

# Council of the Isles of Scilly Delegated Planning Report

**Application Number:** P/19/034/TWA  
**Received on:** 21 June 2019  
**UPRN:** 000192002425  
**Application Expiry date:** 19 August 2019  
**Neighbour expiry date:** 15 July 2019  
**Consultation expiry date:**  
**Site notice posted:** 24 June 2019  
**Site notice expiry:** 15 July 2019

**Applicant:** Mr Arthur Miller Scilly Spirit

**Site Address:** Scilly Spirit

The Distillery

Old Town Lane

Old Town

St Mary's

Isles Of Scilly

TR21 0NN

**Proposal:** Pollarding of both Elm trees on the property as ongoing management practice as required

**Application Type:** Tree Works Applications

**Public Representations:**

**Consultation Representations:** Infrastructure Highways And Maintenance      NONE

**Constraints:**

## Recommendation

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1. That the Application iAPPROVED for the following reason/subject to the condition set out below.
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## Site Description and Proposed Development

This is an application pollard two Elm Trees protected by a Tree Preservation Order (TPO) T1 and T2 of T01/2018. The application refers to the works as part of ongoing management as required.

The trees are situated prominently to the front of Scilly Spirit (formally Kings of the Castle soft plan), opposite Castle Cottages in Old Town. Although located on private land, they appear as street trees that enhance the character of this part of Old Town, in close proximity to Ennor Castle Scheduled Monument. The area in which the trees are situated is enclosed by low box planters with a rear fence on the west boundary. The building of Scilly spirit is situate close to the north side of the trees and the road runs along the east boundary. To the south the site joins a vehicular access that is used by the adjoining building to the west. The ground around the trees is laid to hardstanding. Branches overhang the highway.

## Background and Relevant History

In 2015 a Section 211 notification for Tree Works (**P/15/0100/TWA**) was submitted for crown reduction and re-shaping of re-growth. This was for works to trees in a conservation area and was approved in December 2015. In 2018 the property changed hands and became a gin distillery known as Scilly Spirit and as part of the renovation works to the building, the applicant applied to remove the two Elm Trees. As tree removal wasn't an essential aspect of the works to the building, the applicant was asked to consider taking tree removal out of the application (**P/18/045/FUL**). The application was amended and subsequently approved. A further notification for tree works was submitted (**P/18/064/TWA**). This claimed the trees needed to be removed due to damage being caused to underground water systems, the building and overhead cables as well as interfering with the highway. This notification of tree removal was refused through the making of a trees with Tree Preservation Orders, as the only mechanism to prevent unnecessary tree works from taking place. The applicant was unable to substantiate claims that the trees were causing harm and the two Elm Trees became the islands first TPO designation.

## Consultations and Representations

None

## Primary Legislation and Planning Policy

### Primary Legislation

#### The Town and Country Planning Act 1990

Section 202c of Chapter 1 (Trees) of Part VIII, Chapter 8 of the Planning Act sets out that it is a prohibited activity to cut down, top, lop, uproot, wilfully damage or wilfully destroy trees subject to a Tree preservation Order. Section 202d makes provision for consent for the above prohibited activities, with or without conditions. Section 202e makes provision for compensation in the event of refusal of tree works or consent subject to conditions. Any person who carries out prohibited works to a protected tree, without consent or does not comply with a TPO shall be guilty of an offence under Section 210. This includes being liable, on summary conviction, to a fine not exceeding £20000 or, on conviction of indictment, to a fine.

## **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.

Section 15 of the NPPF relates to conserving and enhancing the natural environment. Paragraph 170 b) states that planning decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services, including the economic and other benefits of the best and most versatile agricultural land and of trees and woodlands.

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

Policy 1 relates to environmental protection and seeks to permit development proposal only where they respect and protect the recognised quality of the island's natural, archaeological, historic and built environment. Proposals should (a) conserve or enhance the natural beauty, wildlife and cultural heritage of the Area of Outstanding Natural Beauty and protect the unspoilt character and good appearance of the heritage coast, (b) Preserve nationally important archaeological remains and their settings; (c) Preserve or enhance the character or appearance of the Conservation Area and preserve the architectural or historic interest of all listed buildings, including their features and settings; (d) safeguard the integrity and nature conservation objectives of Special Protection Areas (SPAs), RAMSAR sites and Special Areas of Conservation (SAC); (e) protect a statutorily protected plant or animal species and the wildlife, geographical and geomorphological interest and features of designated Sites of Special Scientific Interest (SSSI); and locally important biodiversity habitats, species and landscape features.

### **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). Policy OE1 specifically considers the impact of development proposals on the biodiversity and geodiversity of the islands. Part (6) sets out that development that results in the loss of deterioration of irreplaceable habitats such as veteran trees should not be permitted unless there are wholly exceptional reasons and suitable compensation exists.

## **Planning Assessment**

The applicant does not claim the trees are diseased or there are fears that the trees may fall or branches break off. The applicant does not claim the trees are causing any damage to property, such as subsidence or other structural damage. Had the applicant been concerned for parts 1 or 2 of Question 8 on the application form then there is a requirement to submit written arboricultural advice or other diagnostic information from an appropriate expert. No such advice or opined views are submitted to support the works proposed.

The applicant is seeking to pollard both the trees for the purpose of ongoing tree management. The Council is aware of previous tree works for the 2 Elm Trees, which resulted in the crowns being reduced and re-shaped. This was carried out in the winter of 2015/16. Since the last tree works the elm trees have grown back and provide significant character and amenity within the street scene. Pollarding is a form of cutting back a tree significantly without causing it to die. It is common practice

for trees that are located along streets or within smaller gardens or confined spaces. Without pollarding works trees can quickly outgrow their location. It is considered that the works should be carried out by suitably qualified tree surgeons to ensure the timing and amount of pollarding that takes place does not result in the trees dying off. Subject to a condition to this effect it is considered that the works are regarded as responsible arboreal undertakings that will not have a detrimental impact upon the condition of the trees. Whilst initially there will be some loss of amenity value for the local area, it is considered that the trees will grow back over subsequent years.

Conditions

1. The works hereby permitted shall be undertaken before the expiration of 2 years from the date of this consent. Reason: To ensure that the works hereby approved are appropriate to the specific application for which they were approved, in view of the likely growth of the trees in question.
2. The work shall be carried out by a suitably qualified tree surgeon, in accordance with the appropriate recommendations contained in BS 3998:2010 (Tree Works) and in general shall in no way prejudice the health, balance and natural appearance of the trees.

Signed: 	Dated: 24/07/2019	Signed: 	Dated: 24/7/2019
Planning Officer		Senior Manager	