



COUNCIL OF THE ISLES OF SCILLY

Planning Department

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2nd February 2021

Dear Sir/Madam,

PLANNING REFERENCE: P/21/002/OUT
DEVELOPMENT PROPOSED: Outline planning application for 13 detached and semi-detached self-build homes with appearance as a reserved matter (Major Development)
LOCATION: Land to North of Ennor Farm, Old Town Lane, Old Town, St Mary's, Isles of Scilly,

Further to the submission of the above application I am writing to advise you of a number of initial issues that are coming out of my consideration of the submitted details. Firstly I can advise you that the public consultation concludes tomorrow (4th February 2021) and all representations and consultation responses received to date are available online. I would anticipate some late comments to come through and I will highlight any issues, as necessary, in due course. In the first instance, however, and due to the timescales I would draw your attention to the issues raised below:

- Is it possible to review the 'plot passports' or 'design codes' referred to in the Documents?
- In relation to Heritage: please note Historic England's consultation response which raises concerns over the impact arising as a result of the proposed site layout. The response suggests amendments are made to better reflect the layout as identified on page 12 of the Design and Access Statement.
- In relation to archaeology: a recommendation for further evaluation of the site, pre-determination, and its potential historic resource has been identified as necessary. Evaluation trenching over a selection of the identified anomalies and blank areas should be undertaken in accordance with a trench layout plan submitted and approved by the LPA. I would like to understand your response to this point and whether this can be undertaken?
- In relation to access for fire service vehicles: Access and Facilities for the Fire Service as detailed in B5 AD B Volume 1 will be required. You will be required to provide

reasonable facilities for the Fire Service. In most circumstances this will mean providing vehicular access for fire appliances. Are you able to show this on the layout plan?

- In relation to waste: the two options as set out in the Infrastructure consultation response. Are you able to confirm which of the two options would likely be taken forward for the effectiveness of securing waste and efficiency of waste collection?
- In relation to crime: the issues raised in relation to partially covered parking spaces, questions about street lighting and boundary hedges.
- In relation to flood risk mitigation measures: the comments that the finished floor levels be set no lower than 5m above Ordnance Datum. I note from the FRA and Drainage Strategy that this is recommended. It is also recommended that the different SuDS components be in place prior to construction and I wonder if the applicant is able to confirm that will be the case and what mechanisms would be in place to ensure long term maintenance is carried out.
- In relation to the adoption of greenspace and the road surfaces and pavements. Is it the applicant's intention that the Council adopt the road as part of the highway and would the greenspace and roads be maintained by the Council? The Transport Statement references SPG Travel Plan guidance for development in Cornwall. Its not clear why this is referenced as the Council of the Isles of Scilly have not adopted this as part of the 2005 Local Plan or the emerging 2015-2030 Local Plan. Reference is made in the Transport Statement to the Cornwall Council Structure Plan and the car parking standards it advocates, when there are no local car parking standards as part of the adopted or emerging local plans. Is this being provided as a guide to demonstrate the proposed level of off-street car parking is on a par with standards elsewhere?
- In relation to considering the potential conditions that would be connected to the determination at the outline stage, it would be useful to understand how the applicant intends to address the wider issues, that could not be attached to a condition of a plot at the Reserved Matter stage. For example conditioning the details such as the position and number of EV chargers, which is referenced in the Transport Statement (5.9) or the site-wide landscaping (stone bank hedging for example). The Residential Travel Plan seeks to secure a travel plan through contributions secured through a S106 legal agreement which would be subsequently marketed by newsletter and emails as well as to prospective purchasers through the sales staff. The monitoring, on a bi-annual basis through questionnaires once the development is 80% occupied. Can I ascertain whether the applicant is intending the Council to produce a package of measures, as set out, to ensure the travel plan targets are met, and are there long-term plans to manage this?

I would welcome any responses you wish to make in relation to these issues, ahead of the committee report, which I will start to draft shortly. I have not had a consultation response from SWW, the Lead Local Flood Authority or the AONB Partnership, but I will highlight any issues with you should they arise.

In relation to the affordability statement, I have been considering the approach put forward, which includes the use of a 'principal residence' condition, in place of our standard 'in-perpetuity' restrictions: a Section 106 Planning Obligation. I note the rationale for this approach

is on the basis of the Council (as the LPA) cannot enter into a legal agreement with itself (as the applicant).

We can however consider a recommendation to require plot owners, at the Reserved Matter Stage, to enter into a S106 legal agreement that would require occupation to qualifying persons only. In addition to this there are also options for 'point of sale covenants', so there are options outside of completely shifting towards reliance on a planning condition.

My concern is that solicitors wouldn't flag up a restrictive occupancy planning condition, whereas they would always flag up a legal agreement. Legal agreements are therefore less likely to be flouted (intentionally or unintentionally) by the owners/prospective purchasers, through onward sale, and are less straightforward to challenge and lift. Whereas a planning condition is much more straightforward to challenge and potentially lifted, particularly if there is any chink in consistency of future enforcement, or land/housing supply issues. This raises future enforcement resources to ensure we're able to fully keep on top of the potential breach of condition, which hasn't been an issue for monitoring the effectiveness of legal agreements. Once one property, with a 'principal residence' planning condition on, falls into non-compliance (and is either successfully challenged or just not enforced) then there is a danger all would swiftly follow.

I'm aware that any restrictive occupancy clause/agreement/restriction/condition presents difficulties in obtaining a mortgage, so having a condition that delivers the 'same' intended level of control over occupation, would still result in difficulties with finance raising. So shifting away from a S106 to a planning condition would not address the financing issue. Self-builds are generally less straightforward in terms of financing, particularly so with any kind of occupancy restriction.

It is critical that all 'affordable housing' that comes forward is retained for that purpose and planning policy 3 (of the adopted Local Plan) policy LC1 (of the emerging Local Plan) are both intended to anchor in the 'in-perpetuity' community benefit as a permanent foundation. There are no breaches in occupancy of S106 homes across the islands. We have never had a single S106 challenged or lifted and this approach is therefore considered to be the correct approach for this site. Whilst the use of a legal agreement has shifted towards planning conditions on the mainland, I'm not convinced that the circumstances of the islands are comparable. Indeed I also think it could be too early to gauge the impact of any unintended consequences of shifting away from a legal agreement, to be fully comforted by the approach suggested.

The shift completely away from a S106 will be on the radar of many islanders who currently occupy/own a property with an existing S106 attached to it, creating a perceived parity issue for the Council. So whilst the defence is being made that we cannot enter into a legal agreement with ourselves, there is nothing to prevent a S106 at the reserved matters stage, with the owner of the plot. I would very much like to see if the applicant can respond to these points to inform the committee report. I will be intending to explain the alternative approaches available for the Council in my report, in the interests of informing Members decision making on this particular point. It is therefore necessary for me to understand any issues to the project that a recommendation for S106s being required at the reserved matters stage, would present.

I hope the issues expressed above are clear and I will provide any further updates as they arise, should they require further input. I will await your response on this matter before finalising my report.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Walton', written in a cursive style.

Lisa Walton
Senior Officer: Planning and Development Management