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YO6 5BP

Your Ref: NYM4/029/0469D/PA
Our Ref: APP/W9500/A/01/1064908
Date: 5 September 2001

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY K M & N A PATTINSON
SITE AT SOUTH HOUSE FARM, FYLINGTHORPE, WHITBY, N YORKSHIRE, YO22 4UQ**

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

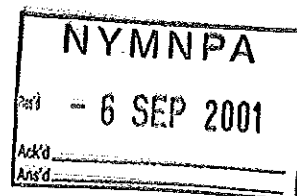
Quality Assurance Unit
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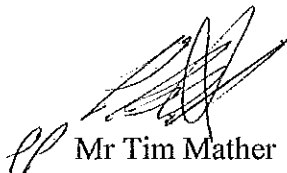
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Yours faithfully




Mr Tim Mather

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Appeal Decision

Site visit made on 24 August 2001

by **J S Deakin FRICS**

an Inspector appointed by the Secretary of State for
Transport, Local Government and the Regions

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Date **05 SEP 2001**

Appeal Ref: APP/W9500/A/01/1064908

South House Farm, Fylingthorpe, Whitby

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr K M & Mrs N A Pattinson against the decision of the North York Moors National Park Authority.
- The application ref: NYM4/029/0469D/PA, dated 14 December 2000, was refused by notice dated 22 March 2001.
- The development proposed is the removal of Condition 7 of decision NYM4/029/0469C/PA to allow holiday cottages to be independent of the farm at South House Farm, Fylingthorpe.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

Preliminary Points

1. Planning permission (NYM4/029/0469B/PA) was granted on 23 July 1999 for the conversion of redundant farm buildings to form two holiday cottages, subject to various conditions. Condition 7 stated that "None of the development hereby approved shall be sold off separately from the existing main dwelling and farm, known as South House Farm without the prior written approval of the local planning authority".
2. Another application (NYM4/029/0469C/PA) was then made to remove Condition 7 but the Condition was reimposed with a different reason, namely "The development is considered unsuitable to provide for residential accommodation as a unit separate from the farm, given it is located within a working farm yard and such a use may give rise to proposals for additional development to relocate the farm activity away from the proposed development, detrimental to the character of the area".
3. I am treating the current application as being made under Sec 73 of the Town and Country Planning Act 1990 to carry out development without complying with a condition subject to which the original application was granted.

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Main Issues

4. I consider that the main issues are the effect of the proposal on the living conditions of future occupiers with particular reference to noise and disturbance from the adjoining farm buildings; and whether it is necessary to impose Condition 7 in order to protect the character of the National Park.

Development Plan and other Planning Policies

5. The development plan includes the North Yorkshire County Structure Plan, and the North York Moors Local Plan which was adopted in 1992. Local Plan Policy BC12

says that proposals to convert a redundant non-residential building to a permanent or seasonal residential use will normally be permitted subject to the proposal satisfying various criteria. These include a requirement that the conversion is compatible in terms of its scale, use and the proposed level of activity with other buildings in the group.

6. The Deposit Draft Local Plan was put on deposit in November 1999 and a second Deposit in March 2001. The National Park Authority says that policies relevant to this appeal have not been subject to any challenge likely to impact on these policies as they relate to the appeal. The Plan is at a fairly early stage of the statutory process but is a material consideration to which I have given weight. Policy BE15 relates to the conversion of traditional rural buildings to tourist accommodation. BE15(3) requires the scheme to be compatible with the character of the locality and the wider area, and (4) says that adequate standards of residential amenity should be provided without the need for significant extensions or external alterations. Policy GP3 states that a proposal should not have an unacceptable impact on the locality, public amenity, the operation of surrounding land uses etc.
7. I have also had regard to advice in Circular 11/95 on the use of conditions in planning permissions.

Reasons

8. The appeal building is part of a group of farm buildings situated in open countryside about 1km south of Robin Hood's Bay. Some of the traditional farm buildings have been converted to holiday cottages and the group at present includes the appellants' farm house together with three letting units. In addition to the appeal building, there is another farm store abutting the north east side and a large complex of more modern buildings to the south. These buildings were formerly used as cattle yards with a milking parlour and dairy. They are separated from the appeal building by a narrow passageway which would provide access to the rear entrances. Both cottages would have rear ground floor windows to bedrooms and kitchens and one cottage would also have rear living room windows facing onto the passage. There would be three rooflights to the rear roof slope serving first floor rooms.
9. The National Park Authority contends that Condition 7 is necessary to protect the residential amenity of occupants from undue noise and disturbance which might be caused by agricultural activity in the adjoining buildings and yards. The Authority is concerned that if the ownership of the holiday units were to be separated from the ownership of the farm, the owner of the cottages would have no control over the level of activity on the adjoining working farm. It is suggested that this could lead to proposals to relocate the farm activity away from the holiday cottages and that this could be detrimental to the character of the area.
10. The appellants state that South House Farm ceased to be a working dairy farm when the milking herd was sold in 1998. Since then the land has been let and I saw that the adjoining modern buildings are used mainly for storage of farm machinery. They are only used to a small extent at present and it is unlikely that the existing level of use would cause any undue disturbance. However, the buildings could be brought back into use without difficulty. They have a large floor area and could potentially generate significant noise and disturbance within a short distance of the holiday cottages. The inclusion of the additional land to the northwest has provided a partial buffer zone and

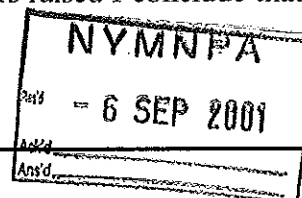
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reduced the risk of noise and activity affecting the northwest facing patio door, but the rear windows and doors of both cottages could still be affected.

11. Condition 6 says that the unit shall not be used for residential purposes other than holiday lettings and letting to the same person shall be for a period not exceeding 28 days in any one financial year. If the property were to be in permanent residential occupation, I consider that noise from the adjoining farm buildings would have the potential to cause unacceptable harm to the living conditions of residents. On the other hand, holiday makers would probably be prepared to tolerate some noise. People who chose to take holidays on, or close to, working farms must reasonably expect some noise from agricultural activities. In some cases the farm setting may be a positive attraction. It is unlikely that the cottages would be occupied every week of the year because of the seasonal nature of holidays. These factors lead me to the conclusion that holiday makers would be prepared to accept a different standard of amenity compared with permanent residents.
12. I consider that the volume and seriousness of complaints from holiday makers about noise and disturbance is likely to be far less than it would be from permanent residents. I noted that at least one of the existing holiday cottages is also very close to the modern buildings and there is no evidence of any previous complaints or problems with lettings caused by its proximity to the former dairy enterprise or the large silos.
13. I conclude that holiday makers would not suffer undue loss of residential amenity from the use of the adjoining farm buildings and land and that the development would comply with adopted Local Plan Policy BC12 and with those in the emerging Local Plan.
14. Having said that, I appreciate that a future owner of the cottages would be anxious to protect his business by ensuring that his visitors were not unhappy about the living conditions. If the modern buildings were in separate ownership, he would have very little control over farming activities and could feel obliged to take some action, whether or not the holiday makers complaints were reasonably justified. The cottages have solid stone walls and further sound insulation, such as double glazing, could reduce noise within the cottages. Nevertheless, an independent owner could press for the noise to be abated or for the buildings to be moved elsewhere. At present they are within a group and any extension into the open countryside would have an adverse impact on the landscape and character of the National Park. This would be contrary to development plan policies.
15. I find the arguments on this point to be finely divided. However, I have decided that the balance of probability is that future noise and disturbance from the working farm would not be sufficiently harmful to justify genuine complaints or to require the re-siting of the farm buildings. Consequently, the development would not harm the character of the National Park and the application would not have to be refused if Condition 7 were not imposed.

Conclusion

16. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be allowed.



Formal Decision

17. In exercise of the powers transferred to me I allow the appeal and grant planning permission for the conversion of existing redundant farm buildings to form two holiday cottages at South House Farm, Fylingthorpe in accordance with the terms of the application No. NYM4/029/0469D/PA dated 14 December 2000, without complying with Condition 7 previously imposed on planning permission No. NYM4/029/0469C/PA dated 22 October 1999 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Information

18. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within 6 weeks from the date of this decision.
19. This decision does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.
20. Attention is drawn to the fact that an applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.



INSPECTOR

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