



TITLE OF CONSULTATION: 106 LEGAL AGREEMENT. MICKLE HILL EXTRA-CARE SCHEME, PICKERING

OFFICER REQUESTING: PHILLIP SPURR. PROGRAMME DIRECTOR FOR ECONOMIC DEVELOPMENT, BUSINESS AND PARTNERSHIPS

1.0 PURPOSE

1.1 A decision is needed on whether the District Council will agree to a request from North Yorkshire County Council to temporarily suspend clauses in a Section 106 legal agreement which restrict the occupancy of affordable unit's extra-care units on the site. The clauses currently restrict occupancy of these units to individuals from a local Pickering geography, and a wider Ryedale geography if necessary.

2.0 RECOMMENDATION(S)

2.1 It is recommended that:

- (i) It is agreed not to enforce against legal clauses which restrict the occupancy of affordable units on the extra-care site at Pickering as a temporary measure for a three month period.
- (ii) The District Council consider a further extension to this time period following an update from NYCC after 3 months, and a rolling review takes place every 3 months.

3.0 REASON FOR RECOMMENDATION(S)

3.1 North Yorkshire County Council (Health and Adult Services) has formally asked the District Council to temporarily suspend clauses in legal agreements which cover the geographic allocation of units within extra-care schemes in the District. There are three extra-care facilities in Ryedale. Only the Mickle Hill retirement complex at Pickering is the subject of legal agreement that this Authority is party to. One site falls within the National Park in Helmsley and the other is a former NYCC care home in Norton and is not subject to a legal agreement.

3.2 The request has also been made to other District Councils across North Yorkshire. It has been made to provide NYCC and the NHS with the flexibility needed to most effectively manage extra-care capacity that is available in the short-term, whilst maintaining strict infection control and risk management.

3.3 If suspended, NYCC is proposing that:

“Allocations panels shall allocate available units of affordable housing on a licence to

occupy basis to any person who is a permanent resident of North Yorkshire (as defined by their current permanent address)”).

3.4 To safeguard the long term nature of extra- care in North Yorkshire, NYCC has stated that the following conditions would be in force alongside changes to S.106 arrangements:

- The suspension would be in place for a period of 3 months with rolling review thereafter
- The new allocations criteria will only apply to people in need of short-term care and support as a result of the COVID-19 outbreak. No-one will be granted permanent status within a scheme as a result of this change

3.5 NYCC has also confirmed that no existing residents will be moved from the site and that the proposed arrangements will only relate to vacancies which arise.

3.6 Under the normal course of events any change to a legal agreement, even as a temporary measure, would be dealt with through a formal deed of variation to the agreement. This would need to be prepared and agreed by all of the signatories to the original agreement. This is a process which will take time and which would be frustrated by the current restrictions on movement.

3.7 It is considered that there is a need to act swiftly and positively to the County Council’s request. Without a formal variation to the legal agreement the clauses cannot be suspended. However, the District Council can agree not to enforce against any breach of the occupancy clauses. This should provide NYCC with the reassurance that is needed in order to best utilise available extra-care resources in the current emergency.

3.8 The County Council will need to agree this approach with the site operators. It is anticipated that the latter will also require reassurance that the Planning Authority will not enforce against non- compliance with the legal agreement. If the decision is agreed, it is considered that the District Council will write to the site operator to confirm this.

3.9 The County Council has requested a suspension for a three month period and for this to be the subject of a rolling review. It is considered that the District Council’s position should be confirmed for a three month period and reviewed after that time in the light of NYCC’s proposed rolling review.

4.0 SIGNIFICANT RISKS

4.1 There are no significant risks associated with the recommendation.

5.0 IMPLICATIONS

5.1 The following implications have been identified:

a) Financial

NYCC has confirmed that all costs associated with the short-term use of extra-care as a result of the COVID-19 will be funded through national contingency arrangements and not through the District’s current housing benefit system.

b) Legal

The request and proposed response has been discussed and agreed with the solicitor. The legal issues are addressed in the main body of the pro-forma.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental and Climate

Change, Crime & Disorder)

No implications.

6.0 MONITORING OFFICER ADVICE

Planning Committee granted planning permission, subject to a legal agreement which covered these occupancy restrictions. Consultation has therefore taken place with the Chair of Planning Committee. Her view is that the recommendations should be supported for a 3 month period or even a 6 month period in the current circumstances. She also suggested that there should be consultation with the local ward members as there had been some opposition at the time of the original decision (although the local ward members were different at that time).

As the recommendation seeks to vary an occupancy restriction which benefitted Pickering residents, consultation with local ward members is supported.

Consultation is also required with the Leader.

Note – the Chair of Planning Committee declared a personal non-pecuniary but not prejudicial interest as a member of NYCC and a member of its planning committee.

7.0 CONSULTATION RECORD

According to the Constitution, under urgency powers, decisions usually taken by the Council and its committees are taken by the CEO following consultation with the appropriate elected members.

The appropriate elected members are:

- The Leader of the Council
- The Chair of the appropriate committee, for matters relating to that specific committee¹
- Relevant Ward member(s), if any, for matters of particular relevance to that ward²

Name of consultee	Cllr Goodrick – Chair of the Planning Committee
Planning Committee granted planning permission, subject to a legal agreement which covered these occupancy restrictions. Consultation has therefore taken place with the Chair of Planning Committee. Her view is that the recommendations should be supported for a 3 month period or even a 6 month period in the current circumstances. She also suggested that there should be consultation with the local ward members as there had been some opposition at the time of the original decision (although the local ward members were different at that time).	
Note – the Chair of Planning Committee declared a personal non-pecuniary but not prejudicial interest as a member of NYCC and a member of its planning committee.	
Date consultation completed	08-04-20

Name of consultee	Comments collated by Cllr Mike Potter in consultation with Cllrs Joy Andrews, Clive Wass and Carrie Brackstone
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¹ “Chairman of the appropriate Committee” refers to committee specific matters and does not mean that all Committee Chairs will be consulted on everything

² “Relevant Ward Member(s), if any” refers to ward specific matters and does not mean that all Members will be consulted on everything

Having consulted with the other three Pickering ward councillors, we are broadly in agreement with the request from NYCC, but only with the following conditions:

1. It is agreed not to enforce against legal clauses which restrict the occupancy of affordable units on the extra-care site at Pickering as a temporary measure for a *six month period*, with a *specified end date*, with provision for a review after 3 months.
2. NYCC will have the right to request a 3 month extension and rolling reviews every 3 months thereafter, but each with a specified end date.
3. For the safety of existing residents, staff and carers, any person moved onto this site as part of this agreement, whether temporary resident or carers, **must be tested for Covid-19 prior to movement**.

It appears that the site developer has not delivered the plans that Methodist Homes submitted for this retirement village (the approval of which contravened RDC's LPS) and that many of the units remain empty, including the affordable ones. This is clearly due to the very expensive purchase, management and care package costs. We therefore fully expect NYCC to robustly negotiate a fair price for use of this facility to the taxpayer, based on the existing low level of demand. We also recommend that NYCC are absolutely clear about precisely who is providing care services, to what level and at what cost to whom. There should be a clear legal contract agreed prior to any referrals.

We have not been impressed to learn that the allegedly 'affordable' 2 bedroom units, which remain empty after several years, are now for sale at £220,000, plus statutory fees of around £5,000 pa.

Date consultation completed	09-04-20
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Name of consultee	Cllr Duncan – Leader of Council
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This is urgently required to deal with North Yorkshire's response to the Covid-19 emergency. The Chief Executive should give regard to the comments made by Pickering ward members about time limitations.

Date consultation completed	13-04-20
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8.0 DECISION

Decision of the CEO based on consultation	The recommendation not to enforce against legal clauses which restrict the occupancy of affordable units on the extra-care site at Pickering as a temporary measure is agreed. Following consultation, this agreement is made for a six month period ending on the 15 October 2020. After this, the District Council may consider a further extension to this date following an update from NYCC after 3 months (June 2020). A subsequent 3 month rolling review will be in place thereafter if required. In confirming its response, the District Council will request that NYCC ensure that any necessary COVID testing is undertaken prior to the movement of people into the extra care site. Other feedback will also be shared with NYCC for their consideration.
Date	16-04-20