

10. SECTION 73 - APPLICATION FOR THE REMOVAL OF CONDITION 11 FROM APPLICATION NP/SM/0698/070 AND REPLACE WITH A LOCAL HOUSING CONDITION AT HEATH BARN, CALTON (NP/SM/0715/0683 P. 10327 410327/349321 31/8/2015/CF)

APPLICANT: MR DAVID TYERS

Site and Surroundings

Heath House is a property that lies in open countryside adjacent to the A523 Leek to Ashbourne road and broadly between the two nearest named settlements; Calton and Waterhouses. The former smallholding at Heath House did consist of a rendered house, a number of outbuildings, and a two-storey stone-built barn of traditional appearance that has since been converted to a holiday cottage. However, the converted barn has subsequently been sold separately from Heath House and is now known as Heath Barn. This barn is the subject of the current application.

Proposals

The current application has been made under s.73 of the Town and Country Planning Act 1990 ('the 1990 Act'), as amended, and seeks the variation of condition 11 from application NP/SM/0698/070 to allow for permanent residential use of Heath Barn as an affordable house to meet local need.

Condition 11 attached to Planning Decision Notice NP/SM/0698/070 originally said:

This permission relates solely to the use of the premises hereby approved for short-let holiday residential use ancillary to Heath House. The property shall not be occupied by anyone person for a period exceeding 28 days in any calendar year. The existing house and the approved holiday accommodation shall be maintained as a single planning unit.

The owner shall maintain a register of occupants for each calendar year which shall be made available for inspection by the National Park Authority on request.

The reason for the condition stated on the original permission is as follows:

Permission has been granted in accordance with policy RT3 of the Structure Plan which permits the conversion of traditional buildings to holiday accommodation. Conversion to a permanent dwelling would be contrary to the Structure Plan policies.

However, this condition has already been varied (under planning application NP/SM/0614/0685) and the ancillary tie has since been deleted and, as noted above, Heath House has subsequently been sold separately. Heath Barn has since been marketed for separate sale as a holiday unit by the current applicant now it is no longer required to be maintained in the same planning unit as Heath House.

RECOMMENDATION:

That the application be **APPROVED** subject to prior entry into a legal agreement made under s.106 of the 1990 Act naming the intended first occupant, containing local occupancy restrictions, and retaining the house as an affordable home in perpetuity and subject to the following planning conditions:

- 1. The stone outbuilding adjacent to Heath Barn shall be retained for the garaging of domestic vehicles and for the storage of domestic items and shall not be used for any other purpose at any time during the lifetime of the development hereby permitted.**

2. **Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any order revoking or re-enacting that Order) no alterations to the external appearance of the dwelling shall be carried out and no extensions, porches, or ancillary buildings other than the timber shed shown on the approved plans, shall be erected on the site without the National Park Authority's prior written consent.**

Key Issues

- whether the intended first occupant of the affordable dwelling has an appropriate local qualification;
- whether a legal agreement would be necessary to make the proposed variation to the holiday occupancy condition acceptable in planning terms; and
- whether the Authority's standard planning obligations relating to affordable housing to meet local needs would be fairly and reasonably related in scale and kind to the proposed development.

History

- 2014 Variation of Condition 11 attached to NP/SM/0698/070 granted to allow the sale of Heath Barn separately from Heath House.
- 2010 Discharge of condition 7 attached to NP/SM/0698/070 for conversion of barn to holiday unit (NP/DIS/0210/0147)
- 1998 Planning permission granted for conversion of barn to holiday unit (NP/SM/0698/070)

Consultations

County Council (Highway Authority) – No response to date.

District Council – No response to date.

Parish Council – No response to date.

Representations

Two letters of support for the current application have been received by the Authority during the statutory consultation period. One letter says that as there is already a large quantity of holiday accommodation in this area, it would be more beneficial to the local economy for this property to be occupied as local housing. The other letter says the area is short of houses for local people and houses need off road parking today; this house has everything it needs for people to live in.

Policy

Policy HC1 of the Authority's Core Strategy says provision will not be made for housing solely to meet open market demand, and housing land will not be allocated in the development plan. Exceptionally, new housing can be accepted where it is (A) for affordable housing to meet local need or for assisted accommodation; (B) for key workers or (C) in accordance with core policy GSP2, it is required in order to achieve conservation and/or enhancement of valued vernacular or listed buildings. In this case, the current application seeks to remove the holiday occupancy restriction and replace it with a local occupancy restriction, which in principle, would be in accordance with policy HC1(A) of the Core Strategy.

The provisions of HC1(A) are also supported by policy DS1 of the Core Strategy and policy LH1 of the Local Plan. DS1 sets out very clearly new residential development should normally be directed to existing settlements within the National Park but saved Local Plan policy LH1 says exceptionally, residential development will be permitted either as a newly built dwelling in or on the edge of settlements or, as the conversion of an existing building of traditional design and materials in the countryside provided that it would be affordable housing to meet local need. Saved Local Plan policy LH2 otherwise sets out the Authority's definition of a person with a local qualification for affordable housing.

It is considered the provisions of these policies in the Development Plan are consistent with national planning policies in respects of new housing with the National Park. Firstly, because paragraph 54 of the National Planning Policy Framework states that in rural areas, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. Paragraph 55 of the Framework otherwise states local planning authorities should avoid granting planning permission for isolated new homes in open countryside.

However, the supporting text to HC1 states that unless open-market values are demonstrably required for conservation and enhancement purposes, all other schemes that provide new housing should be controlled by agreements to keep them affordable and available for local needs in perpetuity. LH1(iv) also requires affordable dwellings to be affordable by size and type to local people on low or moderate incomes and to remain so in perpetuity. The Authority's adopted supplementary planning guidance on affordable housing (SPG) sets out in more detail how these objectives would normally be met by way of a legal agreement for affordable housing with various obligations relating to first occupants, occupancy restrictions and cascade provisions, amongst other things.

Therefore, the Authority's adopted housing policies and planning guidance very clearly set out an expectation that where affordable housing to meet local need is granted planning permission in the National Park: it should be controlled by a legal agreement rather than planning conditions.

Assessment

Section 73 of the Town and Country Planning Act 1990 ('the 1990 Act'), as amended, provides that any application may be made for planning permission without complying with conditions applied to a previous permission. In summary, s.73 of the 1990 Act makes it possible to apply for conditions to be struck out, or for their modification or relaxation. Equally, s.73 of the 1990 Act allows the Authority to decide whether to grant permission for the current application subject to different conditions imposed on the original permission (this can include imposing new conditions); remove the conditions imposed on the original permission altogether; or refuse to alter the conditions. Nonetheless, in terms of decision making, a section 73 application should be treated just like any other application with due regard paid to the Development Plan and other material considerations including the National Planning Policy Framework ('the Framework') and SPG.

In this case, the current policy framework, including national planning policies, Core Strategy policy RT2 and saved Local Plan policy LR6, promotes the conversion of traditional buildings to leisure and tourism uses. The conversion of Heath Barn to a holiday let is consistent with these policies and the holiday occupancy condition attached to Heath Barn was otherwise necessary to make its conversion acceptable at the time permission was granted. As noted in the policy section above, there are still strict controls on new housing in open countryside in both the current Development Plan and the Framework.

Therefore, it is considered that the current holiday occupancy restriction attached to Heath Barn continues to serve a proper a planning purpose and it would not be appropriate to simply delete the existing condition without proper justification. In these respects, officers are aware of a

number of other cases within the National Park where holiday lets have been said to be no longer viable and applications have been submitted seeking the removal of the occupancy restriction, which if granted planning permission, would effectively have created new open market houses to meet general demand. However, where a traditional building has already been converted to holiday accommodation, these types of applications are normally refused planning permission because it cannot be demonstrated removing the holiday occupancy restriction and the subsequent impetus of open market values is required for conservation and enhancement purposes in accordance with HC1(C) or the provisions of paragraph 55 of the Framework.

In these cases, where refusal of planning permission has been appealed, the Planning Inspectorate has consistently supported the Authority's position that where holiday lets are no longer required then it would be appropriate to provide affordable housing with a local occupancy restriction rather than grant permission for an open market house to meet general demand. These appeal decisions include holiday units in named settlements, including converted buildings in Bakewell and Winster, and holiday lets in open countryside including converted buildings in Brushfield (near Taddington), Parwich Lees, and Newtown (near Longnor).

In light of the similarities between these cases and the situation at Heath Barn, the current applicant withdrew his previous proposals to remove the holiday occupancy restriction attached to Heath Barn and is now seeking to replace the holiday occupancy restriction with a local occupancy restriction. In support of this application Heath Barn, the applicant has already carried out a marketing exercise through an estate agent. As a result, the property has been marketed as a holiday let for a period in excess of six months albeit unsuccessfully. However, the marketing information also advertised the availability of the holiday let for affordable housing subject to the grant of planning permission (as agreed with officers).

During this marketing period, there was some interest from potential purchasers with a local qualification (within the terms of LH2) but the only firm interest in the property is from a person who has a local qualification defined in the final tier of the cascade provisions set out in the Authority's 'standard' legal agreement i.e. this person has an appropriate period of residency in a Parish within Staffordshire that is contingent with a Parish adjacent to the boundary with the National Park. It is intended that this person would be the first occupant of the dwelling if permission is granted for the current application although it is acknowledged that if this application proposed a new house then this person would not have an appropriate local qualification within the terms of LH2.

However, it is considered that an exception can be made in this case primarily because the house already exists (albeit subject to a holiday occupancy restriction) but also taking into account the marketing exercise carried out by the applicant did not identify a person with a stronger local connection who also wanted to go through with the purchase of the property. Moreover, in the absence of any firm interest in the existing holiday unit, keeping the property empty would not serve any particular planning purpose whereas a legal agreement prioritising occupancy for local people and retaining the house as an affordable dwelling would provide wider public benefits in the longer term in the event the intended first occupant was to sell the property. Therefore, it is considered that the current application could be granted planning permission subject to prior entry into an appropriate legal agreement made under s.106 of the 1990 Act given that the provision of affordable housing would otherwise accord with the principles set out in local and national housing policies in all other respects.

Legal Agreement

In this case, a local occupancy restriction would normally be considered to be a 'lawful' obligation under section 106 of the 1990 Act, as amended, because it would restrict the future occupancy of the house and would therefore restrict the use of the land in a specified way. However, for the offer of a legal agreement to be capable of constituting a material planning consideration in the determination of the current application, and in particular, a reason for approval; the proposed

legal agreement and the obligations to be entered to by the applicant must also meet three tests, which are set out in identical terms in S.122 (2) of The Community Infrastructure Levy Regulations 2010 and the Framework.

The three tests are whether the obligations contained in a legal agreement entered into by the applicant, or the intended first occupant of the affordable house, would be:

- 1) necessary to make the variation of the holiday occupancy condition proposed in the current application acceptable in planning terms;
- 2) directly related to the development proposed in the current application; and
- 3) fairly and reasonably related in scale and kind to the proposed development.

In this case, the obligations in the 'standard templates' for legal agreements for affordable housing to meet local need can normally be demonstrated to meet these three tests with reference to the Authority's adopted supplementary planning guidance on affordable housing (SPG), which sets out in full, the planning purposes for a legal agreement for affordable housing with various obligations relating to first occupants, occupancy restrictions and cascade provisions, amongst other things. It is also the case that these obligations cannot normally be achieved through the imposition of planning conditions.

Furthermore, the proposed legal agreement is necessary to make the removal of the holiday occupancy condition proposed in the current application acceptable in planning terms, as set out above, because relaxing to create an open market house to meet general demand would be contrary to local and national housing policies. In this respect, the legal agreement would be directly related to the proposed variation of the condition. Therefore, the acceptability of the current application is considered to turn on whether an obligation restricting the occupancy of the house to a person with a local qualification, is fairly related in scale and kind to the property, notwithstanding the applicant's request to vary the condition rather than enter into a legal agreement

In this case, the existing holiday let is a two bedroom house that has an internal floor area that would be less than the guidelines for affordable housing in the Local Plan and associated SPG, which suggest the maximum net internal floor area of an affordable house would be 87 square metres for a five person house. The net internal floor area of Heath Barn is less than 70 square metres and it is considered the property would be 'more affordable' because of its size and market value subject to the occupancy restriction. It is therefore considered that a legal agreement would meet the three legal and policy tests set out above despite Heath Barn being marketed for sale with a separate stone building that has a lawful use (in planning terms) for garaging and domestic storage.

Planning Conditions

SPG says outbuildings such as garaging would not normally be taken into account in terms of the affordability of a local needs dwelling, and would not normally be counted as part of the internal floor area of the house providing any garaging or outbuilding was not used as habitable accommodation. Therefore, it is considered that planning conditions should be used to retain the garaging and the domestic storage (in the loft space above) in their current use to avoid these spaces becoming ancillary living accommodation, and subsequently undermining the reasons for approval of this application if permission were to be granted. Similarly, permitted development rights for extensions and outbuildings, amongst other things, should be removed if permission were to be granted to allow the Authority to retain control over future alterations to the property to safeguard the affordability of the dwelling.

However, it is considered that exceptional circumstances do exist that warrant removing permitted development rights for householder development not only to maintain the affordability of the dwelling but also because the building has been converted to a very high standard and retains its traditional character and appearance. In this respect, inappropriate alterations to the building would be especially harmful and contrary to the provisions of saved Local Plan policy LC8 in particular, which provides specific design criteria for the conversion of traditional buildings to new uses. In all other respects, the proposed development does not give rise to any other relevant planning considerations because the unit has already been converted in accordance with the approved plans, no internal or external changes to the land or buildings within the red-edged application site are being proposed, and the property can be occupied on a permanent basis without being unneighbourly and it already has a safe and suitable vehicular access.

It is therefore considered no other planning conditions are required to make the development acceptable in planning terms noting that a time limit for commencement would not be appropriate in this case because the application has been made under s.73 of the 1990 Act.

Conclusion

It is therefore concluded that the proposed variation of the existing holiday occupancy restriction would conform to the Authority's housing policies subject to a legal agreement and would be acceptable in planning terms subject to appropriate planning conditions, as set out in the above report. It is acknowledged that the intended first occupant's local qualification does not meet the criteria of LH2 but the first occupant would otherwise be eligible to occupy the house in accordance with the cascade provisions that would normally apply to affordable housing under the terms of the Authority's SPG.

Therefore, also taking into account the house already exists, a robust marketing exercise has not brought forward a person with a stronger local qualification than the intended first occupant, and the longer term public benefits of providing an affordable house to meet local need; it is considered that an exception to LH2 is warranted in this case.

Accordingly, the current application is recommended for conditional approval subject to prior entry into an appropriate legal agreement.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil