



Planning Statement

**Change of use from
Bed and Breakfast Guesthouse
to a single dwelling without complying with
Condition 3 attached to
Planning Permission referenced PA16/06996.**

Influence Planning

**on behalf of
Mr D Bonar**

**Beachcroft
Valley Road
Carbis Bay
St Ives
TR26 2QS**

February 2021

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1. Professional Details

- 1.1 My name is Paul James Carey Bateman, Principal Consultant with Influence Planning. I have been instructed by the applicants, Mr and Mrs D Bonar, to represent them in making this planning application for the lifting of condition number 3 attached to planning permission referenced PA16/06996, to allow the unrestricted use of the dwelling known as Beachcroft as a single dwellinghouse.
- 1.2 I am an Associate Member of the Royal Town Planning Institute since 2001, following gaining a Certificate in Continuing Education in Planning Enforcement from the University of Cambridge. I am currently an elected member of the Royal Town Planning Institute's General Assembly.
- 1.3 In 1988, I commenced planning employment with Carrick District Council, a former district authority that is now a constituent part of Cornwall Council's authoritative area, and from 2000 to 2004 headed the Planning Enforcement Team in that authority. I joined another Cornish Planning Consultancy in 2004, becoming a Planning Director. In 2011, I formed Influence Planning in response to the changing nature of the planning system, to encourage community participation, negotiation and mediation of proposals to ensure that only the right developments in the right locations get delivered.
- 1.4 My experience has included representation of public sector, private sector and community group third party clients in planning applications and appeals, including at Public Inquiry and Court hearings, in matters relating to commercial and residential development as well as establishment of lawfulness and remedying adverse condition of land. I have acted as professional witness and advocate in this capacity.
- 1.5 I reviewed the background papers to the proposal, including the policy position, prior to accepting the instruction, and can confirm that I am satisfied that the proposal represents a sound planning solution that accords with the aims and intentions of development plan policy and all other material considerations. I am satisfied that Condition 3 attached to the Planning Permission referenced PA16/06996, should not have been imposed and should now be lifted.

2. The Proposal

- 2.1 The proposal is to lift Condition 3 attached to Planning Permission referenced PA16/06996 that was issued by Cornwall Council on the 21 September 2016 for the change in use of the then existing bed and breakfast accommodation to a use as a single dwellinghouse.
- 2.2 Condition 3 stated *“The dwelling hereby permitted shall not be occupied otherwise than by a person as his or her Only or Principal Home. For the avoidance of doubt the dwelling shall not be occupied as a second home or holiday letting accommodation. The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with.”*
- 2.3 The stated reason for the imposition of the condition is *“To safeguard the sustainability of the settlements in the St Ives NDP area, whose communities are being eroded through the amount of properties which are not occupied on a permanent basis and to ensure that the resulting accommodation is occupied by persons in compliance with policy H2 of the St Ives Neighbourhood Plan 2015 - 2030.”*
- 2.4 Beachcroft is a former dwelling built in the 1920s that is sited amongst other dwellings within an established residential area in the settlement of Carbis Bay, within the administrative area of the St Ives Town Council.
- 2.5 Valley Road is characterised by substantial dwellings of the between wars period, that have been interlaced with more contemporary houses as the expansive plots have been gradually sub-divided over the last century. Beachcroft is one of the more significant dwellings, built in a Cornelius style with later additions, presumably as a mining captain's or merchant's house.
- 2.6 Land Registry documents identify that local landowner R W G Tyringham sold the land to John William Payne on the 6 February 1924, which was sub-divided later that month to include Frances Jane Bolitho and Walter Henry Borlaise, who it is understood first occupied the Beachcroft dwelling.
- 2.7 At some point much later, Beachcroft changed in use to a guesthouse, and planning application PA16/06996, sought to reinstate the original dwelling use, consistent with the residential environment it occupies.

- 2.8 The current application seeks to remove condition 3 attached to the change in use planning permission, in order that Beachcroft can be used as an unrestricted dwelling in the same way as all of the other existing properties built prior to 2016 that exist in Valley Road.
- 2.9 The applicants recognise the policy position that is established by the adopted St Ives Neighbourhood Development Plan but understands that that the policy H2 was not intended to restrict the use of a building that was being permitted to reinstate its original dwelling purpose.

3. Relevant Planning Policy

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 places an obligation on those determining planning applications or appeals. It states *“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”*.
- 3.2 The development plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 comprises the Cornwall Local Plan Strategic Policies 2010-2030 (CLP) and the St Ives Area Neighbourhood Development Plan. 2015-2030 (SINP).
- 3.3 Material considerations in respect of the proposal rise from the National Planning Policy Framework (NPPF), the background history of the development and its location. The aims and intentions of the development plan policies are also relevant.
- 3.4 As planning permission was granted under reference PA16/06996 for the material change in use of Beachcroft from its former bed and breakfast use to a single dwellinghouse, the principle of the building being used as a dwelling has been established. The NPPF and CLP, specifically Policy 3, direct housing to settlement locations, such as Valley Road in Carbis Bay. The scale, form, setting and character of the location have all also been found to be suitable for the dwellinghouse use.
- 3.5 The sole policy consideration for this application is, therefore, H2 of the SINP. Early in the process of the emergence of the SINP, Cornwall Council’s Planning Policy Advisory Committee considered its proposed policies and consultation responses in its meeting of 16 September 2015. The officer’s report to that Committee, in response to circumstances where H2 may not be appropriate, confirmed that Cornwall Council is the authority that determines planning applications and stated that ***“there may be circumstances when it is not appropriate to apply Policy H2, due to other material considerations.”***
- 3.6 Policy H2 of the SINP is titled "Principal Residence Requirement". It states:
"Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing, excluding replacement dwellings, will only be supported where there is a restriction to ensure its occupancy as a Principal Residence. Sufficient guarantee must be provided of such occupancy restriction through the imposition of a planning condition or legal agreement. New

unrestricted second homes will not be supported at any time. Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend the majority of their time when not working away from home. The condition or obligation on new open market homes will require that they are occupied only as the primary (principal) residence of those persons entitled to occupy them. Occupiers of homes with a Principal Residence condition will be required to keep proof that they are meeting the obligation or condition and be obliged to provide this proof if/when Cornwall Council requests this information. Proof of Principal Residence is via verifiable evidence which could include, for example (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools etc)."

- 3.7 Whilst the preamble text provides no definitions of “*new open market housing*” for the purpose of Policy H2, it has been applied to the construction of new housing and the change in use of buildings to provide new housing. The plan is silent of the reinstatement of buildings that were constructed as housing and having that original use reinstated by a subsequent permission, as in this case.

4 Other Material Considerations:

- 4.1 The first material planning consideration is whether policy H2 was intended to restrict the future use of a building that was originally constructed as a dwelling. Whilst the policy can be considered to relate to all new housing, there must be a question whether a building that was built and used as a dwelling but then had an intervening use, can be considered to be a new dwelling if its original and intended use is reinstated. It is considered that the policy was not intended to result in a single dwelling amid a residential area, being the sole building that must be used as a primary residence; when all those other buildings around it, including those built at a similar time and much more recently, remain unrestricted. Beachcroft is not considered a new dwelling in respect of the intentions of the policy.
- 4.2 In this case, Beachcroft has a historic integrity due to the ownership of the land and its first occupiers, as well as its traditional design form. To a degree, it could be considered as an undesignated heritage asset, being a fine example of a substantial dwelling of its mid-war period. The historic integrity of the building is enhanced by its reversion to its original dwelling use and, therefore, planning permission that facilitates that use can be seen as a heritage gain. To place a restriction on such a planning permission that makes the historic use less attractive or even unviable is not consistent with the protection of undesignated heritage assets.
- 4.3 The applicants ceased the use of the Bed and Breakfast accommodation as a result of changing market conditions and in the knowledge that when they purchased the former dwelling, they would have the opportunity to revert back to that original use and acquire the alternative asset value of the property as a dwellinghouse. The effect of the imposition of the primary residence Condition 3 has a serious adverse impact on the value of Beachcroft as a dwelling and lost the applicants their right to peaceful enjoyment of their property that should have been a reasonable expectation in accordance with Article 1 of the First Protocol of the Human Rights Act 1998. That right extends to possessions and financial assets that a public body can only restrict if it is lawful and in the public interest to do so. As Policy H2 was silent on proposals to reinstate dwelling use, the process in adoption of that policy did not include such considerations and should not therefore, be used to restrict the use in such circumstances.
- 4.4 In the current climate, the applicants have not had the opportunity to reconsider reversion to the use as a bed and breakfast guesthouse due, in the main, to Government restrictions requiring the closure of those business uses. In any case, there has been a

shift in the market for Cornwall's tourism accommodation, with a much greater demand for self-contained units where guests can restrict their contact with others. Accordingly, there is now a significant market available for the use of Beachcroft as viable self-contained holiday accommodation that would be available should condition 3 be lifted.

- 4.5 Given that Beachcroft was in tourism accommodation use prior to the implementation of planning permission PA16/06996, it appears particularly onerous that, in approving the C3 dwelling use, Cornwall Council imposed a condition that, unlike any of its neighbouring properties that had never been used for tourism accommodation, restricted Beachcroft's use for that purpose.
- 4.6 In respect of Condition 3 itself, and with regard to the particular circumstances of this case, it is appropriate to consider the circumstances in which conditions should be imposed on planning permissions.
- 4.7 The NPPF gives the six tests for a valid condition; it must be necessary, relevant to planning, relevant to the development permitted and be enforceable, precise and reasonable in all other respects. The legal tests for a valid condition are that they must be imposed for a planning purpose and not for any other ulterior purpose; they must be fairly and reasonably related to the development permitted by the planning permission; and the condition should not be so unreasonable that no reasonable planning authority could have imposed it.
- 4.8 It is accepted that a condition that attempts to retain a sustainable community could be considered necessary and would have a planning purpose. However, when it is a condition imposed on a single dwelling that becomes the only one in its residential locality that is subject to a primary residence restriction, it could be argued that it fails to meet either the necessity test or the planning purpose that it is attempting to achieve.
- 4.9 Where all new housing is subject to a primary residence condition, it has the effect of all existing housing becoming a finite stock of unrestricted dwellings that are capable of being consumed by the more financially favourable second or holiday home market. Accordingly, it creates the potential for residential areas that existed prior to the adoption of the SINP to lose community identity due to the lack of primary residences. It is approximated that between 20 and 25% of the existing dwellings in the Valley Road locality are already in use as second homes. The effect of the condition being imposed on one sole dwelling within an otherwise unrestricted residential area is that it could ultimately be the only primary residence retained

in its locality. This would lead to a complete lack of any community identity and resulting isolation for Beachcroft's future residents, completely contrary to the planning purpose of the condition.

- 4.10 The imposition of Condition 3 on the change in use of Beachcroft back to its original use of a dwelling can be argued as failing to be relevant to the development permitted. As Policy H2 is only relevant to new housing, then a permission for the reinstatement of a dwelling use should not be subject to the imposition of a condition that results directly from that policy.
- 4.11 The condition has, when applied to new housing, been held by Planning Inspectors to be sufficiently precise and reasonable. However, there is no evidence of its enforceability being tested. Whilst provisions exist for the issue of an Enforcement Notice or Breach of Condition Notice, it is unclear what the requirements of such a Notice would be. Enforcement action is taken to remedy harm caused by a breach of planning control. Therefore, Cornwall Council would first have to identify and evidence what harm is being caused by a dwelling not being occupied as a principal residence. If that harm is assessed as the failure to support the community or use local services and facilities, there are no reasonable requirements, that any reasonable authority would make, that could require some form of community engagement or require the use of local services and facilities, such that it could remedy the harm caused by the breach of condition.
- 4.12 The enforceability of Condition 3 has to also be considered from a practical perspective. If Beachcroft is in use as dwelling and subject to a mortgage but the owner, due to their own personal circumstances, is required to move yet retains the dwelling as a holiday home, it is not clear what action Cornwall Council could take to insist on compliance with the condition. The Council could not require the owner to let it or sell it, as this may not be allowable by their mortgage provider, particularly in circumstances where there is negative equity. If the Council require it to remain empty, then it would be effectively facilitating the second or holiday home use. There is certainly no clear explanation how the condition is enforceable in such circumstances.

5 Conclusion

- 5.1 From the inception of the SINP and the review of its first draft by Cornwall Council's policy advisory committee, it was accepted that there would be circumstances where the imposition of a condition requiring a primary residence use, in accordance with Policy H2, would not be appropriate.
- 5.2 Where the proposal constitutes the reinstatement of a historic dwellinghouse use, with a beneficial heritage impact, in an area where all other dwellings around it are unrestricted, and where the dwelling has had a previous holiday accommodation use that has been beneficial to the local economy; this must be a circumstance where it would have been envisaged that such a primary residence condition would not have been imposed. It is difficult to imagine a more relevant case, as recognised by the policy advisory committee, for no restrictive condition to imposed.
- 5.3 Where the development did not constitute new housing, in its usual and expected form, the condition would not have been relevant to the permission being granted, as Policy is silent on reinstatement of dwelling uses. The condition does, therefore, in these particular and exceptional circumstances, fail to meet the test required by the NPPF.
- 5.4 The applicants contend that Policy H2 was not relevant to their proposal for the change in use of the guesthouse back to a dwelling and therefore, Condition 3 should not have been imposed. The material planning considerations that are also relevant to this historic dwelling would, in any case, suggest that the Condition was not intended for this type of development, in these particular circumstances.
- 5.5 Accordingly, the applicants anticipate that Cornwall Council will agree to lift Condition 3 imposed on planning permission PA16/06996 and approve this planning application.