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## Appeal Decision

Site visit made on 5 October 2015

**by G D Jones BSc(Hons) DMS DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 October 2015

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**Appeal Ref: APP/Y2736/W/15/3062060**

**Land Adjacent to Rose Cottage, Goose Track Lane, West Lilling,  
North Yorkshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by Mrs Lorna Marchi against the decision of Ryedale District Council.
  - The application Ref 15/00254/73A, dated 4 March 2015, was refused by notice dated 29 April 2015.
  - The application sought planning permission for the erection of a four bedroom dwelling and formation of no1. parking space without complying with a condition attached to planning permission Ref 14/01083/FUL, dated 26 January 2015.
  - The condition in dispute is No 14 which states that: The dwelling house hereby permitted is to be occupied by persons, spouse and their dependents whom;  
Have permanently resided in the parish, or an adjoining parish (including those outside the District), for at least three years and are now in need of new accommodation, which cannot be met from the existing housing stock; or  
Do not live in the parish but have a long standing connection to the local community, including a previous period of residence of over three years but have moved away in the past three years, or service men and women returning to the parish after leaving for military service; or  
Are taking up full time permanent employment in an already established business which has been located within the parish, or adjoining parish, for at least the previous three years; or  
Have an essential need arising from age or infirmity to move to be near relatives who have been permanently resident within the District for at least the previous three years.
  - The reason given for the condition is: to meet local housing need in non service villages and to satisfy the requirement of Policy SP21 and Policy SP16 of the Ryedale Plan - Local Plan Strategy.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the disputed condition is necessary, relevant to planning and to the development in question, enforceable, precise and reasonable having regard to the provisions of the development plan and the location of new housing development in the District.

## Reasons

3. The appeal site is a vacant plot of land located adjacent Rose Cottage, a two storey house, on the northern side of Goose Track Lane at the eastern fringe of the village of West Lilling. The evidence indicates that the site is mainly within the Development Limits of the village.
4. The evidence also indicates that West Lilling has few services and facilities and this is consistent with what I saw when I visited the area. The Council states that the disputed condition accords with the provisions of the Ryedale Plan – Local Plan Strategy (the Local Plan). The reason for refusal makes reference to conflict with Policies SP2 and SP21 of the Local Plan and the reason for the condition also makes reference to Policy SP16 concerning design. The Local Plan was adopted in 2013 after the publication of the National Planning Policy Framework (the Framework) in 2012.
5. The Local Plan broadly directs new housing development to sustainable locations, which are identified as the Principal Towns of Malton and Norton, which are the Primary Focus for Growth; the Local Service Centres - Market Towns of Pickering, Kirkbymoorside and Helmley, which are the Secondary Focus of Growth; and ten settlements known as Local Service Centres - Service Villages, which are the Tertiary Focus for Growth. West Lilling is not one of these settlements such that it falls within the 'Other Villages' category.
6. In Other Villages new housing is allowed in limited circumstances only as set out in Policy SP2:
  - Infill development (small open sites in an otherwise continually built up frontage) restricted to Local Needs Occupancy
  - Replacement dwellings
  - Sub-division of existing dwellings
  - Conversion and Redevelopment of Previously Developed Land and buildings within Development Limits, restricted to Local Needs Occupancy
  - 100% Rural Exception Sites outside and on the edge of Development Limits in line with Policy SP3
  - Change of use of tourist accommodation (not including caravans, cabins or chalets) where appropriate and restricted to local needs occupancy
7. It appears that the Council granted planning permission for the appeal development on the basis that it would represent redevelopment of previously developed land within Development Limits, restricted to Local Needs Occupancy. I note the appellant's evidence that the site previously accommodated one or more dwelling. However, as any such dwellings appear to have been removed some time ago, neither the replacement dwelling nor the sub-division of existing dwellings criteria of Policy SP2 apply in this case. Based on the information before me and from what I observed during my site visit, none of the other criteria of this Policy are applicable to the appeal development. Among other things, Local Plan Policy SP21 sets out what is meant by Local Needs Occupancy in the terms of Policy SP2; in short it is closely aligned to the wording of the condition in dispute.
8. On this basis, in granting planning permission for the appeal development the evidence indicates that the Council concluded that the proposal would accord with the development plan, including the Local Plan and the requirements of Policies SP2 and SP21, and that this conclusion is based, at least in part, on the

understanding that the appeal development would be restricted to Local Needs Occupancy. With reference to the information before me I have found no reason to disagree.

9. In the event that the condition in dispute were to be removed, for the reasons outlined above, as a new house located away from identified sustainable locations and in an area with limited services and facilities, the appeal development would conflict with Policies SP2 and SP21 of the Local Plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations dictate otherwise. While I have taken all of the evidence into account I have found nothing which, individually or collectively, indicates that the identified conflict with the development plan should be set aside in this case.
10. In come to this conclusion, I have been mindful that the disputed condition is restrictive and has reasonably significant implications in terms of the range of people who would be permitted to live at the appeal property compared to a more conventional unfettered residential use. Nonetheless, like another Inspector who determined an appeal in the same District for similar development<sup>1</sup>, I am guided by the fact that the principle of the policy, and consequently that of the condition, has been the subject of reasonably recent detailed examination by the Inspector during the Local Plan process.
11. The location of new housing and the residential strategy for the District is an important component of the Local Plan, including the need to restrict new development in locations outside the Principal Towns and Local Service Market Towns and Villages. This approach is consistent with the sustainable principles of the Framework. In the circumstances of this case, I also agree with that Inspector in that the removal of the condition would undermine the strategic objectives of the Council as embodied in the development plan and could be seen to create a precedent for other proposals in similar locations in the District.
12. Very many of the matters that have been put to me by the appellant in support of the proposal do carry weight in favour of the removal of the condition. These include the effect of the disputed condition on human rights; its effect on the development's viability, the free movement of capital and land value; housing supply in the area, including in and around York; the site's proximity to York and other settlements and services; and the availability of other residential properties in and around West Lilling. However, for the reasons outlined above, these are significantly outweighed by the identified conflict with the development plan.
13. I also note the concerns expressed regarding the enforceability of the condition. I acknowledge that its monitoring and, if necessary, enforcement would draw on Council resources. However, this is likely to be true of most planning conditions and I do not foresee that enforcement of the disputed condition would necessarily present the Council with any significant difficulties.
14. Overall, therefore, the condition is necessary, relevant to planning and to the development in question, enforceable, precise and reasonable. Consequently, it meets the tests contained in paragraph 206 of the Framework.

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<sup>1</sup> Ref: APP/Y2736/A/14/2219259 as submitted by the Council

**Other Matters**

15. In determining the appeal I have also taken into account the submissions of third parties, including from Lillings Ambo Parish Council. However, these have not led me to any different overall conclusion. The evidence also refers to other residential development and planning decisions. Nonetheless, each proposal falls to be assessed primarily on its own merits and, in any event, I am unaware of the full circumstances associated with any of those other cases.
16. Reference is also made to the conduct of the appellant and the Council. However, the matters raised in this regard are largely considerations that are not for my deliberation in the context of an appeal made under section 78 of the Town and Country Planning Act 1990.

**Conclusion**

17. For all of the reasons given above, I conclude that the appeal should be dismissed.

*G D Jones*

INSPECTOR