

Council of the Isles of Scilly Delegated Planning Report Other application

Application Number: P/24/008/COU
UPRN: 000192000545
Received on: 6 February 2024
Valid on: 8 February 2024
Application Expiry date: 4 April 2024
Neighbour expiry date: 5 March 2024
Site notice posted: 9 February 2024
Site notice expiry: 1 March 2024

Applicant: Mrs Wiphaphorn Ellis
Site Address: Sunnycreek
Garrison Lane
Hugh Town
St Mary's
Isles Of Scilly
TR21 0JD
Proposal: Change of use of garage/kitchen to a hot food takeaway
outlet.
Application Type: Change of Use

Recommendation: Approve

Summary Conditions

1. Standard time limit
2. Adherence to plans
3. External lighting
4. Installation of extraction system
5. Hours of Operation for Construction Works
6. Opening hours of takeaway

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: 01/03/2024

Site Description and Proposed Development

The application site is Sunnycreek, a single storey three bed dwelling located on a relatively steep hill to the west of Hugh Town on the Island of St Mary's. The immediate area is primarily residential, however, the building to the west of Sunnycreek is the police station with residential accommodation above.

The dwelling has a pitched slate tile roof with a gable end of the east elevation. The garage and adjoining flat have a cross hipped roof with a smaller gable end facing the principal (southern) elevation which incorporates a garage door and a smaller pedestrian door. The entire dwelling is rendered and painted white.

To the rear of Sunnycreek there is an adjoining one bedroom flat which forms a separate unit of accommodation and is under separate ownership. Access to this flat is via a short alley between the garage and the main dwelling of Sunnycreek.

The application seeks the change of use of the existing garage into a commercial take-away kitchen and collection point. The existing opening of the garage would not be altered. Customers would enter through the existing pedestrian door and collect food from an internal collection desk.

The works would include:

- Installation of commercial extractor fan which would be vented through the south gable end external wall. External venting pipework is proposed to be white.
- Installation of a new gas supply requiring storage of gas bottles in the alley to the west of the garage.

- Siting of bin storage in the alley to the west of the garage which would be enclosed within a timber bin store.

Certificate: B

Other Land Owners: Yes

Consultations and Publicity

The application has had a site notice on display for 21 days. The application appeared on the weekly list on 5th October 2020. Due to the nature and location of the application a number of internal and external consultations have been carried out. These are set out in the summary below.

Consultee	Date Responded	Summary
Cornwall Fire and Rescue Service	21.03.2024	<p>Access for fire appliances within the site will be considered satisfactory providing it complies with Part B5 of Approved Document B, Vehicle Access.</p> <p>Adequate water supplies for firefighting purposes will be achieved by complying with the requirements of Part B5 of Approved Document B.</p>
Environmental Health Officer	04.03.2024	<p>Best practicable means should be incorporated into the design of the new commercial kitchen extract ventilation system, which is intended to be installed within the hot food takeaway outlet at Sunnycreek, St Marys; to mitigate any potential noise or smell nuisance.</p> <p>The rating level (LAeq, T) from the fixed plant and machinery, should not exceed the background noise level (LA90,T) at any time when measured at the nearest noise sensitive source.</p> <p>All ductwork serving the new commercial kitchen extract ventilation system should be fitted with antivibration mounts to minimise vibration at adjacent sensitive premises.</p>
Waste, Highways and Parking	20.02.2024	<p>Waste & Bin Storage – ample storage should be made to facilitate residual black bag waste and recycling of separately collected paper & cardboard, plastic and tins (and from March 2025, glass bottles and jars). Commercial waste produced as a result of this business activity is required to be paid for. The Council offers a commercial waste collection service for small-medium sized businesses</p> <p>Highways – there isn't a pavement available for pedestrians outside of this facility, other than from the police station. Sufficient area should be provided within the curtilage of the property and proposed</p>

		<p>development to ensure pedestrians can safely wait/queue without having to queue on the highway.</p> <p>Parking – there is no provision for parking as part of this proposed development. Parking in this area is limited due to the number of parked cars and the narrow street.</p>
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Representations from Residents:

Neighbouring properties written to directly:

- **The Police Station, Garrison Lane**
- **1 and 2 Policy House, Garrison Lane**
- **The Flat Sunnycreek, Garrison Lane**
- **Well Lane Cottage, Well Lane**
- **1 Well Lane**
- **2 Well Lane**
- **Prospect Lodge, Well Lane**

[0] letters of objection have been received

[0] letters of support have been received

[1] letters of representation have been received raising:

- access to the rear flat.
- requesting ventilation is not through the side communal alley..
- Amenity issues.

Relevant Planning History:

P/09/095: Application withdrawn for the conversion, extension and change of use of a garage into a restaurant. 05.10.2009

P.4381: Conditional permission granted for the erection of a conservatory. 10.03.1998

P.3379: Conditional permission granted for alterations to the rear porch at Sunnycreek. 16.06.1992

P.248: Conditional permission granted for the demolition of rear lean to kitchen and rebuild to larger dimension. 10.06.1986

P.0001: Permission granted for the erection of 2 bed bungalow with adjoining storeroom. 13.04.1947

Constraints:

- Conservation Area
- Area of Outstanding Natural Beauty
- Heritage Coast
- Historic Landscape Character Landscape Type: Settlements.

Planning Assessment

Design	YES OR NO
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Would the proposal maintain the character and qualities of the area in which it is proposed?	Y
Would the proposal appear in-keeping with the appearance of the existing dwelling, street and area?	Y
Would the materials, details and features match the existing dwelling and be consistent with the general use of materials in the area?	Y
Would the proposal leave adequate garden area and green space to prevent the proposal appearing as an overdevelopment of the site and to ensure an adequate level of amenity?	N/A
Is the parking and turning provision on site acceptable?	N/A
Would the proposal generally appear to be secondary or subservient to the main building?	N/A

Amenity	YES OR NO
Is the proposal acceptable with regard to any significant overlooking/loss of privacy issues?	Y
Has the proposal been designed to respect the amenities of neighbouring properties avoiding unreasonable loss of light or an overbearing impact?	Y
Is the proposal acceptable with regard to any significant change or intensification of use?	Y

Heritage	YES OR NO
Would the proposal sustain or enhance the character and appearance of the Conservation Area?	Y
If within the setting of, or a listed building, a) Will the development preserve the character and special architectural or historic interest of the building? b) Will the development preserve the setting of the building?	N/A
Within an Archaeological Constraint Area	N/A
Other Impacts	Y
Does the proposal comply with Highways standing advice such that it does not adversely affect highway safety?	
Impact on protected trees a) Will this be acceptable b) Can impact be properly mitigated?	N/A
Has the proposal been designed to prevent the loss of any significant wildlife habitats or proposes appropriate mitigation where this has been demonstrated to be unavoidable?	N/A
Does the proposal conserve and enhance the landscape and scenic beauty of the AONB	Y

Are the Water connection/foul or surface water drainage details acceptable?	N/A
If sited within a Critical Flood Risk Area (low lying land below the 5m datum) is the application accompanied by an acceptable Flood Risk Assessment?	N
Are there external lights	N

Protected Species	YES OR NO
Does the proposal include any re-roofing works or other alteration to the roof	N
Does the proposal include any demolition	N
Does the proposal include tree or hedge removal	N
Is an assessment of impact on protected species required	N
Has an assessment been provided that adequately assesses the site and includes mitigation, enhancement and timing requirements	N
Are biodiversity enhancement measures required	N
Is a condition required to provide biodiversity enhancement measures	N

Waste Management	YES OR NO
Does the proposal generate construction waste	Y
Does the proposal materially increase the use of the site to require additional long-term waste management facilities	Y
Does the proposal include a Site Waste Management Plan	Y
Is a condition required to secure a Site Waste Management Plan	N

Sustainable Design	YES OR NO
Does the proposal materially increase the use of the site to require additional sustainable design measures	N/A
Does the proposal include any site specific sustainable design measures	N/A
Is a condition required to secure a Sustainable Design Measures	N

Principle of Development

Scilly Local Plan policy WC2 aims to accommodate home-based businesses, outlining that small-scale home-based businesses will be supported in residential properties. This includes the change of use of existing buildings and the use of ancillary buildings where they are well related to existing buildings and there are no unacceptable adverse impacts.

Policy WC5 outlines that proposals which contribute to a sustainable, diverse and modern tourism economy will be supported where they are sited in a sustainable and accessible location and do not result in the loss of homes that would otherwise be available for permanent occupation.

The proposal seeks to convert an existing residential garage which is attached to a residential dwelling into a commercial take-away kitchen and collection point. The kitchen would provide premises for an existing Thai take-away business which has previously been operating from a catering van adjacent to the Town Hall. Due to the upcoming building works to the Town Hall, it will no longer be possible to operate the existing catering van business.

The change of use would therefore support and facilitate the continued operation of an existing small business as a home-based business. In addition, the proposed location is a central and accessible location within Hugh Town and would not result in the loss of the existing dwelling or any residential floor space.

The change of use and accompanying development therefore accords with WC2 and WC5 and is acceptable in principle. The wider acceptability of the proposal is subject to there being no unacceptable adverse impacts and whether the proposals accord with other relevant policies in the Local Plan.

Design, Placemaking and the Conservation Area

Local Plan Policy SS2 requires proposals to demonstrate high quality design that respects the character of the site and existing townscape, landscape and seascape. Proposals should demonstrate an appropriate scale, density, layout, height, mass and use of materials. In addition, Policy OE7 outlines that the proposal within the island's conservation area should preserve or enhance the character or appearance of the area and its setting.

The proposal seeks to place the extractor vent through the gable end of the garage on the principal elevation. The siting of the pipe is relatively prominent and would be visible from the street scene. This is in part mitigated by the use of white pipework to match the exterior wall and limiting the height of the pipe to slightly above the existing ridge height of the roof. When weighed against the need to minimise amenity impacts on the neighbouring residents and police station arising from cooking smells this placement of this vent is considered to be acceptable.

In addition to the vent pipe, the proposal would require the storage of gas bottles and bins in the alley on the west elevation. The gas bottles would be set back within the alley within a caged enclosure. Due to the slope of the site, the gas bottles would be below the ground level of the police station and would not be readily seen from the public realm due to the existing stone wall on the south elevation.

The bins are proposed to be stored in front of the garage between the alley and the stone wall. This siting is relatively prominent and would be clearly visible from the highway, particularly when walking up the hill towards The Garrison. As such, the proposal has been amended to ensure the bins are enclosed within a timber bin store. This will visually shield the bins, ensuring the proposal conserves the street scene and preserves the character of the conservation area.

In summary, the proposal is considered to conserve/preserve the setting of the area and the conservation area and therefore accords with SS2 and OE7.

Amenity and Highways Impacts

WC2 and WC5 require that proposals have no unacceptable adverse impacts as a result of the specific use, this includes the loss of neighbour amenity.

The proposed change of use has the potential to impact neighbour amenity due to the noise and smells associated with cooking on a commercial scale and the increased footfall to the site as customers collect their food.

In order to mitigate potential smells the extractor vent is proposed to be sited on the front elevation away from immediate neighbours including the flat to the rear of the garage and the dwellings above the police station. The Environmental Health officer has been consulted and has noted that best practice should be followed and the extractor unit should not exceed the background noise level (LA90,T) at any time when measured at the nearest noise-sensitive source. In addition, all ductwork serving the new commercial kitchen extract ventilation system should be fitted with anti-vibration mounts to minimise vibration. These details can be secured via a suitably worded planning condition to ensure the neighbour amenity is not impacted by noise or vibration from the unit.

The proposal would also have the potential to impact neighbours through the increase in footfall as customers collect their food. This has also been raised within the highways comment which noted that a sufficient area should be provided within the curtilage of the property and proposed development to ensure pedestrians can safely wait/queue without having to queue on the highway.

The applicant has subsequently clarified that customers would enter the building through the existing pedestrian door where there would be a small area for customers to be served. In addition, the kitchen would provide food for collection and takeaway only. This is considered sufficient to mitigate against customers overspilling onto the highway and would preserve the amenity of residents, including the access to the flat to the rear of the existing garage.

With an appropriate noise condition in place, the proposal is not considered to have any unacceptable adverse impacts on neighbouring residents and as such accords with WC2.

Waste Management

The small strip of side garden between Sunnycreek and the adjacent police station is currently blocked with debris and waste. This area is proposed for gas bottles and bin storage and will be need to be fully cleared generating a degree of waste.

The submitted site waste management plan outlines that any earth, stone, or rubble removed will be used in the adjoining garden of Sunnycreek. Any additional recyclable waste will be disposed of at the Moorwell waste and recycling facility.

In addition to waste generated through construction, the proposed use of Sunnycreek will result in the continued generation of commercial waste. The Environment officer for the Isles of Scilly has been consulted noting that ample storage should be made to facilitate residual black bag waste and recycling of separately collected paper and cardboard, plastic and tins. The proposal includes an area for bin storage in the alley to the west of the garage adjacent to the highway which would be enclosed within a timber bin store and is considered appropriate for the scale of the business.

The proposed waste management is therefore considered acceptable and in accordance with SS2.

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.

Proactive working: In accordance with guidance within the National Planning Policy Framework the Council has worked in a positive and creative way and has concluded that the application is acceptable for planning approval.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004 and with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Planning Policy: Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 2021, the development plan for the

Isles of Scilly comprises the Isles of Scilly Local Plan 2015-2030.

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	✓

Info Requirements	Submitted (LVC)	Not Submitted	Condition Required
Site Waste Management Plan	✓		
Sustainable Design Measures		✓	
Biodiversity Enhancement Measures:		✓	

Other material considerations include the policies of the National Planning Policy Framework (NPPF) and guidance in Planning Practice Guidance (PPG).

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. In discharging their functions, must have “due regard” to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular to the need to:

- a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of other persons who do not share it
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has had due regard to the matters set out in section 149 of the Equality Act 2010.

Recommended Conditions:

C1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

C2 The development hereby permitted shall be carried out in accordance with the approved details only including:

- **Plan 1 Location Plan, received 06.02.2024**
- **Plan 2 Block Plan, received 06.02.2024**
- **Plan 3 Proposed Plans and Elevations, drawing number PE 3, dated November 2023**
- **Plan 4 Proposed Bin & Gas Bottle Storage, drawing number PE 4B, dated November 2023**
- **Plan 5 Proposed Sections, drawing number PE 5, dated November**

2023

- **Plan 6 Details of Bin Enclosure, received 26.03.2024**
- **Plan 7 Internal floorplan, received 26.03.2024**
- **Plan 8 Proposed Fan, received 06.02.2024**
- **Plan 9 Design and Access Statement, received 06.02.2024**

These are stamped as APPROVED

Reason: For the clarity and avoidance of doubt and in the interests of the character and appearance of the Conservation Area, Area of Outstanding Natural Beauty and Heritage Coast in accordance with Policy OE1 and OE7 of the Isles of Scilly Local Plan (2015-2030).

- C3 The rating level (LAeq, T) from the fixed plant and machinery (extract fan) hereby approved shall not exceed the background noise level (LA90,T) at any time when measured at the nearest noise sensitive source. In addition, all ductwork shall be fitted with anti-vibration mounts to minimise vibration at adjacent sensitive premises.**

Reason: In the interests of protecting residential amenities.

- C4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (As Amended), (or any order revoking or re-enacting that Order) prior to installation, details of any external lighting shall be submitted to and approved, in writing, by the Local Planning Authority. The lighting shall thereafter be installed in accordance with the agreed details.**

Reason: To protect the amenities of the locality, including the amenities of neighbouring residential properties and to protect the amenities of this rural area and preserve the dark night skies of the Isles of Scilly and the Garrison Dark Sky Discovery Site (Milky Way Class) in accordance with Policy OE4 of the Submission Draft Isles of Scilly Local Plan (2015-2030).

- C5 No construction plant and/or machinery shall be operated on the premises, as part of the implementation of this permission, before 0800 hours on Mondays through to Saturdays nor after 1800 hours. There shall be no works involving construction plant and/or machinery on a Sunday or Public or Bank Holiday.**

Reason: In the interests of protecting the residential amenities of the islands.

- C6 The takeaway use hereby permitted shall not be open to customers outside the hours of 1630 - 2000 on any day.**

Reason: To protect the amenities of the area, and in particular the amenities of neighbouring residential properties.

Print Name: Lisa Walton

04/04/2024

Job Title: Chief Planning Officer

Signed:



Authorised Officer with Delegated Authority to determine Planning Applications
