

Item Number: 8
Application No: 19/01151/73
Parish: Terrington Parish Council
Appn. Type: Material Amendment
Applicant: Mr & Mrs P Scaling
Proposal: Removal of condition 13 of planning approval 16/01226/OUT dated 07.03.2017 - local occupancy condition
Location: Land And Buildings West Of Terrington C Of E School North Back Lane
Terrington North Yorkshire

Registration Date: 7 October 2019
8/13 Wk Expiry Date: 2 December 2019
Overall Expiry Date: 6 November 2019
Case Officer: Rachael Balmer **Ext:** 43357

CONSULTATIONS:

Paul Jackson AONB Manager Objection
Terrington Parish Council Comments

Neighbour responses: Mr Ian Tindale

1.0 SITE:

1.1 The site is an engineering workshop with hardstanding. It is located within the Conservation Area of Terrington and is positioned to the immediate west of the Terrington C of E School. It is within the Howardian Hills AONB. Planning permission was granted in outline (16/01226/OUT) for a single dwelling with attached garage. There is a mixture of residences and services in proximity (including parking for the school).

2.0 PROPOSAL:

2.1 The site has been on the market since June 2018 without sale, which is over 17 months. It has been marketed with a sale price of £150,000. This was 15 months after outline planning permission was granted for a dwelling. The applicant seeks the removal of the Local Needs Occupancy Condition (Condition 13) (herein referred to as LNOC) which they see as a barrier to the sale, and ultimately development on the site. The condition requires that:

The dwelling hereby approved shall only be occupied by a person(s) together with his/her spouse and dependents, or a widow/widower of such a person, 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

Reason:- To satisfy the requirements of Policies SP2 and SP21 of the Ryedale Plan - Local Plan Strategy.

- 2.2 The applicants have not submitted any independent valuation appraisal, just the sales particulars of the agents with whom the property is being marketed for sale. They have also not provided any specific details for the reasons why the interest shown has not then led to a sale. Nor was the price rationale discussed with the Local Planning Authority prior to the land being placed on the market. Accordingly, the Council has sought to obtain two independent valuations of the site. These are discussed within the body of the report.
- 2.3 The site has not been reduced in value in the 17 months it has been for sale. The applicants have not sought to establish whether a mortgagee in possession clause could overcome specific lenders concerns and bring about a sale (as it did at their other site in Terrington see application 17/00980/73 which followed the earlier outline planning permission Ref. 16/0127/OUT).

3.0 HISTORY:

- 3.1 Erection of dwelling with attached garage to include demolition of existing engineering workshop (site area 0.051ha)- approved with the Local Needs Occupancy Condition.
- 3.2 No further relevant planning history.

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 Policies Map (2019)

The Local Plan Sites Document (2019)

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 Delivery and Distribution of New Housing

Policy SP12 Heritage

Policy SP21 Occupancy Restrictions

Material Considerations:

National Planning Policy Framework (NPPF) (2019)

National Planning Practice Guidance

Planning (Listed Buildings and Conservation Areas) Act 1990

1990 c. 9 Part I Chapter VI Special considerations affecting planning functions

s.72 General duty as respects conservation areas in exercise of planning functions.

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 Parish Council provided an extensive response which is attached in full and is summarised as follows: They are of the view that the site has been marketed for long enough. That there has been interest but the Local Needs Occupancy has been the issue which prevented a sale. They suggest that a mortgagee in possession clause is used, at the very least to give the lender/receiver in the event of a default on the mortgage, the ability to sell without being fettered by the condition. They consider it should be applied without exception, such as through the policy- and they are aware this could be part of any review of the Plan. They conclude that the condition should be lifted.
- 5.3 The AONB Manager objects to the proposed removal of the condition for the following reasons:
- 1) The same policies remain in force now, as which were applied to the original scheme. It therefore stands to reason that if the original applications were to be submitted now then they would be approved in the same way, with an LNOC in place.
 - 2) Re. Mortgagee in possession clause, (Approval 16/01227/OUT) faced exactly the same issues, with a prospective purchaser from Terrington village unable to raise the funds via a mortgage because of the wording of the LNOC. Planning Application 17/00980/73 sought to add an additional sentence to the LNOC, to read: "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 as mortgagee or receiver provided always that a successor in title of such a person shall be bound by the obligations contained in this condition". This application was Approved and one assumes that a mortgage was raised, because that site is now at foundations stage.
 - 3) Without an LNOC in place, the dwelling becomes market housing and the LPA has no control over who occupies it, thereby negating the Local Plan policy objective of restricting housing in non-Service Villages to local needs only.
 - 4) It should also be borne in mind that the LNOC applies not to the developer but to the occupant. The applicant has presented evidence indicating that the site has not sold as yet to an owner/occupier, but hasn't presented any evidence of alternative options. One would be an amendment to the wording of the LNOC, as described above; a second might be to submit a revised Outline application for say two semi-detached houses, or even three terraced cottages. This might make the site more attractive to a local property developer for a build-to-rent scheme, which would also be of significant benefit in diversifying the housing stock of Terrington village. Given that windfall sites in the AONB are very few and far between, it is far too soon to write this site off as 'undevelopable' with an LNOC in place - all that the marketing to date demonstrates is that it doesn't appear possible to sell a site that has taken the predictable approach of obtaining consent for the largest house possible, rather than being more imaginative.
 - 5) I therefore wish to Object to this application, on the basis that it would be contrary to Local Plan policies and inconsistent with other decisions made for applications in both Terrington and other villages within the AONB. Given that the second site Approved in 2016 faced the same issues, but appears to have navigated these successfully by changing the wording of the LNOC (but not removing it), I don't believe that the full removal is justified. I would also wish other development options for the site to be explored before full removal could be considered.

6.0 APPRAISAL:

- 6.1 The main considerations to be taken into account are:
- i) Principle of the loss of the LNOC at this site on the proposed dwelling; and
 - ii) Any further site-specific considerations

i) Principle of the loss of the LNOC at this site on the proposed dwelling

- 6.2 Policy SP1- General Location of Development and Settlement Hierarchy- identifies other villages 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 includes the redevelopment of previously developed land and buildings, subject to the Local Needs Occupancy Condition which is set out in Policy SP21, and is applied in perpetuity as set out above, and is applied on the following basis:

"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.."

- 6.3 On that basis, it is important to understand why the condition is imposed. 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-led condition, in-conjunction with the other components of Policies SP1 and SP2, is to restrict development out with the larger settlements, to ensure that developed is focused on the larger towns and, to a lesser extent, the Service Villages. The LNOC is applied to ensure that in such a large, relatively sparsely populated District, as Ryedale is, residential development in the smaller settlements is restricted to that which meets locally-derived need.

- 6.4 The application of the LNOC is still concerned with Market Housing, and is not, in planning terms, capable of being considered or treated as an 'affordable dwelling'. That being said, there is anecdotal evidence that the application of such a condition, does give those who meet the LNOC a much greater chance to genuinely compete in the housing market compared to those further afield. This is, however normally in relation to the smaller scale, lower priced dwellings. It can also with the c.15%-20% depression in value, making it more affordable than had the dwelling been without restriction market. This is the Council's experience of the other site in Terrington.

- 6.5 Aligned to this, there have been a number of purely speculative applications for the development of dwellings subject to the LNOC. Application 16/01226/OUT is one such application. 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. As the Howardian Hills AONB Manager has identified, properties built with the LNOC do not have to be owned by their occupier. In this instance, the site has not been built out, and has only outline permission, as such the scheme is on a fully speculative basis.

- 6.6 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.

- 6.7 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 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. They have concluded that in the absence of a local need then the dwellings should not come forward. So it is clear that in the operation of the Development Plan the application of such conditions has been tested, and is deemed to be reasonable, as part of the implementation of the Ryedale Plan-Local Plan Strategy. The Inspectors have concluded that such appeals demonstrate that there was no local need for the dwelling in the first place. Therefore, to lift the condition in such an instance would be resulting in development which is counter to the general approach to development set out in the adopted Development Plan.

- 6.8 Occupancy conditions can be lifted/modified (through the s.73 application route), and this has, in specific instances, been undertaken. 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.
- 6.9 The Mortgagee in possession clause, mentioned by both the Parish Council and the AONB Manger has not been considered by the applicant. This is not unsurprising, as it a feature which is very much driven by the Lender. The Local Planning Authority has taken the view on previous applications that when it comes to the mortgagee in possession clause, the onus is on the buyer's lender to confirm what wording they feel comfortable with, as a starting point. It should be noted that the example of the current wording applied, to date, only allow the lender/receiver to sell the property to a person who does not comply. However, on the subsequent sale, the condition is worded such that it is 'revived' or kicks back in.
- 6.10 Officers share the view of the AONB manager that, if the condition is lifted, that the property can be occupied by anyone. Whilst this may satisfy the seller and the builders, for the most part, in a high value, attractive area such as Terrington that owner/occupier will be a person(s) who is not even likely to be currently within the Ryedale housing market- particularly for a larger property such as this.
- 6.11 The supporting statement at paragraph 10.6, states that "the applicants have lived and operated a business in Terrington for many years and wish to continue to reside in the village. Selling the site would allow them to properly retire and allow them to reside in the village". These are personal circumstances which in the view of Officers would not outweigh the provisions of the Development Plan. Officers have, based on that statement, questioned why the applicants have not sold their existing property and commissioned the building of a dwelling for themselves. If that is the case, given that they are in compliance with the LNOC, and they may be in need of housing which better meets their needs. It is also of note that the applicants have also already sold a site at Terrington.
- 6.12 The report has until now focuses on the policy context considerations, and Officer's experience of the LNOC to date. In a recent application where the LNOC was lifted on a property that was built and on the market. The external valuation was a critical piece of evidence to establish that the property has been priced to reflect the depression in the value that the LNOC brings. The key aspect in the consideration of this application is therefore the results of the two valuations findings. This was done because the property is only subject to outline permission, and so there is capacity for some variance in the value of the land, depending on the built-cost of the scheme approved at Reserved Matters stage.
- 6.13 This site does have extra site costs involved in its redevelopment and those costs would need to be properly factored into the guide price. It was key to understand whether the market price reflected those costs in conjunction with the presence of the LNOC on the basis of the expected resultant value of the dwelling. Valuations were sought from Cundalls and Boulton and Cooper, both companies are very familiar to the Ryedale Property market and have experience of the impact of the LNOC. Members are able to view the full documents on the public access pages. A summary of their findings is provided below:

6.14 Cundalls undertook a residual land valuation calculation. This is where the Gross Development Value (GDV) of the end property is first derived, and then all costs associated with the building of that indicative property are subtracted in order to arrive at a residual valuation that a purchaser would hypothetically pay for the property. The outline did have some indicative details: Cundalls estimated that the property would be a 4 bedroom, detached two storey dwelling of approximately 160 square meters or 1,722 square feet.

6.15 The survey assumed that no contamination investigation (potential or actual) has been undertaken. The site was use for agricultural trailers in terms of repairs. As such, on the planning permission the following condition was imposed:

"Development shall not begin until an investigation and risk assessment of land contamination has been completed by competent persons and a report of the findings submitted to and approved in writing by the Local Planning Authority. This shall include an appropriate survey of the nature and extent of any contamination affecting the site, and an assessment of the potential risks to human health, controlled waters, property and ecological systems.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors. "

As such, the presence of contamination would further detract from the value of the land based on any remediation costs. This is, in the absence of such a survey, an unknown. Without the survey and report it is not possible to precisely quantify the costs of remediation (if any) but to assume that if there were costs, a buyer would want to factor them into the costs of the site. This was undertaken by Cundalls.

6.16 The Valuation by Cundalls is thus;

Gross Development Value of between £500,000 to £520,000

Minus the depression by the Local Occupancy Clause of 20% to between £400,000 to £415,000.

BCIS development/construction costs, and site clearance (£195,000 which includes £20,000 for site clearance and removal of asbestos)

Contingency 5% (£9,750)

Professional Fees 5% (9,750)

1% disposal fees £ (4,150)

Finance 5% (£7500)

= £31,200

Profit on GDV (10%) which is £40,000 to £41,000

This results in a residual value of between £125,000 and £135,000

Whilst a range of values is provided, they represent a realistic appreciation of the potential values associated with an outline scheme.

This is between £15,000-25,000 less than the current asking price. Whilst, as Cundalls have pointed out it might be expected that the asking price would be a little higher (simply to test the demand) this is quite a big difference.

6.17 Boulton and Cooper valued the property using the following rationale:

They too have applied the information submitted at the outline application: with a gross internal floor area of the proposed residential unit 160sq.m excluding the adjoining garage. Boulton Cooper also used the residual method of valuation with the comparable method of valuation (although the report notes the lack of direct comparable evidence of such properties in the locality).

6.18 The site's market value lies in the region of £135,000. They consider the guide price of £150,000 to be reasonable.

Their valuation is thus:

£520,000 Gross Development Value

£420,000 (Less 20% discount to reflect the LNOC)

-£190,000 less build costs including demolition etc

-£50,000 less development profits of 10%

-£10,000 less sales fees of 2%

-£10,500 less interest on the build at 5.5%

-£25,000 less 15% contingency

= £134,500

Estimation Market Value of the subject property based upon the above RMV

£135,000

6.19 The two independently produced valuations have both come out with a figure of £135,000 as the top end value of the plot with the LNOC. This is based on the standard methodology and they have used the same starting point using the scheme details which were part of the outline planning permission.

6.20 Whilst remediation costs have been factored in to an extent, it is important to remember the potential for unknown contamination. The fact that a purchaser will be mindful of the potential impact of the planning conditions such as those to deal with surveys for contamination and their potential for remediation. Aside from the known asbestos there is potential for contamination from fuel, oil, and battery fluids given the use as a vehicle workshop. The uncertainty around this aspect cannot be underestimated for either a developer or for the intended owner/occupier of the site.

6.21 Officers therefore consider that it is not justified to depart from the provisions of the Development Plan in respect of lifting the LNOC on this site based on the valuation. There are no material considerations which would outweigh departing from the Development Plan. This is based on the relative consistency of the valuations provided, which show that the land has been marketed at an elevated price of between £15,000 to 25,000 pounds. It is also supplemented by the lack of detail around the interest the scheme generated. It is considered that the site has not been valued at a price which reflects the outline consent, in combination with the site's re-development costs, which remain not fully known, and a developer profit, and this has stymied interest. It is also considered that an indication of the lack of a local need identified for such housing in the village. If there been such interest, in the 17 months the scheme was on the market (and indeed since the permission was actually granted) even with the price issues, Officers are of the view that this would be likely to have generated a sale.

This is evidenced by the other site which was granted permission, and is now under construction.

ii) Any further site-specific considerations

- 6.22 The site is within the Conservation Area of Terrington, and so Policy SP12 - Heritage- is of relevance given the statutory obligations placed on Local Planning Authorities as a result of the 1990 Act (as referenced in the earlier Policy Section). It was not considered that the creation of the dwelling would result in any harm to the character and appearance of the Conservation Area, subject to the addition of conditions. However, whilst criticisms have been levelled at the building, it has a functional utilitarian modern rural vernacular and whilst it is not attractive in the sense of being a stone barn, nor is it unduly discordant, and represent a once common feature on the edge of villages (although one which is becoming increasingly rare). As such it not considered that there are any heritage grounds, due to the lack of harm to the Conservation Area as a result of this building being retained in its current state. Maintenance (or lack of) is not a reason to depart from established planning policy.
- 6.23 The AONB manager has suggested that the scheme is more radically revised to meet perhaps a different range of end occupiers. Whilst Officers would not dispute the fact that that the property could be let, and that alternative schemes could be considered, these matters are beyond the scope of what the Local Planning Authority is being asked to consider in the current application. The Local Planning Authority must consider the implications of the development as presented by the applicant, based on the planning history and description of the development by virtue of the outline planning permission and this s.73 application.
- 6.24 The principle of the site's redevelopment for residential development (subject to Plan compliance) has been established by the outline planning permission. During the outline application's consideration support was made by the Head Teacher of the sites re-development. This was reiterated in the supporting statement to this application. No noise complaints have been made, and the site is inactive. If noise complaints did arise then other enforcement regimes would address the matter of noise nuisance. Therefore, any arguments made around enhanced amenity do not outweigh the need to consider compliance with the Development Plan.
- 6.25 The fact that the application will lapse on the 6 March 2020 is also not a material consideration which would warrant a departure from the Development Plan. The applicants can re-apply or submit a Reserved Matters application to keep the outline planning permission 'live'.

Conclusion

- 6.28 The independent valuations have confirmed that the property has not been marketed at a price which reasonably and robustly reflects the presence of the LNOC nor the costs associated with the development of this site (which could increase if remediation is necessary for contamination above and beyond currently identified). The applicant has not provided any specific details of the interest and reasons why the interest in the site did not progress to a sale.
- 6.29 A mortgagee in possession clause can be used to provide comfort to the lender in a default and has been applied in two instances, one of which is in Terrington. This is not relevant as a lender is unlikely to lend on the site given its asking price.
- 6.30 Accordingly, Officers are unable to recommend that the LNOC is lifted, as the property has not been marketed a price which reflects fully the LNOC and the site context.
- 6.31 The lack of interest in the site is considered to be reflective of both the sale price of the site, and the lack of local need. If the LNOC is lifted, it will be sold on the open market and not meet an identified local need. Planning Inspectors have dismissed appeals on that basis, as it results in a development which is not in accordance with the Development Plan.

- 6.32 The application is therefore recommended for refusal, as there are no material considerations raised by the site which would be of sufficient weight to justify a departure from the adopted Development Plan.

RECOMMENDATION: Refusal

- 1 The property subject of this s.73 application has not been marketed a price which robustly reflects the implications of the Local Needs Occupancy Condition (LNOC) and the site context. This is in terms of the nature of the former use of the site, and the unknown costs associated with the development of this site (which could increase if additional remediation is necessary for contamination above and beyond that currently identified). The applicant has not provided any specific details of the interest and reasons why the interest in the site did not progress to a sale. The lack of interest in the site is considered to be reflective of both the sale price of the site and the lack of local need. Lifting the LNOC would result in a dwelling being sold on the open market, and not meeting an identified local need.

As such the proposal results in a development which is a departure from Policies SP1, SP2 and SP21 of the adopted Ryedale Plan Local Plan Strategy, which is focused on the restraint of market housing in the Other Villages to that which meets an identified local need. There are no material considerations identified which are of sufficient weight to justify a departure from the adopted Development Plan.