

Council of the Isles of Scilly Delegated Planning Report Other application

Application Number: P/23/012/ROV

UPRN: 000192002760

Received on: 13 February 2023

Valid on: 14 February 2023

Application Expiry date: 11 April 2023

Neighbour expiry date: 8 March 2023

Consultation expiry date:

Site notice posted: 15 February 2023

Site notice expiry: 8 March 2023

Extension of Time Date Agreed: 21/04/2023

Applicant: Mr Mike Green

Site Address: Chalet
6 Bay View Terrace
Telegraph Road
Porth Mellon
St Mary's
Isles Of Scilly
TR21 0NE

Proposal: Removal of condition C3 (Principal Residence Use Only) of planning permission P/22/072/FUL (Re-construction and extension of lawful residential accommodation (Chalet) and associated landscaping) to allow use of dwelling as a permanent residence, second home or holiday let.

Application Type: Removal or Variation of Condition

Recommendation: Permit the removal of condition C3.

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. The application was initially called in. But the call in request was retracted. The Lead Member agreed that unfortunate as the situation is, the existing unit is a lawful dwelling not restricted in occupancy. The replacement dwellings policy (LC8) although restricts the size of new housing, it does not require the replacement home to be strictly for local need, unless the home it replaces is already restricted.

Lead Member Planning Agreed

Name: Cllr D Marcus

Date: 20/03/2023

Site Description and Proposed Development

The application site comprises an area of land to the rear and side of number 6 Bay View Terrace. Number 6 is the end of a terrace of 6 two storey houses. The 'chalet' was originally granted planning permission in 1976 as a garden store. It is a single storey structure laid out with a bedroom, kitchen-dining room and shower room. Contrary to the original permission granted, the accommodation has historically been used as residential accommodation. Based on the evidence submitted and assessed, in 2019 a certificate of lawful use was applied for and granted which established the accommodation as a lawful dwelling.

In December 2022 the application P/22/072/FUL was determined at full council. Although the decision went with the officers recommendation an additional condition was imposed on the use of the accommodation to make it only occupiable for local need on a permanent basis. Condition C3 reads:

C3 The development, hereby approved, shall not be occupied otherwise than by persons as their only or principal homes and the occupants shall supply to the Local Planning Authority (within 14 days of the Local Planning Authority's request to do so) such information as the Local Planning Authority may reasonably require in order to determine compliance with this condition. For the avoidance of doubt the dwelling shall not be occupied as second home or as a unit of holiday letting accommodation.

Reason: The significant increase in scale of the proposal and its use as a short let unit of holiday accommodation would lead to the islands being less socially sustainable, in light of the housing crisis of the islands. To ensure that the accommodation, which replaces a permanently occupiable unit of ancillary accommodation is being used as a permanently occupiable home to help maintain the social wellbeing of the community in accordance with Policy LC1 the Isles of Scilly Local Plan 2015-2030.

The current application is to remove condition C3 on the basis that it is unreasonable and not a requirement of policy.

Certificate: A

Other Land Owners: None

Consultations and Publicity

The application has had a site notice on display for 21 days (15/02/2023 – 08/03/2023). The application appeared on the weekly list on 20th February 2023. Due to the nature of the proposal no external consultations are required.

Representations from Residents:

Neighbouring properties written to directly:

- The Annexe, 5 Bay View Terrace
- 7 Bay View Terrace
- 5 Bay View Terrace

[0] letters of objection have been received

[0] letters of support have been received

[0] letters of representation have been received.

Relevant Planning History:

Planning permission was first approved in 1976 (P1504) for the removal of water storage tanks and the erection of a garden store. In 2019 an application for a Certification of Lawful Use of the building, which was referred to as a chalet, as a unit of independently occupied residential accommodation. Application P/19/015/CLE was approved June 2019, confirming the chalet was now immune from any planning enforcement action against its use as a dwelling. As with any certificate application, the local planning authority are not considering whether the proposal is acceptable but whether the evidence proves that the dwelling is now lawful. It cannot therefore impose planning restrictions such as conditions or legal agreements.

Constraints:

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

Planning Assessment

Policy LC8 (1) permits the replacement of an existing lawful dwelling. Provided:

- a) The size, siting and design, as well as the use of materials, of the proposal would not be more visually intrusive in the landscape or have a harmful impact upon the amenity of neighbouring properties.
- b) Where a proposal results in an increase in size (either in relation to number of bedrooms, floors, usable floor space or footprint) of the original dwelling then this should meet, and be no greater than 30% above as a maximum, the minimum space standards as set out in the Nationally Described Space Standards (Technical Housing Standards) (or any replacement standards); unless clear justification is provided as to why a larger home is required.

The report in December 2022 ([linked here](#)) at Agenda Item 9 concluded that the replacement dwelling would accord with the requirements in terms of scale, without giving rise to harm.

The replacement dwelling is for a 1 bedroom unit of accommodation, which will replace the sub-standard sized 1 bedroom chalet. The scale does not exceed the maximum space standards set under Policy LC8 (1) b).

The decision together with imposition of condition C3, although well-intentioned in light of both the applicant's statement (of personal occupation of the unit) and the declared local housing crisis, I do not consider there is adequate policy support to impose a restrictive occupancy condition in this case.

A [legal view](#) has been sought on this point and on the basis that the existing chalet is lawfully recognised as a dwelling (without restrictions) it would appear to be unreasonable to continue to impose this condition, in light of the applicant's request to remove it. I therefore must conclude that unfortunately in this case it would be unreasonable to persist with the condition and I would recommend that it is removed.

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 Sections 66 and 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	

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.

Recommendation

That condition C3 be removed:

- C3 The development, hereby approved, shall not be occupied otherwise than by persons as their only or principal homes and the occupants shall supply to the Local Planning Authority (within 14 days of the Local Planning Authority's request to do so) such information as the Local Planning Authority may reasonably require in order to determine compliance with this condition. For the avoidance of doubt the dwelling shall not be occupied as second home or as a unit of holiday letting accommodation.**
- Reason: The significant increase in scale of the proposal and its use as a short let unit of holiday accommodation would lead to the islands being less socially sustainable, in light of the housing crisis of the islands. To ensure that the accommodation, which replaces a permanently occupiable unit of ancillary accommodation is being used as a permanently occupiable home to help

maintain the social wellbeing of the community in accordance with Policy LC1 the Isles of Scilly Local Plan 2015-2030.

Print Name:	Lisa Walton	18/04/2023
Job Title:	Chief Planning Officer	
Signed:		
	Authorised Officer with Delegated Authority to determine Planning Applications	