

# Council of the Isles of Scilly Delegated Planning Report

**Application Number:** P/18/068/ROV

**Received on:** 12 September 2018

**UPRN:** 000192000805

**Application Expiry date:** 12 November 2018

**Neighbour expiry date:** NONE CONSULTED

**Consultation expiry date:**

**Site notice posted:** 14 September 2018

**Site notice expiry:** 5 October 2018

**Applicant:** Shaun & Clare Pascoe

**Site Address:** 1 Spanish Ledge Flats

The Parade

Hugh Town

St Mary's

Isles Of Scilly

TR21 0LP

**Proposal:** Removal of condition 2 from planning permission P2365 to allow permanent occupation of flat 1 Spanish Ledge

**Application Type:** Removal or Variation of Condition

**Public Representations:**

**Consultation Representations:** NONE

## **Constraints:**

Listed Buildings Multiple (Spatial)

Archaeological Constraint Areas Name: The Parade & Town Hall. Island: St Mary's

Historic Landscape Character Landscape Type: Settlements.

## **Recommendation**

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1. That the Application is APPROVED subject to the condition set out below.
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## Site Description and Proposed Development

This application seeks to remove a planning condition imposed on the flats that make up Spanish Ledge apartment building. Condition 2 restricts the occupation of the individual flats to non-permanent use only and does not allow for permanent occupation. This condition was imposed in 1985 when planning permission was granted to convert this building to individual apartments.

## Background and Relevant History

The properties that now comprise Spanish Ledge were originally a single residential house. In 1965 planning permission was granted (P596) to convert the building to a guest house. In 1970 planning permission was refused (P950) for an extension to the rear. In 1975 planning permission was refused (P1423) for a lock-up shop to the rear. This was again twice refused in 1978 (P1713 and P1742). The latter was subsequently allowed on Appeal.

In 1982 an application to raise the roof and provide storage (**P2087**) was approved. Later in 1982 a revision to alter the roofline of the shop (**P2113**) was approved. In 1985 planning permission was refused (**P2354**) to change the use of the building to holiday flats and a wine bar. Also in 1985 planning permission was approved (**P2365**) for a change of use to holiday flats including one staff flat. In 1987 planning permission was approved (**P2640**) for a rear extension to the staff flat.

In 2002 an application was approved (**P5188**) for replacement of wood doors and windows with white uPVC (9 Spanish Ledges). In 2014 an application to lift condition 2 of Flat 6 was approved under **P14/037/ROV**. Finally in 2016 an application to lift condition 2 on Flat 2 was approved under **P/16/059/ROV**.

## Consultations and Representations

A site notice has been on display for a period of 21 days and no representations have been received. Neighbouring properties at:

- The Foredeck – 1-3 Silver Street
- Silver Street Gallery – 5 Silver Street
- South'ard Well, 7 Silver Street
- Flats 2, 3, 4, 5, 6, and 7
- The Galley
- The Town Hall

Were written to direct on the 17<sup>th</sup> September. No responses were received from these properties.

Although the property is a listed building no other consultations are necessary given the nature of the application and the fact that no alteration or demolition is being proposed.

## Primary Legislation and Planning Policy

### Primary Legislation

### **The Town and Country Planning Act 1990**

Section 70(2) of the Planning Act requires the Local Planning Authority to have regard to the development plan, so far as material to the application, and any other material considerations when determining planning applications.

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. This circular stresses that conditions should only be imposed where they are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted.

### **The Planning (Listed Buildings and Conservation Area) Act 1990**

The site is within a Conservation Area where there is a requirement to ensure that any development preserves or enhances the character or appearance of the area, as embodied in Section 72 of the Planning (Listed Buildings and Conservation Area) Act 1990.

### **The Countryside and Rights of Way Act 2000**

The Isles of Scilly is also a designated Area of Outstanding Natural Beauty (AONB). The legal framework for such areas is provided by the Countryside and Rights of Way Act 2000. The Act places a statutory duty on the Local Authority to have regard to the purpose of conserving and enhancing the natural beauty of the AONB when exercising or performing any functions affecting land within it.

### **The Conservation of Habitats and Species Regulations 2010 (Consolidation of Conservation (Natural Habitats, &c.) Regulations 1994)**

It is a legal duty of a Local Planning Authority, when determining a planning application for a development, to assess the impact on European Protected Species ("EPS"), such as bats, great crested newts, dormice or otters. A LPA failing to do so would be in breach of Regulation 3(4) of the 1994 Regulations, which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

### **Planning Policy**

#### **National Planning Policy Framework (NPPF) 2018**

At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place. With respect to general development and the Strategic Policies it is considered that the Local Plan remains up to date and conforms to the requirements of the NPPF.

#### **Isles of Scilly Local Plan 2005**

Policy 1 (Environmental Protection) - aims to ensure that the quality of the islands environment, including its natural and historic character, is maintained and enhanced. The overall intent of the Local Plan, as reflected in Policy 1, is to protect its environment and keep development to the minimum required for sustaining viable communities.

Policy 2 (Sustainable Development) - requires proposals to positively relate to the character of the landscape, seascape and built form of the islands through relationship to, inter alia, siting, design and use of materials.

Policy 3 (Housing) – seeks to ensure that housing is available to meet the needs of the community in perpetuity and to promote sustainable communities on the inhabited islands. This policy does not allow for the creation of open market housing and as such residential development will only be permitted for (a) key worker accommodation or to meet a recognised local need; or (b) for the provision of staff accommodation for businesses on or near the premises where it can be demonstrated that there is no other accommodation available and it is not possible to recruit staff already houses on the islands.

### **Consultation Draft Isles of Scilly Local Plan 2015-2030**

The emerging policies within the consultation draft of the Local Plan set out a clear range of policies designed to protect the landscape character (Policy OE1) as well as the natural (Policy OE2) and historic environment (Policy OE3).

A link to this consultation Draft Local Plan has been set out below. Clearly the consultation draft Local Plan has only just concluded public consultation, at the time of writing this report, and as such the policies it contains can only be given limited weight.

### **Planning Assessment**

As stated, Section 73 of the Planning Act can be used to make minor material amendments where there is a suitable condition that can be modified. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. In this case condition 2 restricted the occupation of the flat to that of a non-permanent basis. The occupation of Flat 1, without condition 2, would allow its occupation on a permanent basis.

Paragraph 203 of the National Planning Policy Framework states “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”. Paragraph 206 of the National Planning Policy Framework states “Planning conditions should only be imposed where they are:

1. Necessary;
2. Relevant to planning and
3. To the development to be permitted;
4. Enforceable
5. Precise; and
6. Reasonable in all other respects

Condition 2 of planning permission P2365 stated “that none of the proposed 9 flats shall be used for permanent residential accommodation without further planning permission”. The reason for this condition was to ensure the development was in accordance with policy 6A of the Structure Plan (the Isles of Scilly Structure Plan was adopted in 1984 and covered the period 1981 to 1996). Policy 6 of the Structure Plan sought to allow (as an exception to

Policy 5 “new dwellings will not normally be permitted”) a limited number of residential developments where (a) such developments would provide affordable housing to meeting a genuine economic or social need of the community that cannot be met by the general housing market.



The supporting text of Policy 6, of the now superseded Structure Plan, makes it clear that in view of the uncertainties [at that time] relating to water supply-and-demand, any additional housing after 1991 would be dependent upon the ability of public services to cope. The critical nature of the water supply, in particular, meant that any further housing development would further strain the already delicate balance between supply-and-demand. It also stated that the environmental constraints to new development are considerable and that there remained few opportunities to integrate new development into either Hugh Town or Old Town without further damaging inclusions into the landscape. In addition paragraph 72 stressed that the control of occupancy is essential in an island community where further housing building must remain heavily constrained to protect the environment even if existing infrastructure problems can be overcome.

In the case of the application site (Flat 1), and the proposed removal of condition 2, it is considered that as this is an existing building in residential use, well related to the built environment of Hugh Town, there will be no detrimental impact upon the wider landscape of the Islands if the apartment were to be occupied on a permanent basis. At present there is no restriction that would prevent year-round occupation. It is considered, therefore, that allowing permanent occupation of Flat 6 would represent a sustainable form of development and provide some limited housing within Hugh Town without adding any further strain on existing infrastructure. The occupation of a single one-bedroom dwelling would not be significantly different to its current use/occupation.

### **Other Material Planning Considerations**

Previously for similar applications there have been objections and representations to the removal of the occupation restriction. These have raised concerns that the amenity of other flats will be adversely affected through the occupation of any flat on a permanent basis. No representations have been received in relation to this current application and as previously concluded there is no evidence to suggest that a permanent occupation will have any greater impact upon the privacy and amenity of adjoining properties compared to its occupation for holiday let. As the flat could be occupied on a year-round basis, by different groups of people, the permanent occupation of the flat, by a single person or household, would not give rise to any particular noise or disturbance issues. As holiday accommodation the flat does support the tourism industry on the islands. However it is also considered that there is an acute shortage of permanent dwellings. The loss of a single one-bedroom flat is unlikely to have a significant or detrimental impact upon the overall holiday let business of the Islands. It is considered that the benefits of providing permanent accommodation to support a person or family working on the islands would outweigh the limited harm arising as a result of the loss of this flat for holiday let use.

In conclusion, it is recommended that this application is approved for the removal of condition 2 of P2365 in relation to Flat 1.

Signed: 	Dated: 06/11/2018	Signed: 	Dated: 06/11/2018
Planning Officer		Senior Manager	