

Item Number: 8
Application No: 17/00980/73
Parish: Terrington Parish Council
Appn. Type: Material Amendment
Applicant: Mr Matthew Clarke
Proposal: Variation of Condition 12 (Local Needs Occupancy) of approval 16/01227/OUT dated 15.03.2017 to add: If after a period of 12 weeks a qualifying household is not forthcoming then the area can be widened to the Ryedale District area. Following a further 12 week period the area is widened to the County of North Yorkshire. The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person shall be bound by the obligations contained in this condition.
Location: Land To Rear Of The Forge North Back Lane Terrington North Yorkshire

Registration Date: 21 August 2017
8/13 Wk Expiry Date: 16 October 2017
Overall Expiry Date: 28 September 2017
Case Officer: Rachael Balmer **Ext:** 357

CONSULTATIONS:

Paul Jackson AONB Manager Raises several comments to take into consideration.
Parish Council Agrees with the application, however raises several concerns to consider.

Legal Services

Neighbour responses: **Non received**

1.0 SITE:

1.1 The site is subject to outline permission for the development of a single dwelling 16/001227/OUT granted in 15.03.2017. The site is within Terrington, a non-Service Village, and within Development Limits. The outline permission is subject to a number of planning conditions including the Local needs occupancy condition which was imposed to meet the requirements of policy SP21

2.0 PROPOSAL:

2.1 The proposal seeks to vary the wording of the Local Needs Occupancy condition (LNOc) as it is set out in Policy SP21 of the Adopted Local Plan Strategy, and applied to the original outline permission. The proposed amendments are that, in the first instance, a time-limited cascade of geographical eligibility is proposed:

"If after 12 weeks a qualifying household is not forthcoming then the area can be widened to the Ryedale District area. Following a further 12 week period the area is widened to the County of North Yorkshire."

2.2 The second component is the explicit provision for a clause which in the event of a default on the mortgage, a Mortgagee possession clause is then applied to the mortgagee/receiver/deriver of title until it is then sold on to the next buyer, when the LNOc 'kicks back in'.

"The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that that a successor in title of such a person shall be bound by the obligations contained in this condition."

2.3 The second element is the application of a mortgage in possession clause, which lenders have said (although again no documentary evidence has been provided) would allow them to sell the property unfettered, on the open market- so that they can dispose of the liability as soon as possible. However, the proposed wording of this variation to the LNOc seeks to lift and then reinstate the LNOc in the event of a default on the mortgage. The apparent rationale for this is so that a Lender feels unrestricted, but that the LNOc remains in place and accordingly the depreciation in the value of the property remains.

3.0 HISTORY:

3.1 Planning permission was granted 15 March 2017 for the outline approval of a single dwelling on an infill site within Development Limits of Terrington- an Other Village. The permission applies the Local Needs Occupancy Condition, which is set out in Policy SP21 of the Adopted Local Plan Strategy.

4.0 POLICY:

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms that the determination of any planning application must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises:

The Ryedale Local Plan Strategy (2013)

The Proposals Map (2002) carried forward by the Local Plan Strategy

The 'saved' policies of the Ryedale Local Plan (2002)

The Yorkshire and Humber Plan (Regional Spatial Strategy)- York Green Belt Policies (YH9 and Y1)

(The latter two components are not considered to be relevant as part of the determination of this proposal)

The Ryedale Plan - Local Plan Strategy (5 September 2013)

Policy SP1 General Location of Development and Settlement Hierarchy

Policy SP2 Delivery and Distribution of New housing

Policy SP21 Occupancy Restrictions

Material Considerations:

National Planning Policy Framework (NPPF) (2012)

National Planning Practice Guidance

5.0 CONSULTATIONS:

5.1 A brief summary of the position of statutory and non-statutory consultees is included on the front sheet of the report and issues raised are addressed in the relevant appraisal sections of the report. All consultation responses are available for Members to view on the public access webpage, and referred to in the report accordingly.

5.2 The Council's Solicitor and Legal Services Manager have discussed the implications of the application of such a variation to the condition with the Case Officer. They have concluded that the second element of the application relating to the mortgagee in possession clause is not workable due to the resulting 'kick back in'. This merely shifts the restriction along. Furthermore the use of a cascade is common in respect of affordable housing applications and is usually subject to a s.106 legal agreement. However Members are advised that new housing in other village locations as permitted is not 'affordable' housing but housing designed to meet a demonstrated local need. It is not considered

appropriate to change what is the policy wording in the adopted Development Plan to this proposed re-wording. The LNOc operates under very specific parameters- that is its policy purpose.

Terrington Parish Council are in agreement of the proposed re-wording of the condition. The PC state that whilst the Local Needs Occupancy condition is applied for local needs, it means that only cash buyers with local needs are able to buy such properties. The concept of the cascade, which they do not object to- they consider will not work for most high street lenders. They conclude that the sale of the land seems unlikely to happen without a relaxation of the LNOc. This is however not a view shared by officers and is not demonstrated on the basis of the evidence submitted.

The AONB Manager has advised that he is unable to support the current wording:

The policy is designed to meet local needs, on sites which might ordinarily not receive planning consent. It is to restrict speculative applications and building of market housing. The proposed wording would be moving away from local needs.

The AONB is not subject to any specific change in the operation of SP2/SP21 a relaxation to County level would not be appropriate for the AONB- North Yorkshire is the largest county in England.

The North York Moors National Park is a District-level authority, and therefore is not comparable to the County-level. Would support a relaxation to Ryedale District.

12 weeks for de-restriction is too short, six months is more suitable, but for a desirable village like Terrington, 12 months as a minimum to then the District of Ryedale would be suitable.

S.106 agreements between the LPA and applicant could be a potential means of securing the mortgage against the property and ensuring the LNOc as currently worded is complied with, and this should be explored before any de-restriction.

It should be noted that the revisions to time periods proposed to the condition are of serious concern to officers

6.0 APPRAISAL:

6.1 The applicant, who seeks to buy the site and live in the resulting property with his family complies with the Local Needs Occupancy Condition. They already live in the village but have an expanding family and would like to live in a larger property. They have struggled to obtain a mortgage because the lenders they have applied to are not prepared to lend due to apparent rigidity and stringency of the LNOc applied by Ryedale. (No documentation is provided by any lenders per se as part of this application). The applicant is interested in the site because Terrington is where they want to stay, and the LNOc depreciates the value of the site, resulting in a property which is within their budget- and as they perceive it- makes it affordable.

6.2 The first element is the geographical scope of the LNOc. The applicant's discussions with the lenders (although no documentary evidence has been provided) revolve around the parish and adjacent parish being too narrow, particularly when compared to the National Park's (Yorkshire Dales and North York Moors) approaches, who's LNOcs cover the full area of the Park. As such, they propose a cascade, similar those applied to s.106 agreements in respect of the delivery of affordable housing. They have submitted, by way of justification, a document produced by the Chartered Institute of Housing and the Homes and Communities Agency entitled 'Promoting Mortgage Access for Affordable Housing'. It is described as a good practice note in respect of the operation of cascades used when drawing up s.106 agreements for the provision of affordable housing.

6.3 The main considerations to be taken into account are:

- i) The policy principle of the Local Needs Occupancy Condition;
- ii) The effects of the application of a time-limited geographical cascade on that Policy approach;

and

iii) The effects of the application of a mortgagee in possession clause

i) The Policy Principle of the Local Needs Occupancy Condition

6.4 Policy SP1 of the Ryedale Plan - Local Plan Strategy identifies the Settlement Hierarchy and General Location of Development and states that: In all other villages, hamlets and in the open countryside development will be restricted to, amongst other matters, *"that which is necessary to support a sustainable, vibrant and healthy rural economy and communities"*. Aligned to this, the Local Plan Strategy, in the Spatial Strategy, refers to: Other Villages- Housing to address local housing requirements and affordable housing needs and restricted by a Local Needs Occupancy Condition.

6.5 These policy aspirations are then set out in detail in Policy SP2 of the Local Plan Strategy, concerned with the Delivery and Distribution of New Housing as for a proposal such as that considered in the original outline planning permission 16/01227/OUT:

"Infill development (small open sites in an otherwise continually built up frontage) restricted to Local Needs Occupancy"

6.6 Policy SP21 of the Local Plan Strategy is concerned with Occupancy Restrictions, it states:

The following occupancy conditions will be used to ensure that developments are occupied for the purpose for which they are intended and justified. This policy will be applied in the following circumstances:

a) Local Needs Occupancy To meet local housing need in the non-service villages the occupancy of new market housing will be subject to a local needs occupancy condition where this accords with Policy SP2, and will be limited to people who:

* 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 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

6.7 The Lifting of Occupancy Conditions is also considered in part g of Policy SP21:

g) Lifting of Occupancy Restrictions

(i)The lifting of occupancy restrictions will be carefully considered on a case by case basis. The capability and suitability of the unit being occupied as a permanent residential unit together with any changes in circumstances which mean the occupancy restriction is no longer applicable, will be carefully considered.

6.8 On that basis, this is not a condition imposed as an after-thought, but an integral part of the operation the Development Plan in the provision of housing; as referred to by the AONB Manager. The role of the policy, in-conjunction with the other components of Policies SP1 and SP2 is to restrict

development out with the larger settlements. This is to ensure that development is focused on the larger towns and, to a lesser extent, the Service Villages. The LNO is applied to ensure that in such a large, relatively sparsely populated District, as Ryedale is, residential development in the small settlements is restricted to that which only meets locally-derived need.

6.9 Aligned to this, there have been a number of speculative applications for the development of dwellings subject to the LNO. Application 16/01227/OUT is one such application although it was indicated in writing during the processing of that application that local 'qualifying' buyers were available. Whilst the Local Plan Strategy does not preclude this, because landowners/applicants may have occupants in mind, it is a risk for those who make such applications without an identified occupier, or buyer, to meet with any of the conditions.

6.10 As outlined above, the Local Plan Strategy does already provide the policy means for the Local Planning Authority to lift such occupancy conditions. It is however, as set out in the Plan, to be considered *"on a case by case basis, and the capability and suitability of the unit being occupied as a permanent residential unit together with any changes in circumstance which mean the occupancy restriction is no longer applicable, will be carefully considered."* Members will be already aware that a series of appeals have been made for the lifting of the LNOc on sites which have no dwelling on them. To date, all those appeals have been dismissed by Inspectors on such sites, and the condition has remained in place. It is clear that in the operation of the Development Plan the application of such conditions has been tested, and is considered to be reasonable, as part of the implementation of the Ryedale Plan-Local Plan Strategy. The Inspectors have concluded that to lift the condition would be resulting in development which is counter to the general approach to development set out in the adopted Development Plan.

6.11 Returning to the lifting of occupancy conditions; occupancy conditions can be lifted/modified (through the s.73 application route), and there is already provision for this to take place, but only when the documentary evidence is provided that the property has been marketed at a price which reflects the LNO (usually a 15% reduction in value), for a reasonable period of time (12 months), without success, or there is some exceptional circumstances which warrant a departure from the Development Plan. It should also be noted that this is in respect of properties that already exist - not on-plan dwellings.

The applicant has provided some evidence to support the application. An email and an exchange with a mortgage advisor has been submitted however this does not provide compelling evidence that the applicants have been unable to secure mortgage finance or that the final decision of any lenders has been made. No letters have been received from mortgage lenders.

ii) The effects of the application of a time-limited geographical cascade on that Policy approach

6.12 The application of a cascade is a standard approach in Affordable housing schemes, and usually this forms part of the s.106 agreement- confirming the legal position regarding the eligibility of occupants/tenants. However, it does not extend to properties subject to the Local Needs Occupancy Condition, which is a different type of residential development, and subject to different policy considerations. Properties which are subject the LNOc are subject to a depreciation in the Market Value of c.15%, but they are still sold on the open market- and still attain much higher values than affordable dwellings as defined in the NPPF, and set out in the Development Plan. They may be perceived as being more 'affordable'- as a result of this depreciation, but they are not Affordable Housing in planning terms as defined in the NPPF.

6.13 The Applicant has compared the wording of the LNOcs between that of Ryedale District Council, and those applied by the National Parks (North York Moors and Yorkshire Dales). There are differences when compared at face-value. The NYMNP LNOc covers the entirety of the area of the National Park, and applies a timescale of 5 years for having a local connection (Ryedale DC being 3 years). In examining these difference, it is crucial to understand the very different demographic, settlement pattern and distribution and policy positions regarding these two Local Planning Authorities: There are markedly different of levels of development within our Development Plan's, different levels of housing need, and general population (Ryedale's are significantly higher), and tightly drawn Development Limits for new dwellings/ conversions within Development Limits, for which with

LNOc, the only way for development to come forward outside of Helmsley and the Service Villages. In reality, the National Parks offer no 'relaxed' LNOc, because of the greater restrictions already in place regarding opportunities for residential development.

6.14 Members will be aware that as part of the Examination of the Local Plan Strategy, the Inspector considered that the LNOc as written, was for Ryedale an acceptable approach to managing development in the smaller 'other' villages.

6.15 As also identified by the AONB Manager, the application of the cascade to North Yorkshire County would result in, after only six months of the marketing of the site, a property then being capable of being occupied by a household who could live many, many miles from the settlement. It would also create the somewhat perverse anomaly that adjacent City of York parishes (under the current LNOc, would be eligible for the LNOc), would under the proposed wording be no longer eligible. However a household could live on the edge of North Yorkshire, many miles away from the site and still comply. This would be perverse in its policy operation- and certainly not meeting locally-derived needs.

6.16 Whilst the AONB manager has supported the de-restriction to a Ryedale Level, it is not clear whether this is within the National Park area of Ryedale, or outside. Aside from this, the differences between the National Park and Ryedale in terms of their housing delivery profile, demography, and settlement profile have already been outlined a represent a very different housing demand profile to that of the National Park. Officers are concerned that a default position to the Ryedale Area, after even 6 months is not sufficient in stringency to the plan – led policy approach of Policies SP1, SP2 and SP21.

6.17 The AONB Manager has also raised concerns about the length of time for the operation of the proposed cascade, and Officers echo those concerns. A standard conveyance can easily take 3 months, many take much longer. The reduction in timescales would represent a significant relaxation in the operation of the LNOc, to the point where is in effect the duration is to the detriment of its purpose. The ability to lift such conditions on properties with the LNOc is already part of the adopted Development Plan, requiring them to be considered on a case-by -case basis, and with documentary evidence submitted to justify an exception to normal policy.

6.18 As such, it is considered that the use of such a cascade, is contrary to the adopted Development Plan, and to approve such an approach would constitute a significant departure from the Development.

iii) The effects of the application of a mortgagee is possession clause

6.19 The ability to obtain a mortgage appears to be an issue with the application of the LNOc in some circumstances. It should be noted that the applicant actually complies with the LNOc. They are subject to the very circumstances which the LNO was brought in to provide: seeking the ability to secure a new dwelling in an area where there is a need which cannot be met by the existing stock. The applicants have stated that lenders are comfortable lending within the National Park using their LNO conditions, but not in Ryedale because they deem them too prescriptive, and because of the absence of any "Mortgagee in Possession" clause. However there is no detailed evidence from mortgage lenders that confirms this assertion. This is not provided in the form of any documentary evidence submitted as part of the planning application, nor is there documentary evidence provided to demonstrate that Mortgage Lenders are indeed happy with the remaining wording of the condition as proposed.

6.20 It is also important to remember that this particular clause as proposed has the proposed 'kick-back' of the LNOc in the sale after the disposal of the asset by the Lender. This is stated by the applicants to ensure that the LNOc is seen to exist- and depreciate the value of the site accordingly. However in the views of Officers, a Lender will be no happier with this approach than the imposition of the LNOc in the first place- as any subsequent purchaser will view it as a stymie to their sale capability- and would be likely to go on to fetter any future sale.

6.21 The policy framework to consider circumstances to lift the LNOc is already present (which could be a repossession situation). This is of course, on the basis that there is a property there, and not a speculative scheme for which only permission exists (and outline permission at that).

6.22 Officers have discussed the matter with the Planning Officers of the North York Moors National Park. The NYMNP do not apply a 'Mortgagee in Possession' clause by default, but only through a s.106 agreement in exceptional circumstances and on a case-by-case basis. They do find though that such an approach is resource intensive, but to apply a blanket approach would also come with potential unintended consequences. They are aware that much depends on the Lender's approach and their view concerning LNOcs, as some lenders do not consider that it is a problem.

6.23 As such it is considered that this element of the proposed amended wording to the LNOc is clearly not workable. The Local Planning Authority already has the policy provision to deal with the potential scenario of this occurring, which is hoped would be a very rare occurrence as set out in Policy SP21.

Conclusions

6.24 The applicant has sought, in summary, to achieve a situation whereby the LNOc is deemed to be applied, and therefore depress the value, whilst giving a situation whereby very easily the LNOc can be rescinded. Whilst it is firstly considered that the Mortgagee in Possession clause is unworkable- there is also the policy provision to consider these circumstances.

6.25 Members will be aware that the LNOc is not a condition applied as an afterthought. It is the policy approach of the Development Plan in relation to new residential development in the lower tiers of the Settlement Hierarchy such as those at Other Village locations.

6.26 Having carefully considered the application officers consider that there is insufficient information submitted to justify the proposed changes to the LNOc condition which, if approved, would be seriously detrimental to the Council's adopted development plan policy to the provision of housing in Ryedale.

RECOMMENDATION: Refusal

- 1 Insufficient information has been submitted to justify the proposed amendments to Condition 12 of approval 16/01227/OUT. The propose rewording of the Local Needs Occupancy condition would undermine the Council's approach to the delivery of housing in Ryedale as set out in the Ryedale Plan - Local Plan Strategy with particular regard to policies SP1, SP2 and SP21. There are no material considerations of sufficient weight to warrant a decision other than in accordance with the provisions of the adopted development plan as required by Section 38(6) of The Planning and Compulsory Purchase Act 2004