
Appeal Decision

Site visit made on 3 February 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 February 2016

Appeal Ref: APP/Z0835/W/15/3134610

Former Buccabu Hire, 9 Lower Strand, Hugh Town, St Mary's, Isles of Scilly TR21 0NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Sydney Lewis against the decision of the Council of The Isles of Scilly.
 - The application Ref P/15/025/FUL, dated 26 March 2015, was refused by notice dated 1 May 2015.
 - The development proposed is the conversion of the shop into a 2-bedroomed flat with S106 Agreement for 'local need' or 'key worker' occupancy.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the loss of the shop unit would harm the vitality and viability of the Scilly Isles' main retail area, the effect of the proposal on the living conditions of the residential neighbours to the rear and the proposed flat's occupiers, and whether a S106 agreement is in place to ensure that the proposal meets the local plan requirements for local needs or key worker housing.

Reasons

Retail Vitality and Viability

3. This retail unit was previously occupied by a bike shop and hire/repair facility, which has relocated to the nearby small industrial estate at Porth Mellon. The Council argues that the loss of the retail unit will harm the vitality and viability of Hugh Town, which is the Islands' main shopping centre.
 4. The Council appears to largely rely on its assertion that the proposed change of use would be contrary to Policy 4 (Economic Development) of the Isles of Scilly Local Plan (LP). This Policy seeks to promote employment and economic activity and in particular proposals based on the existing economic base of tourism, agriculture and fishing. A functioning retail shop provides economic activity and employment but this Policy does not specifically seek to prevent changes of use from retail to non-commercial uses. Consequently I cannot agree that the proposal would be contrary to LP Policy 4.
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5. Chapter 2 of the National Planning Policy Framework (NPPF) seeks to promote competitive town centre environments and requires local planning authorities to pursue policies to support the viability and vitality of town centres. Whilst I appreciate that Hugh Town is the Isles' main shopping area, the Council acknowledge that Lower Strand comprises secondary retail frontage. The appellant suggests that other properties in this secondary frontage, and indeed in the primary frontage to the west, have been converted to residential use and so the Council is being inconsistent. I have not been provided with the specific details of these alleged changes of use but it was clear from my site visit that many, if not most, of the properties in Lower Strand are in residential use including at ground floor level.
6. The appellant has indicated that there has been an increase in retail and other Class A uses in recent years elsewhere on St Mary's and on the other inhabited Islands. Given the loss of the Islands' helicopter service, the permanent Islands' population of only approximately 2,000 people and the number of Class A units in the primary frontage of Hugh Town (as defined by the Council) it does not seem surprising that a retail unit in this location may struggle to be viable, as the appellant claims.
7. For the above reasons I conclude that the proposed loss of this retail unit would not harm the vitality and viability of Hugh Town as the Isles' main retail area, and would not be contrary to the NPPF or LP Policy 4.

Living Conditions

8. There are at present two windows in the rear wall of the shop unit, this wall being the rear boundary of the appeal site. They face directly onto the neighbouring site to the rear on which has recently been constructed two affordable housing units. These windows are obscure glazed and so there is no direct overlooking at present. The appellant wants to replace the western window with two new windows in the existing opening, one for the bathroom and one for Bedroom 2 of the proposed flat, with a central stud partition. His intention is to clear-glaze all the rear windows, although his agent confirmed at the site visit that obscure glazing would be acceptable if I considered it necessary.
9. The eastern window faces the patio doors to the sitting room of the new dwelling opposite at a distance of about 6m. This window directly abuts the pedestrian access to the westerly new affordable housing unit. The western window does not directly overlook any windows in this latter dwelling but it directly abuts that unit's small rear yard which, I noticed, is used to dry washing. If these windows were not obscure glazed they would directly overlook the living room patio doors of the first affordable housing unit, and the pedestrian access to and outdoor amenity space of the second unit. Overlooking at such close quarters would be unacceptable to these neighbours because such direct overlooking from habitable windows would significantly reduce their privacy.
10. The appellant argues that such overlooking would occur as a consequence of the Council unreasonably granting permission for the two affordable units to be crammed into a small space insufficient to accommodate them. However, the lawful use of the appeal premises is as a retail shop and its rear windows are obscure glazed and so there were no adverse amenity impacts when

permission was granted for the two affordable dwellings. That would not be the case now, for the above reasons.

11. I agree that such harmful overlooking could be prevented by maintaining obscure glazed windows, which are fixed shut. But this would mean that both bedrooms as well as the bathroom of the proposed flat had no outlook and little or no natural ventilation. Given the fact that the eastern window directly abuts the pedestrian path it would also be possible for anyone in proposed Bedroom 1 to perceive people directly passing this window even if it was obscure glazed. The living conditions of the proposed flat's occupiers would therefore be unacceptable if the rear windows were to be obscure glazed.
12. I conclude for the above reasons that the living conditions, either those of the neighbours or the occupiers of the proposed flat, would be unacceptable.

S106 Agreement

13. I have seen a draft S106 agreement, which seeks to ensure that the proposed flat cannot be occupied other than by a person or persons with a local housing need or by a key worker as defined by the Council in accordance with LP Policy 3.
14. The appellant accepts the obligations in this agreement but it is unsigned and undated and so its obligations cannot therefore take effect. Until it is, the proposed new flat would fail to comply with LP Policy 3 and is therefore unacceptable.

Conclusion

15. Although I have found that the proposal would not harm the vitality and viability of Hugh Town as the Isles' main retail area, it would give rise to unacceptable living conditions either for the neighbours or the proposed flat's occupiers. I have also found that, in the absence of a signed 106 agreement, the proposed flat could be occupied by someone who did not have a local housing need or was not a key worker, which would be contrary to LP Policy 3. For these reasons the appeal is dismissed.

Nick Fagan

INSPECTOR