

10 February 2023

Description_ Planning Statement: removal of condition C3
Address_ The Chalet, Bay View Terrace, Porthmellon, TR21 0NE
Applicant_ Mr Mike Green

Background

This s73 application seeks to remove planning condition C3 attached to approval P/22/072/FUL for the re-construction and extension of an existing dwelling.

The lawful planning use of the site is an unrestricted 'Class C3 Dwellinghouse'.

Within this use class the existing building can be lawfully used and let as a permanent home or holiday home, occupied by a single person or people forming a single household.

Condition C3 imposes a new incumbrance on the property to only allow its use as a principal home, and to no longer allow its use as a second home or holiday let.

The building currently falls 41% below the national minimum for a dwelling of this size. Addressing this shortfall, the proposal aims to replace and enlarge the existing C3 dwellinghouse to bring the home to current space standards whilst significantly improving its energy performance. The proposal will result in a one bedroom two storey home, comprising 66sqm of floor area which is 13% above the national space standards.

In preparing the proposal, the applicants engaged with the Council and followed detailed pre-application advice.

Despite accordance with Policy LC8 of the Development Plan, condition C3 was imposed by the Council's Planning Committee at their meeting on the 15th December against the express wishes of the applicant.

The stated reason for the condition contains errors: the proposed scale of enlargement is not significant but is supported by the Local Plan; the existing building is not ancillary accommodation, it is an independent C3 dwellinghouse; and the proposal will not result in any new homes on the site therefore LC1 is not relevant to the development permitted.

It is submitted that the imposition of the condition C3 is unreasonable and unjustified. This s73 application therefore seeks to remove this planning condition.

Planning policy

The approved application was assessed in accordance with Policy LC8 of the Isles of Scilly Local Plan (adopted March 2021).

Policy LC8 states that replacement and enlargement of a lawful dwelling will be supported subject to compliance with the following requirements:



1) The alternation, enlargement, replacement or substantial rebuilding of a lawful dwelling will be supported subject to compliance with the following requirements:

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.

In deciding the application, the Council confirms that the proposed design will form an improvement to the appearance of this site, while meeting the specific threshold requirement relating to the Nationally Described Space Standards (the approved design is 13% above the current national space standards).

2) A replacement dwelling or an extension or alteration to an existing dwelling will not be permitted to include any self-contained holiday letting accommodation unless this already lawfully forms part of the existing property, secured through planning permission or a lawful development certificate.

The existing dwelling can already be lawfully used for self-contained holiday letting accommodation.

3) All planning applications for replacement dwellings, extensions or alterations that increase the number of bedrooms relative to the existing dwelling should:

a) proportionately improve the overall energy performance of the building and accord with the principles set out in Policies SS1 Principles of Sustainable Development and SS2 Sustainable Quality and Design; and

b) ensure there is sufficient space within the existing curtilage to accommodate the proposal without resulting in overdevelopment of the site or adversely impacting on residential amenity space and parking provision; and

c) be supported by calculations of the existing and proposed internal habitable floor space and the number of proposed permanent occupants.

The proposal will significantly improve upon the building's energy performance, while providing sufficient amenity space. The original application also included details of the habitable floor space and occupants.

In considering the planning application, the Council confirms that the proposal accords with Policy LC8, and that it does not form 'windfall' development whilst recognising there would be no 'net-gain' in housing on the site. (P/22/072/FUL, Committee Report, Page 6, Para 18)

The Committee Report concludes at paragraph 48:



The application will achieve an improvement to the appearance of this site retaining a one bedroom unit which is identified as being for the applicant to occupy, bringing it up to reasonable size. The proposal would accord with Policies SS1, SS2, LC8 and OE7 of the Isles of Scilly Local Plan (2015-2030). (ibid. page 13, para 48)

Material considerations

The National Planning Policy Framework (NPPF) reminds us that it is the law for applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. (NPPF 2021, para 2)

The local plan includes policies that are clearly written, and it is clear at Policy LC8 how a decision for a replacement dwelling should be reached.

The applicant stated clearly that they would not agree to the restriction being imposed while the application followed preapp advice and sought to replace an existing lawful dwelling in accordance with the Development Plan.

It is also recognised that other similar planning applications for enlargement of existing homes have not been imposed with a 'principal homes' condition.

In this case, correspondence shows that the Council's planning committee imposed the condition in attempt to appease housing issues on the island. However, these issues are not relevant to the proposed development. Similar to other cases, and in accordance with the Local Plan, the permission creates no net-gain in housing on the site.

The enlarged dwelling causes no adverse impact on the wellbeing of the local community. In contrast, the proposal will improve living standards whilst providing a home which is more attractive, and sustainable.

Grounds to remove the condition

As confirmed on the decision notice, planning condition C3 was added to the decision for reasons of the 'significant scale of the proposal' with reference to 'ancillary accommodation' and 'Policy LC1 the [sic] Isles of Scilly Local Plan'.

The reason highlights errors in the Council's decision to impose this condition:

- 1) The scale of proposal falls well within the prescribed threshold set out within Policy LC8 of the adopted Local Plan. The increase in scale is therefore supported and in accordance with the Development Plan for the area.
- 2) It is imprecise to describe the building as ancillary accommodation. The existing building is an independent C3 dwellinghouse as demonstrated by the Lawful Development Certificate P/19/015/CLE.
- 3) Policy LC1 relates to the delivery of new homes. The site is occupied by an existing home, and the proposed replacement will not result in any new homes on the site. Policy LC1 has therefore been misused by the Council.



In light of these errors identified above, the imposition of condition 3 is irrelevant to the development permitted, imprecise, and unreasonable.

Conclusion

The planning decision gives permission to upgrade and improve an existing home in accordance with the Development Plan for the area.

The imposition of condition C3 is unreasonable, unjustified, and the condition should therefore be removed.

The existing dwelling can already be used as a holiday let and on this basis the proposal directly accords with the clear requirement set out at adopted Policy LC8, point 2.

In this context, while imposing a planning restriction on a proposal which otherwise accords with specific policy requirements, the imposition of condition C3 appears to be an attempt of the Council to circumvent the Development Plan.

This approach is unreasonable and will lead to inconsistencies in the decision making process.

For the Council to impose this restriction, a more appropriate mechanism would be a review of the Local Plan and amendment to Policy LC8.

This s73 application has been submitted in good faith to resolve matters at a local level. However, if the Council decides to uphold the condition, the applicant will consider options to appeal the decision including an award to recoup costs.

Prepared by,

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