

Date: 30 January 2007**Report: APPLICATION FOR FULL PLANNING PERMISSION: THE OLD SCHOOL
BUNKHOUSE, CHAPEL LE DALE – REPORT OF THE MONITORING OFFICER****Purpose of report**

1. To report to the Authority with respect to the decision of the Planning Committee on the above application, in accordance with Section 5 of the Local Government and Housing Act 1989.

Background

2. Section 5 of the Local Government and Housing Act 1989 places on me a duty to report to the Authority if at any time it appears to me that any proposal, decision or omission by the Authority, or by any Committee or Sub Committee, has given rise to or is likely to or would give rise to a contravention of any rule of law.
3. It is my duty, in preparing this report, to consult with the Chief Executive (as Head of Paid Service), and with the Chief Finance Officer (ie the Section 151 officer), and this I have done. I am also required to send a copy of the report to each member of the Authority. The Authority then has to consider the report within 21 days, which is achieved by this report being included on the agenda for this meeting of the Authority. Until the end of the first business day after this report has been considered by the full Authority, no step may be taken for giving effect to the decision which is the subject of this report.
4. At the meeting of the Planning Committee on 14 November 2006, the Committee considered an application for planning permission for the conversion of a bunkhouse to a bunkhouse with ancillary dwelling at the Old School Bunkhouse, Chapel le Dale. The Planning Officer's recommendation, in accordance with the approved Local Plan, was for refusal. The Committee decided that consideration of the matter be deferred, as members were minded to approve the application contrary to policy and/or the officers' recommendation [in fact, contrary to both], the decision being taken on the casting vote of the Chairman.
5. The matter was therefore considered again by the Planning Committee on 12 December 2006, when the Committee decided, by 8 votes to 5 with 2 abstentions, to grant planning permission subject to a Section 106 agreement and to certain conditions set out in the Planning Officer's report.
6. A copy of the Planning Officer's report to the meeting on 12 December 2006 is attached; it also includes the report to the meeting on 14 November 2006. I also attach some further papers which were before the Committee in the form of late consultations, a letter and enclosure which I understand the applicants sent to Planning Committee members, and a letter from Shield Estates UK Ltd on behalf of the applicants. Financial information provided by the applicants, which was before the Committee at its November meeting, is not included with these papers as I do not think it is relevant for present purposes; however, any member who wishes to see it should please contact the Planning Officer (Andrea Burden) or myself.

7. The decision on this application was required to be advertised as a departure from policy, and notified to the Government Office for Yorkshire and the Humber. This was done, and the Secretary of State has issued an "Article 14 direction", requiring the Authority not to grant planning permission until she has had the opportunity of deciding whether to exercise her powers of call-in. This may be unlikely, as the remit of the Secretary of State does not extend to intervention on the basis of the legality or otherwise of the proposed decision, but rather on consideration of whether the matter is of more than local significance. This aspect of the matter is therefore not really relevant for present purposes. I mention it merely so that members have the complete picture.
8. The legal position in respect of this matter is straightforward. Section 70 of the Town and Country Planning Act 1990 provides that in dealing with an application for planning permission "the Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations". Section 54A of the same Act provides that: "Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise". This is a fundamental principle, which has been included in member training, and is clearly set out in paragraph 6 of the Authority's "Members Code for Exercise of Development Control".
9. Based on the legal position as set out in the previous paragraph, the thought process in relation to the legality of a decision to grant planning permission is also quite straightforward, involving three questions:
 - a. Would approval of the application be contrary to Local Plan policy?
 - b. If so, are there material considerations on which a decision to grant approval could be based?
 - c. If so, do those material considerations in fact outweigh Local Plan policy?
10. So: would approval of this application be contrary to Local Plan policy? There is no doubt that it would. The reasons for this are set out in the Planning Officer's reports. The argument, set out in the letter from Shield Estates, that Policy H4 does not apply because this is not a new build is correct, but that is not the full picture. Policy H3 is relevant: it deals with conversion of traditional buildings to housing, and it states that outside of the settlements listed in policies H1, H2 and H3 (none of which include Chapel le Dale), the conversion of dwellings to buildings will not be permitted unless they accord with Policies H4, H5, B16 or F3. It is for this reason that consideration of policy H4 (housing in the countryside) is relevant; but when it is considered, it is apparent that it does not apply in this case. Nor does Policy H5 (affordable housing on exception sites) or F3 (residential lets and self catering holiday accommodation on agricultural holdings) apply. Policy B16 (reoccupation of former houses) does not apply either, for reasons explained below. The position is quite simply that there is no Local Plan policy under which the conversion of this building to residential accommodation would be acceptable.
11. It is worth adding, because it reinforces the point, that Chapel le Dale itself is not recognised as a settlement within the Local Plan, either as a "Key Service Centre", a "Service Village" or a "Small Village". In Local Plan terms, it is open countryside. The property which is the subject of this application is one of a few scattered buildings adjacent to the Hawes – Ingleton road.
12. Are there, then, material considerations on which a decision to grant approval could be based? The question as to whether any particular factor or argument is capable of being a material consideration is a matter of law. At the Planning Committee meeting in November 2006, Members identified four reasons as the basis for departing from the Local Plan. The first three of these are not capable of being material considerations, as explained in the planning officer's report to the December Committee meeting. The fourth point identified at

the November meeting (that highway issues do not justify refusal) could not on its own justify approval. In the first place, the highways factor was only the second of two reasons why refusal was recommended (the first reason being that approval was contrary to policy). In the second place, the Highway Authority had recommended refusal of the application due to lack of visibility from the existing access given the intensification of use from the additional dwelling. That is a material consideration in favour of refusal. Even if the advice of the Highway Authority is not accepted, that does not become a reason for approving the application.

13. The question of whether material considerations do *in fact* outweigh Local Plan policy is a matter for members to decide, subject only to the principle that the decision must not be so unreasonable that no sensible and properly advised Planning Committee could have reached it. I make this point for completeness, though it is not, in my view, relevant in this case, as I do not believe that there are any material considerations to which weight could be given. It then must follow in clear logic: where the Local Plan contains material policies, and there are no material considerations, the application must be determined in accordance with the Plan.
14. The key point, therefore, is that set out at paragraph 9b above. At the meeting of the Planning Committee on 12 December 2006, the planning officer explained that the application was contrary to policies H2 and H3, that the tests in policy H4 therefore applied, and that the application did not meet those tests. In response to points which had been made about the viability of the bunkhouse as a business if the application was not approved, and the consequent effects if the bunkhouse closed, she pointed out that there was no evidence that the bunkhouse would close if the application was refused, and that even if it did, there were other bunkhouses locally. She also referred to the fact that permission had been granted in 1983 for residential use of the property, but advised that this did not bring the application within Policy B16 (reoccupation of former houses), and was not relevant to consideration of the present application in 2006. Finally, she made the point that the Committee needed to consider the precedent that could be created by approval of this application, and the consequent harm that could be caused elsewhere in the National Park.
15. At this point, I was asked for my advice as Monitoring Officer. I advised that there were no matters which members had raised, or which I was otherwise aware of, which were capable of being material considerations in this case, and therefore there was no lawful basis on which permission could be granted. In the debate which followed, those members who favoured approval referred to four issues which were additional to the original four identified at the Committee's November meeting. Those four issues were:
 - a. The fact that planning permission was granted in 1983 for use of the building as a dwelling, and it was apparently used as such from 1983 – 7.
 - b. The need to keep local communities viable, and the interdependence of local facilities in that regard: in particular in this case the fact that closure of the bunkhouse might have a knock on effect resulting in closure of the local public house.
 - c. The need for the persons running the bunkhouse business to be available there (a point made in the letter from Shield Estates), and the fact that the applicants apparently have to leave their current rented accommodation adjacent to the bunkhouse.
 - d. The personal circumstances of the applicants.I will deal with these four issues in turn.
16. In 1983, planning permission was granted for a two bedroomed bungalow in part of the building that is currently in use as the bunkhouse. That permission was implemented; it is not known for exactly how long it was used as residential accommodation, but it was not for more than four years. On 15th July 1987 planning permission was granted for the change

of use of this portion of the building from residential accommodation to “a place to teach management and to provide residential accommodation for that purpose”. In practice, it has operated as a “bunkhouse” for at least the last 15 years. Both permissions were in accordance with the relevant planning policies at that time: indeed, the National Park Officer in 1983 commented that the residential application “fits well with Committee policy in respect of such proposals”. [Planning permission for use of part of the building as a café / tearoom was also granted in 1987. I have not been able to ascertain whether this was implemented; but in any event I do not think that that is relevant for present purposes.]

17. Arising from this is the question whether the former residential use brings the property within Local Plan policy B16 (reoccupation of former houses). This policy states that the reoccupation of former houses outside settlements will be permitted provided that three conditions are satisfied. The first of these is that the building is listed or it can be demonstrated that it is otherwise of such architectural or historic interest that its restoration in the landscape is justified. The justification for this policy states that it should be sufficient to meet the objectives of the policy to demonstrate that the building has been used as a former dwelling for a significant period of its existence, and that the reintroduction of residential use would bring these buildings back into economic use and repair. In this case, no evidence, or even argument, has been put forward either that the building is of such interest; or that the period of former residential use is “significant”; or that (as the policy implies is necessary) the building is in some way at risk if this current planning application is refused. The residential occupation for up to four years in the 1980s therefore does not bring the case within Policy B16; and given the passage of time and changes in planning policies since 1987 it is not a relevant factor in the determination of the current application.
18. I should add that the fact that the premises have been used previously for residential purposes (pursuant to permission granted in 1983 in accordance with planning policy applicable at that time) does not mean that the premises can lawfully return to that use. Once the premises were put to another lawful use, namely the bunkhouse, the right to revert to residential use without the grant of a new planning permission was lost.
19. Turning to the second point raised by Members at the December Planning Committee meeting: the need to keep local communities viable is capable of being a material consideration, but there is no evidence of its relevance in this case. The argument cannot apply to the bunkhouse itself, as it is accommodation for visitors to the area. The argument therefore would have to be that if this application is refused the bunkhouse would be likely to close, and if the bunkhouse closed other local facilities might also be rendered unviable and have to close. The only such facility referred to was the nearby Old Hill Inn. The applicants did forward to Committee members a copy of a letter dated 28 July 2006 from the Old Hill Inn; this was submitted originally in connection with an earlier application for planning permission for the conversion of the bunkhouse to a bunkhouse with an ancillary dwelling which was refused by officers under delegated powers on 7 August 2006. Committee members referred to the interdependence of local facilities, although the examples given related to other settlements which are recognised within policies H2 or H3 of the Local Plan, which Chapel le Dale is not. In my view, the material before the Committee on this point fell a long way short of being evidence which could substantiate this point as a relevant material consideration in this case.
20. The Authority has consistently taken the view in the past that a bunkhouse use does not necessitate permanent residential onsite supervision. Planning consent has been granted for bunkhouses in roadside locations on the basis that there is no consequent requirement for an owner, manager or similar person to live in the building or close by. Given that the Authority has consistently taken that view in the past, there is no logical reason for departing from it now. Policy VF2, which deals with bunkhouse barns, merely states that the building should be capable of effective management and supervision. Of course, the

building is already a bunkhouse, and the lawfulness of that use is not the issue. Any argument that this application should be granted in order to ensure continued on site supervision etc would logically also have to require that planning permission for a bunkhouse should not be granted in the first place without a positive requirement that such supervision would be provided.

21. Finally, reference was made to the personal circumstances of the applicants. There was no information before the Committee, other than appears from the papers attached to this report, as to what those circumstances are; though some members may have personal knowledge. To constitute a material consideration, personal circumstances must be exceptional, and Government guidance is clear that such circumstances should seldom outweigh more general planning considerations. In my view, there was no evidence before the Planning Committee to entitle it to reach such a conclusion. It is only human nature to be sympathetic to the wishes of local people to be able to continue to live locally, to educate their children in local schools etc. But those are not exceptional personal circumstances. If they were, the housing policies in the Local Plan would be completely undermined. If a decision is to be based on personal circumstances, a specific case has to be made, and the planning authority must give reasons for accepting it. That has not happened in this case.

Conclusions

22. This is certainly not the most significant planning application that the Authority has ever had to consider. However, the legal duty of the Authority remains the same, be the application great or small. And that duty is to determine the application in accordance with the Local Plan, unless material considerations indicate otherwise.
23. I would (and do) defend the right of members to decide what weight they give to material considerations, and to decide whether they have sufficient weight to justify a departure from policy. But in my view, that is not the issue in this case. Rather, the point is that there are no material considerations to which weight can legitimately be given.
24. If my view is right, it follows that any grant of planning permission would be contrary to the Authority's legal duty as set out in Section 54A of the Town and Country Planning Act 1990. Should the decision be subject to judicial review, such action would in my view be likely to lead to the decision being quashed and the Authority being ordered to pay the costs of the proceedings.
25. I am not aware of any threat of judicial review in this case. Even if there is none, that does not mean that a decision to grant planning permission has no adverse consequences. It would set a precedent, as explained by the planning officer. It would also mean either that the Authority believes that my advice is incorrect, or that it is prepared to set aside its legal duty to make planning decisions in accordance with the Local Plan which the Authority itself approved less than a year ago.
26. The options available to the Authority are, I believe:
- a. Refer the matter back to the Planning Committee for determination in line with its' statutory responsibilities;
 - b. Determine the application itself, and refuse it (although the exercise of development control functions is delegated to the Planning Committee, Section 101 (4) of the Local Government Act 1972 explicitly provides that this does not prevent the Authority itself exercising the function);
 - c. Merely note this report, thereby allowing the decision of the Planning Committee to grant planning permission to stand.

RECOMMENDATION

27. That Members consider this report and decide what action to take.

Richard Daly
Monitoring Officer

Background documents:

The papers attached to this report and the Yorkshire Dales Local Plan

10th January 2007