

# Council of the Isles of Scilly

## Delegated Planning Report

### Certificate of Lawful Existing Use

**Application Number:** P/21/031/CLE  
**Received on:** 7 April 2021  
**UPRN:** 000192001476  
**Application Expiry date:** 13 July 2021  
**Neighbour expiry date:** 11 June 2021  
**Site notice posted:** 24 May 2021  
**Site notice expiry:** 14 June 2021

**Applicant:** Luke Thompson  
**Site Address:** 6 Bay View Terrace  
Telegraph Road  
Porth Mellon  
St Mary's  
Isles of Scilly  
TR21 0NE  
**Proposal:** Application for a Certificate of Lawful Use of the dwelling  
(Use Class C3) as two separate dwellings flats.  
**Application Type:** Certificate of Lawfulness - Existing

#### **Recommendation:**

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That a certificate is MODIFIED and issued on that basis.

It is considered that the change of use of the dwelling to one dwelling with a self-contained but short-let unit of ancillary holiday let accommodation on the first floor, has become lawful and immune from enforcement action by virtue of this change of use taking place for a period in excess of 4 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, as modified by the Council, can be granted.

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## Reason for Delegated Decision

No Councillor has requested that the application come to the Full Council. The decision defaults to the level of Delegated:

- Not a Councillor ✓
- Not a Senior Officer (or Officer with influence over planning Decisions) ✓
- No relation to a Councillor/Officer ✓
- Not Major ✓
- Not Council's own application ✓
- Not a departure from the Development Plan ✓
- Not Called in ✓

Chairman/Vice Chairman or Lead Member for Planning Agreed

Vice-Chairman of the Council: Fran Grottick     Date: 15/07/2021

## Site Description and Proposed Development

This is an application for a certificate of lawful use for the splitting of number 6 Bay View Terrace (originally a single terraced dwelling) into 2 separate flats. The property is located on the east side of Hugh Town at Porthmellon towards the north coast at Porthmellon beach. Number 6 is a white rendered end-terraced property over two floors of accommodation. To the front a vehicular access which separates the front garden from the dwelling. To the rear of the property is a relatively modest private rear yard with a rear vehicular access beyond.

Bay View Terraced is a relatively old row of properties, appearing on Ordnance Survey Maps of St Mary's in 1908 (whereas it is not shown as built at the time of the 1890 OS map) and as such it would appear that the row was constructed at some point during the turn of the century on the site of an old quarry and immediately to the south of Harry's Walls.

A certificate has been submitted to demonstrate the dwelling has been operating as two dwellings for a continuous period of more than 10 years, and as such is no longer enforceable under the Town and Country Planning Act.

## Consultations and Publicity

The application has had a site notice on display for 21 days (24/05/2021 – 14/06/2021). The application appeared on the weekly list on 24<sup>th</sup> May 2021. Due to the nature of the proposal no external consultations are required.

## Representations from Residents:

Neighbouring properties written to directly:

- **The Annexe, 5 Bay View Terrace**
- **6B Bay View Terrace**

- **Chalet, 6 Bay View Terrace**

[0] letters of objection have been received and include the following points:

[0] letters of support have been received and include the following points:

[0] letters of representation have been received.

#### Relevant Planning History:

Ref	Description	Decision	Date Determined
P/19/015/CLE	Application for a Certificate of Lawful Use of the building as a dwelling house (Use Class C3).	Granted	21/06/2019

#### Supporting Information

**4 Statutory Declarations** (signed and witnessed) stating that the property was converted to two separate flats, with one being used for holiday let purposes in the late 1980s. Although these are signed and witnessed, they are not supported by a map, just the address of the property.

**1 Supporting Email** from a further person, also confirming their knowledge of the use of the property. Although this is not in a statutory declaration format.

**Council Tax banding** from the District Valuation Website for the properties dating back to 1993 for both flats.

**The Applicants supporting statement** the applicant asserts that the first floor was initially converted into a self-contained flat holiday let use (1988). Then from 2007 the applicants late father occupied the flat until he emigrated and it was again let as a holiday until 2012. The applicant then moved into the property from the chalet at the rear, and continued to let out the first floor as holiday makers with some long term rentals and latterly to key workers.

**Analysis:** This is a Certificate of Existing Lawful Use application for a change of use 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, on the application form it is stated that the use of “6 Bay View Terrace” was split into two flats more than 10 years before the date of the application. The details submitted as part of the application state that the applicant’s grandparents converted the original property in 1988. The supporting statutory declarations all support this statement, that the house was converted and used for letting out to holiday makers.

The applicant has not provided any Council Tax or other utility Bills in support of the payment of Council Tax and utilities (only that they were banded separately). As noted above, they have submitted a number sworn declarations.

Based on the statutory declarations, which all provide the same recollection of facts, to support the period of time in which the property was split into 2 flats, it is clear that both flats are registered separately for Council Tax purposes, but there is no evidence that the two properties pay separately for utilities including: TV licenses, phone lines or energy provision. It would appear that there are two separately occupiable units of accommodation but whilst one is the primary unit, lived in by the applicant, the second unit has been let out for short-let holiday purposes. There is no clear evidence that this has been continuously occupied as a permanent unit of accommodation. There is no separate Royal Mail address to show this property has two addresses, which supports the use of one of the flats as a seasonal holiday let, rather than a permanent home

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.

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.


In this case, the applicant’s evidence clearly supports the splitting of the original house into two self-contained flats, but no evidence has been provided to demonstrate both have been continuously occupied for a period of 4 years on a permanent basis. It therefore has to be concluded that the lawful use of this property is one permanently occupiable flat with one ancillary short-let holiday accommodation flat and a certificate to that effect can be granted based on the evidence provided.

Section 191 (4) advises that 'If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application'.

**EIA:** Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

<b>Print Name:</b>	Lisa Walton	15/07/2021
<b>Job Title:</b>	Chief Planning Officer	
<b>Signed:</b>		
<b>Authorised Officer with Delegated Authority to determine Planning Applications</b>		