

# Council of the Isles of Scilly

## Delegated Planning Report

### Other application

**Application Number:** P/23/011/FUL

**UPRN:** 000192000317

**Received on:** 10 February 2023

**Valid on:** 20 February 2023

**Application Expiry date:** 17 April 2023

**Neighbour expiry date:** **14 March 2023**

**Site notice posted:** 21 February 2023

**Site notice expiry:** 14 March 2023

**Applicant:** Mrs Abbigail Ellis

**Site Address:** Hugh Street Cafe  
Hugh Street  
Hugh Town  
St Mary's  
Isles Of Scilly  
TR21 0LL

**Proposal:** Installation of kitchen extraction and air-conditioning with outlets to the outside wall.

**Application Type:** Planning Permission

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**Recommendation:** PERMIT

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#### **Summary Conditions:**

1. Standard time limit
2. Adherence to plans
3. Hours of Operation for Construction Works
4. Noise assessment required before using both units simultaneously
5. Removal once no longer required/functioning
6. Timing restriction if using both units together

## Reason for Delegated Decision

No Councillor has requested that the application come to the Full Council. The decision defaults to the level of Delegated:

- Not a Councillor ✓
- Not a Senior Officer (or Officer with influence over planning Decisions) ✓
- No relation to a Councillor/Officer ✓
- Not Major ✓
- Not Council's own application ✓
- Not a departure from the Development Plan ✓
- Not Called in ✓

### Lead Member Planning Agreed

Name: Cllr D Marcus

Date: 24/03/2023

## Site Description and Proposed Development

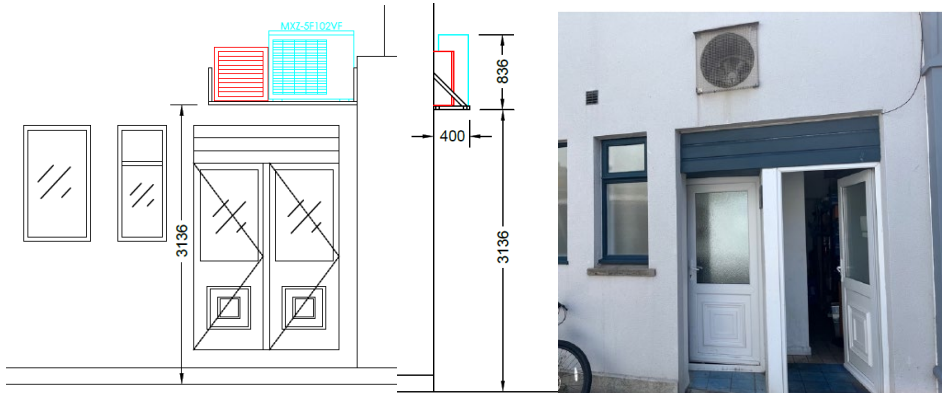
The application site is located in Hugh Town, St Mary's. The property lies adjacent to the junction of The Parade, Silver Street, Garrison Lane and Hugh Street, at the eastern end of Hugh Street. The property is located with other commercial premises, as well as residential properties.

Conditional planning permission was granted for the change of use of the ground floor of the property to a mixed use A1 and A3: delicatessen and consumption of food on the premises in July 2005 under application reference P.5706.

The Farm Deli (now known as Hugh Street Café) is a 2 storey building with dormer windows within the roof. A central door way provides access to the shop from the street at the ground floor. A large window lies either side of the entrance doors.

### Description of Proposal

The application proposes to replace the current extract ventilation fan that is situated on Garrison Lane, above an existing rear door to the building. The proposal is to install an air conditioning unit and a new ventilation/extract fan that would be situated in the same location. The air conditioning unit (blue) is both wider and overall larger than the extract fan (red). A small shelf is proposed to be installed above the side door on which to support the units. They would both be affixed to the out face of the wall and project out by 400mm.



**Certificate: B**

**Other Land Owners: CIOS and Mrs and Mr May**

### Consultations and Publicity

The application has had a site notice on display for 21 days (21/02/2023 – 14/03/2023). The application appeared on the weekly list on 27<sup>th</sup> February 2023. Due to the nature of the proposal **two internal** consultation has been required.

Consultee	Date Responded	Summary
CIOS Environmental Health	14/03/2023	<p>A BS4142 Noise Assessment should be completed prior to the installation of the new commercial kitchen extract ventilation system and air conditioning units including the external condenser unit. Both have outlets to the outside wall and at times may operate simultaneously. The rating level (LAeq, T) from this fixed plant and machinery, when operating simultaneously, should not exceed the background noise level (LA90,T) at any time when measured at the nearest noise sensitive source.</p> <p>All ductwork serving the new commercial kitchen extract ventilation system should be fitted with anti-vibration mounts to minimise vibration at adjacent sensitive premises.</p> <p>The new commercial kitchen extract ventilation system and</p>

		<p>air conditioning units/external condenser unit should not be operated before 0800hrs.</p> <p>The new commercial kitchen extract ventilation system should be fitted with odour control measures in order to minimise grease and odours from cooking fumes. All equipment should be maintained and serviced as per manufacturer's instructions.</p>
CIOS Highways	-	-

#### Representations from Residents:

Neighbouring properties written to directly:

- **1 and 2 The Corners, Garrison Lane**
- **Bishop and Wolf, Hugh Street**
- **Flat 1 and Flat 2 Morleys, Little Porth**
- **Seasalt, Garrison Lane**

[0] letters of objection have been received

[0] letters of support have been received

[0] letters of representation have been received.

#### Relevant Planning History:

App. No.	Description	Date
P5706	Conditional approval for change of use of ground floor to mixed use A1 and A3: delicatessen and consumption of food on premises	21.07.2005
P/15/110	Conditional approval for advertisement consent for a replacement sign on shop frontage; cedar sign, green, white lettering	18.01.2016
P/19/012/ADV	Conditional Approval for the erection of 1300mm x 580mm x 42mm western red cedar wood sign with carved out 2mm raised graphics in black onto a sandblasted background.	02.05.2019

#### Constraints:

- Conservation Area
- Area of Outstanding Natural Beauty
- Heritage Coast

## Planning Assessment

<b>Design</b>	<b>YES OR NO</b>
Would the proposal maintain the character and qualities of the area in which it is proposed?	y
Would the proposal appear in-keeping with the appearance of the existing dwelling, street and area?	y
Would the materials, details and features match the existing dwelling and be consistent with the general use of materials in the area?	y
Would the proposal leave adequate garden area and green space to prevent the proposal appearing as an overdevelopment of the site and to ensure an adequate level of amenity?	n/a
Is the parking and turning provision on site acceptable?	n/a
Would the proposal generally appear to be secondary or subservient to the main building?	n/a

<b>Amenity</b>	<b>YES OR NO</b>
Is the proposal acceptable with regard to any significant overlooking/loss of privacy issues?	n/a
Has the proposal been designed to respect the amenities of neighbouring properties avoiding unreasonable loss of light or an overbearing impact?	y
Is the proposal acceptable with regard to any significant change or intensification of use?	y

<b>Heritage</b>	<b>YES OR NO</b>
Would the proposal sustain or enhance the character and appearance of the Conservation Area?	y
If within the setting of, or a listed building, a) Will the development preserve the character and special architectural or historic interest of the building? b) Will the development preserve the setting of the building?	y
Within an Archaeological Constraint Area	n/a
<b>Other Impacts</b> Does the proposal comply with Highways standing advice such that it does not adversely affect highway safety?	y
Impact on protected trees	n/a

a) Will this be acceptable b) Can impact be properly mitigated?	
Has the proposal been designed to prevent the loss of any significant wildlife habitats or proposes appropriate mitigation where this has been demonstrated to be unavoidable?	n/a
Does the proposal conserve and enhance the landscape and scenic beauty of the AONB	y
Are the Water connection/foul or surface water drainage details acceptable?	n/a
If sited within a Critical Flood Risk Area (low lying land below the 5m datum) is the application accompanied by an acceptable Flood Risk Assessment?	n/a
Are there external lights	n

<b>Protected Species</b>	<b>YES OR NO</b>
Does the proposal include any re-roofing works or other alteration to the roof	n
Does the proposal include any demolition	n
Does the proposal include tree or hedge removal	n
Is an assessment of impact on protected species required	n
Has an assessment been provided that adequately assesses the site and includes mitigation, enhancement and timing requirements	n
Are biodiversity enhancement measures required	n
Is a condition required to provide biodiversity enhancement measures	n

<b>Waste Management</b>	<b>YES OR NO</b>
Does the proposal generate construction waste	y
Does the proposal materially increase the use of the site to require additional long-term waste management facilities	n
Does the proposal include a Site Waste Management Plan	y
Is a condition required to secure a Site Waste Management Plan	n

<b>Sustainable Design</b>	<b>YES OR NO</b>
Does the proposal materially increase the use of the site to require additional sustainable design measures	n
Does the proposal include any site specific sustainable design measures	n
Is a condition required to secure a Sustainable Design Measures	n

**Analysis:** The proposal is to install a fairly standard air conditioning unit and separate ventilation fan. The two installations would provide improved ventilation and cooling for the existing café on Hugh Street and would replace an existing single recessed extract fan. Whilst the two units combined would be more visually prominent, they are identified as quieter than the existing fan with a dB level no greater than 64 dB which they note is likely to be quieter in reality due to the length of ducting internally (the longer the ducting the sound decreases).

Hugh Town is both the main town Centre for the islands and forms the heart of the conservation area on St Mary's, where there are a high number of listed buildings. There is a balance to strike between supporting the needs of local businesses to support a vibrant town centre and ensuring development does not give rise to harm and that could make the area look less attractive. Clearly the installations are utilitarian in nature that will appear somewhat discordant, they would project over the road and be visible from neighbouring property as well as being visible in the public realm. I consider the proposal would give rise to some visual harm to the character and appearance of the conservation area.

Whilst the installation would give rise to some harm, I consider this is less than substantial overall on the basis that they would relate well to a business that is both encouraged and expected in this location. I do not think the visual harm is substantial in this case, as could be the effect of placing the units more prominently on Hugh Street such as the front elevation of the building. It is necessary, however, to consider what wider public benefits would off-set the harm identified.

Hugh Street Café is a year-round business that is particularly busy during the summer. The interior café is often warm requiring doors and windows to be open. Balanced with the position of the existing fan, albeit recessed single installation, the intention to use a quieter system together with the limited options for external positions on the building, I consider there is justification for both the need for such equipment and for it to be located as proposed. Although there is no strict requirement for the current café operator to always be open on a year-round basis, the extract and air con systems are more likely to be in use during the summer season, when the café is at its busiest, the need for summer cooling and ventilation within the building are not unique circumstances for the current applicant, as any future use as a café would benefit from the installation. I do consider it would be necessary to ensure removal once the equipment ceases to function or it no longer required. It would not be acceptable for the equipment to remain in situ once no longer required, as deteriorating equipment could be more harmful to the character of the area. I would recommend a condition to ensure the equipment is removed and the wall made good, once it ceases to function/is no longer required.

In terms of neighbouring amenity. I note the installations would be marginally closer to the upper floor residential use of the neighbouring property (they are attached to the external wall as opposed to being recessed). There would appear to be a flat above the neighbouring retail outlet (formerly Seasalt). I don't consider the equipment would restrict outlook or give rise to over shadowing. The noise would appear to be acceptable, based on the information contained in the application (the quieter systems now proposed relative to the existing fan) but I consider odour could be a nuisance to the amenity of neighbour properties. Harm to the amenity as a result of pollution is a material planning

consideration. The existing building already extracts cooking smells from the building, by virtue of an existing fan. I do not not consider the installations would increase the potential for odours to cause amenity issues. It is likely that the equipment, when used in combination, could give rise to a greater impact upon amenity, as a result of noise. Based on the specification of the equipment, however, if not used in combination, would give rise to no greater impact than the current extract system and I note that the new extract fan would not be significantly closer to this neighbouring residential unit than the current fan. On this basis I consider it would be appropriate to impose a condition to limit the noise and timing of the equipment proposed. A condition to prevent both installations operating concurrently would address the potential harm on the amenity generally.



**EIA:** Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

**Proactive working:** In accordance with guidance within the National Planning Policy Framework the Council has worked in a positive and creative way and has concluded that the application is acceptable for planning approval.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

**Planning Policy:** Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 2021, the development plan for the Isles of Scilly comprises the Isles of Scilly Local Plan 2015-2030.

The relevant development plan policies that have been taken into consideration are set out below:

**Isles of Scilly Local Plan, 2015-2030**



Policy	Tick if Used ✓
Policy SS1 Principles of Sustainable Development	
Policy SS2 Sustainable quality design and place-making	
Policy SS3 Re-use of Buildings	
Policy SS4 Protection of retailing, recreation and community facilities	✓
Policy SS5 Physical Infrastructure	
Policy SS6 Water and Wastewater Management	
Policy SS7 Flood Avoidance and Coastal Erosion	
Policy SS8 Renewable Energy Developments	
Policy SS9 Travel and Transport	
Policy SS10 Managing Movement	
Policy OE1 Protecting and Enhancing the landscape and seascape	
Policy OE2 Biodiversity and Geodiversity	
Policy OE3 Managing Pollution	✓
<i>Policy OE4 Protecting Scilly's Dark Night Skies</i>	
Policy OE5 Managing Waste	
Policy OE6 Minerals	
Policy OE7 Development affecting heritage	
Policy LC1 Isles of Scilly Housing Strategy to 2030	
Policy LC2 Qualifying for Affordable Housing	
Policy LC3 Balanced Housing Stock	
Policy LC4 Staff Accommodation	
Policy LC5 Removal of Occupancy Conditions	
Policy LC6 Housing Allocations	
Policy LC7 Windfall Housing:	
Policy LC8 Replacement Dwellings and Residential Extensions	
Policy LC9 Homes in Multiple Occupation	
Policy WC1 General Employment Policy	✓
Policy WC2 Home based businesses	
Policy WC3 New Employment Development	
Policy WC4 Alternative Uses for Business/Industrial land and buildings	
Policy WC5 Visitor Economy and Tourism Developments	

Info Requirements	Submitted (LVC)	Not Submitted	Condition Required
Site Waste Management Plan	y		n
Sustainable Design Measures	n		n
Biodiversity Enhancement Measures:	n		n

Other material considerations include the policies of the National Planning Policy Framework (NPPF) and guidance in Planning Practice Guidance (PPG).

**Considerations under Human Rights Act 1998 and Equalities Act 2010:** The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

In discharging their functions, must have “due regard” to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;

- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular to the need to:

- a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of other persons who do not share it
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has had due regard to the matters set out in section 149 of the Equality Act 2010.

**Recommended Conditions:**

**C1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

Reason: In accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

**C2 The development hereby permitted shall be carried out in accordance with the approved details only including:**

- **Plan 1 Location Plan**
- **Plan 2 Site Plan**
- **Plan 3 Proposed Elevations**
- **Plan 4 Proposed Floor Plan**
- **Design and Access Statement**

**These are stamped as APPROVED**

Reason: For the clarity and avoidance of doubt and in the interests of the character and appearance of the Conservation Area, Area of Outstanding Natural Beauty and Heritage Coast in accordance with Policy OE1 and OE7 of the Isles of Scilly Local Plan (2015-2030).

**C3 Before the combined equipment of air conditioning unit and ventilation/extractor fan, hereby approved, are first bought into**

**combined use, a BS4142 Noise Assessment shall be completed and submitted for approval in writing by the Local Planning Authority. The noise level (LAeq, T) from this fixed plant and machinery, when operating simultaneously, should not exceed the background noise level (LA90,T) at any time when measured at the nearest noise sensitive source.**

Reason: To safeguard the amenity of neighbouring residents/occupiers and to ensure the development does not generate an unacceptable level of noise in accordance with Policy OE3(1) the Isles of Scilly Local Plan (2015-2030).

**C4 Neither the ventilation/extractor fan nor air conditioning unit, hereby approved, shall be used, in combination, before 0800hours or after 1800hours on any day.**

Reason: To safeguard the amenity of neighbouring residents/occupiers and to ensure the development does not generate an unacceptable level of noise in accordance with Policy OE3(1) the Isles of Scilly Local Plan (2015-2030).

**C5 No construction plant and/or machinery shall be operated, as part of the implementation of this permission, before 0800 hours on Mondays through to Saturdays nor after 1800 hours. There shall be no works involving construction plant and/or machinery on a Sunday or Public or Bank Holiday.**

Reason: In the interests of protecting the residential amenities of the islands.

**C6 The air conditioning unit and ventilation/extractor fan, hereby approved shall be permanently removed upon redundancy for its dedicated purposes and the building reinstated to its former condition within a period of six months following removal.**

Reason: The equipment has been permitted for a dedicated purpose and, if no longer needed, should be removed from this part of the Islands in the interests of the visual amenities of the area.

<b>Print Name:</b>	Lisa Walton	10/05/2023
<b>Job Title:</b>	Chief Planning Officer	
<b>Signed:</b>		
	Authorised Officer with Delegated Authority to determine Planning Applications	