

# Council of the Isles of Scilly

## Delegated Planning Report

### Certificate of Lawful Use Application

**Application Number:** P/21/043/CLE

**Received on:** 27 May 2021

**UPRN:** 000192000773

**Application Expiry date:** 22 July 2021

**Neighbour expiry date:** 18<sup>th</sup> June 2021

**Site notice posted:** 28 May 2021

**Site notice expiry:** 18 June 2021

**Applicant:** Mr C Green

**Site Address:** Freesia  
3 The Parade  
Hugh Town  
St Mary's  
Isles of Scilly  
TR21 0LP

**Proposal:** Application for a Certificate of Lawful Use of the dwelling (Use Class C3) as a guest house (Use Class C1).

**Application Type:** Certificate of Lawfulness - Existing

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That a certificate is GRANTED

1. It is considered that the use of the dwelling to a unit of Guesthouse accommodation with a self-contained owners flat, has become lawful and is immune from enforcement action by virtue of this change of use taking place for a period in excess of 10 years. Under Section 171B(2) of the Town and Country Planning Act 1990, the Local Planning Authority cannot now legally take enforcement action after the end of the period of ten years beginning with the date of the breach. Therefore, the certificate sought by the applicant can be granted.

## 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 ✓

### Lead Member Planning Agreed

Name: Dan Marcus

Date: 25/06/20021

## Site Description and Proposed Development

A certificate has been submitted to demonstrate the dwelling has been operating as a Guesthouse since before June 2010. For a period in excess of 10 years, and as such is no longer enforceable under the Town and Country Planning Act.

Freesia, at number 3 The Parade, is a mid-terrace property that is a Grade II Listed Building under the name 'Stanmore House'. The property was first added the National Heritage List for England (NHLE) in 1975. It is a large two storey granite building that comprises three bays with a central door on the front elevation and two dormer windows to provide accommodation in the roofspace. The property is a double pile construction with additional extension to the rear. The list entry describes the property as:

*House. Early C19. Coursed granite blocks; late C20 interlocking tiles to half-hipped roof; rendered end stack. Double-depth plan with central entrance hall. 2 storeys; 3-window first-floor range. Semi-circular arch with voussiors over mid C20 door with plain fanlight. Granite lintels over 8/8-pane sashes. Curved corner to left (west). Mid C20 rear addition. Interior not inspected.*

The property is centrally located in Hugh Town, it is listed for its group value as a period property that relates well to a high proportion of buildings from this period in the vicinity. The property is considered to be an important building in terms of the wider character of the conservation area and retain a traditional appearance.

### Consultations and Publicity

The application has had a site notice on display for 21 days (28/05/2021 – 18/06/2021). The application appeared on the weekly list on 1<sup>st</sup> June 2021. Due to the nature of the proposal no external consultations are required.

### Representations from Residents:

Neighbouring properties written to directly:

- **4 The Parade**
- **Bourdeaux Shop, 2 The Parade**
- **Thoroughfare Cottage, The Thoroughfare**

[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
P1896	The installation of ventilated roof lights to attic on front elevation of roof of Stanmore House, The Parade, St Mary's	Permitted	1980
P5198	General improvements and renovations.	Permitted	2002
P5199	General improvements and renovations.	Permitted	2002
P5664	Installation of new hardwood front door.	Permitted	2005
P/06/090	Internal Alterations	Permitted	2006

#### Supporting Information

**Business Rates** – Email Confirmation from CIOS: Rateable Value for Business Rates 2010/11 through to 2017/18

**Non Domestic Rates:** Bill for period 2020/21

**Non Domestic Rates:** Bill for period 2019/20

**Non Domestic Rates:** Bill for period 2018/19

**Non Domestic Rates:** Bill for period 2017/18

**Estate Agency Listing:** References owners refurbishment of the property from 2002 and references Four Star Silver Aware by Quality in Tourism

**Trip Advisor Reviews:** 2010-2012

**Availability Emails:** Jan 2010

**Visitor Book Entries:** 2008; 2014; 2019

**Supporting Statement:** Confirms owners have runs a guesthouse since 2003 without interruption or discontinuance

**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 “Freesia” as guesthouse began more than 10 years before the date of the application. The details submitted as part of the application state that the use began in 2003, following purchase of the property in 2002 and that there has been no interruption in its use.

The applicant has provided details of Business Rates from 2010. They have not submitted a sworn declaration but have sought to evidence the trip advisor reviews with a snapshot of reviews from 2010-2012 and snapshots of visitors from the Visitor Book, over the period up to 2019. The evidence is based on bookings and Trip Advisor reviews supported by the applicant’s declaration of truth.

Based on the evidence submitted it would appear that 5 rooms have been used as guest bedrooms with a living room and kitchen, separate to the owners accommodation which comprises a living room, bedroom, kitchen and en-suite shower room. There is clear evidence submitted to demonstrate that Freesia has continuously been used as a guesthouse for a period of 10 years. Whilst it is likely that the guesthouse was not particularly active during 2020 (due to the covid-19 pandemic), it appears to have commenced as a five bedroom guesthouse from 2003, which evidence provided to demonstrate this use from 2010 up to 2020.

There are some gaps within the evidence provided which could suggest periods where the property was not used as a guesthouse. There is, however, clear supporting evidence of business rates commensurate with the use of this property as a business and not a private C3 dwelling.

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 does demonstrate sufficiently that the property has been used as a 5 bedroom guesthouse from 2010. Although it is likely that the property has not been let out to guests during the winter, this is likely to be reflective of most guesthouses on the islands, on the basis of the inactive season for visitors from November through to February.

Taking all of the above into consideration, it is considered that the use of the dwelling as a 5-bedroom guesthouse is now lawful and immune from enforcement action by virtue of this change of use taking place for more than 10 years. Under Section 171B(2) of the


Town and Country Planning Act 1990, the Local Planning Authority can no longer legally take enforcement action against the use of this property as a guesthouse. Therefore, the certificate sought by the applicant must be approved.

**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.

Section 171 of the Town and Country Planning Act 1990 ("TCPA 1990") provides that a material change of use of a dwellinghouse (C3) to a guesthouse (C4) will be immune from enforcement action after a period of 10 years. The breach must be continuous throughout the 10 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.

#### 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	27/07/2021
<b>Job Title:</b>	Chief Planning Officer	
<b>Signed:</b>		
<b>Authorised Officer with Delegated Authority to determine Planning Applications</b>		