
From: Chris Marsh <Chris.Marsh@evansjones.co.uk>
Sent: 17 June 2019 10:48
To: West1
Subject: APP/Z0835/W/19/3225058 - Men-A-Vaur, Church Road, St Mary's, Isles of Scilly
Attachments: Letter - LPA Statement of Case.pdf

Dear Ms Smith,

Thank you for your letter dated 7 June 2019, in respect of which I attach the Appellant's response.

Kind regards,

Chris Marsh
Senior Planner

DDI: 01242 531431

E: chris.marsh@evansjones.co.uk

Royal Mews, St Georges Place, Cheltenham, Gloucestershire, GL50 3PQ

T: 01242 522822 **M:** 07917 156484



Evans Jones Limited

<http://www.evansjones.co.uk>

Directors: David Jones, Ian Eggleton

Company Registration number 5901609



Chartered Surveyors, Chartered Town Planners, Access Consultants

Evans Jones has updated its Privacy Policy with effect from 25th May 2018. These changes were made in line with the new EU data privacy law, the General Data Protection Regulation (GDPR).

<https://www.evansjones.co.uk/legal/privacy.php>

The information in this email is confidential and is intended solely for the addressee. It may be legally privileged. The contents are not to be disclosed to anyone other than the addressee and access to this email by anyone else is unauthorised. Unauthorised recipients are requested to preserve the confidentiality of this email and to advise the sender immediately of any error in transmission. Any disclosure, copying, distribution or action taken or omitted to be taken in reliance upon the contents of this email by unauthorised recipients is prohibited and may be unlawful. Although this email and attachments are believed to be free of any virus, or any other defect which might affect any computer or IT system into which they are received and opened, it is the responsibility of the recipient to ensure that they are virus free and no responsibility is accepted by Evans Jones Limited for any loss or damage arising in any way from receipt or use thereof.

 Please consider the environment before printing this email.

Our Ref: 14382

17 June 2019

The Planning Inspectorate
3/08b Kite Wing, Temple Quay House
2 The Square, Temple Quay
Bristol
Avon
BS1 6PN

Dear Ms Smith,

Re: - APP/Z0835/W/19/3225058 - Men-A-Vaur, Church Road, St Mary's, Isles of Scilly

Thank you for your letter dated 7 June enclosing the Council's Statement of Case and third-party representations in respect of the above planning appeal. Having reviewed in detail, we set out below our comments.

Firstly, we must express concern at the assertions set out at Paragraph 22 of the Council's Statement where it is stated that the draft Local Plan "*is considered to be in advanced stage of adoption and... can be afforded great weight under Paragraph 48 of the NPPF...*" The document in question is at the pre-submission (Reg 19) consultation stage. It has not yet been seen by any Examiner and there is absolutely no indication at this time that the emerging Plan would survive formal examination without substantial amendment. Consistent with standard practice, the emerging Plan can only be given, at most, limited weight in this instance; certainly not the substantial or 'great weight' usually reserved for a Plan immediately prior to adoption.

Moreover, the Council's current assertions in this regard are diametrically opposed to those (quite correctly) set out in the Officer report to Committee (see Paragraph 32 – "*a degree of weight*") and expressed verbally by both officers and Councillors at the meeting itself (see submitted transcript). That the Council should take such a clearly flawed approach at this late stage is worrying.

At Paragraph 32 the Council relies on perceived conflict with Policy OE2 of that same plan, as cited in the second reason for refusal. Implicit from the absence of adopted policies in that reason for refusal is that the proposals therefore do not represent any conflict whatsoever with the Development Plan. As this Plan has primacy in decision-making it must be re-emphasised that the proposals fall, first and foremost, to be considered in that context and that it is inappropriate to seek to retrofit marginal material considerations in this manner.

Moreover, it is noteworthy that despite the suggested harm to flora and fauna within the application site, not a single specie is identified by name as a receptor to the development's impact. The existence of 'potential' habitat is a somewhat tenuous approach to describing some apparent profound harm warranting the refusal of the application, therefore, and it is noted that such cautious language is not borne out even in the emerging Policy OE2, which on a fair reading requires that habitats and species are at least identified prior to the consideration of a development's impact upon them.

While at Paragraph 50 it is suggested that Officers' initial (correct) view that matters of ecology and landscaping could be addressed by condition was subsequently reversed by discussion at Committee, the submitted transcript demonstrates that absolutely no discussion whatsoever took place in this regard. Moreover, it is plain that dealing with these matters in exactly this way was endorsed by the same Committee (indeed by Members' own intervention) in approving the comparable application at nearby Tresco, details of which are contained in the Appellant's original Statement of Case and the accompanying Committee meeting transcript.

The Appellant also notes that the Council's Statement explains that *"Members have decided to use their own independent judgement to apply greater weight to these matters [those forming the grounds of refusal] when deciding to refuse the application."* This is not the case. Officers confirmed in the report to Committee that no material harm would be caused by the proposals in respect of any of the matters identified in the refusal reasons, subject to suitable conditions. Therefore, the assertions in the decision are actually a reversal – not an exaggeration of – the original assessment by officers. While Members are of course entitled to reach their own conclusions in matters of planning judgement, this should be made clear.

Turning to the considerations set out in respect of residential amenity, it is again concerning that the Council's Statement introduces emerging Policy WC5 in this respect despite its being entirely absent from both the Committee's discussion of the application and indeed the issued reasons for refusal. While the matter of relative weight runs with the considerations set out above, this emerging policy should not be introduced at this late stage in any event.

At Paragraph 44 of the Council's Statement it is again acknowledged that dwellings at Branksea Close, and specifically nos.4 and 8 already experience a significant degree of mutual inter-visibility with other residential properties in the locality. As previously explained, the Design Guide SPD acknowledges that due to the characteristically high-density, informal arrangements of certain parts of the islands – and we would suggest this part of Hugh Town – there must be some flexibility in the interpretation of recommended amenity measures.

To that end, it should be noted that the design was deemed to be acceptable in respect of the Design Guide SPD by both the case officer preparing the committee report and the officer advising at the time of the previous pre-application enquiry. As set out in the Appellant's Statement of case, the alleged overlooking is at an oblique angle at the most (as shown on Diagrams 2 and 3, Page 59 of the Design Guide) and as such the proposed design avoids any undue loss of privacy; perceived or real.

Finally, the suggestion that the service road is inadequate is incorrect as there is an adopted vehicular section of Branksea close extending to within 6 metres of the application site and currently used by service vehicles including refuse lorries on a weekly basis (per third-party representations and photograph contained in earlier Design & Access Statement). The adopted Close then reduces to a pedestrian path from the edge of the application site to service the rest of the properties in Branksea Close, in which all eight properties are situated further from the service lane than the application site and have been serviced historically without issue.

Emergency or other service vehicles can therefore achieve appropriate vehicular access to the edge of the application site in the same way as existing and certainly within the 45m referred to. It should also be noted that no objection to the proposals was forthcoming from the Fire & Rescue service, nor from the local Infrastructure consultee, despite both having had ample opportunity to submit such.

Paragraph 57 avers that the proposals would result in harm by way of noise disturbance close to the access to Branksea Close. Nowhere in the reasons for refusal – or Committee transcript – is this mentioned. While it is understood that certain third parties have particular concerns in this respect (noting that reference to past form is, for planning purposes, irrelevant), this again appears to be either an earlier oversight or attempt to bolster the previous reason for refusal at this very late stage.

In any case the suggestion is plainly unreasonable, as illustrated by the lack of any policy reference in this respect. This is a well-used route, in relativity to which the limited additional

movements associated with a proposal of this modest scale would be insignificant. It is suggested that broadly denying any slight increase in the use of typical local access ways such as this would greatly diminish the islands' general ability to meet its future development needs, as well as potentially delaying or preventing further investment in maintenance. It is therefore entirely appropriate that the proposed development utilises the established access in this way.

Having regard to the above considerations, it is again respectfully requested that the appeal is allowed, and planning permission is granted.

Yours sincerely
For and on behalf of Evans Jones Ltd



Chris Marsh
Senior Planning Consultant
Tel. 01242 531431
E-mail: chris.marsh@evansjones.co.uk