

CIOS Ref: P/21/045/COU

PINS Ref: APP/Z0835/W/21/3287898

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (APPEALS) (INFORMAL HEARINGS) REGULATIONS
PLANNING APPEAL BY:
MR TOBY TOBIN-DOUGIN**

RE:

APPEAL AGAINST A REFUSAL OF PLANNING PERMISSION FOR RETROSPECTIVE APPLICATION FOR THE CHANGE OF USE OF BARN TO SEASONAL AGRICULTURAL WORKERS ACCOMMODATION INCLUDING THE ERECTION OF A WC/SOLAR SHOWER BLOCK AND CONNECTED DECKING FOR USE BY OCCUPANTS.

AT:

LAND AT LAWRENCE'S BROW
ST MARTINS
ISLES OF SCILLY

LOCAL AUTHORITY REFERENCE:

P/20/045/COU

PINS REFERENCE NUMBER:

APP/Z0835/W/21/3287898

**THE COUNCIL OF THE ISLES OF SCILLY
RESPONSE TO THE APPELLANTS' APPLICATION
FOR COSTS**

The Council refutes the appellants' claim for costs. The refusal of planning permission was both appropriate and reasonable and in accordance with the provisions of the Development Plan and other material considerations relevant to the application for reasons set out in the decision notice, which are considered to be sufficiently precise and specific.

Planning observations in response to the claim of Costs

The Local Planning Authority contends it has acted both reasonably and consistently in determining the planning application relating to the retrospective conversion of an agricultural building on land at Lawrence's Brow contrary to the claims as set out in the appellants application for costs.

In response to the Application for costs and the specific points raised:

Appellants Comments	LPA Response
a) Firstly, the LPA in their latest statement of common ground state that they Agree that this application site is "remote"	The LPA maintain that the site is 'relatively' remote. St Martins is split into distinct settlement areas, Lower Town, over 1000m to the north west, Middle town over 670m to the north west in the central area and Higher Town 250m to the south east. There are odd buildings dotted around outside the towns but the site lies along the south coast of the island for which there is no established pattern of development to which this site would relate.
b) The fact that the council make the statement that the application is "remote" then state that they "Agree", implies that I have made the statement myself that this site is remote.	The Council agree with the statement and invited the appellant to agree or disagree, as a basis to assist the Inspector in setting the agenda.
c) They seem to be asking the questions then agreeing to the questions they put to themselves.	
d) I have never stated, nor any resident local person would, that this is remote structure/site.	
e) I have attached a plan of the surrounding area, highlighting the plethora of residential housing, school buildings, agricultural business premises, and holiday let businesses that entirely surround this site.	
f) The council's position here is a deliberate mis representation of fact.	It is the Council's view
g) These properties exist to this day. Eleven are marked on the plan, all within 300 metres of my application.	

<p>h) The LPA themselves gave permissions to all of the developments marked on the plan, with the most recent being the Holiday Yurt business, owned by former Councillor Jonathan Smith, a work colleague of the past four years of the Local planning officer. Professionally, she should/would be aware of this recently approved holiday business, as she is also aware of the seven other Shepherds hut holiday and workers accommodations recently granted, along with the council's own statement of a Critical Housing situation.</p>	<p>The LPA are aware of the seasonal yurt. A yurt is not a permanent structure and not directly comparable.</p> <p>The application for a Yurt, on land close to the application site, was secured before the current planning officer took up employment with the Council of the Isles of Scilly. The applicant in that case was also not a Councillor at the time of this planning application.</p> <p>The applicant had not been a working colleague of the Planning Officer. He was a Councillor between 2017 and 2021, when he stood down. The planning permission was secured in 2013. The current planning officer took up post in 2014.</p> <p>The planning officer was aware of this permission.</p>
<p>i) In somewhat contradiction to the calamitous confusion of the council in this matter, is when the planning officer came for a pre hearing site visit to my application. I received a call from her, from some four hundred metres away, apparently lost, unable to find the site. I had to go to collect her and walk her to the site, not remote, but most certainly well concealed from sight.</p>	<p>The Planning Officer arranged a site visit prior to the application being valid. It was not a pre hearing site visit.</p> <p>The location of the site was known but I was asked to meet the applicant along the road. I had never (to my knowledge) met the applicant and did not see any person along the road waiting for me with a dog (as he advised). I telephoned the applicant as I had been unable to find him, along the road, not the site.</p>
<p>j) This shows the LPA's complete lack of knowledge of this applications position, its relationship to its direct neighbouring environment, its place within the Island landscape in entirety, or any possibly stated effect that it has on any area of this landscape, or any influence or reflection in the community. This application is all but invisible from any position outside of the stated Holding boundary.</p>	<p>The Planning Officer has visited St Martins many times and is aware of the position of buildings and where these sit within the landscape.</p>
<p>k) The decking mentioned, approximately 6m x 3.5m IS TOTALLY INVISIBLE FROM ANYWHERE, EXCEPT FROM INSIDE THE MAIN FIELD QUESTION. The wooden garden shed, 8ft x 6ft, which includes a solar shower and compost toilet is only partially visible</p>	<p>While the site may be partially screened in the wider landscape, in terms of landscape character this is an area where built development is not normally accommodated. That absence of development forms part of the character of the area of this part of the AONB and the</p>

<p>due to complimentary landscape planting (see picture attached)</p>	<p>Conservation Area. It is important to differentiate between landscape character and visual impact. In this case, unjustified development in this location is considered to harm landscape character, detract from the character and appearance of the Conservation Area and the AONB.</p>
<p>l) The concrete building itself had been previously used as accommodation for agricultural workers, since its erection for that use in 1937. It has never been connected to any utilities, indeed to this day it is completely self-sufficient, so therefore does not have a paper-trail of utility bills to show this.</p>	<p>The applicant was advised, prior to formally applying for retrospective planning permission, that he could progress a Certificate of Lawful Use of the building, if he considered there was sufficient evidence of its habitable condition. He was advised that in 2017 he had provided the LPA with photographs of the agricultural building (P/17/091) where he described it as being used for agricultural storage.</p>
<p>m) This is commonly accepted local historical knowledge.</p>	<p>The application (P/21/045/COU) came out of an enforcement complaint in April 2021 specifically about the use of the agricultural building. The applicant converted the building, in the knowledge that a similar use had previously been found unacceptable. Previously he had made a planning application to site a yurt on the land that included a conversion of the agricultural building as an amenity block in connection with the yurt. The application P/17/091 was based around the shortage of tourism accommodation and was primarily to support his B&W photographic project. The existing concrete barn being described, at that time, as 'in need of vital repair and maintenance to prevent it from deteriorating further and eventually failing'. In 2017 it was described as being used as a store for feed and equipment. A number of objections were raised from St Martins residents primarily on the basis of the lack of screening of the site, highly visible from open pathways. There is no reference to the 'inscribed date of 1937' in the 2017 application, the only reference to the age of the building was that it predates 1947.</p>
<p>n) The site is accessible from all side, by all vehicles and pedestrian access, it is not in a flood risk area.</p>	<p>The proposal was not refused for being inaccessible or in an area at risk of flooding. At the point of considering the application there was an emerging understanding of the areas intended to be identified as at risk of flooding in the Environment Agency's Flood Maps (due for publication this year) so a consultation was made with the EA to ensure the site was acceptable as a change</p>

	of use to a more vulnerable residential use.
o) It is my understanding that the role of the Planning authority is to allow and enable developments which “Benefit the Community and Economy”	The role of the Local Planning Authority is to support sustainable development (in the holistic sense) balancing this with the need for the development, particularly in a protected landscape, and whether the proposal is likely to give rise to any harm or conflict with the wider remit of protecting the islands from harmful and unnecessary development.
p) The LPA’s position that this development is firstly remote, and secondly is a generic term of being “Harmful” is a direct contradiction of its role in the community.	Policy OE1 seeks to protect the undeveloped coastline as an AONB and heritage coast, it is possible to justify development in such areas but it was deemed harmful because it wasn’t adequately justified.
q) The LPA sets out zero qualification, delineation, interpretation or justification of the term “Harm” to set its case out ?	The growing of crops on the land does not require planning permission. The applicants business needs, to convert an agricultural building to an agricultural workers dwelling, however seasonal and off-grid, were based on the needs of a business that were not clearly set out, resulting in the domestication of the site.
r) Is it an opposition to the visual aspect of this application, for it cannot be hardly seen?	The harm is a conflict with the policy aims of protecting the undeveloped landscape and the domestication of agricultural land through the installation of additional structures.
s) Is it because of the materials used in the erection of a wooden garden shed, or the laying of wooden decking?	
t) Is it because of the consequence of allowing this application, will have detrimental effects on the Community ?	
u) I would invite the LPA to accurately define how this application is harmful	
v) The prevention of this application is in itself “Harmful” to the community in which I work, and live, its denial is damaging to the economy of that community and to the Landscape upon which that community depends “For its civilised existence”.	There is no evidence submitted to demonstrate the refusal has been or would be harmful to the community. Crops can still continue to be grown on St Martins and supplied to local businesses. The applicant has a property at Higher Town, within walking distance of the site.
w) The LPA claim that a case has not been demonstrated to justify the need of agricultural help.	All documents provided to the LPA for consideration, were considered and made publicly available. The business plan did not, in the view of the LPA, set out a clear demonstration of a need to employ staff.
x) A business plan was sent to the LPA and all Members, and some Officers prior to the planning meeting regarding the history of the Organic vegetable business. A plan of proposed extension and expansion of that business was	Information on a proposed new business ‘fernfuel ltd’ was sent to the LPA with a note to say it was confidential. The applicant was advised that we cannot take into account any information about a new

<p>sent to all Members, some officers and the LPA. A paper on Fernfuel Ltd was sent to all Members, some Officers and the LPA , again prior to the planning meeting.</p>	<p>business venture if that business case was not publicly available. We advised the applicant that he could submit a clear business plan of 'fernfuel' for which we could redact anything commercially sensitive or any financial information.</p>
<p>y) I discussed The aims and objectives, in great detail, with the CEO of the Isles of Scilly Council, the Chair of the Isles of Scilly Council and one Member, long before the day of the planning meeting.</p>	<p>Councillors were advised that they can only assess the planning application and not private information that only they have been made aware of. Councillors are not permitted to pre-determine a planning application.</p>
<p>z) I fully expected the application to be passed Unanimously, and was extremely surprised and shocked when the application was refused. To me it was beyond belief, and to all residents of St Martins when told, given the precedents of applications approved in recent times.</p>	<p>It is noted that no statements were submitted to the Local Planning Authority in support of the proposal, either independently or from lcustomers who purchase produce from the applicant. This is the applicant's opinion.</p>
<p>aa) The LPA should seek to approve applications which are beneficial, yet by a singular sweeping statement, claim that this very modest application is "harmful". I will expand later on my distaste and anger, at being labelled as harmful to the community, in which I have lived in for most of my life, in harmony.</p>	
<p>bb) For the moment , I will concentrate on the opposite of "harmful", which is the term "beneficial", which aptly applies to my application, to state my case here.</p>	

<p>Appellants Comments on THE BENEFITS TO SUPPORTING THIS APPLICATION:</p>	<p>LPA Comments</p>
<p>1. This will provide support for an existing Organic Vegetable and Fruit growing business which has been patronised for nearly thirty years, by residents and returning holidaymakers, who all rely on this Organic local bounty, with zero food miles, grown sympathetically on their doorstep. This, along with the other local agricultural growers, provide for a huge gap in the market for produce which cannot be imported, or is imported from vast distances at considerable cost to</p>	<p>The refusal of the planning application does not prevent the continued use of the land to grow organic vegetables. The LPA continue to be supportive of local business needs. The business plan submitted to the LPA to consider was not deemed sufficiently thought through in terms of staffing needs:</p> <ul style="list-style-type: none"> • No supporting statements of existing customers or future supply demands • No details previous employees' accommodation, • No list of alternative accommodation considered and why this is not

<p>quality and the effects of fuel miles on the wider environment. A business plan for the vegetable business, along with proposed plans for expansion on this site, given agricultural workers help, was sent to the LPA prior to application, these are also attached above.</p>	<p>available</p> <ul style="list-style-type: none"> • Basic information such as business rates/council tax and how that impacts the business, • No lists of expenses, turnover, costs (profit/loss) and how this supports the employment of staff. <p>New businesses need to be supported by sufficient evidence to demonstrate that it is viable for a five year period.</p>
<p>2. This will also provide secure accommodation for a new renewable, fossil-free, fuel company which as mentioned before in detail, will improve Biodiversity, the landscape, the economy, employment, lower the carbon footprint here, and later on the Mainland, and visually improve the local vista. A paper on this renewable fuel business Fernfuel Ltd was also sent to the LPA officer, and all Council members (including the CEO) prior to this application.</p>	<p>Details of Fernfuel were limited and identified as confidential. As with the organic vegetable business there was no detailed information about the process, equipment, storage needs for the new business,</p>
<p>3. (I received no response from any member of the council regarding this new renewable fuel , whatsoever. I received no response from the Lead Member for Environment and Climate control. I received no response from the Officer for Environment and Climate affairs, I received no response from the LPA officer, or any questions pertaining to the new fuel business, or the existing agricultural business.) Given the very public rhetoric and statements made of late, by the Council of the isles of Scilly regarding matters of climate, environment and carbon footprint, I find this lack of response to my new business, to be appalling, especially given the favourable responses I have had by HRH Prince Charles, Tim Smit, Dale Vince, The Wildlife Trust, RSPB, Radio 4 Farming Today, Radio Scilly and Exeter University. Radio \$ Farming today, recorded my trial production live, in July of 2021, and repeated in Cop26 week , as a shining example of a new fossil-free fuel. <u>I have attached</u></p>	<p>Members are aware of the need to keep an open mind with respect to determining a planning application. The LPA were being asked to consider the retrospective conversion of an existing agricultural storage business, which was identified as necessary to support the applicant's organic vegetable business.</p>

<p><u>the audio above.</u></p>	
<p>4. With the exception of the LPA officer, <u>no members</u> made a site-visit to my application and relied solely on her report when voting on the application. The LPA officer, after finding the site, had a cursory look at one of my polytunnels, did not walk the rest of the site and apart from the concrete building, asked no questions regarding my agricultural production for the past thirty years or so , or present or future plans whatsoever.</p>	<p>No site visit was requested, so no Member site visit was arranged.</p> <p>The Planning Officer did a careful assessment of the site both with the applicant and from walking around the site, unaccompanied.</p> <p>I sat and listened to the applicant for a long period of time, advising of the policies and offering to send information I felt would be useful, which was sent to the applicant following the meeting. Short duration within the polytunnels was on the basis of covid guidance at the time of restricting indoor site visits.</p> <p>The applicant was advised to ensure he provided the LPA with all the details in writing. He was made aware on multiple occasions that we wouldn't be able to refer to information that was verbal and in conversation only.</p>
<p>5. This application will benefit local employment. It will provide local seasonal employment for both those working and growing Organic vegetables and fruit, and those working sowing and growing addition crops, and the harvesting and processing of those crops, and Bracken, to produce renewable fuel briquettes. This was not considered by the LPA.</p>	<p>The accommodation would not provide accommodation or employment for an existing resident.</p>
<p>6. It will help provide training and education in agricultural growing practices, such as, General Organic agriculture, No Dig practices, Hugelkultur, production of Bio-char. Agricultural equipment driving/control, Harvesting, Briquette making, marketing and advertising, accountancy, customer care. This was not questioned by the LPA on their site visit, or subsequently.</p>	<p>There was no information submitted in relation to this.</p>
<p>7. It will utilise land, which if left abandoned, would be quickly taken over by Invasive species such as Bracken, Gorse, Bramble, this would diminish and deplete biodiversity. The very act of successional</p>	<p>A refusal of the retrospective planning application is not a disapproval of the general approach to a sustainable management of the land, in agricultural terms.</p>

<p>growing a series of varying crops on ground is a huge benefit to the environment providing food, water and housing for insects, birds and mammals. Attached above are examples of housing for birds incorporated in the replacement Barge-Boards, which provide sixteen additional nest box homes for a variety of birds and an automatic water supply which they have all come to rely on. The LPA officer was shocked to see a brood of four swallow chicks, above her head, chirping from the barge boards, and pointed them out to me, That is what I was writing to you about, I replied! None of this is subsequently approved of, by the LPA.</p>	<p>to the agricultural use and management of the land.</p>
<p>8. It utilises a building to provide seasonal accommodation which could remain abandoned to the elements. This building whilst contributing to the employment and economy of the Community, is not a drain on any resources, and as recommended by the Local Plan in many places, is Off-grid, dealing with its own supply of harvested water, Solar electricity and deals with its own recyclables/compost, and composts its own human occupier output. This is seemingly not being approved by the LPA, massively contradicting the Local Plan. The majority of local sewage here on Scilly is either discharged into the ground, untreated, by Septic tanks, which historically have been shown to contaminate local drinking water, or discharged untreated into the sea. One Third of all Potable water on the main Island of St Marys, has to be provided by desalination. The roof-harvested water here, for showering purposes, is managed, monitored and maintained on a regular basis. Attached above are the results of the latest water test results from 8th June 2022 , showing a count of Zero Coliforms.</p>	<p>The local plan is supportive of new business, it is supportive of staff accommodation and is supportive of the re-use of buildings. The details about off-grid living and the biodiversity benefits suggested are not objected to.</p> <p>The application to regularise the conversion of a small agricultural building to habitable accommodation for the employment of seasonal workers for a business that the applicant runs as a 'sole trader' with limited details was not found to be adequately justified.</p>

<p>9. The Environment Agency has recently stated that they require No Environmental Impact assessment, regarding the application.</p>	<p>The application was not refused because of flood risk issues.</p>
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It is considered that in this case, the decision should be upheld as due regard has been given to the development plan and all material planning considerations, in assessing the proposed development. The LPA do not consider it has acted unreasonably in seeking to refuse the application

In conclusion, it is contended that for the reasons set out in this statement, the refusal of planning permission was both appropriate and reasonable and that the reasons set out in the decision notice are sufficiently precise and specific and in accordance with the provisions of the Development Plan, particularly Local Plan Policies SS3 and LC4.

Lisa Walton
 Chief Planning Officer
 06/07/2022