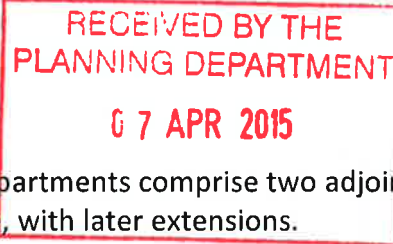


**Application for removal of Conditions No2 & No3 of Planning Permission
P2459, dated 10.06.1986, as they relate to No2 Smugglers Ride,
Thorofare, St Marys, Isles of Scilly TR21 0LN.**



Background

Smugglers Ride & Harbour Lights Apartments comprise two adjoining terraced properties, predominantly built of local granite, with later extensions.

The premises, formerly a large guest house, were converted into holiday flats in the mid 1980s.

Planning permission (P2459) imposed a condition (No2), which stated:

"None of the self-catering holiday units shall be used for permanent accommodation, with one exception, without prior approval of the Local Planning Authority".

In addition, Condition No3 stated:

"That any flat, excluding flat No3, may be used for supervisory purposes but shall not be occupied by more than one person".

The reason for imposition of Condition No2 was:

"In order to comply with the requirements of Policies 6A and 25 of the Approved Isles of Scilly Structure Plan, which require that the layout and design of residential flats are of sufficiently high standard for permanent accommodation".

The reason for imposition of Condition No3 was:

"It is also considered that notwithstanding the indicated superficial areas of each flat to be adequate for lesser numbers of occupants, the external requirements such as off-street parking and open yard space is insufficient for permanent occupation".

Subsequently, planning applications were lodged as follows:

Application Number P3175, dated 1991, for change of use of Flat 2 from holiday accommodation to permanent residential accommodation, was refused on the grounds of "the impact on water consumption and public utilities".

Application Number P3754, dated 1995, for the lifting of the condition restricting occupancy to six of the flats to allow permanent occupation, was refused "due to the impact on water consumption and the creation of a need for six parking spaces".

Reason for Removal of Conditions

Statutory Background

Section 73 of the Planning Act gives applicants a right to make an application to vary or remove a condition. In assessing such applications, regard should be given to Government advice on the use of planning conditions as set out in Circular 11/95. The circular stresses that conditions should only be imposed where they are necessary and reasonable, as well as enforceable, precise and relevant both to the planning and to the development to be permitted.

As a matter of policy, a condition should not be imposed unless there is a definite need for it. The same principles must be applied when considering applications for removal or variation of a condition; a condition should not be retained unless there are sound and clear reasons for doing so.

We also draw your attention to Paragraph 206 of the National Planning Policy Framework 2012 which states that:

“Planning conditions should only be imposed where they are:

- necessary,
- relevant to planning,
- relevant to the development to be permitted,
- enforceable,
- precise, and;
- reasonable in all other respects”.

The newly introduced (March 2014) Planning Practice Guidance makes it clear that **ANY** proposed condition that fails to meet ANY of these six tests should not be used.

Application of the Six tests to No2 Smugglers Ride

Housing Demand

Since the mid 1980's, there has been a marked change in economic and infrastructure issues affecting the islands, and a shift in planning policy to reflect these changing circumstances.

The relaxation of Condition No2 of the 1986 planning permission would help to address the pressing housing issues on the islands, without involving new development or increasing pressure on infrastructure.

The Housing Growth Plan, dated May 2014, prepared by Ash Futures and Three Dragons, recommends a provisional estimate of between 90 and 120 new homes over the next 10 years, plus a further 10 to 15 new homes to prepare for the impact of changing household size. A smaller property such as No2 Smugglers Ride is precisely the kind of property for which demand is rising as a result of changing household sizes, such as young adults /

couples wishing to move out of the family home. In fact, my clients have interest from local people who would be interested in acquiring / renting their flat, but who are prevented from doing so by the restrictive occupancy condition.

Relaxation of the Condition No2 would therefore perfectly match current policy and housing needs on the islands, and we would therefore suggest the condition is **neither necessary, nor relevant to planning**.

Suitability of the flat for Permanent Occupation

No2 Smugglers Ride is a well-located flat, having natural daylight to all habitable rooms, adequate room sizes, reasonable ceiling heights and regular proportions.

It certainly meets "The current statutory minimum fitness standard for housing", as set out in Schedule 5 of the Housing (NI) Order 1992.

We would argue it is perfectly suitable for occupation by either a single person or a couple, and indeed has proven demand for permanent occupation by local people, who are in regular employment on the islands. With so many local people living in blatantly unsuitable accommodation, such as converted sheds and garages, we would hope that the Local Authority would seek to encourage permanent occupation of a properly designed town centre flat such as No2 Smugglers Ride.

Condition No3 restricts occupation of the nominated supervisory flat to one person only. The flat is clearly suitable for occupation by two persons at least; it has a reasonable size double bedroom, adequate kitchen & bathroom facilities, and seating for 4 persons.

The reason for imposition of Condition No2 in the 1986 permission, infers that it is reasonable for tourists to occupy premises that are of an inferior layout and design to those used as permanent accommodation. Surely this was unacceptable even in the mid 1980's? Certainly, there is now a general realization that tourist accommodation should be of a high standard, as stressed in the 2011 Blue Sail Report. The award of a Four Star grading for No2 Smugglers Ride by the independent agency, Visit Britain, demonstrates the quality and adequate size of the accommodation; this should demonstrate the fact that the accommodation is suitable for occupation by at least two persons and equally suitable for permanent occupation.

We also consider that Conditions No2 and No3 are self-contradictory. On the one hand Condition No2 prohibits use of the flats generally for permanent accommodation on the grounds they are all of inferior size and layout, and on the other Condition No3 permits use of one nominated flat (except Flat No 3) for permanent accommodation.

We would therefore argue that Conditions No2 and No3 are **unnecessary, unreasonable, not relevant to planning and not relevant to the development permitted**.

In addition, Condition No2 prohibits “permanent occupation” but fails to define what this means. Accordingly, we suggest this condition is **imprecise and unenforceable**, and should therefore be removed.

Impact on water consumption, public utilities and car parking

The current Local Plan contains no restrictions on development on the basis of water shortages, and indeed numerous planning applications for residential development have been approved in recent years. Notwithstanding this point, given that the flat already exists, and can be occupied all year round on the basis of short-term lettings, it is a spurious argument to suggest that water consumption will increase if the property is occupied as a permanent dwelling. Arguably, a local occupier may well use less than a succession of short-term tenants, particularly during the dry summer season when water consumption is more of an issue.

Again, car parking has been cited in subsequent planning applications, as a reason for refusal to relax the condition prohibiting permanent occupation. And yet in the past couple of years, approval has been granted for two town-centre developments, at Porthcressa and Well Cross, totaling five residential units and three commercial units. Neither of these developments included any car parking provision.

Having regard to the fact that planning policies contained in the Structure Plan in force at the time of the 1986 permission have long been superseded, both regarding housing policy generally and the absence of a restriction on development as a result of water shortages, and that recent permissions have allowed town centre development without the provision of additional car parking, we would argue that the conditions are **neither necessary, nor relevant to planning**.

Summary

In conclusion, we therefore consider the restrictions should be removed on the grounds that they fail all six tests required by Planning Practice Guidance, March 2014.