

RYE NEIGHBOURHOOD PLAN (RNP): AFFORDABLE HOUSING AND SECOND HOMES/BUY TO LETS

1. At the Rye P&T meeting on Mon 4 Sep 2017, the Committee asked the RNPSG to re-examine again the policy in the latest draft RNP on second homes/buy to let. The context is the current proposal for 72 homes on the lower school site (RNP allocates this to housing but recommends no more than 50) and apparently rising numbers of second home buyers, often from London, encouraged by local estate agents.(Example is below).

Rye Buyers Profile (Quote from Phillips and Stubbs Rye Website) The holiday home market is strong in Rye and the surrounding villages, with approximately 20% of sales being for second homes or holiday lets. Other major buyers are retired couples, usually from London, who by downsizing are also able to release money to augment their pensions. Some of course are people who left Rye when they were young to further their careers, and want to come back to their roots. While others are those who came to the area for childhood holidays and have continued to visit ever since. A new and growing group are people who, since the advent of faxes, email and broadband, are able to work from home and want to move their families out of the city to what they rightly see as a better environment .

2. Some Councillors feel that we should do more in the RNP by way of policy to restrict new build open market sales as they have done in places such as St Ives. This paper draws on earlier work and refers to current draft policy set out in the V8 draft RNP (Para 10).

3. Leaving aside the challenge of defining a second home (does this include purchases into which buyers - mostly from London - intend to retire within 5 years?) In Rye it is calculated that there are some 200 second homes/buy to let homes; this of a total stock of around 2500. This represents some 8%. In St Ives the figures are acute (25% non residents). However, with the possibility of the Fast Rail Marsh link it is not to say that the numbers here will grow. What merit in taking 'a stitch in time' approach? But can it be justified on forecasts? Over the last two years the trend for second homes/buy to let has increased, but changes to the tax laws have damped down this market. Rother has been invited to validate the figures.

4. With the uncertainty of BREXIT and the global financial situation it is difficult to predict how the numbers will change in 10 or 20 years.

5. Although many in Rye may see more stringent policy on second homes as desirable, solid evidence is required to justify it and there are clearly impacts in terms of definition, monitoring and enforcement. Who would do this? at what cost?

6.. Advice has been sought again from Rother DC officers and our consultant. The former are still considering their earlier advice not to adopt such stringent policies but the latter says:

" Dear Anthony, It will be interesting to see RDC's response to this. My own view is that you should avoid getting embroiled in such a complex issue. St Ives did succeed in retaining such a policy but only after lengthy legal wrangles, and I suspect it will be very difficult to enforce. Also I would suggest that St Ives' issue with second homes is much more severe than that experienced in Rye. Regards, CT "

7. As Rye Town Council owns the RNP, it can choose to modify or strengthen the existing policy H2 (perhaps along the lines of that of St Ives – see below) if it feels that there is sufficient community support. However, as suggested below, such policy is not without challenges such as definition, enforcement and potentially costs.

What Options for Rye TC?

8. **Option 1.** Endorse the existing RNP H2 policy below (Para 10) and leave as is.

9. **Option 2.** Endorse the existing policy RNP H2 (Para 7) but adopt additional policy along the lines of that set out in the St Ives policy below (Para 11).

RNPSG Recommendation

10. Having consulted again, it is felt that the evidence does not support the sort of policy adopted by St Ives, because the numbers are not so acute. In addition, there are the significant challenges of definition, monitoring and enforcement: work which would probably fall to Rye TC. Some consider that there is adequate provision in the existing RNP policy to cover affordable housing. Therefore it is recommended that the RNP policy remains as below.

RNP H2: Within the overall allocation of dwellings there is to be a mix to include:

- ***More affordable housing for families, first-time buyers and properties for "downsizers". The former is to meet the scale set by the Rother DC Core Strategy (for Rye this is 30% of any build over 10 dwellings). The allocation must give priority to individuals and their dependants who have lived continuously in Rye for at least the last five years. OR, those who have had previous periods of continuous residency in Rye and have close relatives living in the Parish OR work in the Parish; OR, have made a genuine contribution to community life in the Parish, for example as a volunteer.***
- ***Proposals for new residential development that maximise the delivery of affordable housing and provide for the size, type and tenure of homes to meet local needs will be supported, provided that they comply with other relevant policies. The layout and design of affordable housing will be appropriately integrated into each development so affordable housing is indistinguishable from the equivalent market housing.***

Affordable housing should be spread carefully through the development, not isolated in specific blocks.

- ***Dwellings suitable for elderly occupants to a percentage of 10% of the total.***
- ***The achievement of the mix of unit sizes will be monitored and subject to an annual monitoring report by Rye TC.***

St Ives Background

11. Because of the perceived adverse impact upon the local Cornish housing market by the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes), St Ives¹ adopted a policy for new open market housing, excluding replacement dwellings, which supports a restriction to ensure its occupancy as a Principal Residence². The policy is as below.

- ***St Ives Policy is: H2 Principal Residence Requirement*** *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).*

12. The justification for the policy was to better meet the housing needs of local people, by bringing greater balance and mixture to the local housing market and creating new opportunities for people to live and work in St Ives. This policy covers

¹ Other neighbourhood plans, both in Cornwall and beyond, such as *The Roseland Plan 2015-2030* and *The Lyn Plan (Lynton and Lynmouth) 2013-2028*, have sought to put in place policies with the same objective but have run into trouble with the external examiner as there was insufficient evidence to support the policy

² 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.

new housing which has to be used as the principal residence of the household living in it, but does not have the price controls that affordable housing does, or any local connection requirement.

13. St Ives (and other towns nearby) are in the top five settlements in Cornwall with the highest proportions of second homes and holiday lets. In 2011, 25% dwellings in the NDP area were not occupied by a resident household - a 67% increase from 2001. Over this same period, housing stock in the NDP grew by 684 or 16%, but the resident population grew by only 270 or 2.4% and the number of resident households grew by less than 6%. The growth in housing stock in the NDP area between 2001 and 2011 was double the average across England. The socio-economic effects of such a high proportion of holiday properties are being felt by the local community.

14. A Penzance architectural firm subsequently challenged Cornwall Council's decision to allow the referendum on the policy to go ahead. The High Court has ruled that the vote, which said new homes should be occupied as "principal residences", was lawful. Therefore St Ives will keep its ban on new-build second homes.

An Analysis of the Policy

15. **Peter Edwards**, a consultant solicitor with *Brains Solicitors in Cornwall*, who runs his own planning consultancy, *Planning Progress Ltd* has looked at the St Ives policy. This is worth reading as it provides useful background. Peter says that "It is certainly encouraging to see the St Ives examiner supporting a planning policy that the people of St Ives want to guide development in their area. That, after all, is the essence of neighbourhood planning, which some may argue is being diluted by slavish adherence of NDP examiners and planning inspectors to ministerial guidance in the form of the NPPF and National Planning Policy Guidance – neither of which is part of the statutory development plan. It is also to be applauded that the examiner made significant and detailed modifications to Policy H2 with a view to making it a more effective planning policy. However, the real problem with an 'anti-second homes' planning policy has always been what the effect of such a policy would actually be, whether or not it is enforceable and, therefore, whether it would even be valid".

16. His arguments follow as below.

- a. **Nature of the principal residence restriction** Before considering if the St Ives NDP really takes us any further forward, or whether the principal residence restriction is enforceable, it is worth considering the nature of the restriction and what its effect would be. Policy H2 imposes a restriction on occupancy very similar in type to the 'local occupancy' clauses that became the precedents for the affordable housing restrictions now used to keep affordable housing affordable. However, the principal residence restriction allows incomers to occupy because it does not restrict occupation to those with a pre-existing local connection, and neither – almost by definition – does it prevent ownership of more than one dwelling. Therefore, although the Policy H2 restriction does not have price controls, just like the original 'local occupancy' clauses that inevitably affected market value, the principal

residence restriction is likely to create a middle tier of the housing market in the area; one that sits between affordable and open-market dwellings. The examiner of the Roseland plan appears to have been fearful of this effect, while the St Ives examiner considered that it could increase the 'wide choice of quality homes' of which the NPPF seeks delivery. However, the inherent difficulty with the principal residence restriction, unlike the controls on affordable housing, is that it implies the occupier owns or is at least allowed to own, other residences. Implicitly, there is no objection to the occupier owning as many second or holiday homes as they like, even within the same neighbourhood plan area, provided the subject property is the principal residence. In terms of planning principle, this creates no problem at all; planning for new housing stock of the type required must start somewhere.

- b. **Is the St Ives 'principal residence' restriction enforceable?** The real problem here lies in the criteria used to define the term 'principal residence' and whether or not those criteria are capable of being fulfilled by evidence that can be easily assessed as credible and reliable. Leaving aside those occupiers who may deliberately want to confuse the issue, there may be cases where identifying the principal residence is genuinely not straightforward. It is obviously important to be able to determine if a restriction is being observed in compliance with the policy aims. But perhaps even more to the point is how a breach may be proved. A planning condition, or obligation in a section 106 agreement, is only valid if enforceable and only enforceable if a breach is capable of proof. This brings us back to the criteria used to define the term principal residence. Policy H2 of the St Ives NDP does not actually define what it means by principal residence. The only evidence of occupation as a principal residence suggested by the policy itself is registration on the electoral roll or for local services, such as schools and GPs. However, these are not conclusive forms of evidence of principal residence occupation. It is quite legitimate, for example, to be on the electoral roll in more than one district (although it is an offence to vote more than once in a general election or national referendum, there is nothing to outlaw voting in more than one local council election). The minimum 270-day occupancy requirement (of the submission version Policy H2) amounts to a definite criterion, albeit one that would be difficult to monitor accurately or reliably prove one way or the other. It may also be regarded as a rather arbitrary test of a principal residence. It may not be critical that principal residence, or the type of evidence used to prove such occupation, is not precisely defined in Policy H2. But it is essential for the defining criteria and acceptable types of evidence to be clearly stipulated in the planning conditions and/or legal agreements used to support the policy when planning permissions are issued, it may be that a number of different criteria are applied to assess compliance with the restriction, including enrolment of children in local schools and declarations made by occupiers on prescribed matters such as ownership and occupation of other properties. The lack of any clear definition of, or defining criteria for, a principal residence will inevitably make monitoring and enforcement difficult, particularly with borderline cases. However, making clear that a number of factors will be considered will at least act as a deterrent and make possible the enforcement of determined abuse.

- c. **Planning condition or legal agreement?** The St Ives Policy H2 allows for either method of control – but there are significant differences between the two in terms of notice to purchasers, monitoring, enforcement and how easily the restriction may be avoided. Occupation in breach of a planning condition, if monitored and detected, can usually be addressed relatively simply, either by an enforcement notice or a breach of condition notice provided, that is, the LPA has the will and available resources to take such enforcement action. However, continuous occupation lasting for 10 years or more in breach of a planning condition may become lawful and immune from enforcement action. In these circumstances, the control on occupancy imposed by the condition is lost. The ‘legal agreement’ referred to in Policy H2 is a section 106 agreement, or planning obligation, which is binding on every owner of the land or property to whom it relates. If contained in a section 106 agreement, the principal residence restriction would continue to be effective even if immunity from enforcement of the planning condition were acquired. The section 106 obligation could be enforced via the more difficult and costly route for the LPA of a county court injunction. Another disadvantage of imposing a condition only is that the condition will generally only appear on the planning permission itself, which is often only considered by the solicitors of the first purchasers after construction. By contrast, a section 106 agreement will be on the Register of Local Land Charges (and may be noted on the registered title) so should come to the notice of all future purchasers. Making the occupancy restriction the subject of a section 106 obligation renders it almost impossible for any owner to sell the property free from the restriction, even if they have gained immunity from the effect of a planning condition.
- d. **How effective will Policy H2 be in controlling second homes?** This question should be considered in a number of different contexts. First of all, will Policy H2 and the principal residence restriction be applied to all new planning permissions for open-market dwellings in the St Ives area – that is, for all dwellings that are not affordable housing? That is obviously the intention, but although the policymaker is the qualifying body for the NDP, St Ives Town Council, Cornwall Council as the LPA will continue to issue planning permissions in the area. It will be for Cornwall Council to ensure that all relevant permissions contain an effective principal residence restriction as prescribed by Policy H2. This raises the next crucial question:
- e. **By what means, and in what terms, will the principal residence restriction be imposed?** To ensure maximum effect the restriction will need to be imposed via planning condition and a section 106 agreement in terms that specify exactly what is meant by the restriction and what evidence will be required to prove compliance with it. It will be important that any such evidence is capable of being presented reasonably easily and assessed so that compliance can be effectively monitored and any breach enforced against. Otherwise, the restriction would not be merely ineffectual; whether a planning condition or a section 106 obligation, it runs the risk of being declared invalid (if not enforceable). In this worst-case scenario, Policy H2 would be completely undermined and serve no purpose at all.

- f. **How will the restriction be monitored and enforced?** Effective monitoring and enforcement is likely to depend on close liaison between St Ives Town Council, which represents those with the interest in making Policy H2 work, and the LPA – Cornwall Council – with its statutory enforcement powers. In practice, the town council will probably have to monitor compliance with the restriction and collaborate with Cornwall Council in gathering and assessing evidence of any breach that may lead to enforcement action.

17. **Peter Edwards concludes:** While the St Ives NDP may represent the most determined effort yet to produce a planning policy that is effective in preventing the occupation of newly built houses as second homes, fundamental questions remain. It appears that Policy H2, despite the best efforts of the NDP examiner whose modifications were clearly aimed at making the policy work, may not have dealt with the most fundamental question of all: what precisely is meant by a principal residence and how should it be defined? In this respect any shortcomings in the policy will need to be addressed by the terms of the restriction actually imposed on relevant planning permissions. That restriction will then need to be carefully and closely monitored by, or with the full support of, the LPA to ensure that St Ives NDP Policy H2 has the intended effect.