

Council of the Isles of Scilly

Delegated Planning Report

Other application

Application Number: P/22/068/S106MO

UPRN: 000192000968

Received on: 21 September 2022

Valid on: 23 September 2022

Application Expiry date: 18 November 2022

Neighbour expiry date: 14 October 2022

Consultation expiry date: N/A

Site notice posted: 23 September 2022

Site notice expiry: 14 October 2022

Applicant: Mr Martin Hardern
Site Address: 1A Castle Farm House
Old Town Lane
Old Town
St Marys
Isles Of Scilly
TR21 0NN

Proposal: Application for the discharge of the section 106 planning obligation in relation to the planning permission P3736 dated 20th December 1995 restricting occupancy of dwelling to those with a specific local need.

Application Type: Section 106 Modification

Recommendation: REFUSE

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: 04/11/2022

Site Description and Proposed Development

1A Castle Farm House is a one bedroom apartment that has been created following the subdivision of the former farmhouse to apartments in the 1990s. The application property is a 1 bedroom flat occupying half of the ground floor of the building. The entire building was the originally the farmhouse for Castle Farm, which was named after Ennor Castle, a medieval castle that is located on the cairn behind the property but is now reduced to remains.

The flat was created as a result of the subdivision of the ground floor flat in the mid 1990's. As a result, it is the only unit of accommodation within the building that is restricted in occupancy with a section 106 planning obligation to those with a specific local need.

This application is to discharge the section 106 and remove the occupancy restriction on the property which would allow it to be available to purchase on the open market.

Certificate: A

Other Land Owners: None

Consultations and Publicity

The application has had a site notice on display for 21 days (23/09/2022 – 14/10/2022). The application appeared on the weekly list on 26th September 2022. Due to the nature of the proposal no external consultations are required.

Representations from Residents:

Neighbouring properties written to directly:

- 1B & 2 Castle Farmhouse, Old Town
- Scilly Spirit & The Distillery Flat, The Distillery, Old Town

[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:

No planning history relevant under the 2005 Local Plan or the adopted 2015-2030 Local Plan. Other planning history:

P.3101	Permission granted for the conversion of Guest House / Restaurant into 2 self - contained flats	16.10.1990
P.3736	Conditional permission granted for the conversion of ground floor flat to two flats, as per scheme illustrated on drawing CFF-1A.	04.04.1995

Constraints:

- Conservation Area
- Area of Outstanding Natural Beauty
- Heritage Coast
- Archaeological Constraint Area – Old Town
- Tree Preservation Order T01/2018 – The Distillery – Adjacent to site
- Scheduled Monument – Ennor Castle – 10m

Assessment

Primary Legislation and Planning Policy

Primary Legislation

The Town and Country Planning Act 1990 (TCPA)

Section 106 of the TCPA 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. It is highly desirable that local planning authorities should have an up-to-date plan in place.

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 all new affordable housing to be subject to occupancy restrictions, to ensure they will be occupied in perpetuity by a person or persons (and their dependents) with a local housing need, as their principal residence throughout the year.

Policy LC5 (Removal of Occupancy Conditions): Part (1) of this policy states that planning permission for the removal of an occupancy restriction on residential accommodation will only be permitted where it can be evidentially shown that: a) there is no longer a continued need for the accommodation for any business or organisation on the islands; and b) the property has been marketed locally for an appropriate period (minimum 12 months) at an appropriate price

Assessment

This is an assessment to discharge an existing Section 106 Planning Obligation only. On this basis, the main issue for consideration relates to whether the S106 still serves a useful planning purpose for the flat, as a unit of local need accommodation.

Planning permission was granted in 1995 for the sub-division of a flat to create two smaller flats. 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 what became flat 1A, to qualifying persons only. It remains the case, under the current Local Plan, that all new homes permitted can only be for a local need, in accordance with policy LC1 and LC2 of the Isles of Scilly Local Plan 2015-2030. There remains a need for small local need accommodation and staff accommodation on the islands, as evidenced by the Local Plan and the Council declaring a housing crisis in January 2022. The existing S106 on this flat, therefore, still serves a useful planning purpose in retaining a locally available unit of accommodation.

To date the Council have granted planning permission for around 34 local need homes, and 21 units of staff accommodation. The Local Plan identifies a need for 105 local need homes over the plan period up to 2030. There remains a need for local housing and staff accommodation.

The discharge of the S106 would result in an open market unit of residential accommodation. This is contrary to policy LC1(2) of the Isles of Scilly Local Plan 2015-2030 as it would result in an open market unit of accommodation. Additionally Policy LC5 requires applications to demonstrate that there is a) no longer a need for the accommodation; and b) the property has been marketed

locally for an appropriate period at an appropriate price. The policy suggests 12 months as an appropriate period.

In this case, the applicant makes the following points to support the case for the discharge:

- The existence of the S106 has prevented the sale of the applicants deceased stepmothers' property to a cash buyer.
- The sale is required to assist with the discharge of the will and distribution of legacies to local people and charities
- The property incorporates the freehold for the whole of Castle Farm
- The property is in need of repair and modernization to make it habitable
- The property includes the responsibility of ensuring the Ennor Castle Scheduled Monument is not disturbed
- Given the flat is a small one bedroom property, it is debatable whether a single person or couple on local wages would want or could afford the liabilities that come with the property (listed above)
- The S106 was imposed on the applicant's stepmother at a time of financial hardship and they had to accept to avoid homelessness. 27 years have passed since the planning permission was granted.

It is not considered that age of the S106, in itself, is adequate justification to now discharge the requirements imposed. It remains a key policy requirement of the Local Plan to deliver homes that meet a local need. It is still, therefore, relevant in current planning policy. In terms of whether the version of the deed is fit for purpose, this can be addressed by an application to modify the S106 to the most recent version. This may then allow the property to be sold to a cash buyer or one with a mortgage. No reason is given as to why a potential sale to a cash buyer has fallen through and the additional 'liabilities' are considered to be civil matters.

A section 106 planning obligation may be modified (Deed of Modification) or discharged. This is an application to discharge and as such there is a duty to decide if the obligation is no longer needed to serve its original intended purpose, if the answer is no, then the S106 may be discharged. If it is still needed to serve its original intended purpose, but that this can be achieved by modifying the obligation in the way proposed in the application, the Council can agree to modify the obligation. If, however, the obligation still serves a useful purpose, the Council can refuse to discharge the obligation.

Conclusion

It is considered that there still remains a need for locally available housing on the islands, on this basis the obligation still serves a useful purpose, as there remains a 'need' for locally available homes.

Recommendation

It is not recommended the deed be discharged for the reasons provided in this application. Based on the information provided and this assessment, the application should be refused and the planning obligation shall continue to have effect without modification.

Other Issues

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 (minute P&D 11/13), 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 1st April 2021 the Chief Planning Officer in consultation with the Lead Member for Planning). Where modifications 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 (now Full Council).


As this is an application to discharge the S106 planning obligation, in accordance with the current scheme of delegation, unless the application is 'called-in' for determination at Full Council, it can be determined under delegated powers. As noted above the Lead Member for Planning is content that this decision, to refuse to discharge the S106, can be dealt with as a delegated decision and would not 'call in' the decision to Full Council.

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	

Policy OE4 Protecting Scilly's Dark Night Skies	
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	

Print Name:	Lisa Walton	18/11/2022
Job Title:	Chief Planning Officer	
Signed:		
	Authorised Officer with Delegated Authority to determine Planning Applications	