

# Council of the Isles of Scilly

## Delegated Planning Report

### Other application

**Application Number:** P/21/100/S106MO

**UPRN:** 000192001446

**Received on:** 22 November 2021

**Valid on:** 22 November 2021

**Application Expiry date:** 17 January 2022

**Neighbour expiry date:** 17 December 2021

**Consultation expiry date:** N/A

**Site notice posted:** 29 November 2021

**Site notice expiry:** 20 December 2021

**Applicant:** Mr & Mrs Sherris

**Site Address:** Penhallow  
4 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 P4557 dated 25th May 2000 to update to most recent obligation wording including mortgagee in possession clause and most recent specific local need criteria and to allow occupation of the owners accommodation by those employed by the guesthouse business.

**Application Type:** Section 106 Modification

**Recommendation:**

1. That the application for the modification of section 106 planning obligation in relation to planning permission P4557 dated 25<sup>th</sup> May 2000 is **APPROVED** for the reasons set out below.

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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 ✓

### Lead Member Planning Agreed

Name: Cllr D Marcus

Date: 09/02/2022

## Site Description and Proposed Development

Penhallow is a 5 bedroom guest house with a unit of owners accommodation. The property is located on the south side of the residential cul-de-sac of Pilots Retreat, St Mary's over-looking the Moorwell and Lower Moors areas.

The property was constructed in the early 2000's on a sloping site over 4 floors from a lower ground floor to a second floor in the roof space. The lower floors (only visible from land to the north of the site) have a cream painted render finish with the first floor visible from road level in a granite clad finish and concrete tile roof and white UPVC fenestration including a conservatory on the lower ground floor.

The proposal is to modify the section 106 planning obligation to the most recent version containing the mortgagee in possession clause and also allow occupation of the owners accommodation by those with a specific local need or who are employed by the guest house business. The property has secured a Certificate of Lawful Use for use of the property as a guesthouse. This was granted in 2021 (P/21/037/CLE).

Certificate: A

Other Land Owners: None

### Consultations and Publicity

The application has had a site notice on display for 21 days (29/11/2021–20/12/2021). The application appeared on the weekly list on 29<sup>th</sup> November 2021. Due to the nature of the proposal no external consultations are required.

### Representations from Residents:

Neighbouring properties written to directly:

- Northwethel, 12 Pilots Retreat
- Flat, 3 Pilots Retreat
- 3 Pilots Retreat

[0] letters of objection have been received

[0] letters of support have been received

[0] letters of representation have been received.

### Relevant Planning History:

| App. No.    | Description   | Date       |
|-------------|---|------------|
| P.4203      | Application refused to erect a dwelling   | 18.03.1997 |
| P.4557      | Conditional permission granted for the erection of a dwelling   | 16.03.1999 |
| P.4630      | Conditional permission granted for the erection of a dwelling   | 06.07.1999 |
| P/10/104    | Conditional permission granted for new UPVC window in North West elevation.   | 15.12.2010 |
| P/20/052    | Application for the modification of section 106 planning obligation in relation to planning permission P4557 dated 25th May 2000 to update to most recent obligation wording including mortgagee in possession clause and most recent specific local need criteria. | WITHDRAWN  |
| P21/037/CLE | Approval of certificate of lawful existing use for use of the dwelling (Use Class C3) as a guesthouse (use class C1) with ancillary and self-contained owners accommodation.  | 17.09.2021 |

### Constraints:

- Conservation Area
- Area of Outstanding Natural Beauty
- Heritage Coast
- SSSI – Lower Moors (160m)
- Scheduled Monument – Platform Cairn, Peninnis (150m)
- Archaeological Constraint Area – King Edwards Road (110m)

### *Primary Legislation and Planning Policy*

#### *Primary Legislation*

#### **The Town and Country Planning Act 1990**

*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 generally only use Section 106 obligations to require dwellings permitted, to be occupied in accordance with local need qualifying criteria.*

*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) 2021** 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. IAdopted in March 2021 the current Isles of Scilly Local Plan is up to date.

**Isles of Scilly Local Plan (2015-2030):** The policies within 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.

**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.*

**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).*

**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.*

*In addition, **Policy LC4 (Staff Accommodation)** allows staff accommodation for a business where it is of an appropriate size, well related to it and is subject to occupancy restrictions to those who are employed by the business.*

### Planning Assessment

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 Isles of Scilly Local Plan policies.

Planning permission was granted in 2000 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 LC2 of the Isles of Scilly Local Plan 2015-2030.

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.

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 and as of 1<sup>st</sup> April 2021 the Chief Planning Officer), 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 is to update the agreement to the re-worded version and include the most recent specific local need criteria and also allow occupation by someone employed by the business (now it is lawfully a C4 guesthouse). Occupation by owners of the guesthouse business would be considered to be in accordance with Policy LC4 (staff accommodation) of the Local Plan so a Full

Council decision is not considered to be necessary on that basis. The Lead Member has agreed to the delegated level of this decision.

As noted above, in September 2021, a certificate of lawful use was obtained for the use of the dwelling (Use Class C3) as a guesthouse (use class C1) with ancillary and self-contained owners accommodation. This means that using the property as a single dwelling house again would require planning permission.

In effect, and as a result of the current lawful use, the original section 106 planning obligation no longer serves a functional planning purpose as the planning status and makeup of the property has now changed.

### Conclusion

In light of the above assessment, it is considered that the proposal is acceptable as it isn't applying to remove the planning obligation but will ensure retention of it by listing employees as qualifying persons. As assessed, following the issuing of a certificate of lawful use, the LPA has no control over the sole use of the property as a dwelling. It is considered that allowing the occupancy of the owners accommodation by those with a specific local need ensures that should the unit no longer be required for owners/employees then it can still be used to meet the residential needs of the community and prevents the use of that part of the property as a second home or holiday let without a further application being made to the LPA.

The relevant development plan policies that have been taken into consideration are set out below:

### Isles of Scilly Local Plan, 2015-2030

| Policy  | Tick if Used ✓ |
|---|----------------|
| Policy SS1 Principles of Sustainable Development                        |                |
| Policy SS2 Sustainable quality design and place-making                  |                |
| Policy SS3 Re-use of Buildings  |                |
| Policy SS4 Protection of retailing, recreation and community facilities |                |
| Policy SS5 Physical Infrastructure                                      |                |
| Policy SS6 Water and Wastewater Management                              |                |
| Policy SS7 Flood Avoidance and Coastal Erosion                          |                |
| Policy SS8 Renewable Energy Developments                                |                |
| Policy SS9 Travel and Transport   |                |
| Policy SS10 Managing Movement   |                |
| Policy OE1 Protecting and Enhancing the landscape and seascape          |                |
| Policy OE2 Biodiversity and Geodiversity                                |                |
| Policy OE3 Managing Pollution   |                |
| <i>Policy OE4 Protecting Scilly's Dark Night Skies</i>                  |                |
| Policy OE5 Managing Waste   |                |

|  |   |
|--|---|
| Policy OE6 Minerals  |   |
| Policy OE7 Development affecting heritage                              |   |
| Policy LC1 Isles of Scilly Housing Strategy to 2030                    |   |
| Policy LC2 Qualifying for Affordable Housing                           | ✓ |
| Policy LC3 Balanced Housing Stock                                      | ✓ |
| Policy LC4 Staff Accommodation   | ✓ |
| Policy LC5 Removal of Occupancy Conditions                             | ✓ |
| Policy LC6 Housing Allocations   |   |
| Policy LC7 Windfall Housing:   |   |
| Policy LC8 Replacement Dwellings and Residential Extensions            |   |
| Policy LC9 Homes in Multiple Occupation                                |   |
| Policy WC1 General Employment Policy                                   |   |
| Policy WC2 Home based businesses                                       |   |
| Policy WC3 New Employment Development                                  |   |
| Policy WC4 Alternative Uses for Business/Industrial land and buildings |   |
| Policy WC5 Visitor Economy and Tourism Developments                    |   |

|                    |  |            |
|--------------------|--|------------|
| <b>Print Name:</b> | Lisa Walton  | 30.03.2022 |
| <b>Job Title:</b>  | Chief Planning Officer   |            |
| <b>Signed:</b>     |  |            |
|                    | Authorised Officer with Delegated Authority to determine Planning Applications     |            |