

**Item Number:** 14  
**Application No:** 19/00448/73  
**Parish:** Flaxton Parish Council  
**Appn. Type:** Material Amendment  
**Applicant:** Mrs Sarah Jackson  
**Proposal:** Removal of Condition 17 of approval 15/00363/FUL dated 19.02.2016 - Local Needs Occupancy Condition in respect of Unit 1 the property known as The Elms  
**Location:** The Elms Main Street Flaxton Malton YO60 7RJ  
**Registration Date:** 8 April 2019  
**8/13 Wk Expiry Date:** 3 June 2019  
**Overall Expiry Date:** 16 May 2019  
**Case Officer:** Rachael Balmer **Ext:** Ext 43357

## CONSULTATIONS:

**Flaxton Parish Council**  
**Flaxton Parish Council**

**Neighbour responses:** Mr Jeremy chalk, Mr Adrian Lawrence, Mrs Denise Guyer, Mrs Lorraine Ritchie, Mrs Alexandra Aldersley, J H Sutton,

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- 1.1 The Elms is a five-bedroom dwelling and one of two relatively new dwellings which were granted permission in Flaxton by planning application 15/00363/FUL, granted permission in February of 2016. The properties are within Development Limits and the Flaxton Conservation Area. Their curtilage is within the Conservation Area alone. They are adjacent to the Grade II Listed Elm Farm House.
- 1.2 The properties have both been marketed since October 2017. Whilst one has sold, this property has not sold. Both are subject to the Local Needs Occupancy Condition as required by Policy SP2 of the Ryedale Plan- Local Plan Strategy.

## 2.0 PROPOSAL:

- 2.1 A variation of the permission is sought by the removal of the Condition 17 on the permission which relates to the Local Needs Occupancy Condition (LNOC). This would allow the property to be sold without any eligibility criteria. Under the description originally submitted, two properties were subject to that condition, and this application is only concerned with The Elms, as per the red –outline of the site. The Officer sought revision to the description to read as follows:

Removal of Condition 17 of approval 15/00363/FUL dated 19.02.2016 Local Needs Occupancy Condition in respect of Unit 1 the property known as ‘The Elms’.

This revision has been agreed with the agent.

- 2.2 The agent acting for the applicant has submitted the sales particulars and supporting documentation to demonstrate that the condition should be lifted.
- 2.3 Originally, when the permission was granted, the LNOC was imposed in accordance with

adopted policy, and with the expectation from the applicants that they would live in the property. This scenario, for personal reasons, has not been realised.

- 2.4 Officers considered that this information would need to be independently appraised by an individual who had considerable in-depth knowledge of the housing market in the wider York area, (as Flaxton is less than 10 miles from the City of York-) which significantly influences the property market. This was to assess whether or not 'The Elms' had been realistically marketed at a price which reflected the presence of the Local Needs Occupancy Condition. Hunters Estate Agents provided a valuation of the property. The findings are discussed within the body of the report.

### **3.0 HISTORY:**

- 3.1 15/00363/FUL- February 2016- Erection of 1no. five bedroom dwelling(plot1)and 1no. three bedroom dwelling (plot 3), with open car port, amenity areas and rebuilding of an existing outbuilding to serve Plot 1 and Elm Tree Farm House. - Approved
- 3.2 13/01101/FUL- Erection of 1no. 4 bed dwelling with integral garage (plot3) 1no. 3 bed dwelling (plot1) and 1no. 2 bed dwelling (plot 2) with block 3 no. single garages to serve Plot 1, Plot, 2 and Elm Tree Farmhouse with alterations to existing shop for form village shop- partial approve/refusal
- 3.3 12/000745/FUL - Erection of 1 no Four bed (plot3) 1no. 3 bed dwelling (plot 1) and 1no. 2 bed dwelling (Plot2) and Elm Tree Farm House with alterations to existing shop for form village shop- withdrawn
- 3.4 12/00743/CON: demolition of existing fold yard – withdrawn

### **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 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 Policy SP2 Delivery and Distribution of New Housing

Policy SP21 Occupancy Restrictions

Material Considerations:

National Planning Policy Framework (NPPF) (2019)

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 Flaxton Parish Council object to the application for the following reasons:

The conditions are deemed valid and should remain. The lack of interest in the property is not unique to Flaxton as properties generally in the area are not moving at the moment. Has renting been considered until the market improves? The market is quite flat but people may rent. It is quite likely that the removal of this condition will turn the property into a second home or holiday home and there is already a large amount of such accommodation in the village with Blacksmith Arms, Thompson Arms, Woodland Farm and the Sandburn Hall Lodges and new hotel. The Parish Council do not support this application.

5.3 In terms of neighbour responses, the following responses received concerning the support for the application have been and these are summarised comments:

- Still can attract a family to come and live in the village;
- Renting is at odds with the policy – like a second home
- The property could be sold at auction if the condition remains
- Support the LNOC, but at £5/600,000 is unlikely to fulfil any perceived benefits of the LNOC
- It has been on the market for a long time, and proving impossible to sell- this is not fulfilling a local need
- Because the condition applies in perpetuity this is likely to put off any compliant individual
- This would also impact on a potential mortgage provider
- The catchment is extremely limiting – demand seems high on the open market

5.5 Those who object to the lifting of the condition make the following comments:

- No assurance over who will purchase the property and what their intentions will be for using it;
- It could become a holiday home or rent it out
- The condition enables people with a local connection with Flaxton to be able to live there
- The removal of the clause will make my adjoining property lower in relative value
- If the clause is lifted I will be seeking to lift the condition myself- as I want the same rights in case I wanted to sell my property.

## 6.0 APPRAISAL:

6.1 This proposal is a very specific requirement, which is to consider whether it is appropriate, and in accordance with the provisions of the Development Plan, to release the property known as ‘The Elms’ from the Local Needs Occupancy Condition. The report explains:

- The reason for the application of the Local Needs Occupancy Condition through Policies SP1, SP2 and SP21; and
- The circumstances around the lifting of such conditions through Policy SP21.

### **The reason for the application of the Local Needs Occupancy Condition through application of Policies SP1, SP2 and SP21**

6.2 Policy SP1- General Location of Development and Settlement Hierarchy- identifies other

villages, such as Flaxton as being areas of housing restraint, and development is restricted to that which is necessary to support a sustainable, vibrant and healthy rural economy and communities. Accordingly, Policy SP2 sets out the limited scenarios where new residential development will be permitted. This scheme did not strictly accord with those scenarios, as it was not infill development. It was approved in part by Members and subject to the Local Needs Occupancy Condition which is set out in Policy SP21, and is applied in perpetuity:

**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 or their dependants/spouse 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.

6.3 It can apply to both ownership and occupancy, allowing an owner to rent to those who need to rent the property (because they are unable to access the housing market) and who comply with the condition. This is still meeting a local need. The Local Planning Authority have also included clauses which allow in the default of a mortgage the LONC is lifted- and this has satisfied the lender in question.

6.4 It is important to understand the context of why the condition is imposed in the first place. Its principal objective is to act as a restrictive check on the supply of housing coming forward in the less sustainable locations at the point of considering proposals- with a corresponding focus on delivery of housing at the Market Towns and Service Villages in the adopted development plan. It is to therefore allow housing in circumstances to meet identified local needs, and not meeting externally driven demand (with the corresponding increases in house prices). That is the spatial approach of the Ryedale Plan Local Plan Strategy. However, after the dwelling has been constructed, there can be instances where, in time, the condition is no longer relevant or reasonable to apply.

**Circumstances around the lifting of Occupancy Conditions in accordance with Policy SP21**

6.5 Policy SP21 also sets out the situation where in time, there may come a point where the Local Needs Occupancy Condition (or other condition) cannot reasonably continue to be applied. This is particularly relevant when properties are built, and the Local Planning Authority does not want to prevent the ability of a dwelling to be occupied. It states that:

“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”.

6.6 This dwelling has been marketed by Boulton Cooper Stephenson since October 2017, and so

has been for sale for at least 17 months. It was on the market for £575,000, and in the sales particulars it clearly state the presence of the Local Needs Occupancy Condition. Hunters Estate Agents provided the Council with an independent view to the valuation of the property and they confirmed that “the property has been marketed at a price that would reflect the Local Needs Occupancy Condition on it.” The property has been marketed for well over one year- (a year being the time reasonably expected to market a property subject to an agricultural occupancy condition). Most properties in an around York sell well within a year of being placed on the market due to the high demand.

- 6.7 Anecdotally, in relation to sizable, higher value properties such as this, whilst being reflective of the market value with the LNOC in place; they are priced beyond the means of many local residents- particularly those seeking to get onto the housing market. Smaller properties are then more desirable when they have the LNOC in place- as it allows those with a local connection to get a purchase over those without that connection.
- 6.8 Noting the Parish Council’s comments, Officers are satisfied that it is not reasonable to indefinitely prevent the condition from being lifted- as conditions must be imposed on a basis which is reasonable. The property has indeed been rented with a family member also in residence who complies with the LNOC- but it cannot be financially sustained.
- 6.9 Concerns have been raised about the effects of the lifting of the condition. In relation to lack of control over the nature of the use. The property is currently valued at £575,000 and likely to sell for well over £600,000 with the LNOC removed. It is therefore unlikely that a property of this nature would be a holiday home. Regarding being used for tourist accommodation, it does not have planning permission to be used solely for tourist accommodation. Planning permission would be required to use the property for anything other than as a residential dwelling accepting that intermittent use, through hosting (such as provided by Airbnb) is likely to be ‘permitted development’.
- 6.10 This lifting would not apply to the adjoining property as the application did not relate to that property (being not within the red line), nor in in the description. Indeed they own and occupy their dwelling, and are not seeking to the sell the dwelling at present. If an application is made in the future to lift the condition it will be considered on its own merits as per Policy SP21.

### **Conclusion**

- 6.11 Clearly the development in principle is capable of permanent residential occupancy. The applicants have marketed the property for a considerable period of time, at price which had any parties met the occupancy criteria would not have prevented them from buying the property. It is therefore considered that it is reasonable and appropriate in this instance to lift the occupancy condition associated with the property known as ‘The Elms’ as there is no locally-derived need. In terms of varying the conditions on the original planning permission, a number of the conditions do not merit repeating as the development is completed. Those conditions which need to be re-applied are listed below.

### **RECOMMENDATION:                      Approval with the following conditions**

- 1            Notwithstanding the provisions of any Town and Countryside Planning General Permitted or Special Development Order, for the time being in force, the areas shown on drawing number 27 P1 for parking spaces , turning areas and access shall be kept available for their intended purpose at all times.

Reason: In accordance with Policy SP20 of the Ryedale Plan - Local Plan Strategy and to ensure that these areas are kept available for their intended use in the interests of highway safety and the general amenity of the development.

- 2 Notwithstanding the provisions of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (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 alternation of a dwelling house

Class B: Roof Alterations to enlarge a dwelling house

Class C: Any other alterations 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 the purpose incidental to the enjoyment of a dwelling house or the maintenance improvement or other alteration of such a building or enclosure.

Reason: to ensure that the amenity of residents is protected, in accordance with Policy SP20 of the Ryedale Plan- Local Plan Strategy, and in relation to the dwellings being within a Conservation Area, in accordance with Policy SP12 of the Ryedale Plan- Local Plan Strategy.

- 3 The 'granny annexe' as shown within Drawing Number 11 P4 of the development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the pf the dwelling referred toon the aforementioned plan as Plot 1.

Reason: In the absence of specific details, it is not considered that the independent occupation of the building, the subject of this application, accords with Polices SP20 and SP21 of the Ryedale Plan - Local Plan Strategy, and to satisfy the requirements of the National Planning Policy Framework.