



Appeal Decision

Site visit made on 26 August 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2020

Appeal Ref: APP/W9500/W/20/3253018

Paddock House, Sutherland Lane, Cropton, Pickering YO18 8EX

- 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 conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Simon Ashworth against the decision of North York Moors National Park.
 - The application Ref NYM/2019/0681/FL, dated 5 October 2019, was refused by notice dated 5 December 2019.
 - The application sought planning permission for erection of agricultural dwelling without complying with a condition attached to planning permission Ref NYM3/031/0010/PA, dated 10 December 1975.
 - The condition in dispute is No 5 which states that: "the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such a person residing with him) or a widow or widower of such a person".
 - The reason given for the condition is: "the site of the proposed dwelling is in an area where the local planning authority consider that new residential development should be restricted".
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling at Paddock House, Sutherland Lane, Cropton, Pickering YO18 8EX in accordance with the application Ref NYM/2019/0681/FL, dated 5 October 2019, without compliance with condition number 5 previously imposed on planning permission Ref NYM3/031/0010/PA dated 10 December 1975 and subject to the following condition:
 - 1) The occupation of the dwelling shall be limited to a person, or a widow or widower or surviving civil partner of such a person, and to any resident dependants, who are;
 - a. Currently resident in the National Park, having been resident in the Park for at least the previous 3 years; or
 - b. Currently in employment in the National Park; or
 - c. Having an essential need to live close to relative(s) who are currently living in the National Park; or
 - d. Having an essential requirement for substantial support from relatives who are currently living in the National Park; or

- e. Former residents whose case for needing to return to the National Park is accepted by the Authority.

Application for costs

2. An application for costs was made by Mr Simon Ashworth against North York Moors National Park. This application is the subject of a separate Decision.

Procedural Matter

3. The North York Moors National Park Local Plan (NYMNPLP), which was in draft at the time the Council refused the application, was formally adopted on 27 July 2020. This replaces in full the North York Moors Core Strategy and Development Management Policies DPD (2008), such that the policies of those plans cited on the decision notice are no longer part of the development plan and have no weight. I have therefore determined the appeal having regard to the relevant policies within the NYMNPLP.

Main Issue

4. The main issue is whether the condition is necessary having regard to the location of the dwelling in the open countryside and relevant local development plan policy.

Reasons

5. The appeal property is a detached dwelling located in a remote, open countryside location, adjacent to Skelton Banks Farm, approximately 1km from the village of Cropton.
6. Policy CO16 of the NYMNPLP states that the removal of occupancy conditions relating to agriculture, forestry or other essential land management activity will only be permitted where it can be demonstrated that there is no longer a need for the accommodation on the holding or from persons meeting the conditions in the locality. Where this has been successfully demonstrated the condition will be substituted with a condition restricting occupancy to local needs in accordance with Policy CO13.
7. The supporting text explains that the removal of agricultural occupancy conditions will only be permitted in exceptional circumstances. However, it is recognised that changes in farming, forestry or land management practices may in certain circumstances mean that a dwelling constructed for agricultural workers is no longer required. One of the necessary criteria is that the property has been actively marketed at a realistic price reflecting the occupancy restriction for 12-18 months, in order to find an occupant who satisfies the condition. Once it can clearly be demonstrated that the dwelling has been adequately marketed at a suitable price for an appropriate period with no persons meeting the criteria, consent is likely to be granted for the condition to be replaced with a local connection condition to allow the dwelling to be permanently occupied by persons meeting the local connection criteria, in accordance with Policy CO13.
8. It is not in dispute that the property has been marketed for a sufficient period of time and at a suitable price.
9. Whether or not there exists potential occupants who satisfy the current restriction is central to the appeal. The local planning authority are of the view

- that such potential occupants do exist, whereas the appellant considers that the potential occupants do not meet the relevant criteria.
10. The evidence before me presents a somewhat muddled picture of the roles of the potential occupants in their respective positions. The first, Mr Keane, works for the Forestry Commission. The evidence refers to his main role as Deerstalking. However, this is extended, or clarified, in later correspondences to be species management for the protection of the growing timber stands and completing environmental assessment forms for works to be carried out.
 11. Although Mr Keane is employed by the Forestry Commission and works within Forestry Commission land, I do not consider that the roles which have been outlined would constitute 'forestry'. Any link to forestry is a by-product of Mr Keane's main role, which I consider does not constitute a direct role in the planting or managing of a forest.
 12. The second potential occupant upon which the evidence focuses is Ms Creaser who is an Assistant Farm Manager at Westfield Farm. There is disagreement as to the nature of the primary undertaking at Westfield Farm and whether this is an arable farm with an element of game breeding, or conversely a game breeding facility with an element of arable activity. From the evidence before me, particularly from Ms Creaser's employers website, which states '*we specialise in the production of Pheasants from our closed flock, also producing Red-leg Partridge, Grey Partridge and Mallard ducklings, for nationwide customers new and old as well as our own shoots*', I conclude it is the latter. I have no substantive evidence before me that would lead me to conclude it is predominantly an arable farm.
 13. On this basis, such an enterprise would not constitute agriculture as defined in Section 336 of the Town and Country Planning Act 1990 as this does not include pheasant rearing and shooting or any other game keeping related activities within the definition of agriculture. The Courts have also held that the rearing of game birds is not an agricultural activity for planning purposes.
 14. From the evidence before me, I therefore do not consider that either Mr Keane or Ms Creaser are solely or mainly employed in agriculture or forestry and as such would fail to meet the occupancy restriction in its current form.
 15. The Council's officer report refers to an objection from Mr Davison who outlines that he tried to view the house with the intention of making an offer only to be told by the seller's agent he did not meet the criteria even though he is a farmer with an agricultural holding number. Although such an occupant would appear to comply with the existing restriction, I am not presented with any further evidence about this matter and so cannot reach a certain conclusion.
 16. The local planning authority has issued a notice in which they consider potential purchasers of the property comply with the existing condition imposed on the property. Although, as it is outlined that they are the enforcing body for such matters, this does not close the matter for the purposes of this appeal in which, for the reasons I have outlined, it has been demonstrated that no purchasers have come forward that would comply with the current occupancy restriction.
 17. For the reasons outlined above, I conclude that the condition in its current form is not necessary and that it can therefore be deleted. Removal of the condition

would comply with Policy CO16 of the NYMNPLP which states that the removal of occupancy conditions relating to agriculture, forestry or other essential land management activity will only be permitted where it can be demonstrated that there is no longer a need for the accommodation on the holding or from persons meeting the conditions in the locality.

Condition

18. Policy CO16 continues that where it has been successfully demonstrated the occupancy restriction is no longer needed, it will be substituted with a condition restricting occupancy to local needs in accordance with Policy CO13.
19. Policy CO13 sets out that occupancy will be restricted to those: 1. Currently resident in the National Park, having been resident in the Park for at least the previous 3 years; or 2. Currently in employment in the National Park; or 3. Having an essential need to live close to relative(s) who are currently living in the National Park; or 4. Having an essential requirement for substantial support from relatives who are currently living in the National Park; or 5. Former residents whose case for needing to return to the National Park is accepted by the Authority.
20. Whilst I have accepted that the appellant has demonstrated justification to remove the existing condition, I am not presented with substantive evidence that would justify deviation from the requirement as outlined in Policy CO16, that in the event of the removal of an occupancy condition it should be replaced with the restriction as outlined above. Although it is agreed that the property has been marketed for an appropriate period, at a suitable price, this is in the context of the existing restriction and not the local connection restriction. I am not presented with substantive evidence that potential purchasers who would meet the local connection restriction do not exist. Therefore, the new condition is necessary to restrict occupation in the open countryside to maintain the quality of the National Park, and to comply with the requirements of Policies CO16 and CO13 of the NYMNPLP.
21. The Council have requested that in the event the appeal is allowed and the existing condition is removed, one of two suggested conditions be imposed, restricting the occupancy of the dwelling. The first suggested condition effectively adds 'essential land management' to the existing restriction. This is drawn from the requirement in Policy CO10. Policy CO10 is primarily concerned with the creation of new dwellings. As the dwelling relating to this appeal is already in existence as a dwelling, and has been for some time, I do not consider it to be appropriate to apply this condition. The second condition follows the route outlined in Policy CO16 leading to Policy CO13. This is reflected in the condition I have imposed, although I have simplified the wording and removed the requirement to obtain confirmation in writing from the Council as this is advisory but not necessary.

Conclusion

22. For the reasons outlined above, I conclude that the appeal should be allowed. I shall delete existing condition No. 05 and replace it with a new condition.

A M Nilsson

INSPECTOR