Appellants response to LPA's Grounds of Appeal

General comments

1.1 The application was validated with 'holiday use' in the development description. Holiday use was invited into the title by the LPA which was subsequently considered under Development Policy 21 where a straightforward 'same use' development is sought.

1.2 The application was:

- submitted on 4 June 2018 (copies already supplied).
- the agent sent an email to the LPA confirming inclusion of holiday use on 6 June 2018 (copy supplied).
- Acknowledgement of the application was received 8 June 2018 (the first and only acknowledgement received) (copy supplied).

Clearly, holiday use was being considered during the full application period.

Key facts in relation to:

Paragraph 3.6 – The LPA are aware of the specific circumstances of the case and that the proposed use(s) are to remain the same as part of this proposal. This is confirmed at paragraph 4.2 of the LPA Grounds of appeal.

It has been confirmed that the application would be dealt with under Development Policy 21 of the NYM Local Development Framework as a local occupancy dwelling with holiday use. Development Policy 21 restricts replacement dwellings to 'local occupancy' but does not state anywhere within the policy or the supporting text that it is preventative or that it will remove other 'existing' uses.

Guidance received from the LPA suggests that the building should appear more temporary in recognition of its current appearance. Although size, scale and design was discussed during pre-application engagement no guidance was given with regard to the replacement structure potentially falling outside of Development Policy 21 or that a better quality development could mean the development would no longer be classed as being appropriate for holiday use or dual use within the policy remit.

Paragraph 5.5 – Sets out the full wording of Development Policy 21 – the LPA would have been aware of this during pre-application discussions but didn't bring it to the forefront of the discussion.

Paragraph 5.6 – The application is being considered under the same policies (NYM Local Plan and updated NPPF2) that it was determined against during the 2017 application (NYM/2017/0340/FL) i.e. the same development plan in force where the same use(s) were not found to be in conflict with the development plan in force.

No material considerations have been provided by the Authority during pre-application discussions, the course of the application or during post decision documentation that would suggest otherwise.

Paragraph 5.7 – The scale and quality of the development is clearly being used as a means to prevent a future use which is currently sought. Holiday use is not an issue that has been raised by any of the statutory consultees including the Parish Council and is not the reason the application was triggered to planning committee.

Applications presented to planning committee generally take place where they are contrary to the development plan and at no point had the LPA mentioned that this was one of those such applications; where there are four or more comments which would go against the recommendation and where a statutory consultee comments are contrary to the recommendation.

In this case, the only reason that the application needed to be presented to Members of the planning committee was in view of the Parish Council raising comments about the scale, volume and design and not about future use.

Paragraph 6.1 – The appellant is fully aware of the imposition of the local occupancy condition having purchased the property with the restriction applicable and does not wish to contest this.

Paragraph 6.5 – The appellant had made it clear during pre-application discussions that the same pragmatic approach would be used for the replacement building, the same approach that had been accepted only some months earlier during the 2017 application to include holiday use.

The Inspector is reminded that the application was validated as a Development Policy 21 proposal with holiday use in the title of development as invited by the LPA. No material circumstances have changed with regard to 'use'.

Paragraph 6.6 – Does this mean therefore that the LPA are penalising the appellant for making significant improvements to the landscape and landscape setting of the NYM National Park and as a result of this they are able to remove holiday use.

Paragraph 6.7 – At no point during the application up until two weeks prior to planning committee was it made clear that the specific reasons for allowing holiday use in the past would no longer exist due to the replacement building being of a better quality development, with three bedrooms and better quality living space, making it entirely suitable for permanent accommodation. Are the LPA qualifying therefore that they will only consider low grade accommodation for holiday purposes and not better-quality development.

Paragraph 6.9 – Whilst Development Policy 21 refers to the size and quality being the same as the dwelling it will replace it does not specifically mention that the quality of accommodation will also determine the suitability for future uses or that accommodation will only be suitable or appropriate for short, medium or long term accommodation.

Paragraph 6.10 – In response to NYM Local Plan emerging policies (not yet in force) the development is not for wholescale holiday accommodation. It is for dual purposes including local occupancy and holiday use.

Paragraph 7.1 - The LPA appear to make a case that the description of the development was amended during consideration of the application. It is confirmed in fact that this was done at the start of the application process with the application being validated on 4 June 2018.

Therefore, with the correct description from the start is the inference that the LPA were not clear what the appellant was asking for or that the LPA did not have an issue with the proposed uses being sought under Development Policy 21 of the NYM Local Development Framework.

From the 4 June 2018 to 4 September 2018 no contact was made with the appellant or the appellants agent regarding any potential issue with holiday usage.

The LPA seem to contest that it was an 'administrative error' that led to the decision notice being incorrectly worded. It wasn't until the appellant, the appellants agent and the appellants planning consultant queried this post issuing of the decision that it was discussed with the Authority's solicitor. To the appellant this is much more than an 'admin error' given the extended consultation timeframe with zero feedback on this issue until 2 weeks before committee.

The Parish Council didn't object to holiday lettings at any point, yet their objections on other aspects were the reason given to the appellant by the LPA why the determination deadline had to be extended to allow further consultation (…'I doubt you can overcome all of their objections but you might be able to resolve some…').

If holiday letting was not an issue to the Parish Council, why did it only become an issue for the LPA so late in the day? Surely, this is a material consideration which should have been flagged when the application was validated or earlier in the application process.

Paragraph 7.2 - Again no acceptance that the issue with holiday letting was raised by the LPA at the end of the extended consultation process. The committee report has clear conditions pertaining to local occupancy which are not contested and are accepted by the appellant …. but as the decision notice also allows holiday lets then it is queried why the appellant would expect restrictions on something that has clearly been approved?

The fact that the published agenda for the September Committee meeting includes in the application title 'holiday use', it is expected the official minutes of this meeting would make reference to the fact that this element of the application was not approved.

There is no reference to this aspect whatsoever in the published minutes, so it is contested that the LPA cannot argue that the minutes reflect the decision that was made? It is also telling that when the LPA wrote to the Parish Council on 15 November 2018 giving reasons why they had overruled their objections to the scheme, holiday lettings was not cited as an issue in the letter. The only reason that this was flagged at this point was because the LPA had changed the development description by removing holiday use. It was then that the appellant queried why the letter didn't explain to the Parish Council why this element had not been approved.

Paragraph 7.3 – The two examples which the LPA directed the appellant towards are nearby log cabins and are not barn conversions (Lowfield Log Houses). It is queried that if the LPA knew the proposal was for a good quality timber construction from the outset …. why did they not flag policy DP21 and prevention of holiday lettings earlier in the process?