

Council of the Isles of Scilly Delegated Planning Report

Application Number: P/19/025/CLE
Received on: 29 May 2019
UPRN: 000192002336
Application Expiry date: 25 July 2019
Neighbour expiry date: 21 June 2019
Consultation expiry date:
Site notice posted: 31 May 2019
Site notice expiry: 21 June 2019

Applicant: Mrs M Senior
Site Address: Nornour
Mount Flagon
Harry's Walls
St Mary's
Isles Of Scilly
TR21 0NE
Proposal: Application for a Certificate of Lawful Use of the flat as a single dwelling house
(Use Class C3)
Application Type: Certificate of Lawfulness - Existing

Recommendation

That a certificate is GRANTED.

1. It is considered that the conversion of the building to a single, separate dwelling has become lawful and immune from enforcement action by virtue of this change of use taking place for a period in excess of four years. Under Section 171B(2) of the Town and Country Planning Act 1990, the Local Planning Authority cannot legally take enforcement action after the end of the period of four years beginning with the date of the breach. Therefore, the certificate sought by the applicant can be granted.
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Contributors:**Public Representations:** NONE**Consultation Representations:** NONE**Constraints:****Scheduled Monuments:** None**Listed Buildings:** None**Archaeological Constraint Areas:** None**Site Description and Proposed Development**

The application is for a Lawful Development Certificate (CLUED) for the existing use of a part of a former single dwelling, as a separate unit of self-contained residential accommodation.

The CLEUD details for this application includes a signed declaration from the applicant showing that they purchased the property in 2006 and have occupied it since that date as permanent residents of the Isles of Scilly.

The flat is known as Nornour which is located within the detached property Mount Flagon on St Mary's, just between the areas of Rocky Hill, Porthloo and Porthmellon.

Background and Relevant History

App. No.	Description	Decision	Date
Nonour			
P/10/072/ART4	Replacement of mahogany look double glazed UPVC windows and door on West and North elevations with like for like including amended window design to units adjacent to door.	Approved	09/09/2010
Mount Flagon			
P/06/036/CLE	Certificate of Lawfulness for Self Contained flat	Granted	23/06/2006
P0498	construction of prefabricated extension to existing house	Approved	27/05/1964
P1295	The erection of an extension to provide additional living accommodation comprising kitchen, sitting room, dining room, and bathroom at Mount Flagon, Porthloo, St Mary's	REFUSED	05/03/1974
P1317	The erection of an extension comprising bedroom in lieu of existing (now to be converted to office store), sitting room, W.C. and shower room at Mount Flagon Guest House, Porthloo, St Mary's	REFUSED	02/04/1974
P1324	The erection of an extension to provide a bedroom in lieu of an existing one (to be converted to office / store) sitting room, W.C. and shower room, at the property known as Mount Flagon Guest House, Porthloo, St Mary's	REFUSED	28/05/1974
P1486	Living room extension	REFUSED	02/03/1976
P1812	Extensions and alterations together with internal re-arrangements including new staircase to provide improved guest house facilities at Mount Flagon, Porthlow, St Mary's	REFUSED	11/09/1979

P2046	The provision of an extension to the existing kitchen and owners bed sitting room at Mount Flagon Guest House, Porthloo, St Mary's	Approved	10/11/1981
P2360	The change of use of ground floor to 3 self-catering holiday flats at Mount Flagon Guest House, St Mary's	Approved	23/04/1985
P3202	Erection of a replacement garage at Mount Flagon, St Mary's	Approved	24/05/1991
P3684	Lifting of Condition No. 2 of the planning permission in respect of application No. P.2360.	REFUSED	09/08/1994
P3207	Lifting of conditions No.2 of planning permission for application No. P.2360 dated 23rd April 1985.	REFUSED	06/10/1994
P4451	Installation of dormer windows.	Approved	17/09/1998
P4678	Pitched roof accommodation over existing flat and other improvements.	Approved	23/09/1999
P5508	New build - 2 bedroom residential home. [in place of chalet to East of Mount Flagon]	REFUSED	22/07/2004
P/5687	Erection of new holiday dwelling to replace existing holiday chalet.	Approved	22/07/2005

Consultations and Representations

None

Primary Legislation

The Town and Country Planning Act 1990

Section 171 of the Town and Country Planning Act 1990 ("TCPA 1990") provides that a material change of use to use as an independent dwellinghouse (C3) will be immune from enforcement action after a period of 4 years. The breach must be continuous throughout the 4 year period. Section 191(4) of the TCPA 1990 requires that a local planning authority ("LPA") must issue a certificate of lawfulness if it has been provided with information to satisfy it of the lawfulness of the use at the time of the application. The LPA must be satisfied on a balance of probabilities. In any other case, the application must be refused. The LPA should consider whether they have any information to contradict or cast doubt on the information provided by the applicant. If they do not, the certificate should be issued.

Planning Assessment

This is a Certificate of Existing Lawful Use and Development Application (CLEUD) and therefore it is not a matter of considering the planning merits of the scheme, but it is a legal determination based on the facts to establish whether the stated activity is established and lawful by period of time and therefore beyond the scope of enforcement action. The test of the evidence is "on the balance of probabilities" rather than the stricter criminal test of "beyond reasonable doubt".

The burden is on the Applicant to show, on the balance of probabilities, that the breach has been continuous throughout the whole of the relevant period (Swale Borough Council v First Secretary of State and Lee [2005] EWCA Civ 1568).

In outline, in this case, in the application form it is stated that the use of "Nornour" as a single dwelling house began more than four years before the date of the application. The details submitted as part of the application state that the use began in 2006 and that there has been no interruption in its use.

The applicant has provided further details, in addition to that outlined above, in support of the application in order to seek to provide more certainty in relation to the use and occupation of property. This includes a copy of a Council Tax bill specifically for the property Nornour for the periods 2006-2007, 2010-2011, 2012-2013, 2015-2016, 2016-2017, 2018-2019 and 2019-2020. There is also a water bill for the period 2017-2018. There are therefore evidential gaps within this case of permanent and continuous occupation over the last 13 years, specifically nothing to show occupation during the period 2007-2008, 2008-2009, 2009-2010, 2011-2012, 2013-2014, 2014-2015. Although for the last 4 years, up to the date of the application, this evidence does show continuous payment of water and council tax from 2015.

Section 191(4) of the TCPA 1990 requires that a local planning authority (“LPA”) must issue a certificate of lawfulness if it has been provided with information to satisfy it of the lawfulness of the use at the time of the application. The LPA must be satisfied on a balance of probabilities. In any other case, the application must be refused. The LPA should consider whether they have any information to contradict or cast doubt on the information provided by the applicant. If they do not, the certificate should be issued.

Conclusion

National Planning Practice Guidance advice is that in the case of application for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In this case, the applicant’s evidence relies largely on the applicant’s own account of events and use of the property. However, there is some corroborative information relating to the council tax listing and no evidence is available that would cast doubt, contradict or otherwise make the applicant’s version of events less than probable.

While it is perhaps a more marginal case because of the weight of evidence available, it is considered likely that Nornour has been used continuously as a separate dwelling house since 2006 and, therefore, for more than four years.

Taking all of the above into consideration, it is considered that the conversion of the building to a single, separate dwelling has become lawful and immune from enforcement action by virtue of this change of use taking place for a period in excess of four years. Under Section 171B(2) of the Town and Country Planning Act 1990, the Local Planning Authority cannot legally take enforcement action after the end of the period of four years beginning with the date of the breach. Therefore, the certificate sought by the applicant can be granted.

Signed: 	Dated: 24/07/2019	Signed: 	Dated: 24/7/2019
Planning Officer		Senior Manager	