



## Appeal Decision

Site visit made on 11 July 2017

**by Andrew McCormack BSc (Hons) MRTPI**

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

**Decision date: 9 August 2017**

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**Appeal Ref: APP/Y2736/W/17/3172848**

**Site adjacent to The Paddocks, Weaverthorpe, Malton, North Yorkshire YO17 8EX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Christopher Boyes against the decision of Ryedale District Council.
  - The application Ref 16/01085/FUL, dated 22 June 2016, was approved on 11 October 2016 and planning permission was granted subject to conditions.
  - The development permitted is erection of a three-bedroom detached dwelling with attached double garage.
  - The conditions in dispute are Nos 4, 5 and 14 which state that: (4) The dwelling hereby approved shall only be occupied by a person(s) who: have permanently resided in the Parish, or adjoining parish, 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 or women returning to the parish after leaving military service; or are taking up full time permanent employment in an already established business which has been located in 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. (5) Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or amending that Order), development of the following classes shall not be undertaken other than as may be approved in writing by the local planning authority following a specific application in that respect: Class A: Enlargement, improvement or alteration of a dwelling house, Class B: Roof alteration to enlarge a dwelling house, Class C: Any other alteration to the roof of a dwelling house, Class D: Erection or construction of a domestic external porch, Class E: Provision within the curtilage of a dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwelling house or the maintenance, improvement or other alteration of such a building or enclosure. (14) Construction works shall not take place outside 08:00 hours to 17:00 hours Mondays to Fridays and 09:00 hours to 13:00 hours on Saturdays and at no time on Sundays or Bank Holidays.
  - The reasons given for the conditions are: (4) To meet the requirements of Policies SP2 and SP21 of the Ryedale Plan – Local Plan Strategy. (5) To ensure that the character of the area is not prejudiced by the introduction of unacceptable materials and/or structures to protect the amenities of neighbouring occupiers and to satisfy the requirements of the NPPF. (14) In the interests of protecting the amenities of neighbouring occupiers and to satisfy the requirements of Policy SP20 of the Ryedale Local Plan.
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## Decision

1. The appeal is dismissed.

## Background and Main Issues

2. The appeal follows the granting of planning permission Ref: 16/01085/FUL, dated 22 June 2016 and relates to Condition Nos. 4, 5 and 14 concerning a local needs occupancy requirement on the approved dwelling, the removal of permitted development rights and the restriction of construction working hours during the construction phase of the development, respectively. The appellant argues that these conditions are unfair, unreasonable and unnecessary and do not meet the six tests for conditions as set out in the Planning Practice Guidance (the Guidance). As a result, the appellant has made the appeal seeking to have the disputed conditions varied or removed.
3. The Council's reasons for imposing the disputed conditions are to meet the requirements of relevant policies in the Ryedale Plan – Local Plan Strategy (LPS) and the National Planning Policy Framework, to ensure that the character of the area is not adversely affected and that the living conditions of neighbouring occupiers are protected.
4. Taking the above into account, I consider the main issues to be:
  - whether the disputed conditions are necessary and reasonable, having regard to national and local planning policy; and
  - the effect that removing the disputed conditions would have on the character and appearance of the area and the living conditions of neighbouring occupiers with regard to noise and disturbance.

## Reasons

### *Condition 4*

5. Condition 4 places restrictions on the future occupiers of the proposed dwelling and identifies criteria which must be met by prospective occupiers in order to be acceptable. The key consideration is whether the condition meets the tests set out in the PPG and also has regard to the locational strategy in the Ryedale plan – Local Plan Strategy (LPS).
6. The locational strategy directs most new development to the market towns in the district and the ten service villages, as identified within the LPS. The service villages are identified for their range of services and facilities which would meet every day needs and their ability to accommodate new development without increasing dependency on the car. I note that Weavertorpe is not identified as a service village and has very limited services and facilities. Notwithstanding this, the locational strategy recognises that there may be circumstances where residential development would be permitted in such locations in order to meet a particular need. Policy SP21 of the LPS clearly sets out the criteria for such development, including the requirement for local need occupancy.
7. The Council argues that removing Condition 4 would result in an unfettered market dwelling in an unsustainable location which would be contrary to Policies SP2 and SP21 of the LPS. From what I have seen and read, I agree with this view. Therefore, the removal of the condition would result in development that would be a departure from the development plan.

8. The appellant argues that since these policies have been in place, the Council has not applied them consistently to other developments within the village. As a result, it is argued that the appellant has been unfairly treated. However, from what I have seen and read, I note that the cases to which the appellant refers, 16/00207/REM and 15/00901/REM, were both for the approval of reserved matters following an earlier grant of outline planning permissions which predate the adoption of the development plan in September 2013. Furthermore, I note that the outline approvals were not subject to the local needs limitation which was introduced with the new plan.
9. Having had regard to the other cases referred to by the appellant, based on the evidence before me, I find that these applications were determined in accordance with policy. In addition, I note that where affordable housing contributions are sought from a proposal, local needs occupancy conditions are not imposed on any of the dwellings on the site. As a result, I find that the appeal proposal has been assessed correctly against the development plan as the starting point. I acknowledge that there are circumstances where development in Weaverthorpe may be acceptable and in this case I note that the proposal meets the criteria set out in Policy SP21. However, it is necessary, in accordance with policy, that such dwellings remain available to meet local needs in such locations.
10. The Council refers to the advice it provided to the appellant regarding the potential erection of a dwelling on the appeal site during the pre-application stage, Ref: 14/01352/PREAPP. From this, it is evident that there was extensive reference made by the Council to the policy requirements relating to Policies SP2 and SP21 and the need to comply with the local needs criteria from the early stages of the application. As a result, I find the appellant's argument that the matters were only briefly mentioned by the Council to have limited weight.
11. I appreciate the appellant's points relating to the potential impact of the condition with regard to local needs occupancy on the future value of the appeal property. Notwithstanding this, property value is not a material planning consideration and as such, I must give it limited weight in my determination of the appeal. Furthermore, I note that were the previous planning approvals on the appeal site implemented, then it may have been the case that such restrictions on occupancy would not have been implemented. Notwithstanding this, all proposals must be determined in the context of the current development plan policies at the time.
12. Having had regard to all of the above, I find that the imposition of Condition 4 is restrictive on the future occupancy of the dwelling. Nonetheless, I note that the principle and precise wording of the policy, and therefore the condition, have been subject to scrutiny on a number of occasions, including other appeals and the LPS examination in public. Furthermore, I find that the condition accords with the adopted policy within the LPS. As a result, I find the imposing of the condition to be necessary, reasonable and justified. Therefore, I conclude that Condition 4 should be retained as imposed for the reason stated by the Council.

#### *Condition 5*

13. Condition 5 relates to the removal of certain permitted development rights. I note that the appeal site consists of a substantial area that reaches around and to the rear of a neighbouring property which fronts onto Main Street. The Council indicates that the appellant originally proposed a larger dwelling for the site. This was subsequently reduced in size and scale and the design was amended as a result of detailed negotiations in order to allow the development to be in keeping with the character and appearance of the streetscene and the wider area, including The Wolds Area of High Landscape Value.

14. In addition, the Council argues that the imposition of Condition 5 should not be seen as a way to prevent further development taking place. Rather, the condition has been imposed to ensure that the development of the appeal site has no significant adverse impact on the characteristics of the area in the future. Furthermore, I find that the condition is imposed to retain some control over small scale developments and alterations or additions to the dwelling itself and with regard to the erection of sizeable curtilage buildings which have the potential to dramatically alter the locality and significantly harm the character and appearance of the surrounding area.
15. Having had regard to these matters, given the extent of the curtilage of the appeal property and the fact that it goes beyond other neighbouring plots and further into the open countryside, I find that the Council is justified and has acted reasonably in removing permitted development rights for the reasons stated. I note the points made relating to the extent of the property along the frontage of the site. I also appreciate that the appellant considers the imposition of such a condition to be unfair with regard to the retention of PD rights at other nearby properties. Notwithstanding this, I find that the condition is necessary and reasonable for the above reasons. Furthermore, I am satisfied that the tests of conditions set out in the Guidance have been met. As a result, I conclude that the condition should be retained as imposed.

#### *Condition 14*

16. This condition relates to a restriction on construction working hours which I note was imposed by the Council due to concerns raised by a neighbour regarding potential noise and disturbance during the construction period. From what I have seen and read, I note that the nearest neighbouring property is around 6 metres from the appeal property with windows in its gable end.
17. During the site visit, I saw that the appeal property was substantially constructed in terms of external works. Furthermore, the Council confirms that the condition is not intended to include control over internal works such as plumbing, electrics joinery and decoration. I acknowledge the appellant's argument that other permissions for dwellings were not subject to such a condition. However, each proposal must be assessed on its own merits and circumstances. As a result, having considered the evidence before me in relation to this matter, I find that the Council has reasonably imposed this condition in order to protect the living conditions of neighbouring occupiers with regard to noise and disturbance, particularly those neighbours in relatively close proximity to the appeal property.
18. Notwithstanding that the appeal property is now largely constructed, I conclude that the condition should remain as imposed in order to protect the living conditions of neighbouring occupiers against any remaining construction work at the appeal site for the reasons stated by the Council.

#### **Conclusion**

19. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Andrew McCormack*

INSPECTOR