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Planning and Sustainable Development  
Cornwall Council  
Pydar Road,  
Truro,  
TR1 1XU

Our ref: 21485  
29<sup>th</sup> November 2021

Dear Sir/Madam

**NON-MATERIAL AMENDMENT TO APPLICATION PA20/06063 AT BROOK COTTAGE, TREDINNICK, NEWMILL, PENZANCE, CORNWALL, TR20 8XU**

Laurence Associates is retained by Mr. Jeeves and Miss Johansen (the applicant) to submit a non-material amendment under Section 96A of the Town and Country Planning Act 1990 (all further references to sections refer to the Town and Country Planning Act 1990) for the proposed amendment to the description of development as set out in this supporting letter to the development permitted by planning permission PA20/06063 relating to the above address.

Permission PA20/06063 was granted on 15<sup>th</sup> February 2021 and the description of the approved development as per the decision notice is as follows:

*'Demolition of poor-quality extensions and replacement with new rear extension, renovation of piggeries and remodelling of garage/workshop. Track access to western residential boundary.'*

**Description of development**

An amendment to the approved plans is sought. The proposed alteration is to change the style of approved windows by removing the glazing bars within the windows of the southeast elevation (Figures 1 and 2 below), to change the style of the central door on the southeast elevation (figures 1 and 2 below), to remove the glazing bars from windows on the northeast elevation and change the fenestration pattern of the large master bedroom window (figures 3 and 4). All other windows are already approved for use without window bars.



Figure 1: approved plan southeast elevation

Figure 2: proposed plan southeast elevation



Figure 3: approved plan northeast elevation

Figure 4: proposed northeast elevation

The changes to the door and window design are only minor in nature and would not compromise the external appearance of the property and in fact follow the existing, original pattern of the southeast elevation and present continuity throughout the property.

The proposed changes would not result in a detrimental impact either visually or in terms of amenity.

The proposed changes are considered inconsequential in terms of its scale in relation to the original application.

There are also benefits in the longevity of the material, aluminium instead of wood.

Therefore, the non-material amendment is appropriate in this instance and achievable through the power in s96A for the below reasons provided.

### ***Relevant Legislation***

Section 96A provides an express power for a Local Planning Authority to make a change to a planning permission if it is satisfied the change, is not material. The express legislative power includes the power to impose new conditions and to remove or alter existing conditions:

*'96A Power to make non-material changes to planning permission or permission in principle*

*(1) A local planning authority in England may make a change to any planning permission, or any permission in principle (granted following an application to the authority), relating to land in their area if they are satisfied that the change is not material.*

*(2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission or permission in principle as originally granted.*

*(3) The power conferred by subsection (1) includes power to make a change to a planning permission—*

*(a) to impose new conditions;*

*(b) to remove or alter existing conditions.'*

Whilst s96A (3), gives two examples of the scope of the power in s96A (1), both referring to conditions, this list is inclusive, not exhaustive. The power in s96A (1) is not simply limited to changes to conditions, subsection (3) merely seeks to provide examples. This is reinforced by the fact that when s96A was amended in 2017 the legislative drafters saw fit to include permission in principle in subs (1). Given that conditions cannot be imposed upon the grant of permission in principle (hence the omission of permission in principle in subs (3)), it is clear that the intention behind s96A was that the power extends beyond just the conditions, so as to also include the operative part of a permission.

### ***Planning Practice Guidance***

Planning Practice Guidance reinforces what was originally in the guidance, giving greater flexibility for planning permissions and published in November 2009 and October 2018. Reflecting the drafting of the legislation, this guidance refers to: amending a planning permission for s96A; and amending conditions for s73.

Paragraph: 002 Reference ID: 17a-002-20140306 sets out that *“There is no statutory definition of ‘non-material’. This is because it will be dependent on the context of the overall scheme...”*

PPG Paragraph: 008 Reference ID: 17a-008-20140306 adds that *“The local planning authority must have regard to the effect of the change, together with any previous changes made under section 96A... ...As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 (‘PCPA’) does not apply”*

Control over the Permission is exercised by both the operative part (the description) and the conditions (i.e., Condition 1 – in accordance with the plans). The plans themselves limit the grant of planning permission by setting the quantum of each use that is approved in the operative part.

As such, having regard to the effect of the change, the proposed changes to the windows in the application are not just non-material, they in fact make no difference at all to the permission

granted, because it remains subject to Condition 1 requiring the development to be in accordance with the plans.

***Cornwall Council Non-material amendments criteria***

*'Each non-material amendment application will be considered on its merits. If it meets the following criteria, it is likely that the proposed change can be dealt with by this procedure:*

- *There would be no change to the application site boundary and the proposal would be located within it (red line boundary).*
- *The amendment would not conflict with development plan policies or other Government guidance.*
- *There would be no conflict with any conditions on the planning permission.*
- *The proposal would not make worse any concerns raised by third parties when the original planning permission was considered.*
- *The approved footprint/siting of the building will not be moved in any direction by more than 1 metre.*
- *The proposal would not result in an extension to development already approved.*
- *The height/volume of the building or extension would not be increased or significantly reduced.*
- *The amendments must not result in a fundamental change in the design of the building.*
- *The change does not amount to new works or elements which have not been considered by any environmental statement submitted with the original application.*
- *Amendments to windows/doors/openings must not have any overlooking impact on neighbouring properties.*

*These criteria are designed to prevent amendments being accepted that would have a harmful impact on neighbours or amenity. If the above cannot be met, a minor material amendment or a new full application may be required. Potential applicants should consider whether the proposed change would be likely to meet these criteria before making a submission' (Cornwall Council website 2021).*

## **Relevant Caselaw**

### *Fulford*

The power in s96A is available to amend more than just the conditions (as per s73), it includes the permission itself. In the Court of Appeal case *R (on the application of Fulford Parish Council) v City of York Council* [2019] EWCA Civ 1359 [35], Lewison LJ considered the meaning of planning permission within s96A (1) in relation to the question as to whether s96A permits alterations to a reserved matters decision. His consideration provides assistance in understanding the meaning of planning permission in s96A:

*'In my judgment, the "planning permission" to which section 96A refers is the package consisting of the grant of planning permission itself, together with any conditions to which the grant is subjected.'*

### *Finney*

In contrast, the Court of Appeal case *Finney v Welsh Ministers and others* [2019] EWCA 1868 considered the ability to use s73 TCPA 1990 to change the description of an existing permission.

The s73 application in *Finney* sought permission for wind turbines the tip height of which exceeded that in the description of the original permission. Ultimately it was decided that such a change was outside the power conferred by s73.

The judgment explains how that decision was made and casts light on the reasoning and the availability of other powers. Giving the lead judgment, Lewison LJ stated: *'The original planning permission comprises not merely the description of the development in the operative part of the planning permission, in this case the erection of a dwelling, but also the conditions subject to which the development was permitted to be carried out'*. In addition, Lewison LJ set out the distinction between the operative part or grant, on the one hand, and conditions on the other, stating: *"... the grant identifies what can be done—what is permitted—so far as use of land is concerned; whereas conditions identify what cannot be done—what is forbidden"*.

The judgment in *Finney* was that a s73 application could not amend the operative part (or grant), only the conditions. It was not possible to amend the conditions to permit something which exceeded the permission's description.

**Conclusion**

The power in s96A is not limited to amending conditions but includes the planning permission. The term planning permission, in relation to s96A was explicitly considered by Lewison LJ in *Fulford* to constitute '*...the package consisting of the grant of planning permission itself, together with any conditions.*'

In his later judgment in *Finney*, Lewison LJ described the planning permission as including:

- i) the operative part - the description; and
- ii) ii) the planning conditions; before going on to set out that if a proposed change is not material, then section 96A provides an available route to make those changes.

The power in s96A is therefore not subject to the same restrictions as described in s73 and *Finney*.

Considering the above, the power under s96A permits the Local Planning Authority to amend the Permission.

I hope the above gives you enough information and ultimately provides you with comfort that the request to alter the description can be accommodated under a s96A application. I look forward to confirmation of validation of this application and if any further information or clarification is required, please do not hesitate to contact me.

Yours faithfully,



**Scott Wilson LLB, MSc, LRTPI**  
**Graduate Planner**