



**Observations and objections to Development Proposal P/17/053/FUL**

Page 1

The Council has placed itself in a position whereby it is under two irreconcilable and diametrically opposed obligations, on the one hand it has facilitated a LAG funding bid which, to have been successful, will have required an undertaking that a viable operating site either on the public highway or on publicly owned land within Hugh Town was assured by the Authority; the second and infinitely greater obligation is the absolute that the Council at all times acts impartially to ensure that within the constraints of planning law the best interests of its citizens are paramount when making planning determinations.

To date the Council appears to have minimised any cost to the Authority by following a presumptuous course of action that purely for expediency, and without the customary and necessary public consultation (a Traffic Regulation Order TRO), located the mobile burger van business merely on the basis that it allowed access to an existing, convenient Council owned power supply, an ill considered manoeuvre described as “temporary” which may yet prove to be ultra vires. This was exacerbated by the fact that the constrained size of the site meant that the permitted operation breached the Council’s own *March 2017 Street Trading Policy and clause 143 of The Highways Act 1980*.

In a phone call on the 11<sup>th</sup> of July Mr. C Dryden, the Senior Manager for Infrastructure & Planning confirmed that following an inspection of highways maps he had undertaken that day, the site in question was definitely part of the Public Highway; this fact calls in to question the appropriateness of seeking a fixed trading site consent which is a classification limited to sites other than those designated as being on the Public Highway.

We feel the current choice of location was an act of desperation avoiding the uproar caused by an earlier, equally ill-judged and unauthorized location (no TRO, no notice, no consultation and breaches of highway legislation namely clause 143 of the Highways Act 1980) whereby customers were obliged to queue on the trafficked section of the highway behind the Town Hall accompanied by a working generator! Given that the previous site and the recent use of the Park site both ignored Council policy and highways legislation it must be extremely doubtful that the Authority would qualify for indemnity from its insurers.

Since the beginning of the operation of the burger van we have made clear to the Senior Manager for Infrastructure & Planning that we are very concerned about the likelihood of injury as a result of fast food customers gathering on the highway or stepping out into either of the two main roads. In addition we have alerted him to the issues of nuisance noise from the business and its customers which impacts on our guests who have hitherto been able to sit in our front garden and quietly enjoy the attractiveness of the Park and its surroundings.

A separate and important concern is the nuisance caused by the smell of cooking burgers permeating our home and business each evening, this problem is compounded by the fact that the odour has started to accumulate and linger in the soft furnishings in our guest rooms.

It is particularly relevant to note that the guidance to prospective street traders in other local authority areas particularly precludes (amongst others) operating in three specific instances,

1. "Trading that is likely to obstruct the free flow of traffic and pedestrian movement or otherwise cause a hazard to other road users"
- 2 "Trading that takes place in narrow or restricted areas where the activity would cause congestion or impact on public safety"
3. "Trading that will have a detrimental effect on the character of an area".

The Park is the only formal maintained garden area in the centre of the town, it is flanked by the Town Hall which is one of few imposing granite buildings in Hugh Town, it is difficult to imagine the Council Planning Department doing anything other than energetically and vehemently opposing the locating of a similar structure, such as a 'porta-cabin', occupying the same footprint in the same space.

The Highway Code (rule 243) specifically advises against parking "opposite or within 10 metres (32 feet) of a junction, except in an authorised parking space" the intention of the guidance is to maintain clear sight lines at a junction for both pedestrians and drivers alike; the area proposed by the Authority is already too small to allow the safe distance recommended by the code. If councillors refer to plan CIO1.BP.01 provided as part of the submission it is possible to see that the proposed site allows no more than a three metre or 9ft 8 inches of unhindered vision for those needing to use the junction. The Council of The Isles of Scilly must be unique amongst local authorities by actively considering engineering such risks into an application!

The proposed site (notwithstanding that it has already been in use but has now been stopped by the Council! 12/07/17), is on a junction at the confluence of two main roads, the positioning of the burger trailer (which is in effect the same obstruction as would be caused by a family caravan) significantly reduces the scope for drivers on either 'A' road to see what is approaching the directly adjacent junction.

In an obvious, but frankly threadbare attempt to mitigate the evident safety impediments to the proposed use of the site, the operation of the burger trailer differs in the latest iteration only in that it has been reversed so that the serving hatch and hence the approach for customers is now (from the side of the trailer) that faces the Park, this assumes that the trailer is in future backed into position from the narrower of the two roads, the (Strand side A3111) across the pavement. Whilst this reorientation may allow customers to gather 'pre-purchase' within the Park it does nothing to preclude the gathering of customers with food 'in hand' on the junction side of the trailer once purchase is complete, moreover it reduces or narrows the sight lines for pedestrians whether customers or not if they are stepping out from either the side of the trailer adjacent to either road and far from mitigating any of the evidently recognised risk it creates a higher likelihood that a customer or other pedestrian, be they adult or child, will end up in a conflict with a motor vehicle that they are always destined to lose.

Through proposing this application the Authority is seeking to retrospectively sanction or 'rubber stamp', what to any observer must appear to be, a pre-determined planning outcome on the Public Highway. If sanctioned by councillors this proposal would be seen as getting the Authority 'off the hook' by satisfying the demands of a private enterprise that is, quite understandably, holding the authority to a contractual commitment to provide a site it judges adequate to meet the trading demands of its business whilst obliging the Council to ignore the safety and environmental nuisance factors which the prior operation of the burger van has already confirmed.

The community has a right to expect that the Council of the Isles of Scilly determine its planning duties in an unbiased and impartial manner. This simply cannot be the case when the use of this site is a *fait accompli* sanctioned by the Council and where, moreover the authority is apparently already subject to a prior commitment to provide a suitable operating site. The location of the Park site did not pre-exist this commitment, it is a new site being tailored to meet a new LAG obligation.

The meeting of the Licensing Committee of the previous Council held on March 16<sup>th</sup> this year to discuss outline proposals for new trading sites is worthy of review. That meeting determined for obvious public safety reasons that the site between the two main roads at the head of the Park was the least desirable of all those offered for consideration. This proposal namely site number one was unanimously voted against by all councillors attending the meeting and subsequently removed from there list.

To pre-empt the likelihood of legal challenge and the escalation of ill-will and suspicion about this application in the eyes of many within the community we ask that, in the interests of transparency, the application is either refused at the meeting as obviously unsuitable, or suspended pending independent legal advice being sought and published by the Council on two counts; the first in respect of the legality of its actions in determining the initial use of the site in the absence of any conventional consultation or prior notice; the second being an investigation to determine how the Council can properly proceed with this proposal in the light of the widely held perception of a conflict of interest between its obligation to a private business and its duty to its citizens. It is our direct concern that the questioned and questionable prior use of the site by the Authority will be viewed by the Planning Committee as evidence of legitimacy for its continued operation.

Ben & Kirsty Kirk  
Cc all elected members  
Email:

append

Relevant correspondence

3 letters

3 photos



Development Proposal P/17/053/FUL

## COUNCIL OF THE ISLES OF SCILLY

Town Hall, St Mary's, Isles of Scilly, TR21 0LW

01720 424000

[enquiries@scilly.gov.uk](mailto:enquiries@scilly.gov.uk)

Mr B Kirk  
Evergreen Cottage  
The Parade  
St Marys  
Isles of Scilly  
TR21 0LP

13<sup>th</sup> July 2017

Dear Ben,

### RE Siting of Burger Van

Further to your letters of 7<sup>th</sup> and 11<sup>th</sup> July and email of 12<sup>th</sup> July 2017 regarding the temporary siting of the Burger Van, I am writing to confirm that permission for this temporary siting has now been withdrawn. As discussed previously, the recent siting of the burger van business was only a temporary arrangement.

The planning permission sought by the Licensing team is to regularise the site as a possible permanent position for a fixed trading business in the future.

The Licensing department have confirmed that the applicable policy in this matter is not the 'Street Trading Policy'. The policy which is referred to in the planning permission documentation and with which they have been working with the burger van business is the 'Fixed Trading Site' Policy. This is an "all in one" policy that was approved by Full Council on 12<sup>th</sup> December 2013: it provides a single document to cover the policy and also the process for application by businesses wishing to operate from a fixed trading site. I have included a copy for your reference.

If you have any further concerns relating to licensing or the Council's licensing policies please contact the Licensing Department at the Town Hall, by email to [Licensing@scilly.gov.uk](mailto:Licensing@scilly.gov.uk) or telephone (01720) 424000.

If you are not satisfied with this response you can request that this is dealt with as a formal complaint. To do this you can forward your complaint to Tom Walton, Communications Officer at the Town Hall, by email to [twalton@scilly.gov.uk](mailto:twalton@scilly.gov.uk) or telephone (01720) 424000.

Yours sincerely,

Craig  
Senior Manager: Planning & Infrastructure



# Re Development Proposal P/17/053/FUL

Mr Craig Dryden Senior Manager  
Infrastructure & Planning

Evergreen Cottage Guest House  
Hugh Town  
Isles of Scilly

July 8th 2017

Dear Mr Dryden,

## **Requirement from Mr & Mrs B Kirk for substantive information.**

As a matter of procedure I request your written confirmation of receipt of this letter.

I am informed of the requirement to respond to a local authority planning application for the temporary burger van site to be made permanent; this application, P/17/053/FUL, having a limited time by which objections must be lodged with your department.

It is for this reason that I now require your substantive response within two working weeks of receipt to the requests for information contained herein; for the purposes of clarity understand that I require your written response, it is inappropriate for you to discuss the matter in a manner that does not provide a verifiable record of your reasoning or actions.

As a consequence of the Council's determination that a planning consent is a condition of the use of the site I now require a statement from you which clearly identifies what specific planning or highways regulation or executive authority you or others exercised that allowed the burger van operator to street trade from the location. I also require the job title of any other officer who has been party to or who gave advice or who participated in discussions with you in regard to this matter in advance of the decision to permit the use of the site.

Should it be the case that the direction to the operator allowing him to street trade from the site came about as a result of discussion or determination in committee, or any discussion with elected members outside of committee I also require a list of the names of all those councillors with whom officers have been in discussion in advance of the Authority's decision.

This issue has been the subject of discussion between ourselves on numerous occasions since the first of May 2017; each time it has been made clear to you that we consider that the action of the Council in locating a mobile fast food outlet between two main roads and directly adjacent to both residential and guest accommodation is inherently dangerous to customers of the site whilst generating a concurrent noise and smell nuisance to nearby properties.

Please understand we make no judgement on either the vendor or the merits of the operation of his van; we are content that he provides a valuable service to the public; our purpose in writing is to question the actions of the Authority in relation to the 'temporary location'. We look forward to receiving your considerations to the questions posed.

Yours sincerely,

Ben & Kirsty Kirk  
Cc all elected members  
Email:

Re Development Proposal P/17/053/FUL

**From:**

**Sent date:**

**To:**

**Subject:**

**Attachments:** letter+to+Mr+Dryden+8th+July+2017.doc plus coulor.pdf 39.2 KB

Dear Mr Dryden

We are in receipt of your letter of the 13th July which we understand is intended as a response to our letter to you dated 8th July and titled

Requirement from Mr & Mrs B Kirk for substantive information.

We are writing to you again because your response letter did not address the questions we asked.

Please find attached to this email for your easier interpretation of our inquiry.

Please understand from the outset that our letter was a straightforward request for information and to that end the copy letter attached has had the questions highlighted in different colours to allow for your ready understanding of the specific issues about which we continue to seek your clear answers. Please further understand that at this stage we have no wish to trigger a formal complaint, nor do we necessarily consider that the actions of the council have been anything other than properly complaint, moreover (viewed cynically) we are aware that a complaint or a freedom of information request would effectively "time out" after our need for information requested, in other words after the opportunity for us to understand the specific legislation which framed the authorised recent of the area (that you have confirmed remains Public Highway) in time for us to reflect on the matter when composing our submission in regard to the current planning application.

There are now two more minor, additional pieces of information that we consider would assist us:

1. Would you please advise who took the decision to remove consent for the recent use of the burger van site?

2. What was the legal determination or reasoning for the withdrawal of that consent?

As we are sure you will understand, we consider that your swift response to our unambiguous questions are a significant factor in allowing us properly to respond to the planning application ahead of the deadline set by your department.

We look forward to receiving your answers to all the questions posed as a matter of increasing urgency.

Yours sincerely

Ben & Kirsty Kirk

Email:











