obvious that Mr Keane has been schooled as to what he needed to say within his latter objection due to the remarkable similarity in the language used by Saunders and Keane.

The other objector stated that he tried to view the house with the intention of making an offer but was told by the appellant's agent that he did not meet the criteria, even though he advised that he was a farmer with a holding number in the locality.

Our Reply

Although the 'Other Objector' claims to have had a holding number, the Agricultural Housing Need Questionnaire that he completed clearly indicated that:

- 1. Mr Davison claimed to live at Highfield, Whitby Rd, Pickering which is a residential address.*
- 2. When Mr Davison completed his agricultural housing needs questionnaire, he claimed to own 20 acres of grassland including a dwelling that he occupied.*
- 3. He also claimed to work 20 hours per week but failed to confirm what activity was being conducted upon the land, or where the land was located.*

Given the above, it is clear that Mr Davison did not possess an agricultural, forestry or local housing need for Paddock House.

6.8 Requirements of the Agricultural Occupancy Condition.

The appellants' agent argues that in order to comply with an agricultural occupancy condition, a prospective occupier must be in housing need and must demonstrate that there is no other suitable housing available in the locality. **However, these criteria relate to evidence required by policy when considering an application to construct a new agricultural workers dwelling** on a particular farm holding.

Our Reply

The above statement made by case officer Saunders is wholly incorrect in that appellants' agent (This Firm) has not argued, "that in order to comply with an AOC a prospective occupier must be in housing need". The appellant's agent correctly argues that the wherewithal to comply is not indicative of agricultural need which is the test applied in cases of this nature, which is a view upheld at appeal.

This is set out in Core Policy J of the Core Strategy, Policy CO10 (Housing in Open Countryside) of the Draft Local Plan and Paragraph 79 of the NPPF. It is acknowledged that a proposal for the construction of a new house in the open countryside would have to meet these tests and would only be permitted if these criteria (and others relating to financial and functional tests) were met.

However, this proposal is not for the construction of a new dwelling in the open countryside and consequently, those policy criteria do not apply. Further advice is contained in National Planning Policy Guidance in "Housing needs of different groups" and sets out that evidence is required for new dwellings, of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise.

6.9 The occupancy restriction attached to such dwellings reflects the special circumstances under which such new dwellings in the open countryside are approved (as set out in Paragraph 6.8 above) and seeks to ensure that such dwellings continue to be available for this purpose even if the requirement on the holding it was originally built to serve has changed. Consequently, the agricultural/forestry worker occupancy condition does not require a person to be in housing need or to demonstrate that no other properties are available, just that they are 'solely or mainly employed, or last employed in the locality in agriculture or in forestry.'

6.10 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 or forestry from moving into this property. As set out in 6.9 above, 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.

6.11 Forestry Workers and compliance with the occupancy condition

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**'.

Reply

*The above is yet another example of case officer Saunders palpable ignorance of this type of case, in that the AOC requires that an occupier must be **Solely or Mainly Employed in Agriculture or in Forestry within the Locality**, which means something totally different to simply being **Employed**.*

As we know, Solely or Mainly defines the degree of Employment needed to satisfy the AOC imposed, in this case upon Paddock House, and whilst genuine need is the test applied for new agricultural dwellings, the lack of genuine need is the test relied upon to remove such conditions as is held in all appeal decisions, NYM policies, NPPF guidelines and relevant circulars.

There is no definition within the Act relating to forestry, however it should be noted that the condition to which this appeal relates 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.

Reply

This could and has been the subject of argument and debate either way, and if it is that the reference to woodland (Read Forest) within S336 definition of agriculture has no meaning or useful purpose, and it is that Forestry stands on its own without definition, we must accept that this can present problems, accordingly we must rely upon Case Law and Appeal decisions to guide the way which we have in this case provided such clarity in Appeal Decision Ref: 2148731 wherein the inspector held that:

“There is no statutory definition of forestry in S336 of the Town and Country Planning Act 1990. An ordinary dictionary definition of forestry is the planting and managing of trees. Forestry is not an agricultural activity for the purposes of the 1990 Act except for ancillary woodland use. The Secretary of State gave a view that forestry would include growing, management, cutting and uprooting of trees and clearing of undergrowth”.

It is clear to me that case officer Saunders has read the above and reinvented the duties of a ‘Wildlife Ranger’ to harmonise with that underlined, in a desperate and clumsy attempt to justify the flawed and unsafe Keane-Creaser CVC decision that she was responsible for.

6.12 Retired Workers

The condition also applies to last employed, thereby being available to local retired agricultural or forestry workers. As such these types of dwellings provide an important part of the National Park’s housing stock which particularly allows older generation farmers or forestry 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.

Reply

It is held that persons who have or are retiring from agriculture do not possess an agricultural need, as if this were the case all persons retiring from agriculture could, and most likely would, submit an application for such accommodation upon the existing holding on those grounds, which as we know would most likely be refused unless exceptional circumstances prevailed.

Notwithstanding the above, it is reasonable to expect that a retired agricultural worker should not find him or herself out in the cold, which is rather an unlikely scenario, as if they are housed upon a farm in rented accommodation they are protected under the rent act agriculture, conversely if they own the dwelling and wish to step aside and give their home to the next generation and buy another property elsewhere, then it follows that the raft and constant ready supply of more affordable housing within the locality than Paddock House with the AOC taken into consideration would serve such a retirement need or needs that may arise from time to time in the future, accordingly, case officer Saunders argument is simply absurd.

6.13 Removal of condition to allow an open market dwelling.

The appeal proposal seeks permission to remove the condition in its entirety to provide an open market dwelling. The reason put forward by the appellant's agent is that the house has been inherited by the appellant who works in an industry outside of agriculture or forestry, and who owns and lives in a property elsewhere; and therefore does not require the appeal property. However, as set out in Sections 5.2 and 5.3 above, even if it was considered that satisfactory evidence had been submitted to demonstrate that the property could not be sold to someone complying with the agricultural or forestry worker condition, the removal of the condition and creation of an open market dwelling would be contrary to adopted planning policy.

Our Reply

Howsoever the appellant came into possession of the property is irrelevant here, as we provided the Authority with substantive evidence that Paddock House serves no useful purpose from an Agricultural, Forestry or Local Housing Need perspective, it is therefore clear that case officer Saunders is being intentionally blind to the Needs Tests applied in this type of case that populates all NYM Policies, accordingly as it can be assumed that case officer Saunders can read and understands the simplicity of the word 'Need', I can only conclude that case officer Saunders is being disingenuous, intentionally obstructive and transparently divisive in the language she has employed in the Authority's reply to the appellant's appeal.

The Authority's adopted policies require that if satisfactory evidence is provided that there 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 of the Core Strategy, and also Policy CO16 of the Draft Local Plan, to ensure that the property continues to meet local housing needs. No marketing exercise has been undertaken for a Local Occupancy Dwelling in relation to this property so it hasn't been determined that there are no prospective purchasers who would meet the local occupancy criteria wishing to purchase the property. Comments on Grounds of Appeal and Claim for Costs

7.1 It is considered that the material planning issues of this case are relatively straightforward and are adequately addressed in Section 6 above. The volume of information provided by the appellant does not circumvent the relatively straightforward, clear and correct planning judgements involved. Accordingly The Local Planning Authority does not feel it is necessary to make any further comments in relation to the appellants Statement of Case at this stage, but will provide any additional information requested as part of this Appeal.

7.2 In response to the appellants Costs Claim, the Local Planning Authority would comment that the Authority has considered the appeal proposal correctly in the context of adopted and emerging planning policies, national policy and on the evidence before them of genuine interest from interested parties complying with the agricultural and forestry occupancy restriction. The LPA does not believe it has behaved unreasonably in refusing the planning application to which this appeal relates.

The appellant has not applied relevant policies correctly and has refused/failed to recognise the relevance of the existence of parties that satisfy the occupancy restrictions and are seeking to purchase the property. Consequently, the Authority contests the claim for costs.

7.3 The Authority believes a relevant and aggravating factor in this matter has been the behaviour of the appellant's planning agent, who has sought to get around relatively straightforward and clear planning judgements by whatever means possible, including a lengthy failed process of corporate complaints. The agent, PSi Planning Law, operates in part through website www.agtiesremoved.com

Our Reply

*It is extremely alarming that case officer Saunders and all other staff that have involved themselves in the appellant's application and this appeal, including the Director of Planning (Mr France) and the Authority Solicitor (Mr Smith) have collectively failed to grasp the fundamental issues involved in this case, and despite being capable of reading, refuse to accept decisions held at appeal, clear information contained within NPPF guidelines, Circulars and NYM policies, within which the **Need Test** populates all but every paragraph which is written on the subject of the removal of an AOC under S73, the denial of which has provoked no less than six stage 2 complaints that were rejected out of hand by the involved parties which has caused unreasonable stress and unnecessary expense to the appellant, accordingly we feel the claim for costs to be awarded is completely justified.*

We are proud of the service and track record that we have provided to the public over many years and like any other reputable business have a website these days, accordingly I'm not sure what case officer Saunders point is by making such a bizarre comment, which is likely to be yet another grubby attempt to defame this firm in some way, as with the inappropriate comment regarding my aggravating behaviour.

Accordingly, to set the record straight I confirm that I do not tolerate unreasonable overbearing attitude and unprofessional behaviour from any Local Authority, and will exercise my duty of care to the public to bring such bad behaviour and incompetence to task.

8.0 Conclusion

8.1 In conclusion it is considered that whilst the property was marketed for 18 months until autumn of 2019, at a reasonable asking price, the appellant has continued to refuse to sell the property to a qualifying person who has repeatedly offered the asking price to purchase the property. Furthermore, whilst the appellant's agent has continually argued that the appellant would not sell to the prospective purchaser as he did not consider they complied with the occupancy restriction, he subsequently emailed that prospective purchaser and offered to sell the property to him if he paid 40% above the asking price – see Appendix B.

8.2 Furthermore, the appellant's agent has made it clear that even if it was accepted that there was no longer an agricultural need, he would not accept a local occupancy restriction as a substitute, which would be contrary to adopted Policy.

8.3 In view of the above consideration the LPA respectfully requests that the Inspector dismisses the appeal. However, should the Inspector be mindful to allow the appeal, a list of conditions which the LPA would wish to see imposed are attached at Appendix A.

Conditions

The first suggestion is to vary the condition so that it reflects the updated Agricultural Occupancy condition in accordance with Core Policy J of the Local Development Plan or Policy CO10 of the Draft Local Plan (due to be adopted on 27th July 2020), as follows:-

A. 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 336 of the Town and Country Planning Act 1990 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order), or in forestry, or other essential land management activity, or a dependant of such a person residing with him or her, or a widow or widower of such a person.

OR

Local Occupancy Condition as required by Development Policy 22 of the Local Development Plan or Policy CO16 of the Draft Local Plan

B. 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 Policy of the adopted North York Moors Local Plan, namely that he/she:

- a. Currently resident in the National Park, having been resident in the Park for at least the previous 3 years; or
- b. Currently in employment in the National Park; or
- c. Having an essential need to live close to relative(s) who are currently living in the National Park; or
- d. Having an essential requirement for substantial support from relatives who are currently living in the National Park; or
- e. Former residents whose case for needing to return to the National Park is accepted by the Authority.

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. Note A: For the purposes of the above, a person has an interest in the dwelling if he/she has a freehold or leasehold interest in the whole or any part of it, or is a secure tenant or statutory tenant within the meaning of the Housing Act 1985 or the Rent Act 1977.

Note B: For the purposes of the above, resident within the National Park will include the whole of parishes split by the National Park boundary with the following exceptions:: Allerston, Beadlam, Burniston, East Harlsey, Ebberston and Yedingham, Great Ayton, Great and Little Broughton, Great Busby, Guisborough, Irton, Kirkby in Cleveland, Kirkbymoorside, Lockwood, Nawton, Newby Pickering, Potto, Scalby, Snainton, Sutton under Whitestonecliffe. In these cases a qualifying residence must be strictly within the National Park boundary.

Correspondence from Prospective Purchaser

The copy of an email below from the appellant's agent, to the prospective purchaser, has been sent to the Local Planning Authority by the prospective purchaser, who has given the LPA written consent to submit as part of its statement (but has also submitted it directly to the Planning Inspectorate).

This email demonstrates that whilst the appellants case is based on the fact that he wouldn't sell the house to someone he didn't think complied with the condition, he then offered to sell the house to that same prospective purchaser, but for £110,000 more than the asking price of £275,000, that was advertised on the Estate Agents website.

Our Reply

After the Authority had refused the appellant's planning application, Mr Keane continued to pester the Appellant via his estate agent, asking them if they would speak with the vendor and enquire if he would accept a higher offer for Paddock House, and as the appellant's estate agent had withdrawn their services due to the questionable pressure they felt under from the Authority, I proposed a figure to Mr Keane which is nothing to do with the Authority nor do I feel it has any relevance to this Appeal.

In consideration of all the evidence we presented with the application and subsequently in this Appeal, we respectfully request that this appeal is allowed, in which eventuality the Appellant would be happy to agree to Paddock House being limited to a Principal Residence Condition only.