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**PLANNING ASSESSMENT  
IN RESPECT OF THE USE OF  
PIER HOUSE  
THE BANK  
ST MARY'S  
ISLES OF SCILLY**

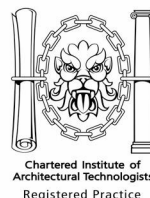
**ON BEHALF OF  
MR T MITCHELL & MS C EMERSON**

**Our ref: 17220-1**

**NOVEMBER 2017**



**RTPI**  
Chartered Town Planners



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## **1. EXECUTIVE SUMMARY**

- 1.1.1 Pier House is a dwelling with a secondary unit that is formed for part of the year, known as “The Annexe.”
- 1.1.2 The lawful status of the property it is that of a single dwelling house.
- 1.1.3 It is recommended that a planning application is granted for the retention of The Annexe as a self-contained holiday unit on the basis that it complies with part (b) of Policy 4 of the Local Plan.

## **2. BACKGROUND**

- 2.1.1 The review of the planning status of the property has been undertaken following consideration of the documents provided by the clients, in addition to confirmation from the Council of the Isles of Scilly as to the planning history for the property and a request for additional information resulting therefrom. We have been advised by the Council that it holds no records for the property in terms of Licencing or Environmental Health records. However, contained within the bundle of documents received from the clients are a number of letters dating from the 1980s relating to licencing for the sale of intoxicating liquor for consumption on the premises. The property is registered for Council Tax purposes under Band G, as a single dwelling, the effective date for which is given as 4 July 2000 on the DirectGov website. This is confirmed by the letter from the Valuation Office, dated 28 December 2000. The Annexe does not appear as an entry for Council Tax purposes.
- 2.1.2 The planning history for the property is extensive, with the first reference in January 1978. This sought permission for an extension to the first floor, but was refused.
- 2.1.3 Consent to display a notice board was granted in June 1978.
- 2.1.4 Planning permission was granted on appeal in 1979 for the change of use of the ground floor to a restaurant.

- 2.1.5 Between September 1981 and May 1992, various applications were made to the Council for physical works to the building.
- 2.1.6 In May 1993, listed building consent was granted for internal alterations. At this point, the property is referred to as “Nut Rock Café”, rather than Pier House.
- 2.1.7 However, later that year, permission was granted for the change of use of the ground floor restaurant and kitchen to form an exhibition centre and it would appear that this use was implemented, as the next application, submitted in February 1996, sought permission to change the use of the building from “exhibition display and gift sales to general retail A1.” That application was refused.
- 2.1.8 A second attempt at the change of use to A1 retail sales was attempted later that year, but was also refused by the Council; however, an appeal was lodged against this decision (coincidentally, by this company) and planning permission was granted by the Inspector in June 1997. This appeal decision provides a good understanding of how the building operated at that time and it is clear that the retail uses were only undertaken on the ground floor in the room fronting the highway. The appeal was determined on that basis, so it is relatively safe to assume that the upper floors remained in residential use. The decision letter also confirms that the exhibition centre was in use at that time.
- 2.1.9 In April 2000, planning permission was sought to reduce the floor level and change the use of the building to a fish and chip restaurant and takeaway. This was approved in May 2000, along with an associated application for listed building consent. However, it appears that these were not implemented, as the next application, submitted in July of that year, sought change of use from the retail use to residential. Permission was granted that August and the associated plans and condition 3 of that permission confirm the use of the building as a single dwelling.

- 2.1.10 An application for listed building consent for the display of a sign advertising B & B was approved in December of that year and the associated application form refers to the property as a “granite residence.”
- 2.1.11 In December 2004, planning permission and listed building consent were sought for the change of use of part of the ground floor to a restaurant. Permission was granted in January 2005, but it does not appear that these were implemented, most likely as the applicant was a prospective purchaser, who did not proceed with the purchase. Both application forms refer to the existing use of the building as a guest house and dwelling.
- 2.1.12 The only other records provided by the Council relate to the replacement of windows, the applications for which were submitted and approved in 2016.
- 2.1.13 I am advised by the clients that the property was purchased by Ms Emerson in 2006 as a dwelling, but that it had been in use for B & B purposes. Following the purchase, it was occupied as a dwelling but with two rooms rented out for B & B. In 2008, Ms Emerson left the Isles of Scilly for personal reasons and let the property to a tenant. There is no record of the property having been used for B & B during that period. The tenant didn’t pay rent and left in January 2009. The property was then unoccupied until September of that year, when it was let to Mr Reynolds on a domestic tenancy. There is evidence (not least from the personal experience of the author of this assessment) that the property was used as a guest house during Mr Reynolds’s occupation of the property. That was, apparently, in breach of his tenancy agreement. Mr Reynolds left in February 2016.
- 2.1.14 The property is now used as a single dwelling house, but the area to the rear, known as The Annexe, is let as an independent residential unit during the holiday season.

### **3. ASSESSMENT**

- 3.1.1 The documentary evidence indicates that the property was in use as a restaurant with associated residential premises from around 1979 until around 1993. Permission was then granted for the use of the ground floor as an exhibition centre and that permission appears to have been implemented shortly thereafter. The residential element appears to have remained untouched.
- 3.1.2 The retail use approved in 1997 also appears to have been implemented and, again, the residential element left untouched.
- 3.1.3 In 2000, permission was granted for the amalgamation of the retail area into the residential element and, again, this appears to have been done.
- 3.1.4 From that point onwards, in terms of the planning history, the property has held the status of a single dwelling; however, it was clearly used for “B & B” or as a guest house, at least in part, and the extent of this use and the period of use is material in determining the current lawful use.
- 3.1.5 There appear to have been periods since 2000 when the property was in use as a single dwelling house (i.e. with no guest house or B & B element), most notably during the period when Ms Emerson left Scilly in 2008 and Mr Reynolds’s occupation in September 2009, and on Mr Reynolds’s vacation of the property in February 2016.
- 3.1.6 The current use of the property fluctuates between a single dwelling and two units capable of self-containment, although there is a connecting door between the two.

#### 4. CASE LAW & LEGAL PROVISIONS

- 4.1.1 Planning permission was clearly granted for the use of the property as a single dwelling in August 2000, so it is necessary to consider whether or not there has been a material change of use within that period that has altered its lawful status. A dwelling falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987, whereas a guest house falls within Class C1. There is no explicit permitted change between these two use classes without an express grant of planning permission by the local planning authority.
- 4.1.2 The first point to consider, therefore, is whether or not the property has a lawful use as a dwelling house (C3) or as a guest house (C1). In that regard, the case of *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse DC* [1999] JPL 461 provides us with the relevant thought process. In that case, guidance was given by the High Court on the approach a decision-maker should follow in considering an application for a Certificate of Lawfulness. This was first to ask the question, 'when did the material change of use specified in the application occur?' To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or, as in the instant case, at a date at least 10 years prior to the application. Secondly, if the material change of use took place prior to the relevant date, as is the position in this case, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise. In this case, we have a situation where the guest house use has been interrupted on two occasions before the relevant ten-year period has elapsed, so neither period of guest house use has gained lawful status. However residential use has not ceased, which as recent case law has shown is not classified as abandonment in planning terms.

## 5. CONCLUSIONS

- 5.1.1 The current use of the building has fluctuated between one and two self-contained units. Whilst the two units remain inter-connected via a door, both units are advertised for use independently from one another and, in planning terms, this amounts to two dwelling houses for which planning permission does not exist. The history of the uses clearly shows continued residential uses as a single planning unit, the two units are capable of sub division and the current application has been submitted to establish a lawful use of the Annexe as a residential unit capable of holiday letting.

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