

Council of the Isles of Scilly Delegated Planning Report

Application Number: P/20/089/S106MO

Received on: 27 October 2020

UPRN: 000192001447

Application Expiry date: 22 December 2020

Neighbour expiry date: 20 November 2020

Consultation expiry date:

Site notice posted: 2 November 2020

Site notice expiry: 23 November 2020

Applicant: Mr & Mrs Hitchens

Site Address: Nancherrow
5 Pilots Retreat
Hugh Town
St Mary's
Isles Of Scilly
TR21 0PB

Proposal: Application for the modification of section 106 planning obligation in relation to planning permission P4313 dated 2nd November 1998 to update to most recent obligation wording including mortgagee in possession clause and most recent specific local need criteria.

Application Type: Section 106 Modification

Recommendation

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1. That the application for the modification of section 106 planning obligation in relation to planning permission P4313 dated 2nd November 1998 is **APPROVED** for the reasons set out below.
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Description of site location

1. Nancherrow is a two-storey detached dwelling house located at the north west cul-de-sac end of Pilots Retreat bordering Jacksons Hill. The 2-bedroom dwelling was built in the late 1990's and is on a well screened site surrounded by around 9 other dwellings.
2. The dwelling itself is a dormer style bungalow with a fibre cement tile roof, smooth rendered walls and brown UPVC windows. It is understood that two of the bedrooms are used for bed and breakfast purposes to supplement the householder income. This is considered acceptable as it is at a scale not requiring a material change of use. All documents submitted with this application can be found online in **link (1)** below.

Description of proposal

3. A Section 106 Planning Obligation is currently in place on the dwelling known as Nancherrow. The obligation restricts occupation of the property to qualifying persons only, which in this case is those with a Specific Local Need (SLN) or Key Worker status (KW). The obligation is of an 'older' style which does not include the more recent 'mortgagee-in-possession' clause and restricts occupation to older versions of SLN and KW. These occupation restrictions were revoked in 2018 and superseded by the adoption of the interim Specific Local Need criteria in 2018 and retrospectively applied to any SLN and KW obligations.
4. Via an application made under The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, the current owner/applicant is now seeking to modify the Section 106. This is to bring it up to date with the most recent wording, which has been used since 2012 when the mortgagee-in-possession clause was introduced. This would also include the most up to date definition and criteria for SLN which, in effect, already applies to the property.

Background and Relevant History

5. Whilst there is nothing in the planning history relevant to the determination of this current Section 106 Modification application, for completeness this has been set out below.

6. P4313 – Condition approval of planning permission for the erection of a dwelling. Granted on 13th January 1998.
7. P5300 - Conditional permission granted for the erection of conservatory porch granted on 16th February 2006.

Consultations and Representations

8. A site notice has been on display in the vicinity of the application site for a period of 21 days. The nine adjoining neighbouring properties have been consulted. No letters of representation have been received.
9. No statutory consultations were required.

Primary Legislation and Planning Policy

Primary Legislation

The Town and Country Planning Act 1990

10. Section 106 of the Town and Country Planning Act enables any person interested in land in the Local Authority area to enter into an agreement or obligation (enforceable by injunction, against any person entering into the obligation and against any person deriving title from that person) restricting the development or use of the land in any specified way. The Council of the Isles of Scilly only use Section 106 obligations to require dwellings permitted, to be occupied in accordance with local need qualifying criteria.
11. Section 106A allows, on agreement between the parties by and against which the obligation is enforceable, for the obligation to be modified or discharged.

Planning Policy

National Planning Policy Framework (NPPF) 2019

12. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

Isles of Scilly Local Plan 2005

13. Policy 3 relates to housing and requires new housing to meet the housing needs of the islands to promote sustainable communities with no general open market housing being permitted. Development proposals, which result in an inappropriate mix of dwelling sizes, will not be permitted. To ensure that suitable housing is available to meet the long term needs of the community, residential development will only be permitted where: it is required to meet an identified and recognised local need or to accommodate a key worker whose needs cannot be met by the existing housing stock; or for the provision of staff accommodation for businesses on or near the premises where possible and where it can be demonstrated that there is no other accommodation available and it is not possible to recruit staff already housed on the islands. A **link (2)** to the Isles of Scilly Local Plan 2005 is set out below.

Submission Draft Isles of Scilly Local Plan 2015-2030

14. The emerging policies within the consultation draft of the Local Plan set out a clear range of policies designed to ensure that new housing makes a positive contribution to addressing the local housing needs of present and future generations. A **link (3)** to the draft Isles of Scilly Local Plan 2015-2030, is set out below.
15. Policy LC1 (Isles of Scilly Housing Strategy to 2030): requires new development to contribute towards the creation of a sustainable, balanced and inclusive island community by making a positive contribution to addressing the local housing needs of present and future generations through the provision of appropriate staff accommodation to support the continuity and viability of businesses and organisations.
16. Policy LC2 (Qualifying for Affordable Homes): requires that homes delivered by registered providers (under policy LC1) or as custom/self-build homes on windfall sites are only occupied by persons meeting its criteria (specific local need).
17. Policy LC3 (creating a balanced housing stock): requires all new residential developments to contribute towards the creation of sustainable, balance and inclusive island communities by ensuring an appropriate mix of dwelling types, sizes and tenures, taking account of existing and future housing needs of the community, imbalances in the housing stock and viability and

market considerations. Specifically, part (2) of this policy requires all new homes to be constructed in accordance with the Nationally Described Space Standards.

18. As of 30th September 2019, the draft Local Plan has been submitted to the Secretary of State. On the 21st to the 23rd January 2020 the draft plan was subject to an Examination in Public (EiP) and as such the policies it contains can be given greater weight in decision making. The draft policies of the new local plan will now be given primary consideration.
19. Paragraph 48 of the NPPF states that local planning authorities may give weight to relevant policies in emerging plans according to:
 - a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
 - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

Planning Assessment

20. As no physical development is proposed the main planning issues for consideration relate to whether the proposed modification of the S106 planning obligation is acceptable against the current and emerging Isles of Scilly Local Plan policies.
21. Planning permission was granted in 1998 for the erection of a dwelling for specific local need occupancy. In accordance with planning policy at that time, the granting of this planning permission was subject to the signing of a Section 106 planning obligation restricting the occupation of the property to qualifying persons only. This is still the case in accordance with policy 3 of the Isles of Scilly Local Plan and policy LC2 of the Submission Draft Isles of Scilly Local Plan 2015-2030.
22. Following a review of the standard draft versions of Section 106 Legal Agreements in 2012, to make them simpler, more up to date and

acceptable to mortgage lenders, Members resolved at the Planning & Development Committee in September 2012 that the re-worded agreements were to be brought into use. This current application is to update the agreement to the re-worded version and include the most recent specific local need criteria.

23. At the Planning & Development Committee meeting in January 2013, Members resolved that decisions relating to applications and requests to modify Legal Agreements to the recently approved versions be delegated to the Chief Planning and Development Officer (as of February 2020 this is now delegated to the Senior Officer, Planning and Development Management), in consultation with the Chairman and Vice-Chairman of the Planning and Development Committee (now Lead Member for Planning) (minute P&D 11/13). Where amendments to existing, legal agreements seek to include additional parameters such as allowing additional forms of occupation that are not in accordance with policy, then the decision to amend the S106 will be determined by members of the Planning and Development Committee (Full Council). This current application does not seek to introduce additional parameters.
24. Although the application seeks to modify the qualifying criteria to the most up to date version for Specific Local Need (as contained in policy LC2 of the Submission Draft Isles of Scilly Local Plan), this criterion does already apply to the dwelling. The application is not seeking to vary or add anything beyond the current criteria, other than the mortgagee-in-possession clause.

Conclusion

25. In light of the above assessment, it is considered that the proposal is acceptable as it isn't applying to remove the planning obligation, simply update it to the most recent version which would be put on any new dwelling being created today. It therefore ensures that the dwelling originally created still remains available to meet the residential needs of the community and prevents the use of the property as a second home or holiday let.

Links

1. The application details submitted: <https://www.scilly.gov.uk/planning-application/planning-application-p20089>

2. Isles of Scilly Local Plan 2005:
<https://www.scilly.gov.uk/sites/default/files/document/planning/Isles%20of%20Scilly%20Local%20Plan.pdf>
3. Modified Submission Draft Isles of Scilly Local Plan 2015-2030:
<https://www.scilly.gov.uk/sites/default/files/planning-apps/TRACKED%20CHANGES%2025.09.pdf>
4. Updated Planning Protocol 2021:
<https://www.scilly.gov.uk/sites/default/files/planning-apps/Planning%20Protocol%202021%20Update.pdf>

Report Author

Print Name: Andrew King

Job Title: Officer, Planning and Development Management

Signed:



24/02/2021

Report Sign-Off

Print Name: Lisa Walton

Job Title: Senior Officer, Planning and Development Management

Signed:



24/02/2021

Duly Authorised Officer with Delegated Authority to determine Planning Applications on behalf of the Council of the Isles of Scilly

Monitoring – Case Officer – Don't forget to complete and enter into the Monitoring Table: Y:\Infrastructure & Planning\Planning\Monitoring\2015-2030 Local Plan Monitoring

