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# Appeal Decision

Site visit made on 16 November 2010

**by Mrs K.A. Ellison BA, MPhil, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 7 December 2010**

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**Appeal Ref: APP/T9501/A/10/2135796**

**Land adj Falstone Farm, Falstone, Northumberland NE48 1AA**

- 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 S Grime against the decision of Northumberland National Park Authority.
  - The application Ref 10NP0037 dated 5 July 2010 was refused by notice dated 26 August 2010.
  - The application sought planning permission for the erection of a new dwelling and garage with associated ground works and landscaping without complying with a condition attached to planning permission Ref 06/NP/02 dated 3 March 2006.
  - The relevant condition is No.2 which states: The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the local planning authority.
  - The reason given for the condition is: to ensure that development is carried out in accordance with the approved plans.
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## Decision

1. I dismiss the appeal.

## Preliminary Matters

2. Applications for costs were made by Mr Grime against the Northumberland National Park Authority and by the Authority against Mr Grime. These are the subject of a separate Decision.

## Background

3. It is common ground that the 2006 permission is extant. The appeal proposal seeks to construct a dwelling of similar design to that originally approved, but facing south instead of west and slightly further away from the neighbouring property. The Authority makes no objection to the proposed amendments. Given the similarities between this proposal and the permitted scheme, as well as the absence of any harm arising from the design, I take the same view. The disputed condition could be replaced with a similar one which specifies the revised plans.
4. However, the appeal proposal is made under the procedure for minor material amendments to planning permissions which came into force on 1 October

2009. The relevant guidance<sup>1</sup> advises that local planning authorities should, in making their decisions on such applications, focus their attention on national or local policies or other material considerations which may have changed significantly, in addition to the impact of the changes sought. In 2009, the Authority adopted its Local Development Framework *Core Strategy and Development Policies (Core Strategy)*. This constitutes a significant change in local policy. Core Strategy policy 10 seeks to ensure that new residential development is restricted in perpetuity to that required for people who meet local need criteria. According to the Authority, the dwelling should be subject to a local occupancy requirement and this should be achieved by means of a planning obligation. The Appellant would not satisfy those criteria and seeks permission for the appeal scheme unencumbered by such a requirement.

5. A proposed minor material amendment proceeds under S73 of the Town and Country Planning Act 1990 as an application to develop land without complying with conditions subject to which a previous planning permission was granted. S73(2) allows consideration only of the conditions relating to the permission. If it is found that permission should be granted with different conditions from the previous one, it should be granted accordingly, at which point a new permission would be created. If the conditions should be the same, permission should be refused and the original permission remains unchanged.
6. These provisions make no reference to planning obligations so that the absence of one should not be an obstacle to the success of this appeal. However, I am satisfied that, in principle, a condition could be imposed which gave effect to Local Plan policy 10 and was also in accordance with Circular 11/95, *The Use of Conditions in Planning Permissions*.

### **Main Issue**

7. In the light of the above, the main issue in the appeal is whether the proposed dwelling should be subject to a local occupancy requirement.

### **Reasons**

8. According to the Core Strategy, policy 10 is intended to strike a balance between the statutory duty to preserve the special qualities of the National Park, which means residential development must be restricted, and the aim of fostering the social and economic well-being of local communities, including through the provision of housing.
9. The appeal scheme would have no greater impact on the special qualities of the National Park than the extant permission and so would not alter the existing balance in relation to preserving the Park's special qualities. However, it would result in a finite resource, namely an environmentally acceptable site, being developed for housing which was not directed to meeting local need. In this way, it would undermine the well-being of the local community. The development plan places considerable importance on the principle of fostering local well-being, as shown by its inclusion within the definition of sustainable development<sup>2</sup> within the National Park.
10. Arguments in support of the proposal relate to the fallback position of the existing permission and the greater energy efficiency of the revised scheme. From the Appellant's point of view, there is an extant permission so the

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<sup>1</sup> Greater Flexibility for Planning Permissions, DCLG, October 2009

<sup>2</sup> Core Strategy and Development Policies 2009, p20

'resource' or site is not genuinely available to meet local need, even though no dwelling has yet been built or occupied. In addition, the Appellant's stated intention is to develop the site for his own use. Given the desirability of the location, I accept that there is a high probability that the approved dwelling would be built if a new permission is not forthcoming. However, I consider the alternative scenario to be less likely, whereby the approved scheme would be built then remodelled, due to the costs and inconvenience this would entail.

11. As regards energy efficiency, no objective assessment of the relative performance of the approved and proposed dwellings has been provided. There is a suggestion that the proposed dwelling would include a high level of renewable energy and could achieve Level 5 or possibly even 6 of the Code for Sustainable Homes. However, few details are provided. Reliance is placed on broad comparisons between the different orientations of the original and the proposed building. According to the Appellant, the large, glazed opening would be moved from the northern to the southern elevation so that, under the proposed scheme, it would generate passive solar gain rather than act as a heat sink. However, the Authority notes that the glazed opening would be on the south east rather than the west elevation. This seems to me to be a more accurate assessment of the appeal plans. As such, I am not convinced that the relative gain would be quite so substantial as has been argued. I do accept, however, that the south facing roof slope would enable better use of solar power. A range of other measures were also identified such as rainwater recycling, composting, air circulation and choice of materials. I have no doubt that these would all contribute to the energy performance of the house and they certainly indicate that a high level of attention has been paid to the carbon footprint of the development. However, such measures do not necessarily arise from the modifications proposed and could equally well be incorporated into the permitted scheme. Without further information as to the comparative efficiency of the two designs, I am not convinced that the appeal scheme would offer any substantive gains in relation to energy efficiency.
12. If a new, unencumbered permission was not forthcoming on this site, it is highly likely that the existing one would be implemented. For that reason, the extant permission is a material planning consideration of substantial weight. On the other hand, the strategy to restrict all new residential development to meeting local need will probably be the subject of significant pressure over the lifetime of the current development plan. For it to be effective, it must be applied consistently. Given the importance which the recently adopted Core Strategy attaches to fostering the social and economic well-being of local communities, it is a requirement which should not be set aside without very strong reason when a fresh permission is being created.
13. If the appeal failed, the harm would be that the Appellant would be faced with implementing a design which he views as being less desirable than the one now proposed. That situation would be most unfortunate, especially if subsequent remodelling work was then carried out. However, if the appeal succeeded it would add to the difficulties of maintaining the local occupancy restriction across the National Park area by establishing a basis for exceptions to be made. That would undermine the broader purpose of balancing the preservation of the National Park with fostering the well-being of local communities. Although the adverse consequences for the Appellant would be more direct and immediately measurable, I consider that the harm in policy terms would be even greater because it would be more wide reaching.

14. On my main issue therefore, I conclude that the proposed dwelling should be subject to a requirement to contribute to the supply of dwellings for local people, in accordance with policy 10 of the Core Strategy.

**Conclusion**

15. There is no inherent objection to the design of the appeal proposal. However, in order to make a new permission acceptable in planning terms, a local occupancy condition would have to be imposed. Since that condition would negate the value of the permission to the Appellant, it would be unreasonable for it to be imposed in the circumstances of this appeal. On that basis, I find there should be no change to the conditions attached to the previous permission.

16. For the reasons given above, I conclude that the appeal should not succeed.

*K.A. Ellison*

Inspector