

Certificate of Lawfulness Application in relation to occupation of Bowford Cottage as an unrestricted dwellinghouse following removal of condition 3 from planning approval 3/2004/0653

Bowford Cottage
Carr Lane
Balderstone
BB2 7LN

Supporting Evidence

March 2023

Prepared by Gemma Kennedy BA (Hons) MA Town Planning



WBW Surveyors Ltd
Skipton Auction Mart
Gargrave Road
Skipton BD23 1UD
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1. Site Description

- 1.1 Bowford Cottage is a semi-detached property located towards the eastern end of Carr Lane, off Commons Lane, Balderstone. Planning approval was granted for the construction of Bowford Cottage, and adjoining Beacon Cottage, as a pair of holiday cottages under planning reference 3/2004/0653 on 24th November 2004.
- 1.2 The following condition was imposed on the grant of planning approval;

3. The unit(s) of accommodation shall not be let to or occupied by any one person or group of persons for a continuous period of longer than 3 months in any one year and in any event shall not be used as a permanent accommodation. Letting records for the two units shall be kept by the applicant and provided for inspection by the Local Planning Authority on an annual basis.

Reason: In order to comply with Policies G1, G5, ENV3 and RT1 of the Ribble Valley Districtwide Local Plan. The building is located in an area where the Local Planning Authority would not normally be minded to grant the use of building for a permanent residential accommodation.
- 1.3 On 20th December 2010 an application was made to Ribble Valley Borough Council to remove condition 3 of planning approval 3/2004/0653. Planning permission was subsequently granted to delete condition 3 in a decision issued on 18th February 2011.

2. Planning History

- 2.1 3/03/0505/P (alternative reference 3/2003/0505) – Erection of two holiday cottages, improvement to junction of Carr Lane and associated engineering works. Approved 12th August 2003. Planning permission not implemented.
- 2.2 3/2004/0653 – Erection of 2 no. holiday cottages on site of former barn. Approved 24th November 2004.
- 2.3 3/2010/0960 – Application to remove condition no. 3 of planning consent 3/2004/0653P, to allow the holiday cottage known as Beacon Cottage to be used as a permanent residential dwelling. Approved 18th February 2011.

3. Proposal and Background to Application

- 3.1 The owner of Bowford Cottage has received correspondence from Ribble Valley Borough Council alleging that Bowford Cottage is being occupied in breach of planning condition 3 of planning approval 3/2004/0653. It is the owner's case that in the granting of planning approval 3/2010/0960 on 18th February 2011, Ribble Valley Borough Council removed the holiday occupancy condition in full from original planning approval 3/2004/0653. As will be detailed under the Evidence section below, in deleting condition 3 of planning approval 3/2004/0653, the condition was entirely removed from the original decision notice a decision that affected Bowford Cottage as well as Beacon Cottage. Both Beacon Cottage and Bowford Cottage

have therefore not been subject to condition 3 since 18th February 2011 and have been permitted to be occupied as unrestricted dwellinghouses from that date.

4 Legislative Background to Certificates of Lawfulness

- 4.1 Paragraph 003 (gov.uk/guidance/lawful-development-certificates) sets out how lawfulness is defined in relation to lawful development certificates;
- 4.2 *“The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement action is in force, or, for which planning permission is not required.”*
- 4.3 In making a decision on a certificate of lawfulness application, Planning Practice Guidance (paragraph 009 – ‘Lawful Development Certificates sets out that a Local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant considerations at any stage of this type of application, or at appeal.

5 Evidence

- 5.1 It is the owner’s case that in the granting of planning approval 3/2010/0960 the Local Planning Authority intended to, and subsequently deleted condition 3, from original planning approval 3/2004/0653P. Accordingly, both Bowford Cottage and Beacon Cottage are no longer restricted by the original holiday occupancy condition.

- 5.2 Copies of the evidence are included in the appendices to this report (emphasis added);

- 5.3 1) Ribble Valley Borough Council’s formal written response to pre-application enquiry dated 9th November 2010

The planning officer, in response to a pre-application enquiry from the owner of Beacon Cottage advised as follows;

“The way in which you would seek a formal decision on this matter would be the submission of an application to delete condition no 3 of planning permission 3/2004/0653.”

- 5.4 2) Application form submitted Ribble Valley Borough Council dated 05/12/2010

Section 4 ‘Details of pre-application advice received?’ *“To apply for the removal of condition (3) attached to planning application number 3/2004/0653.”*

- 5.5 3) Delegated Item File Report – Approval – application 3/2010/0960/P

Development Proposed: *“Application to remove condition number 3.”*

Summary of reasons for approval: *“The requested deletion of the condition is in accordance with the presently applicable policies and would not result in any seriously detrimental effects upon visual amenity, the amenities of any nearby residents or highway safety.”*

Recommendation: *“That permission be granted for the removal of condition number 3 of planning permission 3/2004/0653/P.”*

5.6 4) Decision Notice 3/2010/0960 dated 18th February 2011

Development Proposed: *“Application to remove condition no. 3 of planning consent 3/2004/0653P.”*

“Ribble Valley Borough Council hereby give notice that permission has been granted for the carrying out of the above development...”

6 Conclusion

- 6.1 In making application 3/2010/0960 to remove condition 3 of planning approval 3/2004/0653, it was the intention of both the applicant and the local planning authority, and later the decision of the local authority, to remove condition 3 from the planning approval, and not to vary the condition. Had the intention been for the condition to have been varied rather than removed, then condition 3 should have been reworded to specify that Bowford Cottage remained subject to a holiday occupancy condition.
- 6.2 Following the removal of condition 3 of planning approval 3/2004/0653 Bowford Cottage is not subject to a holiday occupancy condition. The applicant respectfully requests that a Certificate of Lawfulness is granted to confirm that Bowford Cottage can be occupied as an unrestricted dwellinghouse.

Appendices

- 1: Ribble Valley Borough Council's formal written response to pre-application enquiry dated 9th November 2010**
- 2: Application form submitted Ribble Valley Borough Council dated 05/12/2010**
- 3: Delegated Item File Report – Approval – application 3/2010/0960/P**
- 4: Decision Notice 3/2010/0960 dated 18th February 2011**



RIBBLE VALLEY BOROUGH COUNCIL

please ask for: COLIN SHARPE
direct line: 01200 414500
e-mail: colin.sharpe@ribblevalley.gov.uk
my ref: CS/CMS/ENQ/2010/00203
your ref:
date: 9 November 2010

Council Offices
Church Walk
CLITHEROE
Lancashire BB7 2RA

Switchboard: 01200 425111
Fax: 01200 414487
DX: Clitheroe 15157
www.ribblevalley.gov.uk

Dear Mr Garnett

RE: PROPOSED OCCUPATION OF HOLIDAY COTTAGE AS A PERMANENT
DWELLING AND ERECTION OF A WIND TURBINE AT BEACON COTTAGE,
CARR LANE, BALDERSTONE

This letter is the Council's formal written response to your pre-application enquiry concerning the above-mentioned proposals about which we have spoken on the telephone on a number of occasions. Please accept my apologies, however, for the delay in sending this written response to your enquiry.

Planning permission was originally granted for the erection of a pair of holiday cottages on the footprint of a derelict barn in August 2003 (3/2003/0565/P). Planning permission was then granted in November 2004 for basically the same development, but with an amended design (3/2004/0653/P). It is this second planning permission that was implemented.

At the time of consideration of the applications, the erection of permanent dwellings in this location would have been contrary to the Local Plan Policies that were applicable at that time.

The construction of the holiday lets with the restricted occupancy condition, however, was considered to be in accordance with Policy RT1 of the Local Plan that is generally supportive of proposals that extend the range of tourism and visitor facilities in the Borough subject, of course, to other detailed considerations. The proposed holiday lets were considered to be acceptable, particularly because they would be within the group of buildings that also includes the Pewter House Farm complex and the barn conversion dwelling on the opposite side of the lane from the site.

What we presently therefore have is an established built development with a restrictive class of residential use. Given this restriction, your proposal should be treated as tantamount to the conversion of a rural building. Policy H2 of the Local Plan concerns itself with dwellings in the open countryside and allows for "the appropriate conversion of buildings to dwellings provided they are suitably located and their form, bulk and general design are in keeping with their surroundings".

Continued ...

CS11-03

Continuation Sheet 1
9 November 2010

I consider that the locational characteristics of the site that were considered to justify the erection of the pair of holiday lets in the first place, could be used in the current policy climate to justify the use of your unit as a permanent dwelling. In order to restrict any potential detrimental effects upon the appearance and character of the locality, the residential curtilage of the permanent dwelling (should planning permission be granted) should be restricted to that for which permission was granted in respect of the holiday let.

The way in which you would seek a formal decision on this matter would be the submission of a planning application to delete condition no 3 of planning permission 3/2004/0653/P. You should note that the advice contained in this letter is given at officer level only and is entirely without prejudice to the Council's formal consideration of any planning application that might be submitted

Turning to the second matter about which you ask for advice, a small domestic wind turbine in this general location would be acceptable in principle. Its precise siting should, wherever possible, take advantage of any existing hedges or trees in order to screen the turbine and minimise its effects upon the visual amenities of the locality. Such a turbine would require planning permission, and any application should include technical details of the noise generated by the particular turbine that you propose to use, in order that the effects on other nearby residential properties can be properly assessed. Again, this advice relating to the wind turbine is given "without prejudice".

I trust that you will find this letter of assistance, but if you have any queries, do not hesitate to contact me again

Yours sincerely



COLIN SHARPE
SENIOR PLANNING OFFICER

Robert Garnett
15 Brookfield
Mellor
BLACKBURN
Lancashire
BB2 7JN



RIBBLE VALLEY
BOROUGH COUNCIL

Council Offices, Church Walk, Clitheroe, Lancashire. BB7 2RA Tel: 01200 425111 www.ribblevalley.gov.uk

For office use only

Application No 20100960P

Date received

Fee paid £

Receipt No:

Application for removal or variation of a condition following grant of planning permission

Town and Country Planning Act 1990

Planning (Listed Buildings and Conservation Areas) Act 1990

FOR THE ATTENTION OF
DEVELOPMENT

10 DEC 2010

Publication of planning applications on council websites

Please note that with the exception of applicant contact details and Certificates of Ownership, the information provided on this application form and in supporting documents may be published on the council's website.

If you have provided any other information as part of your application which falls within the definition of personal data under the Data Protection Act which you do not wish to be published on the council's website, please contact the council's planning department.

Please complete using block capitals and black ink.

It is important that you read the accompanying guidance notes as incorrect completion will delay the processing of your application

1. Applicant Name and Address

Title: MR First name: ROBERT HENRY
Last name: GARNETT
Company (optional):
Unit: House number: 15 House suffix:
House name:
Address 1: BROOKFIELD
Address 2: MELLOR
Address 3:
Town: BLACKBURN
County: LANCASHIRE
Country: ENGLAND
Postcode: BB2 7JN

2. Agent Name and Address

Title: First name:
Last name:
Company (optional):
Unit: House number: House suffix:
House name: N/A
Address 1:
Address 2:
Address 3:
Town:
County:
Country:
Postcode:

320100960P

3. Site Address Details

Please provide the full postal address of the application site

Unit: House number: House suffix:

House name: BEACON COTTAGE

Address 1: CARR LANE

Address 2: BALDERSTONE

Address 3:

Town: BLACKBURN

County: LANCASHIRE

Postcode (optional): BB2 7LN

Description of location or a grid reference.
(must be completed if postcode is not known):

Easting: Northing:

Description:

4. Pre-application AdviceHas assistance or prior advice been sought from the local authority about this application? ☒ Yes ☐ No

If Yes, please complete the following information about the advice you were given. (This will help the authority to deal with this application more efficiently)

Please tick if the full contact details are not known, and then complete as much as possible: ☐

Officer name:

COLIN SHARPE

Reference:

CS/CMS/ENQ/2010/00203

Date (DD/MM/YYYY):

(must be pre-application submission)

09/11/2010

Details of pre-application advice received?

TO APPLY FOR THE REMOVAL OF
CONDITION(3) ATTACHED TO
PLANNING APPLICATION NUMBER
3/2004/0653/P.

5. Description Of Your Proposal

Please provide a description of the approved development as shown on the decision letter, including the application reference number and date of decision in the sections below:

FOR THE ERECTION OF A PAIR OF HOLIDAY COTTAGES ON
THE FOOTPRINT OF A DERELICT BARN.

Reference number: 3/2004/P653/P Date of decision (DD/MM/YYYY): 09/11/2004 (date must be pre-application submission)

Please state the condition number(s) to which this application relates:

1		6	
2		7	
3	<u>NUMBER 3</u>	8	
4		9	
5		10	

Has the development already started?

☒ Yes ☐ No

If Yes, please state when the development started (DD/MM/YYYY):

 (date must be pre application submission)

Has the development been completed?

☒ Yes ☐ No

If Yes, please state when the development was completed (DD/MM/YYYY):

04/04/2007 (date must be pre-application submission)**6. Condition(s) - Removal**

Please state why you wish the condition(s) to be removed or changed:

WE HAVE TRIED FOR THE LAST 3 YEARS RENTING OUT THE
COTTAGE THROUGH HOLIDAYSONS HOLIDAYS BUT HAS PROVEN TO BE NOW
PROFITABLE

If you wish the existing condition to be changed, please state how you wish the condition to be varied:

FROM HOLIDAY LET TO RESIDENTIAL DWELLING

7. Certificates

One Certificate A, B, C, or D, must be completed with this application form

CERTIFICATE OF OWNERSHIP - CERTIFICATE A**Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7**I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/ the applicant was the owner (*owner is a person with a freehold interest or leasehold interest with at least 7 years left to run*) of any part of the land or building to which the application relates

Signed - Applicant:

Or signed - Agent:

Date DD/MM/YYYY:

05-12-10

CERTIFICATE OF OWNERSHIP - CERTIFICATE B**Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7**I certify/ The applicant certifies that I have/the applicant has given the requisite notice to everyone else (as listed below) who, on the day 21 days before the date of this application, was the owner (*owner is a person with a freehold interest or leasehold interest with at least 7 years left to run*) of any part of the land or building to which this application relates.

Name of Owner	Address	Date Notice Served

Signed - Applicant:

Or signed - Agent:

Date DD/MM/YYYY:

CERTIFICATE OF OWNERSHIP - CERTIFICATE C**Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7**

I certify/ The applicant certifies that:

§ Neither Certificate A or B can be issued for this application

§ All reasonable steps have been taken to find out the names and addresses of the other owners (*owner is a person with a freehold interest or leasehold interest with at least 7 years left to run*) of the land or building, or of a part of it, but I have/ the applicant has been unable to do so

The steps taken were:

Name of Owner	Address	Date Notice Served

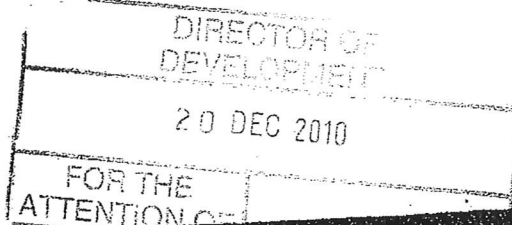
Notice of the application has been published in the following newspaper (circulating in the area where the land is situated):

On the following date (which must not be earlier than 21 days before the date of the application):

Signed - Applicant:

Or signed - Agent:

Date DD/MM/YYYY:



320100960P

7. Certificates (continued)

CERTIFICATE OF OWNERSHIP - CERTIFICATE D
Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7

I certify/ The applicant certifies that:

S Certificate A cannot be issued for this application
S All reasonable steps have been taken to find out the names and addresses of everyone else who, on the day 21 days before the date of this application, was the owner (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of any part of the land to which this application relates, but I have/ the applicant has been unable to do so

The steps taken were:

Notice of the application has been published in the following newspaper (circulating in the area where the land is situated):

On the following date (which must not be earlier than 21 days before the date of the application):

Signed - Applicant:

Or signed - Agent:

Date DD/MM/YYYY:

AGRICULTURAL HOLDINGS CERTIFICATE
Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7

Agricultural Land Declaration - You Must Complete Either A or B
(A) None of the land to which the application relates is, or is part of, an agricultural holding

Signed - Applicant:

Or signed - Agent:

Date DD/MM/YYYY:

B) I have/ The applicant has given the requisite notice to every person other than myself/ the applicant who, on the day 21 days before the date of this application, was a tenant of an agricultural holding on all or part of the land to which this application relates, as listed below:

Name of Tenant	Address	Date Notice Served
N/A		

Signed - Applicant:

Or signed - Agent:

Date DD/MM/YYYY:

20.12.10

8. Planning Application Requirements - Checklist

Please read the following checklist to make sure you have sent all the information in support of your proposal. Failure to submit all information required will result in your application being deemed invalid. It will not be considered valid until all information required by the Local Planning Authority has been submitted

3 copies of a completed and dated application form: ☒

3 copies of other plans and drawings or information necessary to describe the subject of the application: ☒

9. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information.

Signed - Applicant:

Or signed - Agent:

Date (DD/MM/YYYY):

07.12.10

(date cannot be pre-application)

10. Applicant Contact Details

Telephone numbers

Country code: [redacted] National number: [redacted] Extension number: [redacted]

Country code: [redacted] Mobile number (optional): [redacted]

Country code: [redacted] Fax number (optional): [redacted]

Email address (optional):

[redacted]

11. Agent Contact Details

Telephone numbers

Country code: [redacted] National number: [redacted] Extension number: [redacted]

Country code: [redacted] Mobile number (optional): [redacted]

Country code: [redacted] Fax number (optional): [redacted]

Email address (optional):

[redacted]

12. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

☒ Yes☐ NoIf the planning authority needs to make an appointment to carry out a site visit, whom should they contact? *(Please select only one)*☐ Agent☒ Applicant☐ Other (if different from the agent/applicant's details)

If Other has been selected, please provide:

Contact name:

[redacted]

Telephone number:

[redacted]

Email address:

[redacted]

DELEGATED ITEM FILE REPORT - APPROVAL**Ref: CS/CMS**

Application No:	3/2010/0960/P
Development Proposed:	Application to remove condition number 3 of planning permission 3/2004/0653/P to allow the holiday cottage known as Beacon Cottage to be used as a permanent residential dwelling at Beacon Cottage, Carr Lane, Balderstone

CONSULTATIONS: Parish/Town Council

Parish Council - No comments or observations received.

CONSULTATIONS: Highway/Water Authority/Other Bodies

Environment Directorate (County Surveyor) – N/A.

Environment Agency – N/A.

CONSULTATIONS: Additional Representations.

No representations have been received.

RELEVANT POLICIES:

Policy G1 - Development Control.
 Policy G5 - Settlement Strategy.
 Policy ENV3 - Development in Open Countryside.
 Policy H2 - Dwellings in the Open Countryside.
 Policy H15 - Building Conversions - Location.
 Policy H16 - Building Conversions - Building to be Converted.
 Policy H17 - Building Conversions - Design Matters.
 Policy H23 - Removal of Holiday Let Conditions.

COMMENTS/ENVIRONMENTAL/AONB/HUMAN RIGHTS ISSUES/RECOMMENDATION:

The applicant states on the submitted forms that he has tried for the last three years to rent the holiday cottage through Hoseasons Holidays, but it has not proven to be profitable. He therefore now seeks to remove the holiday let condition to allow occupation of the property as a dwelling.

Planning permission was originally granted for the erection of a pair of holiday cottages on the footprint of a derelict barn in August 2003 (3/2003/0505/P). Planning permission was then granted in November 2004 for basically the same development, but with an amended design (3/2004/0653/P). It is this second planning permission that was implemented.

At the time of consideration of the applications, the erection of permanent dwellings in this location would have been contrary to the Local Plan Policies that were applicable at that time.

The construction of the holiday lets with the restricted occupancy condition, however, was considered to be in accordance with Policy RT1 of the Local Plan that is generally supportive of proposals that extend the range of tourism and visitor facilities in the Borough subject, of course, to other detailed considerations. The proposed holiday lets were considered to be acceptable, particularly because they would be within the group of buildings that also

includes the Pewter House Farm complex and the barn conversion dwelling on the opposite side of the lane from the site.

What we presently therefore have is an established built development with a restrictive class of residential use. Given this restriction, this proposal can be treated as tantamount to the conversion of a rural building. Policy H2 of the Local Plan concerns itself with dwellings in the open countryside and allows for "the appropriate conversion of buildings to dwellings provided they are suitably located and their form, bulk and general design are in keeping with their surroundings".

I consider that the locational characteristics of the site that were considered to justify the erection of the pair of holiday lets in the first place, can now be used in the current policy climate (ie the lack of an identified 5 year housing land supply) to justify the use of this unit as a permanent dwelling. In order to restrict any potential detrimental effects upon the appearance and character of the locality, the residential curtilage of the permanent dwelling must, however, be restricted by condition to that for which permission was granted in respect of the holiday let.

Subject to such a condition, the proposal is in accordance with the presently applicable policies.

SUMMARY OF REASONS FOR APPROVAL:

The requested deletion of the condition is in accordance with the presently applicable policies and would not result in any seriously detrimental effects upon visual amenity, the amenities of any nearby residents or highway safety.

RECOMMENDATION: That permission be granted for the removal of condition number 3 of planning permission 3/2004/0653/P to allow the holiday cottage known as Beacon Cottage to be used as a permanent residential dwelling.

RIBBLE VALLEY BOROUGH COUNCIL

Department of Development

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111

Fax: 01200 414488

Planning Fax: 01200 414487

Town and Country Planning Act 1990

PLANNING PERMISSION

APPLICATION NO: 3/2010/0960

DECISION DATE: 18 February 2011

DATE RECEIVED: 20/12/2010

APPLICANT:

Mr R H Garnett
15 Brookfield
Mellor
Blackburn
Lancs
BB2 7JN

AGENT:

DEVELOPMENT PROPOSED:

Application to remove condition no.3 of planning consent 3/2004/0653P, to allow the holiday cottage known as Beacon Cottage to be used as a permanent residential dwelling.

AT: Beacon Cottage Carr Lane Balderstone Lancashire BB2 7LN

Ribble Valley Borough Council hereby give notice that **permission has been granted** for the carrying out of the above development in accordance with the application plans and documents submitted subject to the following condition(s):

1. The residential curtilage of the dwelling permitted by the deletion of the condition shall be restricted to the area outlined in red on the submitted 1:1250 scale location plan. The area outlined in blue on that plan shall not at any time be used as residential curtilage.

Reason: For the avoidance of doubt and to protect the appearance and character of the locality in accordance with Policies G1 and ENV3 of the Ribble Valley Districtwide Local Plan.

Relevant planning policy

Policy G1 - Development Control
Policy G5 - Settlement Strategy
Policy ENV3 - Development in Open Countryside
Policy H2 - Dwellings in the Open Countryside
Policy H15 - Building Conversions - Location
Policy H16 - Building Conversions - Building to be Converted
Policy H17 - Building Conversions - Design Matters
Policy H23 - Removal of Holiday Let Conditions

Summary of reasons for approval

The requested deletion of the condition is in accordance with the presently applicable policies and would not result in any seriously detrimental effects upon visual amenity, the amenities of any nearby residents or highway safety.

P.T.O.

Note(s)

APPLICATION NO. 3/2010/0960

DECISION DATE: 18 February 2011

1. For rights of appeal in respect of any condition(s)/or reason(s) attached to the permission see the attached notes.
2. The applicant is advised that should there be any deviation from the approved plan the Local Planning Authority must be informed. It is therefore vital that any future Building Regulation application must comply with the approved planning application.

STEWART BAILEY
DIRECTOR OF DEVELOPMENT SERVICES