

# Council of the Isles of Scilly Delegated Planning Report

**Application Number:** P/19/015  
**Received on:** 16 April 2019  
**Application Expiry date:** 13 June 2019  
**Neighbour expiry date:** 14 May 2019  
**Consultation expiry date:** 14 May 2019  
**Site notice posted:** 23 April 2019  
**Site notice expiry:** 14 May 2019

**Applicant:** Mr L Thompson  
**Site Address:** The Chalet  
6 Bay View Terrace  
St Mary's

**Proposal:** Application for a certificate of lawful use of the building as a dwelling house (Use Class C3)

**Application Type:** Lawful Development Certificate for an Existing use of operation

## Recommendation

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That a certificate is GRANTED.

It is considered that the conversion of the building to a single, separate dwelling has become lawful and immune from enforcement action by virtue of this change of use taking place for a period in excess of four years. Under Section 171B(2) of the Town and Country Planning Act 1990, the Local Planning Authority cannot legally take enforcement action after the end of the period of four years beginning with the date of the breach. Therefore, the certificate sought by the applicant can be granted.

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**Contributors:****Public Representations:** NONE**Consultation Representations:** NONE**Constraints:****Scheduled Monuments:** None**Listed Buildings:** None**Archaeological Constraint Areas:** None**Site Description and Proposed Development**

The application is a Lawful Development Certificate application (CLEUD) for the existing use of a building as a separate dwelling.

The CLEUD details for this application includes the agent's statement in support, which presents their case supporting the granting of the CLEUD. Letters have also been included from the applicant and others setting out how the building has been used together with details relating to Council Tax payments.

The application site lies to the rear of 6 Bay View Terrace. The property is located approximately 0.5 miles north east of the centre of Hugh Town.

It would appear that the application property, known as "The Chalet" was granted planning permission as a garden store to 6 Bay View Terrace in May 1976. The building is single storey and appears to be laid out with a bedroom, kitchen dining room and shower room.

**Background and Relevant History**

App. No.	Description	Date
P1504	Approval of planning permission for the removal of water storage tanks and the erection of a garden store	25.05.1976

**Consultations and Representations**

NONE

**Primary Legislation and Planning Policy****Primary Legislation****The Town and Country Planning Act 1990**

Section 171 of the Town and Country Planning Act 1990 ("TCPA 1990") provides that a material change of use to use as an independent dwellinghouse (C3) will be immune from enforcement action after a period of 4 years. The breach must be continuous throughout the 4 year period. Section 191(4) of the TCPA 1990 requires that a local planning authority ("LPA") must issue a certificate of lawfulness if it has been provided with information to satisfy it of the lawfulness of the use at the time of the application. The LPA must be satisfied on a balance of probabilities. In any other case, the application must be refused. The LPA should consider whether they have any information to contradict or cast doubt on the information provided by the applicant. If they do not, the certificate should be issued.

**Planning Assessment**

This is a Certificate of Existing Lawful Use and Development Application (CLEUD) and therefore it is not a matter of considering the planning merits of the scheme, but it is a legal determination based on the facts to establish whether the stated activity is established and lawful by period of time and

therefore beyond the scope of enforcement action. The test of the evidence is “on the balance of probabilities” rather than the stricter criminal test of “beyond reasonable doubt”.

The burden is on the Applicant to show, on the balance of probabilities, that the breach has been continuous throughout the whole of the relevant period (Swale Borough Council v First Secretary of State and Lee [2005] EWCA Civ 1568).

In outline, in this case, in the application form it is stated that the use of “The Chalet” as a single dwelling house began more than four years before the date of the application. Under question 10 of the application form it states that the use began in 1977 and that there has been no interruption in its use. Photographs of the property have been provided. Two of these photographs are stated as being taken on 26 March 2019. Three other undated photographs have been provided. All the photographs appear to show the outside of The Chalet. A letter has been provided by Linda Thompson advising that she lived at The Chalet with her husband when it was built in 1977 until 1980 and, again, from October 2008 until May 2010. Mrs Thompson also advises that her son moved in to The Chalet in May 2010 and has lived there since. A letter has been provided by Luke Thompson stating that he has lived in The Chalet since May 2010. There is no information to indicate how the building was used from 1980 until May 2010, although further information subsequently received from the agent suggests that The Chalet was let out, generally in summer, and only to friends of the applicant’s grandmother from 1980 to 2010. The Chalet was not occupied during the winter over this period.

The agent has provided further details, in addition to that outline above, in support of the application in order to seek to provide more certainty in relation to the use and occupation of The Chalet, particularly in relation to the applicant’s use since May 2010. In an email dated 3 June 2019, the agent advises that although the applicant contributes to electricity and water bills, these services are connected via 6 Bay View Terrace. Notwithstanding that, a further letter has been provided by the applicant, Mr L Thompson, together with letters from the Council’s revenues office in relation to council tax payments that seeks to demonstrate that The Chalet has been used and occupied independently of 6 Bay View Terrace, rather than ancillary to it.

The applicant’s letter explains that when the opportunity arose for him to move into his grandparent’s chalet accommodation (The Chalet) to the rear of their property, he took the opportunity to move into The Chalet. The applicant explains that this provides his own space, with kitchen/lounge, a double bedroom and shower room and toilet. The Chalet has its own patio and garden for hanging out washing and dustbin storage.

The applicant explains that he moved into the property in May 2010 and that he has lived there independently from 6 Bay View Terrace ever since. The applicant advises that he does his own cooking, washing and cleaning and that a path separates The Chalet from 6 Bay View Terrace. He advises that, for 8 years he has not left the island and that he has only not stayed in the property for a period of 2 days, twice, over that period.

There is some corroborative evidence, with a copy of a letter dated 19 July 2012 from the Council of the Isles of Scilly Revenues Office, which seeks to follow up council tax and water charges as these were not being paid in relation to the use of The Chalet, which appeared to be in use as a dwellinghouse. Another letter from the Council, dated 24 January 2019, shows that the property has been in the council tax list since 1 June 2012.

Section 191(4) of the TCPA 1990 requires that a local planning authority (“LPA”) must issue a certificate of lawfulness if it has been provided with information to satisfy it of the lawfulness of the use at the time of the application. The LPA must be satisfied on a balance of probabilities. In any other case, the application must be refused. The LPA should consider whether they have any information to contradict or cast doubt on the information provided by the applicant. If they do not, the certificate should be issued.

**Conclusion**

National Planning Practice Guidance advice is that in the case of application for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In this case, the applicant's evidence is relatively light touch and relies largely on the applicant's own account of events and use of the property. However, there is some corroborative information relating to the council tax listing and no evidence is available that would cast doubt, contradict or otherwise make the applicant's version of events less than probable.

While it is perhaps a more marginal case because of the weight of evidence available, it is considered probably that The Chalet has been used continuously as a separate dwelling house since May 2010 and, therefore, for more than four years.

Taking all of the above into consideration, it is considered that the conversion of the building to a single, separate dwelling has become lawful and immune from enforcement action by virtue of this change of use taking place for a period in excess of four years. Under Section 171B(2) of the Town and Country Planning Act 1990, the Local Planning Authority cannot legally take enforcement action after the end of the period of four years beginning with the date of the breach. Therefore, the certificate sought by the applicant can be granted.

Signed:	Dated:	Signed:	Dated:	Signed:	Dated: 20/6/19
<i>J. White</i>	20/06/2019	<i>[Signature]</i>	20/06/2019	<i>[Signature]</i>	
Planning Officer		CIOS Planning Officer		Senior Manager	