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TOWN AND COUNTRY PLANNING ACT 1990

Planning Statement

*Application for certificate of lawfulness for
use as a guesthouse*

Penhallow
Pilots Retreat
St Mary's
Isles of Scilly
TR21 0PB



Ref: **CT/SHER-119-1**

1 Introduction

- 1.1 This statement is made in support of an application by Mr Kevin Sherris for a certificate of lawfulness in respect of the change of use of the property known as Penhallow, Pilots Retreat, St Mary's, Isles of Scilly, TR11 0PB ("**Penhallow**") from use as a private dwellinghouse to use as a guesthouse.
- 1.2 From 2003 one room at Penhallow was let on a long term basis, however, for the purposes of this certificate application, the use as a guesthouse from June 2010 is relied upon. Since that date the property has been in use as a guesthouse with the owners permanently resident.

2 Law and Guidance

- 2.1 The Town and Country Planning Act 1990 provides for immunity from enforcement action in certain circumstances:-

171B Time Limits

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach

...

- 2.2 The PPG confirms that an application for a certificate must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application.
- 2.3 The applicant is responsible for providing sufficient information to support an application. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.
- 2.4 In the case of applications 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.
- 2.5 A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.
- 2.6 In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"
- 2.7 The threshold of evidence for the grant of a certificate of lawfulness is the balance of probabilities, i.e. more likely than not and not the criminal threshold of 'beyond all reasonable doubt'.

3 History of use

- 3.1 Reliance is placed on the use of Penhallow as a guesthouse from June 2010. The property was made available to supply accommodation and board to employees of Kier Western who had been contracted by the Council of the Isles of Scilly to build the new Five Islands School, this use continued for almost a year with significant occupation usually of at least two rooms throughout that period.
- 3.2 This initial change in use is demonstrated by a number of different sources as set out below.
- 3.3 The reservation diary¹ shows the names of occupants booked to stay at Penhallow from June 2010 through to December 2011.
- 3.4 These bookings are confirmed by e-mails from Kier Western's staff², including the Quantity Surveyor and Site Secretary for the Five Islands School, which also confirm that the accommodation was booked on a Bed, Breakfast and evening meal basis.
- 3.5 Invoices were generated for these bookings for accounting purposes.
- 3.6 A selection of remittances from Kier Western are provided to confirm the position as shown in the other evidence³.
- 3.7 Kier paid these invoices as demonstrated by the example bank statements provided⁴.
- 3.8 On 21 August 2010 the domain name scillypenhallow.com was purchased⁵ in order to market Penhallow on the internet. The property retains the same domain name to this day.
- 3.9 The school was completed and occupation of rooms at Penhallow by Kier ceased from October 2011, however, by that time stays at Penhallow were being booked by the public⁶.
- 3.10 An advert in the Isles of Scilly brochure for 2011 (operated at the time by the Tourism Office of the Council of the Isles of Scilly) was purchased on 08 October 2010⁷. In order to be accepted into the brochure it was necessary for the owners to be members of Visit England and therefore they were subject to scrutiny in terms of public liability insurance, suitability to operate as a B&B, fire and electrical certificate checks and more recently Health and safety checks.
- 3.11 The property has run a guest book throughout the period, which is available for review if considered necessary. The guest book records the rooms in which the guests stayed, which tally with the floor plans⁸

¹ Appendix 1

² Appendix 2

³ Appendix 2

⁴ Appendix 3

⁵ Appendix 4

⁶ Appendix 1

⁷ Appendix 4

⁸ Appendix 6

- 3.12 Tripadvisor reviews are available from July 2012⁹ and will tally with the guest book.
- 3.13 The use of Penhallow as a guesthouse from 2011 is not considered to be contentious – for that reason further evidence has not been included within the application (e.g. so as to avoid unnecessary disclosure of bank account data etc), but can be provided upon request if considered to be necessary for a positive determination of the application.
- 3.14 The guesthouse was assessed for food hygiene on 31 January 2018¹⁰.
- 3.15 At all material times over a 10 year period Penhallow was in use as a guesthouse. The property remains a guesthouse to the date of this application and the rooms are available to book.
- 3.16 The information above is consistent with the answers given by the owners in their response to the PCN¹¹, which confirmed the B&B use in June 2010 for Kier. It is noted that the answers on the PCN are subject to s171D of the Town and Country Planning Act 1990.

4 Section 106 agreement

- 4.1 Should the certificate application be proposed to be approved, the owners are willing to enter into a s106 agreement to secure that the guesthouse be occupied as the permanent residence of the operators and that the terms of the standard Isles of Scilly s106 relating to Vacancy Notice and Qualifying Persons shall apply.
- 4.2 The first and second floors (excluding the lounge) would be available for occupation of the owners.

5 Conclusion

- 5.1 The above demonstrates the lawfulness of the use of the Property as a guesthouse and accordingly a certificate should be issued under Section 191(1)(a) of the Town and Country Planning Act 1990.

Stephens Scown LLP

14 May 2021

⁹ Appendix 5

¹⁰ Appendix 8

¹¹ Appendix 7

Appendices

1. Booking diary entries from June 2010 to December 2011.
2. Correspondence and remittance from Kier.
3. Income records 2010-2011 and example bank statements.
4. Advertising records.
5. Early Tripadvisor reviews July 2012 – April 2013.
6. Floor plans
7. Response to PCN ref: E-2019-PCN-004
8. Food Hygiene rating.