

HARROGATE BOROUGH COUNCIL

PLANNING AREA2 DC COMMITTEE – AGENDA ITEM 6: LIST OF PLANS.

DATE: 11 October 2005

PLAN: 11	CASE NUMBER: 05/04223/DVCON
APPLICATION NO. 6.71.7.B.DVCON	GRID REF: EAST 441919 NORTH 463375
	DATE MADE VALID: 19.08.2005
	TARGET DATE: 14.10.2005
	WARD: Claro

APPLICANT: Messrs N G And J N Naish And Mrs J Waddington

AGENT: Barber Titleys

PROPOSAL: Deletion of condition No. 1 of permission No. 6.71.7.A.PA to allow non agricultural occupancy of the dwellinghouse.

LOCATION: Amber Hill Grafton York North Yorkshire YO5 9QJ

REPORT

SITE AND PROPOSAL

Detached bungalow that is located within the development limit for the village. Planning consent was granted for the dwelling in 1975 and was the subject of a condition restricting the occupancy of the dwelling to an agricultural/forestry worker (Planning reference No6.71.7.A.PA)

This application seeks to delete the agricultural occupancy condition from the original planning permission. Condition 1 of the above consent stated 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 for the condition was:

The development hereby approved would be unacceptable unless justified by the local needs of agriculture.

MAIN ISSUES

1. Need for the condition and compliance with Policy H19 of the local plan

RELEVANT SITE HISTORY

6.71.7.PA - Erecting a bungalow. PER 20.11.1974

6.71.7.A.PA - Erecting a bungalow. PER 24.09.1975

CONSULTATIONS/NOTIFICATIONS

Parish Council

MARTON-CUM-GRAFTON

APPLICATION PUBLICITY

SITE NOTICE EXPIRY: 23.09.2005

PRESS NOTICE EXPIRY: 23.09.2005

REPRESENTATIONS

MARTON-CUM-GRAFTON PARISH COUNCIL - The Parish council objects to the application on the following grounds:

- * The applicant does not give any explanation for requiring deletion of the Agricultural condition
- * The property does not appear to have been actively marketed
- * The case has not been made that there is a lack of demand for such property
- * There is still a need for agricultural housing in the village

OTHER REPRESENTATIONS - 1 letter received expressing concern much for the future rather than the immediate position but stating that:

There is no evidence thus far that the principle of the original covenant is still not applicable to allow further and continued occupancy.

Amber Hill is very prominent on the hillside and any significant building development could make it hugely visible particularly with regard to any increase to its elevation.

Concern if there was any increase to the building as the planning process is more likely to be tested to the limit and beyond without the agricultural covenant.

VOLUNTARY NEIGHBOUR NOTIFICATION - No properties notified

RELEVANT PLANNING POLICY

PPS1 Planning Policy Statement 1: Delivering Sustainable Communities

PPG3 Planning Policy Guidance 3: Housing

PPS7 Planning Policy Statement 7: Sustainable Development in Rural Areas

SPH4 North Yorkshire County Structure Plan Policy H4

LPHX Harrogate District Local Plan (2001, as altered 2004) Policy HX: Managed Housing Site Release

LPH06 Harrogate District Local Plan (2001, as altered 2004) Policy H6: Housing developments in the main settlements and villages

ASSESSMENT OF MAIN ISSUES

1. NEED FOR THE OCCUPANCY CONDITION AND COMPLIANCE WITH POLICY -

Harrogate District Local Plan Policy H19 specifically deals with agricultural occupancy conditions. The policy states that, where permission has been granted subject to an agricultural occupancy condition, removal of the condition will only be permitted if it can be demonstrated that there is no longer a need for the dwelling on the holding/business or in the locality. A detailed assessment must be submitted with the application covering all of the following matters.

a) the existing and future working needs of the farm holding/business, with details of changes since the condition was imposed.

b) the housing needs of the local farming community.

c) the measures taken to dispose of the property.

The application does not provide evidence that there is no longer a need for an agricultural workers dwelling in the locality nor does it provide a detailed assessment outlined in a)-c) above. The application therefore does not comply with Policy H19.

The application instead relies on a High Court Judgement. (Hambleton District Council V SoS and Barker (1994)). The essence of that case is that permission was granted for an agricultural workers dwelling. This was subsequently identified within the development limit of the settlement and therefore 'settlement' policies apply rather than 'countryside' policies which apply to developments outside settlements. Hambleton had a policy in the Local Plan requiring evidence to accompany an application to show that there was no longer a need for a dwelling. The Inspector went on to conclude that a present day permission to build on a site within a development limit would be most unlikely to bear an agricultural occupancy condition. He regarded this as a very weighty factor in a realistic assessment of the need to retain the occupancy condition. The Inspectors decision was challenged in the High Court but the Judge held that the Inspector had been entitled to give considerable weight to the fact that the development limit had changed. The Appeal to the High Court failed.

A further appeal example has also been submitted in relation to an appeal case in West Dorset, which allowed the removal of the occupancy condition despite their still being an agricultural need on the basis that a contemporary application for a dwelling in the appeal location would have been permitted without restriction.

This application for the removal of an occupancy condition for a property in Grafton has many similarities to the Hambleton case.

The condition was correctly imposed in 1975 but since that date the HDLP has been formally adopted and identifies Grafton as a larger village. Policy H6 identifies that inter alia new residential will be permitted within the development limits of the identified larger villages. The bungalow is within the development limit of Grafton. If an application to build a dwelling on this site was submitted now it would be judged primarily against Policy H6

and recommended for approval since it is within the built up confines of the village (Policy HX permits development on previously developed sites of less than 0.3 hectares). No special or exceptional justification would be required and conditions restricting occupation would not be applied.

In the light of the above conclusion and the High Court decision, it is considered that although the application has not been supplied with the evidence to comply with Policy H19, it is not appropriate to simply rely on the policy to justify refusal.

CONCLUSION - It is recognised that in this instance the removal of the condition would be in direct conflict with Policy H19 and consideration of the scheme should be referred to the Planning Committee for a decision. In this respect the Parish Council have objected to the development on the basis that evidence has not been provided to satisfy H19.

The dwelling is however within the defined development limit for the village. A contemporary application would be permissible under HDLP Policy H6 and HX, without the requirement to impose an occupancy restriction. The applicants have provided supporting evidence highlighting similar appeal cases including a high court judgement regarding a case in Hambleton.

Such evidence was also provided in relation to a similar application, also in Grafton for the removal of an agricultural occupancy condition at Cherry Tree Close (Plan ref 6.71.24.D.DVCON). Harrogate Borough Council at the Planning Area 2 Sub Committee of July 2000 permitted this earlier and almost identical application without compliance with H19, on the basis that the dwelling was now within the development limit.

Legal advice has been sought in respect of the Hambleton DC -v- Secretary of State case and members are advised that the principle laid down in the case i.e the question of whether such a condition would be attached to a grant of approval now, is a material consideration to be taken into account when determining this scheme. There has not been any case subsequently that overrides or casts doubt on that principle. Equally the issue of need is still a material consideration and clearly in the absence of evidence would point the decision maker in a different direction to the Hambleton case. Clearly the decision rests on which of these considerations should take precedence.

The condition itself was originally imposed because a dwelling on this site would have been unacceptable unless justified by the local needs of agriculture. Due to the change in circumstance as a consequence of the adoption of the development limit, this justification would not now be required to construct the dwelling.

In view of the evidence provided , and in light of the earlier decision of this council in respect of Cherry Tree Close, it is your officer's opinion that in order to retain consistency of decision, consent should be granted to allow non agricultural occupancy of the dwelling following deletion of the condition 1 of planning consent 6.71.7.A.PA.

CASE OFFICER: Mr A Hough

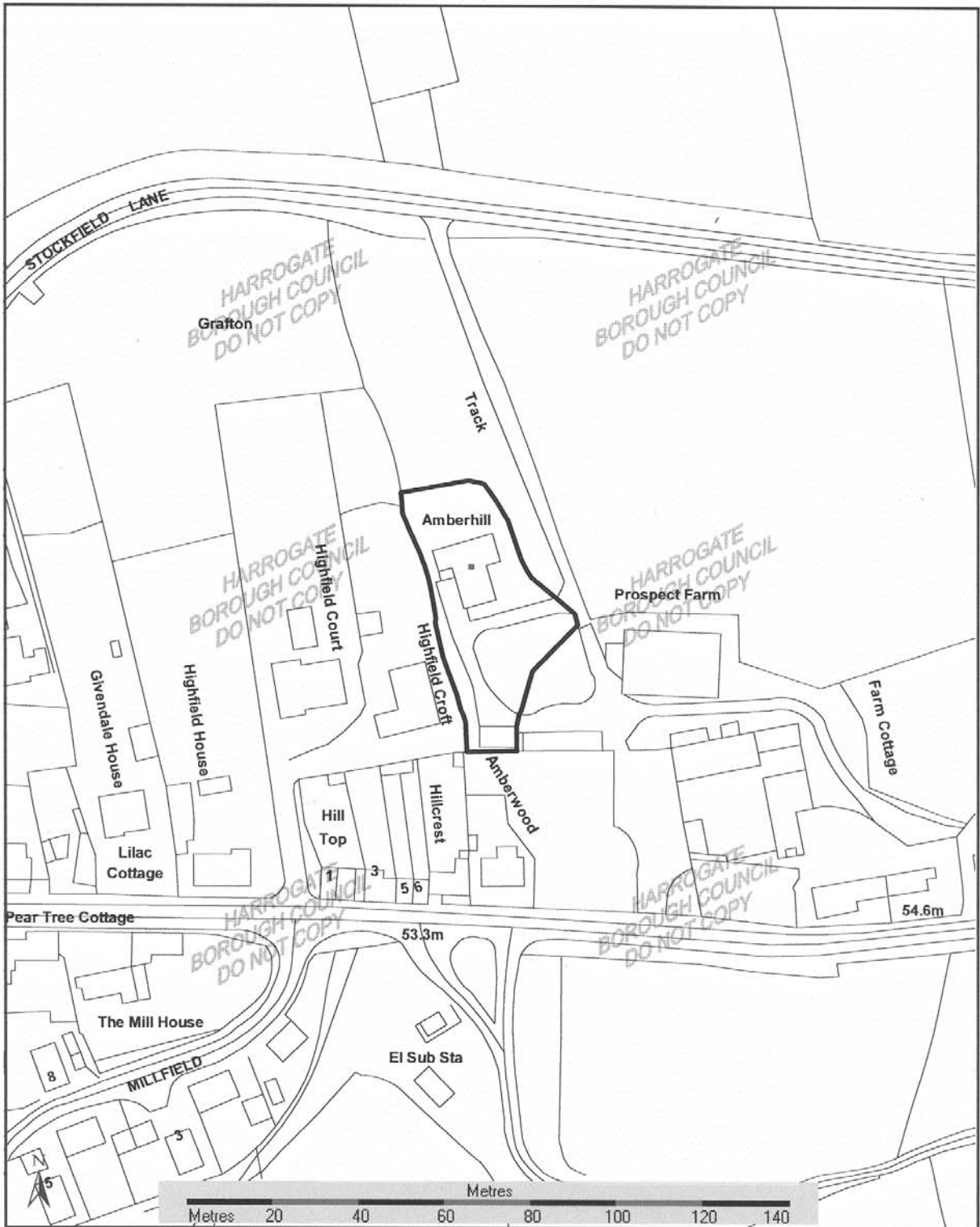
RECOMMENDATION

That the application be APPROVED subject to the following conditions:-

1 CC02 DEVELOPMENT IN ACCORDANCE WITH DRAWINGS

Reasons for Conditions:-

1 CC02R COMPLIANCE WITH DRAWINGS



Harrogate
BOROUGH COUNCIL

Department of Development Services

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Harrogate Borough Council 1000 19628 2005.

AREA 2 DC COMMITTEE

Item No. **11**

App No./Case No. 05/04223/DVCON 6.71.7.B.DVCON

Scale (at A4 size) 1:1250

Site area 0.14ha

Site boundary

Drawn MDTT

Date 11/10/2005

