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By Lisa Walton at 5:02 pm, Jan 18, 2022

Applicant Pre-determination Preliminary Grounds for Appeal

Dear Lisa

For the sake of 'completeness' I would like this document to be added to the planning portal **now, Tuesday 18th January 2022** so that members are fully informed when considering this application.

P/21/102/COU

Thank you for the continued dialogue concerning our application for planning permission. We have reverted to our agents and legal advisers regarding these matters for their advice as to how we may work towards a satisfactory outcome all round. We have now received their observations at this time and would respond as follows:

We have asked on numerous occasions for clarification as to why this planning application has been 'Called-In' and have yet to receive an adequate response which allies with the LPA's own protocols in which a Member may call in an application, however as they **must** have valid, material planning reasons to do so one can only surmise that the reason for the non-disclosure is that there are none.

Our previous planning application, P/21/075/COU was similarly called in by the Portfolio Holder who somewhat bizarrely then went on to congratulate the applicant on the application and then proposed approval - if someone could explain that to us, we would be grateful.

In the pre application stage we responded to every single question that was asked of us, and in some detail, so if there are still outstanding matters that necessitate the continuance of the Call In then why have we not been apprised of them.

Given that Scilly is one of only a handful of planning authorities in the UK that do not allow members of the public to speak at planning meetings, this medium is our only conduit to fully explain our case to members, and while it is recommended for approval if we are unaware of a problem then we cannot respond.

The Need for Staff Accommodation & Timing of Application.

1. The Case for Staffing.

This is stated regarding our personal circumstances. You are correct in stating that there are no specific references to support for pensioners in the Local Plan. It is generic and speaks of Social Need and Economic Need and both, very specifically mention, throughout the document and the various Policies, the ageing population, and their impact on Scilly in both contexts. So, are we to suppose a proposal to house care workers, meals on wheels staff and home support staff would be rejected on the grounds there is no specific mention of them in the Local Plan? It is, in our view, disingenuous to argue against such implications given the absence of a glossary or indices of social and economic definitions attached to the Local Plan by the authors. If this is going to result in the LPA being unable to determine applications based on undefined economic or social need then it would seem sensible to request a taxonomy of agreed criteria for decision making purposes from the full Council and an amendment request to the Planning Inspectorate so as to enable the LPA to feel enabled to make such decisions.

Allow me to share 2 responses from the Duchy re my proposal

1) *'I would agree with you that the suggested location is one that would benefit from some 'enhancing' and I am sure that with this development, that would be achieved.'*

2) *'I am sure that the provision of a hut for staff accommodation is very sensible and helpful. Is there the potential that this employee would have time to also offer services to other accommodation providers?'*

Interesting to see that the Duchy can also immediately see the benefit of potential spare staff days!

2. The Timing of the Application.

This seems to be, for some reason, a stumbling block. Let us be clear. It was always our intention to apply for staffing accommodation. We were successful in application P/18/013FUL to convert a packing shed to accommodation. As stated previously, this project has not moved beyond the clearing and preparation stage. It can only be undertaken outside the tourist season due to its location at a key road intersection. Covid has ruined both previous winter opportunities as neither goods nor builders were available. We are thus behind in our schedules.

We have been planning to apply for staffing accommodation as this project was underway and we have been in discussions for some time with suppliers for suitable accommodation that we could locate elsewhere. Had the project worked to plan it would have been completed last winter and we would have applied for staffing this year. I attach for your interest the plan options we received regarding this, but we have naturally not progressed them. **Appendix 1**

Given our plans were in abeyance the development of the shepherds huts on the vineyard drew our attention. Shepherds' huts are easy to transport and to build, not requiring mainland builders, nor their plant and machinery to execute the project. Hence, we applied for the hut under P/21/102/COU. We could build quickly and recover lost revenue opportunities also.

You query why we didn't include the staff application at the time. The answer is very simple. It never occurred to us, was not part of that plan and we still intended to put in for other staffing accommodation as we dealt with P/18/013FUL.

What changed? There was considerable (positive) discussion amongst the island community about shepherds' huts and those who awaited the outcome of our application before submitting their own. It was from a conversation with Jackie Perkins that revealed she was applying for staff accommodation using a shepherd's hut that made us sit up and think, why not? Our plot was big enough, could support the infrastructure required and, as we had not yet placed the order for the kits and were waiting to see if our tenant neighbour's application may succeed, there was time to order 3 huts and complete them during the spring. The location and speed of building removes the logistical difficulties we have with the packing shed located on the road.

There is no mystery or alternative motives Lisa, just a practical solution. Andrew's email of the 29th of November was very clear:

'Thank you for the response **which helps to clarify the proposal and the links with the planning permission P/21/075/COU on the same site.**

I've been over it with the Chief Planning Officer Lisa Walton and we feel it is necessary to make the connection with the use obtained under that permission clear in the application. This shouldn't be too difficult to achieve and either way would not impact on the ability to implement the existing planning permission that has been obtained, ***please see the two options below;***

1 – The cleanest way to achieve the link would be to re-submit the original planning application and amend the description to include 'and 1 shepherds hut for staff accommodation'. This would tie the two proposals together through application and allow the combined use to be considered in the context of the whole site. The additional fee would only be that already paid under this new application, but the documentation would need to be amended to cover the whole use of the site.

2 – ***This is probably the easiest option*** and that would be to agree to amend the description for the submitted application to 'Change of use for the provision of one additional shepherds hut for staff accommodation on the site granted planning permission under reference P/21/075/COU (for the change of use of the land to site two holiday letting shepherds' huts).''

This all appeared straightforward and helpful from the LPA. We went for option 2, the easiest option. If it were not an option, why offer it? We are therefore at a loss to understand:

1. Why has this become a major stumbling block?
2. Why it is, yet again, subject to a Call In initiated by the Portfolio holder?

3. Process

Our previous application P21/075/COU was submitted and aroused no comments from the island community or wider body of people interested in Scilly matters. The consultation period ended on the 13th of October. On the 27th of October, 14 days later it was subject to a Member Call In citing 'Public Interest'. In responses to our queries you stated, the 'Call In' period was not fixed and that you also had discretion regarding these matters. Can you please provide a reference to the Council's Standing Orders for these, as they digress markedly from the LPA's Planning Protocol and other LPA 'best practice' and protocol documents.

In the event at the Council meeting to determine the application several statements were allowed and minuted.

Quote 1)

'Councillor D Marcus commended the application and asked how the usage of the property would be monitored. The Chief Planning Officer replied that any use other than that granted would be investigated if a breach was reported to them.'

This is a peculiar question. They are holiday lets and subject to the standard checks and balances that all lets are and, as the planning report stated, subject to the normal 28 occupancy rules. What relevance did this question bear to the 'Call- In' Where was the 'public interest' issue?

Quote 2)

'Councillor T Tobin-Dougan said that a number of people on St Martins had made representations to him with concerns around the future implications of permitting such an application.'

Again, this is peculiar as no one had anything to say about the application in writing. Councillor Dougan's previous 2 applications had elicited many, many adverse letters (not from us). We have only had positive comments and enquiries for help from all over the island. This observation was met with confusion by the island community. There is such a thing as a tendentious eristicism that introduces a statement that can't be challenged in order to win an argument. There is a democratic process that allows the community to comment, and it should be followed. Anecdotal evidence is without objectivity or any weight and unfair when the public are not allowed to speak at a meeting.

Quote 3)

'Councillor T Tobin-Dougan also felt that the site of the application was disappointing as it was within the 'industrial site' for the island, which was really intended for businesses, and so the application represented a loss of a site for a potential occupant.'

This designation of an 'industrial site' is not recognised by either the Local Community, nor indeed the Local Plan and Maps. Furthermore, had anyone taken a scale rule to the local plan they would have seen there are 3 domestic premises closer to the storage barns than the proposed shepherds' huts

This Application and Process.

19. b) of the Planning protocol states applicants may expect, *'consistency of interpretation of the planning policies;'*

In attempting to understand the fair application of process to planning submissions our agents reviewed some recent and relevant applications to better understand where the LPA were drawing their criteria from.

1) P/21/085/COU

This is relevant as it was an additional application for more units and a new feature, a launderette. This excited no Call-In and no objections or discussion at the minuted council meeting but passed straight through. However, applications are expected to have elevation drawings associated. In this case there was merely a commercial flyer used to advertise the units submitted.

In the case of our application P/21/075/COU we were asked to resubmit the elevation drawing as they did not expand correctly when printed out on A3. This was reasonable and immediately corrected.

Unfortunately, this application P/21/085/COU submitted the commercial flyers for snoozepods and these were stamped as approved by Lisa Walton at 1;43, Nov.24th 2021. It can be seen that the dimensions shown on the approved picture state a Length of 6062 cms and a width of 2773 cms. Thus providing 16.628 Sq. Mts of living space.

The written application, notwithstanding the pictures attached states: 'Design and Access Statement, Page 3 Proposals': *'It is proposed that the use of the plot would be temporarily changed from agricultural to residential (Class C3) for a period of 3 years. 7 "snoozepods" would be placed on the site, spaced to provide adequate privacy and fire separation and facing inwards towards the yard Each unit would be 8.5 by 3 metres,' This would provide an accommodation area of 25.5Sq Mts.*

This is a VERY SUBSTANTIAL reduction of 35% of available living space. Had this application been as closely scrutinised as ours perhaps this would have been identified also and questions asked. The most salient one is whether they are sufficiently large to accommodate workers over the extended months of occupation planned, as opposed to temporary living quarters.

2) P/21/023/COU

This is relevant as it is the same class of building as per our application. It was permitted on the 20th of May 2021. It was allowed under delegated powers and signed off by Councillor Marcus as portfolio holder.

The location of the pods is directly under the landing and take-off runway of the St Marys Airport and of a proximity of less than 3 metres from working farm barns and chicken sheds and within an existing community house grouping. The location is visible from various locations, including the airport. Given the permission was granted 6 months before our application, why was the spurious issue of an industrial site, many metres distant from our secluded site, raised as a means of opposing the application. What criteria permitted this as a delegated powers decision whilst ours was 'Called In?'



P/16/130/FUL

This is relevant as it is similar accommodation to our application. The shepherds' huts were granted permission with standard occupation restrictions of 28 days.

P/01/059/FUL

This is relevant as the Vineyard on St Martins has provided the stimulus for our own applications, However, the occupation conditions applied to these holiday lets does not include a standard 28 day restriction. In terms of occupation status, it states;

C7 Prior to the first occupation of the dwelling, hereby approved, details of measures to promote biodiversity enhancements shall be submitted to and approved in writing by the Local Planning Authority, this shall include details of any new landscaping, where required, to comprise native species from sustainable sources, the installation of bat boxes and bird nesting opportunities appropriate to species found on the Isles of Scilly. The approved details shall be retained as approved thereafter. Reason: To promote measures to improve and awareness of the value of biodiversity on the Isles of Scilly and in accordance with the requirements of Policy 1 of the Isles of Scilly Local Plan 2005 and Policies SS1(d) and SS2(g) of the Submission Draft Isles of Scilly Local Plan 2015-2030.

Whatever the reason for the LPA not applying the standard occupancy on this application, it raises questions as to the reason for the Call In of our application on 'Public Interest' grounds (unsubstantiated). We applied for 2 shepherd huts, exactly the same as the Vineyard. The portfolio holder then expressed concern as to 'how the huts were to be used?' (What is confusing about holiday lets). The LPA responded there were measures in place: perhaps, but they are demonstrably not applied consistently.

Clearly, there is manifest 'inequity' as to how the processes have been conducted. There are many, many other examples that have been found of recent instances. However, that is a by product of the process of scrutiny. At this time, we are concerned that our application is treated fairly, whatever the outcome. Let me restate:

1. The local community have raised no objections
2. None of the Agencies have raised any objections (subject to the accepted 25 year review period from the EA re flood)
3. The Duchy is in support of both the site location AND the staff accommodation

Call In and Meetings.

The Planning Protocol offers clear guidance regarding the entire process. Helpful to this issue are:

1) Nolan Report

'The Nolan Committee Report on Standards in Public Life, the Local Government Association and the Royal Town Planning Institute all place particular emphasis on the need for Members to have adequate knowledge of the planning process. Training sessions will be arranged for all Members in order to keep them fully up to date with all relevant legislation and local, regional, and national policies and guidance. In addition to planning training for any newly elected Member, Officers will seek to regularly provide training for Members. Regular reports will be made to Full Council to keep Members fully updated on changes in planning legislation, policy and guidance.

Newly elected Members should attend Officer organised training sessions before they participate in the debate and determination of planning applications at Full Council. **'Members who have not received planning training, should not participate in planning items on the Full Council agenda.'**

Can you confirm that all new members have had this training, what was its nature, how long did it last and when did it occur?

2) Impartiality

'Avoid expressing an opinion in advance of the determination of an application which may be taken as indicating that a Member has made up their mind without hearing all the relevant information and the arguments at the appropriate Member meeting;'

Neither our local councillor Mr Tobin-Dougan, nor portfolio holder Dan Marcus troubled themselves to speak with us ahead of the last application to help understand the application and its exciting place in the new tourist experiences encouraged by the Local Plan. Nor even to inform us of other people's concerns, which, whilst not expressed on paper, had arisen through hearsay, apparently.

Now, there is another Call In, again in the face of no local opposition and the Duchy support, plus additional applications for shepherds' huts arising, in part, as a result of our success and support for other members of our community.

The Call IN justification:

'Public interest in development. (sic) because 1 new unit of accommodation required in addition to two already approved within the same field. Unclear why this has come in as a separate application after the Council granted two for holiday let use and why it wasn't considered as part of the previous application, if the applicant can't operate the two approved without somewhere for staff use.'

1) It is necessary to justify the statement **'Public Interest'**. Public is open and known, not esoteric and discussed amongst a cabal. The democratic process allows the community to write into the portal, they evidently do so when motivated by an application.

There has been no expressed public interest. This is a handy phrase to justify personal interest. The portfolio holder should cite some other valid planning reasons, there are many that could be used to justify the call in by the portfolio holder, the Planning Protocol states what they are! There is NO PUBLIC INTEREST and this will be held to scrutiny at this second go round.

2) **'Avoid expressing an opinion in advance of the determination of an application which may be taken as indicating that a Member has made up their mind.'**

'Why it wasn't considered as part of the previous application, **if the applicant can't operate the two approved without somewhere for staff use.'** Councillor Dan Marcus

This is pure supposition and speculation as the emails between us attest. It would also appear at odds with the 'Planning Aid' link provided from the LPA Portal. Under the defining heading, **'Non Material Planning Considerations'** it states:

'Previously made objections/representations made regarding another site or application'

Appendix 2

Had Councillor Marcus approached us for a discussion maybe he would have agreed with the Duchy's conclusion that it seems a good idea, especially if it may provide opportunity for others. Also, he may have sympathised with us for the manner in which our plans for building improvements on the packing shed have been scuppered by 2 winters of Covid disruption and gained some appreciation of the additional difficulties off islanders' experience with building projects.

Our application should stand on its own merits and be treated fairly. We have pointed out some quite glaring discrepancies in just a few recent and relevant applications. No one and no process is perfect, but we should all expect to be treated fairly at the very least.

So finally, should this be rejected, notwithstanding the extensive dialogue into which we have entered, there will be an appeal process of course. Also drawn to our attention was the fact that there is evidence of planning applications having failed but where the applicant has carried on regardless with their project. May one enquire how the Council and the LPA deal with such transgressions in reality as opposed to the protocol? Not, by the way, that we are planning any such radical opposition to the democratic process.

Regards

Dawn & Keith Bradford

