

**Dawn Paton**

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**From:** Vicky Taylor on behalf of General  
**Sent:** 27 March 2017 14:57  
**To:** Planning  
**Cc:** Cheryl Ward  
**Subject:** FW: OBJECTION LETTER: VARIATION OF CONDITION 2 (MATERIAL AMENDMENT) OF PLANNING APPROVAL NYM/2015/0014/FL TO REGULARISE CHANGES TO EXTENSION, DECKING AND BOILER ROOM, RAISED GROUND LEVEL, WATER DRAINAGE AND WALL ENCLOSING RAISED PATIO AREA  
**Attachments:** Objection Letter.pdf

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**From:** Bradley Stovell  
**Sent:** 27 March 2017 14:30  
**To:** Cheryl Ward  
**Cc:** General; 'John Ventress'  
**Subject:** OBJECTION LETTER: VARIATION OF CONDITION 2 (MATERIAL AMENDMENT) OF PLANNING APPROVAL NYM/2015/0014/FL TO REGULARISE CHANGES TO EXTENSION, DECKING AND BOILER ROOM, RAISED GROUND LEVEL, WATER DRAINAGE AND WALL ENCLOSING RAISED PATIO AREA

FAO Mrs C Ward,

Please find attached a copy of our objection letter on behalf of Mr & Mrs Ventress who live at Dunsley Lodge for your consideration.

Kind regards,

**Stovell & Millwater Ltd**  
Chartered Planning Consultants  
5 Brentnall Centre  
Brentnall Street  
Middlesbrough  
TS1 5AP



Web: [davidstovellandmillwater.co.uk](http://davidstovellandmillwater.co.uk)

P Consider your responsibility to the environment - think before you print

Your ref: NYM/2017/0016/FL  
Our Ref: BDS/NYM/17/002  
Date: 27 March 2017

North York Moors National Park Authority  
The Old Vicarage  
Bondgate  
Helmsley  
York  
North Yorkshire  
YO62 5BP



FAO Mrs C Ward

**OBJECTION LETTER: VARIATION OF CONDITION 2 (MATERIAL AMENDMENT)  
OF PLANNING APPROVAL NYM/2015/0014/FL TO REGULARISE CHANGES  
TO EXTENSION, DECKING AND BOILER ROOM, RAISED GROUND LEVEL,  
WATER DRAINAGE AND WALL ENCLOSING RAISED PATIO AREA**

We write to object to the above planning application (ref: NYM/2017/0016/FL). We have been instructed by Mr & Mrs Ventress who live at Dunsley Lodge and own Gardeners Cottage, which adjoins the application site to the north and west respectively. They have serious concerns over this proposal and have asked that we substantiate their concerns in relation to the relevant planning policy context. They also have concerns over the manner in which the approved application (ref: NYM/2015/0014/FL) was determined and its validity.

This letter deals with our clients objection to the current application first. This is followed by concerns over the manner in which the approved application has been determined and its validity, and the effect this could have on the current application.

We have viewed the various application documents on the LPA's website and are generally familiar with the area and the circumstances of the application site.

**Main issues**

The Officer Report for the approved application highlighted three issues; the principle of the use, the effect on the character and appearance of the area and the effect on the amenities of neighbouring properties. The development has now been completed. The development has not been constructed in accordance with the approved plans and an application has been submitted to regularise the current position. Our client has no concerns over the principle of the use, however given the existing situation our client has serious concerns over;

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- (i) The effect the development has on the character and appearance of the area, and
- (ii) The effect on the living conditions of their property

Under other matters we consider security issues that have arisen from the development.

### **Planning Policy and Context**

The relevant NYM Local Plan Policies to consider with this application are Core Policy A (Delivering National Park Purposes and Sustainable Development), Development Policy 1 (Environmental Protection), Development Policy 3 (Design), Development Policy 14 (Tourism and Recreation) and Development Policy 19 (Householder Development), together with the advice contained within Part 2 of the Authority's adopted Design Guide.

Core Policy A seeks to further the National Park purposes and duty by encouraging a more sustainable future for the Park and its communities whilst conserving and enhancing the Park's special qualities.

Priority will be given to:

- 1 Providing a scale of development and level of activity that will not have an unacceptable impact on the wider landscape or the quiet enjoyment, peace and tranquillity of the Park, nor detract from the quality of life of local residents or the experience of visitors.
- 2 Providing for development in locations and of a scale which will support the character and function of individual settlements.
- 3 Maintaining and enhancing the natural environment and conditions for biodiversity and geodiversity.
- 4 Conserving and enhancing the landscape, settlement, building features and historic assets of the landscape character areas.
- 5 Applying the principles of sustainable design and energy use to new development.
- 6 Enabling the provision of a choice of housing that will meet the needs of local communities in terms of type, tenure and affordability.
- 7 Strengthening and diversifying the rural economy and providing tourism based opportunities for the understanding and enjoyment of the Park's special qualities.
- 8 Enabling access to services, facilities, jobs and technology whilst minimising the environmental impacts of transport.

Development Policy 1 the NYM Local Development Framework states to conserve and enhance the special qualities of the North York Moors National Park, development will only be permitted where it will not have an unacceptable adverse impact on surface and ground water, soil, air quality and agricultural land and there will be no adverse effects arising from sources of pollution which would impact on the health, safety and amenity of the public and users of the development.



Development Policy 3 of the NYM Local Development Framework seeks to maintain and enhance the distinctive character of the National Park, development will only be permitted where the siting, orientation, layout and density preserves or enhances views into and out of the site, spaces about and between buildings and other features that contribute to the character and quality of the environment. Furthermore, the Authority seeks a high standard of design detailing whether traditional or contemporary, which reflects or complements that of the local vernacular.

Development Policy 14 seeks to ensure that new tourism development and the expansion or diversification of existing tourism businesses will be supported where the proposal will provide opportunities for visitors to increase their understanding, awareness and enjoyment of the special qualities of the National Park; where the development can be satisfactorily accessed from the road network (by classified roads) or by other sustainable modes of transport including public transport, walking, cycling or horse riding; where the development will not generate an increased level of activity; where it will make use of existing buildings and where proposals for new accommodation do not have an adverse impact on the character of the local area.

Development Policy 19 of the NYM Local Development Framework states that proposals for development within the domestic curtilage of a dwelling will need to take full account of the special qualities of the Park's nine landscape character areas and architectural character of settlements and will only be supported where the scale, height, form, position and design of new development does not detract from the character and form of the original dwelling or its setting in the landscape.

#### Effect on the Character and Appearance of the Area

The main concern regarding the appearance of the building relates to the plastic cladding that has been used extensively throughout the development. The approved application specified prefinished textured weatherboarding. The approval notice under condition 7 clarified the matter stating "*No work shall commence on the timber cladding of the development hereby permitted until details, including the design and fixing of the timber cladding including samples if so required have been submitted to and approved in writing by the Local Planning Authority.*" The Councils reason for the including the condition was "*to comply with the provisions of NYM Core Policy A and NYM Development Policy 3 which seek to ensure that building materials are of a high quality and compatible with the character of the locality and that the special qualities of the National Park are safeguarded.*" (our underline). We assume the LPA included reference to timber as they felt anything else would be inappropriate. Given the work that has been carried out we assume that condition 7 was never discharged. The use of plastic on a historic rural building that forms part of a larger group of attractive buildings is wholly inappropriate. The large rear extension is completely clad in the plastic as is the boiler room alongside the property. Further the front entrance porch has been clad in the same plastic. This is not shown on the plans that have



been submitted. We would expect that drawings submitted to regularise the current position should show the current position accurately.

Supporting text for Policy DP3 states *"New development should respect existing settlement character, patterns and layouts and the principles of traditional building design in order to ensure that the character and local distinctiveness of the built environment is maintained and the landscape of the Park conserved and enhanced."* The rear extension is essentially a plastic box that has been added to the end of the existing stone building. Nothing in the design of the extension respects the traditional building design. We acknowledge that contemporary design can sit alongside traditional. However for this to work it is essential that the materials used are complimentary. Plastic is not. In this location there is a strong character and local distinctiveness which is eroded by the use of plastic.

We consider that the use of plastic cladding on the development has a significant effect on the character and appearance of the area and its use would be contrary to policies DP3, PD19 and advice contained within Part 2 of the Authority's adopted Design Guide.

#### **Effect on Living Conditions**

Our clients main concern regarding the effect on their living conditions is due to the height and location of the decking to the rear of the property. The position that has been created is one that is significantly different to what existed before. Before the decking was erected the properties were separated by a 2m fence. The height would have been the same on both sides, meaning anyone in the garden of the cottage would not be able to see our clients property. Our clients enjoyed a high degree of privacy in secluded location. The decking has been erected 1.55m from the bottom of the fence leaving a barrier that is 0.45m above the level of the decking. This elevated position and lack of screening around the decking creates a viewing platform for the occupiers in which they could look directly into our clients home. There are a number of windows of habitable rooms that face the development. The windows are large and it would be easy for any occupiers of the holiday cottage to look in to these rooms.

The decking is an integral part of the holiday cottage and likely to be well used by most occupiers that visit with regular noisy activity. It provides a platform for overlooking our clients property where none existed before. They have enjoyed a level of privacy that is now materially harmed. Good neighbourliness and fairness are among the yardsticks against which development proposals can be measured.

Supporting text for Policy DP3 *"The safety and security of potential users of new development are an important consideration which should be taken into account at an early stage in the design process. Incorporating features that address this issue will help to contribute to a high quality and safe environment for all."* Our clients also has safety concerns over the height of the decking in relation to their fence. The top of the fence is only 0.45m above the level of the decking. On our clients land the drop from the top of



the fence is 2m. Under the Building Regulations Part K it would be expected that any guarding should be at least 1.1m in height to protect from falling. It is clear to us this relationship would raise safety issues especially when there is potential for young children to be present. It would seem that there is a requirement under Policy DP3 for the LPA to consider this issue and we believe that suitable guarding should be provided around the decking to protect from falling.

We believe given the height and location of the decking there would be an effect on the living conditions of our clients at Dunsley Lodge. We believe the proposal would be contrary to Core Policy A and Policy DP3 in this regard.

## **Other**

### *Security*

As discussed above the boundary between the properties was defined by a 2m timber fence before the development was completed. The height of the fence above the level of the decking is now only 0.45m. This makes it a lot easier to access our clients land. This has already occurred once when the applicant accompanied by two of his employees cut down as much vegetation as they could on our clients land from the decking area. One of them then scaled the fence and continued cutting the trees and shrubs previously unreachable. The presence of the hotel means there are many people visiting the site on a daily basis. It is not always possible to know for what reason the people are there and the current position would easily allow anyone that might have ulterior motives to access of our clients land. A position which our clients believe is unsatisfactory and makes them feel vulnerable given the previous trespass.

It would seem to us the current height and location of the decking would create a potential crime problem, giving a feeling of insecurity and reducing the quality of life that Mr & Mrs Ventress could reasonably be expected to enjoy. We believe the proposal would be contrary to Core Policy A and Policy DP3 in this regard.

## **Conclusion**

We believe the inclusion of plastic has a significant effect the character and appearance of the area and the inclusion of decking given the height and location would have an effect on the amenity of our clients. Also we believe the development gives rise to issues of security.

## **Approved Application (ref: NYM/2015/0014/FL)**

We discuss below our clients concerns over the manner in which the approved application has been determined, in particular regard to the issue of drainage and the inaccuracies of the drawings. We also discuss whether the development has been lawfully implemented and the effect this could have on the current application.



### **Drainage**

The approved application stated that drainage would be dealt with by the mains sewer. The area has no mains sewer. Dunsley Hall Hotel and the other dwellings are served by a septic tank that is now located on land owned by Mulgrave Estates to the north. The septic Tank was installed a number of years ago when the Hall was a residence. Since the Hall has been converted in to a hotel problems with the septic tank have arisen and these are presently being investigated. The issue has arisen due to the increase in the amount of foul sewerage that is being discharged in to the septic tank. Any foul discharge from further properties needs to be considered. Unfortunately the LPA did not consider this issue even though it was highlighted at the committee meeting by Mr Ventress when he addressed the members and officers regarding the application.

Since then the development has been completed and the property has been connected to the existing septic tank without any examination of the effect this could have. No doubt this extra discharge is only going to further exacerbate the current problems.

DP Policy 1 states that *"development will only be permitted where It will not have an unacceptable adverse impact on surface and ground water, soil, air quality and agricultural land and there will be no adverse effects arising from sources of pollution which would impact on the health, safety and amenity of the public"*. Given the connection to the existing septic tank this policy should have been considered when determining the approved application. Given the current problems and the extra discharge from the cottage there could be a real adverse impact on the land around septic tank which could lead to other environmental issues.



The lack of scrutiny has now led to a position where there could be an adverse impact on land from sources of pollution. Further to this the owners of the dwellings and Dunsley Hall Hotel pay a maintenance fee to Mulgrave Estate to maintain the septic tank. The owners of the holiday cottage have connected to an existing septic tank which is not on their land, which they do not own and which they are not paying a fee for the maintenance. It seems to us this has created a wholly unsatisfactory position for all concerned and one which could only be rectified by the submission of a full planning application to regularise the position.

In our experience it would normally be the case where there were uncertainties over the drainage that a condition would be included to request details of the connection before development could commence. It would not have been unreasonable given the advice from our client to committee members and officers that this should have been done.

### **Drawings**

The drawings that accompanied the approved application did not accurately represent the land levels of the existing situation at the time. The land

slopes down significantly from the south to the north of the site. The difference in the land levels would have been about 1.5m. This was not represented on the existing drawings and given the absence of levels would have been difficult to envisage the final development. Certainly the relationship at the boundary between our clients land and the proposed decking was incorrect. The issues that are raised by the location and height of the decking would not have been able to be determined in a satisfactory manner as the officer would not have had the correct information to make an informed decision at the time.

We also have concerns over the drawings that have been submitted as part of the application to regularise the position. As we have stated already the drawings do not show the plastic cladding to the front of the property. Also again the relationship at the rear of the property where the decking is positioned to our clients land is not correct. We feel the only way to provide an accurate position of the development would be for levels to be taken and included on the drawings.

### ***Lawful Implementation***

We have concerns over whether or not the planning permission has been lawfully implemented, which raises concerns on the validity of the current application. It would seem from a search on the LPA's application portal condition 7 of the original approval was never discharged. The condition states:

*"No work shall commence on the timber cladding of the development hereby permitted until details, including the design and fixing of the timber cladding including samples if so required have been submitted to and approved in writing by the Local Planning Authority. The materials used shall accord with the approved details and shall be maintained in that condition in perpetuity unless otherwise agreed with the Local Planning Authority."*

There is a lot of case law regarding conditions precedent and the implementation of planning permissions. It seems to us that the issue on whether the development has been lawfully implemented relates to whether condition 7 can be considered as a condition precedent.

Justice Sullivan, in the case of R (on the application of Hart Aggregates Ltd) v Hartlepool Borough Council [2005] EWHC 840 (Admin), distinguished between conditions which were true "condition precedents" in the sense that it required something to be done before development is commenced and which went to the heart of the planning permission and conditions which were not true "conditions precedents" in that they required something to be done prior to commencement of development but did not go to the heart of the planning permission.

A further distinction was made between a condition that expressly prohibited any development before a particular requirement (e.g. No development shall commence until a landscape scheme has been submitted to and agreed in writing with the local planning authority) and a condition





which states the particular requirement should be undertaken prior to development (e.g. A landscape scheme shall be submitted to and agreed in writing with the local planning authority prior to commencement of development).

In view of the above, whether a condition is a true condition precedent can be established by reference to the following factors:

1. Does the condition prohibit any development until compliance with the requirements? If so, then it is likely to be a true condition precedent unless factor 2 below can be evoked; and
2. Does the condition go to the heart of the permission? If the condition relates only to either minor aspects of the development or one particular aspect, then there is an argument that even if the condition is prohibitive in nature (i.e. fulfils 1. above) it is not a true condition precedent.

Whilst factor 1 above is an objective test on the wording of the condition, factor 2 involves a subjective element as to the importance of the condition to the permission.

It would seem to us that condition 7 could be viewed as a true condition precedent attached to the approval as it prohibits development without compliance with it and also goes to the heart of the permission.

It follows that we consider the development has not been lawfully implemented as condition 7, which requires details and a sample of the timber cladding to be submitted to the LPA, has not been done.

If the LPA feel that the permission has not been lawfully implemented then we feel given the other issues it would be more appropriate for a full application to be submitted to regularise the position. This could then pick up issues regarding the drainage and remedy inaccuracies in the current application.

We ask that you take our considerations in to account when determining the proposed development.

Yours sincerely,

Bradley Stovell PGDip BSc  
David Stovell & Millwater

