

Planning Committee – 15th December 2014



APPLICATION TO REMOVE A LOCAL OCCUPANCY RESTRICTION THAT RELATES TO THE DWELLING KNOWN AS BARLEY CROFT, FOLD LANE, COWLING

Report of the Strategic Manager of Planning and Regeneration

Ward affected: Cowling

1. **Purpose of Report** – To seek a resolution on whether to agree to remove a S106 Planning Obligation that imposes a restriction on the occupation of a property, in that only a person(s) in the local area with a housing need can occupy it.
2. **Recommendations** – **Members are recommended: -**
 - 2.1 **To refuse the application to remove the Section 106 Planning Obligation in its entirety.**
3. **Details of the application**
 - 3.1 Under Planning Ref. 5/22/386 residential development in this location was refused on 11/02/91 due to the sites isolated location unrelated to any form of settlement; and to the access road to the site being insufficient in width or suitable gradient to serve any additional development.
 - 3.2 Barley Croft was subsequently granted outline planning permission and reserved matters permission in 1994 (Planning Refs. 5/22/386/A & 5/22/386/C). Planning Committee approved the development, but as the site was outside the existing developed area of the village it was only accepted by the Council on the condition that the applicant (Mr Alan and Mrs Jean Elizabeth Collier) entered into a S106 Planning Agreement to restrict the premises to a local occupancy restriction.
 - 3.3 The restrictions require occupation of the dwelling to be limited to people who live and work locally, in this instance in the parish of Cowling. There are no affordability criteria although clearly the occupancy restriction indirectly limits the amount the property can be sold for.
 - 3.4 An application has now been made by Mr & Mrs Collier to the Council to remove the S106 restrictions. Section 106A of the Town & Country Planning Act 1990 (as amended) allows for such an application to be made once 5 years have passed

since the obligation was entered into. Should the application be refused the applicants have a right of appeal to the Secretary of State.

4. **Consultations**

- 4.1 **CDC Strategic Housing** object to the proposal and have also provided information to explain the importance and contribution that restricted dwellings can make to the local housing stock:

'Barley Croft is a 'restricted' dwelling, with a local occupancy covenant. It is not an affordable home. Affordable homes are occupied by those in need of suitable housing who are unable to afford market housing to rent or buy. Restricted dwellings are intended for occupation by local people, irrespective of their income. In this, there is no different from ex council houses sold in rural parts of the district and homes built in the National Park. These homes come in a variety of types and sizes and at a variety of values. Local connection criteria are checked by the Council. Restricted dwellings are a very useful addition to the housing stock, providing increased housing options for local people

The s106 agreement allows for the owner of the property to ask the Council for consent to relax the local area restriction. This is standard for restricted dwelling agreements and the Council considers each request on the particular circumstances of each case. In granting consent, the Council may consider a number of factors, including 'any efforts made to sell or let the property to persons who have a need for housing in the local area'. There is no express restriction on the amount the owner can sell for, but the local connection criteria may limit the amount the property can be sold for. This is not unreasonable in itself; it is the nature of this type of restriction.

In this instance, no marketing information has been provided in support of the application. The applicant states that Cowling has lost a number of local jobs and the property is larger and more valuable than an affordable home. This is not relevant to occupiers of a restricted dwelling and removal of the local occupancy restriction is not supported by Strategic Housing.'

- 4.2 **Cowling Parish Council** recommend refusal:

Barley Croft was built in 1991 with a requirement that it be sold under market value (75%) to a person needing housing in Cowling, Glusburn, Sutton or Lothersdale. The reason for that requirement was that the house was built outside the Unitary Development Plan (UDP)

The applicant seeks to prove that there is no need for such a requirement now that Cowling has little in the way of employment, but does not mention the other three villages.

There is a proven need for 'affordable housing' in Cowling according to Craven District Council's own research. There is a proven need for affordable homes in the other villages, especially Lothersdale which is now expensive.

Clause 3(B) states that the consent of the council with regard to the local need shall not be unreasonably withheld provided that the bungalow has remained unsold after having been properly offered for sale throughout the preceding 12 months at a price not greater than 75% of the market value. Although the application states that the 'sister' property, Stoney Croft' was offered for sale for that period of time, Barley Croft has not been offered for sale at all.

The property should be offered for sale as per the Section 106, as was Stoney Croft, if there is a need (and CDC state that there is such a need) for affordable housing in some of the above villages.

5. **Relevant Planning Policy**

5.1 The National Planning Policy Framework (NPPF).

6. **Assessment of the application and other background information**

- 6.1 The key question that needs addressing is whether the Council should agree to remove the S106 restriction in its entirety so that its requirements would no longer be applicable to the property?
- 6.2 Historically planning permission was only granted by the Planning Committee on the basis that the premises was subject to a local occupancy restriction and would therefore contribute to the supply of housing for local people. From the information available to the Council, it appears that the applicant and his wife built Barley Croft Bungalow and have occupied it since completion but now wish to remove the Section 106 restrictions.
- 6.3 The applicants have submitted supporting information stating that Cowling has changed since the Section 106 Agreement was signed 20 years ago and that it is now 'a dormitory community with little or no work and what was perhaps valid for Barley Croft 20 years ago is no longer applicable today'.
- 6.4 Although the applicant considers the clause to be a forerunner to what is now known as affordable housing, the Council's Housing Strategy Officer has explained in their consultation response to this submission that this is not the case and that restricted dwellings are useful in providing more housing options for local people.
- 6.5 At Planning Committee on 23rd September 2013, Members resolved to remove the Section 106 restriction from the adjoining property known as Stoney Croft. The minutes from that meeting explain that '*during the course of the ensuing discussion a number of Members expressed concern at the precedent that could be set by acceding to the request whereas others expressed the view that the employment situation in the area had changed significantly, and that in the intervening period other development had taken place in the area around the property; also the marketing whilst not meeting the criteria had not been unreasonable*'
- 6.6 The applicant's agent states that there are 2 identical adjacent stone built detached bungalows (Stoney Croft and Barley Croft), each occupying an acre plot with the same postcode, in the same village. One (Barley Croft) is now covered by what the applicant's agent considers to be an unnecessary and inappropriate Section 106

Agreement and one (Stoney Croft) is not. The applicant's agent advised that the Colliers Solicitor predicted resale problems 20 years ago and explains that many banks and building societies were unwilling to lend when Stoney Croft was marketed during 2011-2012.

- 6.7 Officer view remains that as the site was at the time outside the boundaries of the main village it does not seem to be at all surprising that development was initially resisted and then only permitted subject to a local occupancy restriction. An explanation of how this type of property continues to be important to meeting local housing needs has been provided by Strategic Housing (see consultation response). The advice given by Strategic Housing is accepted by Planning Officers and notwithstanding the similarities with the case at Stoney Croft, Officer advice remains that the application to remove the restriction should be resisted.

7. Conclusions

In summary, the applicants gained permission for a dwelling in the early 1990's in a location that ordinarily planning permission would not have been granted. The permission was only given on the basis that the premises were subject to a local occupancy restriction and would therefore contribute to the supply of housing for local people. It is understood the applicants have lived in the dwelling since it was constructed and have therefore benefitted from the permission that was granted. Officers do not accept that the local occupancy clause is no longer appropriate or serves a useful purpose and it is therefore recommended that the Council should not agree to remove the S106 restrictions in their entirety.

8. Implications

- 8.1 **Financial and Value for Money (vfm) Implications** – As is always the case with such matters should the application be refused an appeal against the decision may be made. Financial costs would be incurred defending the Council's case.
- 8.2 **Legal Implications** – None other than those indicated elsewhere in the report.
- 8.3 **Contribution to Council Priorities** – Increasing the supply of affordable housing is a corporate priority. Whilst the application premises is not an affordable dwelling Strategic Housing have advised that dwellings that are subject to a local occupancy restriction play an important role providing housing for local people where opportunities are scarce.
- 8.4 **Risk Management** – N/A
- 8.5 **Equality Impact Assessment** – The Council's Equality Impact Assessment Procedure **has not been** followed. Therefore neither an Initial Screening or an Equality Impact Assessment has been undertaken on the proposed policy, strategy, procedure or function to identify whether it has/does not have the potential to cause negative impact or discriminate against different groups in the community based on •age • disability •gender • race/ethnicity • religion or religious belief (faith) •sexual orientation, or • rural isolation.

9. **Consultations with Others** – CDC Strategic Housing.
10. **Access to Information : Background Documents** – Planning application file ref. 22/2014/15052.
11. **Author of the Report** – Cathy Dakin, Planning Enforcement Team Leader, telephone 01756 706447, e-mail: cdakin@cravencd.gov.uk

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

12. **Appendices**

Appendix A – Section 106 Agreement between Craven District Council and Alan and Jean Elizabeth Collier dated 25/05/93.

Appendix B – Plan indicating Barley Croft (the application premises) and neighbouring Stoney Croft.

Appendix C – Supporting Information submitted with the application by the applicant's agent.