



The Planning Inspectorate

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The Solicitor to the Authority
North York Moors National Park Authority
The Old Vicarage
Bondgate
HELMSLEY
York
YO6 5BP

Your Ref:

Our Ref:
T/APP/W9500/A/98/290483/P4

Date:

18 MAY 1998

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND
SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY MR AND MRS BRADLEY

1. At the Hearing into the above mentioned appeal held on 21 April 1998 an application for costs was made on behalf of Mr and Mrs Bradley.
2. I enclose my decision on this application.

Yours faithfully

R P BROOKS BA(Hons) MRTPI
Inspector

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Dr Malcolm Bell
Ward Hadaway
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Your Ref:
MB JNR BRA088/1
Our Ref:
T/APP/W9500/A/98/290483/P4

Date:

18 MAY 1998

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Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MR AND MRS BRADLEY
APPLICATION NO: NYM4/034/1217E/PA

1. I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine this appeal against the decision of the North York Moors National Park Authority to refuse planning permission to continue to occupy Romany Cottage, Eskdaleside, Sleights without compliance with Condition No.2 on Consent No. NYM4/034/1217C/PA dated 17 June 1993. I conducted a Hearing into the appeal on 21 April 1998. At the Hearing, you made an application for costs on behalf of your clients against the National Park Authority (NPA). This is the subject of a separate letter.

2. The condition in dispute states:

"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 (as amended) or forestry or in connection with the breeding and keeping of horses including any dependent of such a person residing with him or a widow or widower of such a person."

3. The reason for the condition is:

"The dwelling was erected in an area of open countryside where new residential development was only permitted in relation to agricultural or forestry development or in connection with other uses accepted as being necessary in the countryside. The diversification of farming operations to include the keeping of horses is considered acceptable in the particular circumstances relevant to this site."

4. Although the appealed application was lodged in the terms set out in Paragraph 1 above, the disputed condition is a modification of that applied to the original outline planning permission for the dwelling in 1978 and, as Condition 4, to the renewal of that permission

in October 1981. This original condition, relating solely to agriculture, was imposed on the understanding that the dwelling was required to support a proposed calf rearing unit though the latter was never established. As retired farmers your clients complied with the occupancy condition when they acquired the property but they successfully applied in 1993 to have it widened to cover employment in connection with the breeding and keeping of horses. I shall therefore deal with the appeal as being against refusal of an application to continue occupation of Romany Cottage without complying with Condition 4 of planning permission No. NYM4/34/103D/PA dated 7 October 1981, as modified by Condition 2 of planning permission No. NYM4/034/1217C/PA dated 17 June 1993.

5. Your clients' property lies in a very attractive pastoral landscape on the southern slopes of the Esk Valley, characterised by a mix of permanent pasture, woodland and scattered farm steadings. The development plan context is to be found in the North Yorkshire County Structure Plan (1995) and the North York Moors Local Plan (1992). Both Policy E1 of the former and Policy G1 of the latter give priority to conservation of the landscape of the National Park and apply a test of necessity to proposals for new development. Policy H5 of both Plans restricts new housing in the countryside to that essential to agriculture or other rural activities, and Local Plan Policy F1 states that occupancy conditions will be applied in such cases. Both policies closely reflect advice in Planning Policy Guidance Note 7: The Countryside - Environmental Quality and Economic and Social Development (PPG7) and are clearly relevant here.

6. In the Policy context I have outlined above, and despite the fact that the original agricultural enterprise did not materialize, I am satisfied that the occupancy condition was appropriately applied at the outset. From all that I have read and seen, and particularly bearing in mind advice in PPG7 on occupancy conditions, the central issue in this appeal is whether there is an ongoing need for the dwelling either for agriculture, or for the breeding or keeping of horses, which justifies continued imposition of that condition.

7. Dealing firstly with agricultural need, it is clear from all the evidence that there is no realistic prospect of the holding being viable as a farm as it stands at present, mainly because of its small size and difficult terrain. The NPA accepted this at the Hearing and I note that the specialist advisors on both sides were of the same opinion when your clients first applied to have the occupancy condition lifted in 1995. The only significant change since then has been that the prospects for hill farming in general have become bleaker, and the chances of viability even more remote. Whilst it is possible that some form of intensive farming might be practicable, there have been no realistic suggestions for this and the NPA would not favour it because of its likely effects on the landscape.

8. Nor is there any convincing evidence of agricultural need in the locality which the property could meet. I was told that only some 15-20% of local farms employ labour outside the family and, although there are currently 6 applicants on the housing authority's waiting list with an agricultural worker's background and looking for accommodation in the Sleights area, this does carry great weight in itself, particularly in the absence of any detailed information on their circumstances. The NPA accepted that the majority of the 21 applications relating to agricultural workers' dwellings it had cited were of limited relevance because they were site specific or in locations well away from Romany Cottage. There was detailed debate on one case, that at Moor Lanc Farm, Grosmont where a new dwelling was

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sought following severance of an existing farmhouse in a farm sale. Although much of the evidence was contradictory, I did not find clear support for the NPA's argument that Romany Cottage might address the applicant's problem of having to travel between Moor Lane and another holding at Hutton Mulgrave. The case seemed to me to turn essentially on whether there was a need for dwelling at Moor Lane itself, and the location of Romany Cottage, some 2kms away and in another valley, did not bear directly on this. Nor was the NPA's argument supported by evidence that anyone involved in this case had pursued Romany Cottage as a possibility during the considerable time it has been on the market.

9. The best available evidence on the question of agricultural need is the detailed information on marketing put forward for your clients. The property has been on the market continuously since February 1995, and since July of that year at a price which the NPA accepted as reasonable and reflecting the occupancy condition. A number of advertisements were placed in the local, regional and farming press in 1995/6 and, although it has not been so advertised since, it has been placed throughout with an agent with close links with the agricultural community. I accept the force of the argument that "word of mouth", rather than formal advertising, would be particularly important in that situation. In addition, a comprehensive and detailed brochure, including reference to the occupancy condition and its likely implications, has been sent to some 113 enquirers over 3 years. Although it was argued for the NPA at the Hearing that additional sales techniques could have been tried, including renewed advertising, auction, "best and final offers" and joint agency, the basic thrust of the campaign was not challenged and I see no reason to doubt that it was a serious attempt to find a buyer. Against this background I consider the fact that only 8 parties have viewed the property, and that until recently only 2 had made offers, both subsequently withdrawn, to be convincing evidence of the lack of an agricultural need for the dwelling. Not only is there no such need on the holding itself, but there is none evident in the locality, including from retired farm workers.

10. Turning to the question of a need related to the breeding and keeping of horses, it is clear that in widening the occupancy condition in 1993, the NPA saw this as a preferable avenue to removing it completely. At the same time it was keen to ensure, by means of an informative, that the scale of any equestrian enterprise should be strictly controlled because of the sensitivity of the site and its surroundings. It was argued for your clients at the Hearing that the holding is quite unsuitable for any intensive equestrian use because of its topography and landscape setting and because of the limitations of the Grosmont-Sleights road, and that any low key use would be totally unviable. The NPA accepted the first part of this argument and though several suggestions were made on the second, including purchase of additional land, and training and breaking of horses for carriage racing, these appear to me to be essentially speculative and capable of carrying little weight. I see no realistic prospect that the holding could provide a livelihood from the breeding and keeping of horses in a way which would both satisfy the occupancy condition and be acceptable to the NPA. Nor is there any cogent evidence of need in the surrounding area; although there is a riding centre about 1km to the north-east, and another further away off the Whitby-Scarborough road (A171), there was no suggestion that Romany Cottage could meet any accommodation needs they might have.

11. As with agricultural need, whether or not there is a need for the dwelling for horse breeding and keeping largely turns on the scope and outcome of the marketing undertaken.

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When the appeal application was being considered the NPA was concerned that the property had been insufficiently advertised, including in the specialist national equestrian press, and in response an advertisement was placed in Horse and Hound in October 1997. In addition it was argued for your client that advertisements in the general and farming press, as well as display in the estate agent's office, would also reach many people interested in horse keeping. There is no evidence of strong interest in the property from such people and its difficult topography, and the planning restrictions which would necessarily apply in the National Park, may well partly explain this. There was a conditional offer current at the time of the Hearing from a prospective purchaser with a Shetland pony stud, who the NPA considered would comply with the occupancy condition. However, that opinion appears to me to rely on very limited information which is capable of varying interpretations, and I do not regard this one expression of conditional interest as clear evidence of underlying need.

12. My colleague who dismissed your clients' previous appeal in November 1996 refers to there being little evidence provided of the extent and nature of the advertising undertaken, and he specifically mentions horse owners as one potential market. Both matters have now been addressed to my satisfaction and I concur with the view of the NPA officers, in their report on the appeal application, that appropriate and realistic attempts have been made to market the property, but with no resulting interest in it with the occupancy condition in place. I conclude on the central issue that there is no ongoing need for the dwelling either for agriculture, or for the breeding or keeping of horses, which justifies continued imposition of that condition.

13. I understand the NPA's concern, underlying the second reason for refusal, that relaxing the disputed condition might be seen as evidence of a weakening of the necessarily strict control over new housing in the countryside generally, and in the National Park in particular. However, not only does every proposal need to be assessed on its own merits, but there are particular circumstances in the present case, including the topography of the site and its planning history, which, in addition to the evidence of lack of need, satisfy me that to allow the appeal would not undermine the development plan policies I have referred to. I have also considered the "local needs" condition suggested by the NPA as a preferable alternative to deleting the occupancy condition altogether. However, this condition is evidently intended to apply to villages listed in the Local Plan rather than to dwellings in the open countryside, which are to be controlled under Policy H5 of both the Structure Plan and Local Plan. The appropriate test here is whether there is continuing agricultural or equestrian need, and accordingly whether the condition has outlived its usefulness, and in my opinion that test has been met in your clients' favour. I have considered all other matters raised but none outweigh the considerations leading to my conclusions.

14. For the above reasons and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission to continue occupation of Romany Cottage without complying with Condition 4 of planning permission No. NYM4/34/103D/PA dated 7 October 1981, as modified by Condition 2 of planning permission No. NYM4/034/1217C/PA dated 17 June 1993, in accordance with the terms of the application (No NYM4/034/1217E/PA) dated 17 July 1997 and the plans submitted therewith, but subject to the other conditions imposed on the first-named planning permission so far as the same are still subsisting and capable of taking effect.

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15. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully



R P BROOKS BA(Hons) MRTPI
Inspector

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APPEARANCES

FOR THE APPELLANTS

- Dr M Bell MA FRAgS
MRTPI MIEnvSc AIAMgt - Planning Associate: Ward Hadaway,
Solicitors, Sandgate House, 102 Quayside,
NEWCASTLE-UPON-TYNE NE1 3DX
- Mr W R Jessop BA FRICS
FAAV - Chief Agricultural Surveyor: Northallerton
Auctions Ltd and Northallerton Estate Agency,
143 High Street, NORTHALLERTON,
North Yorkshire DL7 8PE
- Mrs J A Bradley - Appellant: Romany Cottage, Eskdaleside,
Steights, WHITBY, North Yorkshire

FOR THE LOCAL PLANNING AUTHORITY

- Mr M Hill DipURP MRTPI - Area Planning Officer: North York Moors
National Park Authority
- Mr R Davies ARICS FAAV - Partner: Strutt and Parker, Estate Agents,
Princes House, 13 Princes Square,
HARROGATE,
North Yorkshire HG1 1LW

DOCUMENTS

- Document 1 - List of persons present at the Hearing.
- Document 2 - Letter of notification of Hearing and list of parties notified.
- Document 3 - Letter from North Yorkshire County
Council, Environmental Services, received in response to
notification of Hearing.
- Document 4 - Supporting documents submitted with appeal, pages 1-81,
including 4 appendices.
- Document 5 - 5 appendices to Appellants' Statement of Issues.
- Document 6 - Appendix to Dr Bell's evidence; extract from Journal of
Environmental Management 1996.

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- Document 7 - Appendices 1-2 to Mr Jessop's evidence; list of prospective purchasers sent details of property, and sales brochure.
- Document 8 - Appendix to Mrs Bradley's evidence; letter from Paul Elm, planning consultant, dated 11 November 1992.
- Document 9 - Appendices 1-14 to National Park Authority's Statement of Case.
- Document 10 - Exchange of letters between Mr Barugh, prospective purchaser, and National Park Authority March-April 1998, submitted by the Authority.
- Document 11 - Condition suggested by the National Park Authority.
- Document 12 - Report of Millbank's exors v Secretary of State for the Environment and another 1989, submitted by Dr Bell at the Hearing.
- Document 13 - Letter from National Park Authority to Mr Jessop, dated 11 July 1995, submitted by Dr Bell at the Hearing.
- Document 14 - Declarations by Mrs Bradley and Dr Bell, concerning correspondence between the National Park Authority and Mr Barugh, submitted by Dr Bell at the Hearing.
- Document 15 - Letter from Mr and Mrs Newton, prospective purchasers, dated 26 November 1997, submitted by Dr Bell at the Hearing.
- Document 16 - Agricultural evaluations relating to proposal for a dwelling at Moor Lane, Grosmont, dated December 1996 and September 1997, submitted by Dr Bell at the Hearing.
- Document 17 - Bundle of correspondence December 1996-April 1997, and agricultural appraisal dated December 1996, relating to proposal for a dwelling at Moor Lane, Grosmont, submitted by Mr Hill at the Hearing.
- Document 18 - Letter from Mr Elm dated 13 April 1993, concerning application to vary occupancy condition, submitted by Dr Bell after the Hearing.
- Document 19 - Report of Kember v Secretary of State for the Environment and another 1981, submitted by Dr Bell after the Hearing.

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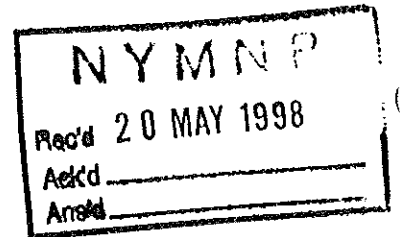
Document 20

- Decision notices dated 7 October 1981 and 17 June 1993, submitted by the National Park Authority after the Hearing.

PLANS

Plan A

- Application plan, dated 5/97





The Planning Inspectorate

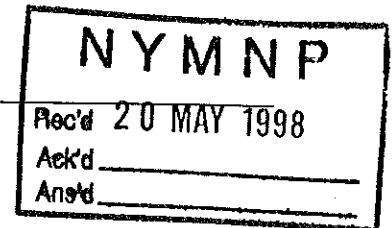
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Date:
18 MAY 1998



Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND
SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL AND APPLICATION FOR COSTS BY MR AND MRS BRADLEY

1. I refer to your clients' application for an award of costs against the North York Moors National Park Authority (NPA) which was made at the Hearing held at Sleights Village Hall on 21 April 1998. The Hearing was in connection with their appeal against refusal of planning permission to continue to occupy Romany Cottage, Eskdaleside, Sleights without compliance with Condition No.2 on Consent No. NYM4/034/1217C/PA dated 17 June 1993. A copy of my appeal decision letter is enclosed.
2. In support of an application for a full award of costs you said that all the general conditions for such an award set out in Paragraph 6 of Annex 1 to Circular 8/93 (the Circular) were satisfied. The refusal was unreasonable in the light of the facts before the NPA Committee. No reasonable evidence had been produced in support of the decision, no agricultural need for the property had been demonstrated and, although the NPA representative had striven valiantly to present its case, he had accepted that the Committee had given no guidance on the scope and nature of marketing it considered necessary.
3. The first reason for refusal was imprecise and incomplete and failed the tests in Paragraphs 8, 9 and 20 of Annex 3 to the Circular. Efforts to secure further explanation had been unsuccessful; the statement, documents and correspondence from the NPA did not adequately address the reason or the thinking behind it; and the appellants were still no wiser as to what would need to be done to satisfy the Authority. Its unreasonable behaviour had been most recently evident in the way it had dealt with the case of a prospective purchaser.
4. In the light of the Inspector's comments on their first appeal the appellants had presented full evidence on the marketing undertaken but the NPA had acted unreasonably in dealing with outside advice. The opinion of the County Council's Director of Property

Services in December 1995 and January 1996 that the holding was unviable, and that it had been properly marketed, was ignored without reason. Evidence was sought from an estate agent, at a late stage in the proceedings, not to inform the decision or help the appellants, but to defend the NPA's position at the Hearing. Nothing that the agent had said had substantiated in any way the NPA's case that the marketing undertaken had been inadequate. In view of the Authority's unreasonable behaviour relating to the substance of the case, an appeal with all its associated costs had been inevitable.

5. As an alternative to a full award, a partial award was sought in 2 respects. Firstly, the NPA produced late evidence, contrary to advice in Paragraph 2 of Annex 2 to the Circular, and compounded this failing by sending it to the wrong address. As a result the appellant's agents had to undertake additional work, incurring additional expense, in response, including reading it at the weekend. In addition the NPA's evidence was unclear and inadequate in a number of important respects, including its apparent irrational approach to a recent prospective purchaser, and failure to clarify what the Authority had in mind by way of a suggested variation of the disputed condition. These shortcomings resulted in additional work and unnecessary expenditure for the appellants and their agents.

6. The second basis for a partial award was that the second reason for refusal had not been substantively defended, contrary to advice in Paragraph 15 of Annex 2, and Paragraph 8 of Annex 3, to the Circular. The NPA essentially addressed a different precedent reason but without specificity, and only in terms of a generalised fear of what might result from allowing the appeal proposal.

7. In response the NPA argued that it was not unreasonable for a Committee to go against officer advice if the decision was based on sound planning reasons. The previous appeal had essentially been dismissed on the grounds that insufficient marketing had been carried out to convince the Inspector that the condition was no longer needed. This was a sound planning issue and the Committee had used its experience and local knowledge to determine that there had also been inadequate marketing since the appeal decision to warrant discharging the disputed condition; this was a subjective judgement which it was entitled to make. Evidence had been given of continuing need for the condition, including that from a specialist marketing consultant.

8. So far as the late evidence was concerned, this could not be produced within the 3-week timetable laid down for Hearings as the NPA had been unable to engage the agent concerned sooner. However, the statement was submitted on time and indicated that further evidence would be forthcoming; it also referred to the case of the recent prospective purchaser. The week that remained between the submission of the additional evidence and the Hearing was sufficient to enable it to be properly assessed, and it was unclear that any additional or wasted work had resulted, particularly as the evidence of the appellants' estate agent had been prepared by 23 March.

9. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

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10. When your clients' application was reported to the NPA's Development Control Committee the officers' report referred back to the main issue defined in the previous appeal decision letter; stated that additional advertising had been undertaken since the application had been first considered in September; and advised that officers considered that appropriate and realistic attempts had been made to market the property, with no resulting interest. However, assessment of adequacy of marketing in such cases is far from being an exact science and inevitably involves a substantial element of judgement. Whilst I do not share the NPA's view, as is evident from my decision on the appeal, I consider it to have been one which members could reasonably have reached on the information before them. The opinion of the County Council's Director of Property Services, though an important factor in any decision, is not compelling in itself, and members could reasonably balance this against other factors. Among those factors I would include their local knowledge, and the need to exercise particularly stringent control over new development in the sensitive landscapes of the National Park. The latter would inevitably mean particularly careful scrutiny of applications to remove occupancy conditions, which could result in unencumbered properties, a point alluded to in the committee report.

11. I thus consider that the Committee had reasonable planning grounds for taking a decision contrary to officer's advice. The first reason for refusal, which again refers back to the previous appeal issue, appears to me to be complete, precise, specific and relevant in the terms set out in Paragraph 8 of Annex 3 to the Circular. That members gave officers no guidance on what further the appellants might do by way of marketing was clearly not helpful, but only some 3 months had passed since the question of advertising in the specialist equestrian press was first actively discussed, and the Committee could reasonably come to a view that more might be done in this area.

12. In the particular circumstances of this case, involving a condition somewhat wider than the usual agricultural occupancy, I consider that the NPA's officers gave your clients adequate guidance on the Authority's stance. Whilst I have not attached great weight to either suggested relaxations of the condition; informal or otherwise, or to a recent approach from a prospective purchaser, in these and other respects the officers appear to me to have been genuinely seeking a solution to a particularly intractable problem. Nor was it unreasonable for the NPA to instruct a estate agent as a witness at the Hearing to deal specifically with the marketing issue. Although he did not fundamentally challenge your clients' sales campaign, other possible approaches were suggested and explored, underlining the central importance of judgement in this matter. In my view the NPA's basic case was not inherently unreasonable, and was substantiated at the Hearing. A full award of costs is not therefore justified.

13. Turning to the applications for a partial award, the NPA's late production of additional evidence, and error in sending it to the wrong address, were unreasonable behaviour but in my view there was still adequate time for it to be assimilated well before the Hearing, especially as it was very brief and straightforward. I have not heard any persuasive evidence that the late submission resulted in quantifiable unnecessary expenditure. I accept that it was necessary for you to deal in some detail in the body of your clients' case with the NPA's evidence on the recent prospective purchaser and possible variation of the disputed condition. However, though the merits of that evidence might be arguable, it seems to me to be legitimate, and put forward in good faith to try to solve a difficult problem, as

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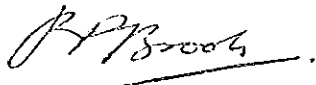
noted above. Taking both parties' cases as a whole it was not unreasonable.

14. Finally, whilst the first reason for refusal was clearly the substantive one, the NPA was able to substantiate the second at the Hearing, including by reference to the need to exercise particularly close control over agriculture-related dwellings in the National Park. Whilst I agree with you that any concern about precedent is effectively countered by the particular circumstances of this case, the concern is a legitimate one and not simply generalised fear. I therefore conclude that your clients' applications for partial award of costs are not justified.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by MR AND MRS BRADLEY for an award of costs against the North York Moors National Park Authority.

Yours faithfully



R P BROOKS BA(Hons) MRTPI
Inspector

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