

Council of the Isles of Scilly

Delegated Planning Report

Other application

Application Number: P/24/073/S106MO

UPRN: 000192000657

Received on: 10 September 2024

Valid on: 12 September 2024

Application Expiry date: 07 November 2024

Neighbour expiry date: N/A

Consultation expiry date: N/A

Site notice posted: 17 September 2024

Site notice expiry: 8 October 2024

Case Officer: Stella New

Applicant: Simon and Samantha Nicholls

Site Address: Prospect Lodge
Well Lane
Hugh Town
St Mary's
Isles Of Scilly
TR21 0HZ

Proposal: Application for the discharge of the section 106 planning obligation in relation to the planning permission P3450 dated 29 January 2015 restricting occupancy of dwelling to those with a specific local need.

Application Type: Modification to Planning Agreement

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 Dan Marcus

Date: 25.09.2024

Site Description and Proposed Development

The application relates to a dwelling known as Prospect Lodge, which was granted planning permission in 1993. The permission is subject to a Section.106 legal agreement (S.106) to restrict occupancy to a qualifying person(s).

The application seeks to entirely discharge (remove) the S.106 legal agreement to allow the property to be sold on the open market without any occupancy restriction.

Consultations and Publicity

The application has had a site notice on display for 21 days. The application appeared on the weekly list on 16th September 2024. Due to the nature of the application no external consultations have been carried out.

Representations from Residents:

[1] letters of objection have been received and [0] letters of support have been received. Concerns raised include the following:

- Qualifying person criteria are very clear
- The S106 should not be relaxed due to personal circumstances
- There are multiple properties on the open market available to the applicant's buyer
- Would set a precedent for discharging S.106 agreements
- S106 properties were not intended for sale at 'open market prices'

Relevant Planning History:

App. No.	Description	Date
P3450	P3450 Conditional approval of outline planning permission for the conversion to dwelling of barn adjacent to Prospect House (Prospect Lodge).	12.01.1993
P3511	Refusal of planning permission for consent for demolition in a conservation area	09.02.1993
P3512	Refusal of planning permission for the erection of dwelling	09.02.1993
P3539	Conditional approval of reserved matters for the conversion of barn to dwelling at Barn adjacent to Prospect House, Well Lane, St Mary's	13.04.1993

P3557	Conditional approval of planning permission for the demolition of barn adjacent to Prospect House, Well Lane, St Mary's	10.08.1993
P4880	Conditional approval of planning permission for erection of conservatory	12.10.2000
P5384	Conditional approval of planning permission for extension at rear for improved accommodation.	25.11.2003
	S106 PLANNING OBLIGATION (modified in 2015 to update to a recent version containing a mortgagee in possession clause)	29.01.2015

Constraints:

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

Planning Policy

National Planning Policy Framework (NPPF) 2024 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.

- **Policy LC7 (Windfall Development)** supports new homes on windfall sites. LC7 2) requires all new homes to meet Local Housing Needs in accordance with Policies LC1, LC2 and LC3.

Planning Assessment

Background

Policies LC1 and LC2 require 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. All new affordable housing must 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 LC7 2) requires all new homes to meet Local Housing Needs in accordance with Policies LC1 and LC2.

Whilst planning permission for the dwelling pre-dates current development plan policies, the proposal for a new dwelling was subject to similar policy criteria at the time the permission was granted, given that new development in Scilly is generally restricted. Accordingly, permission P3450 was subject to a S.106 legal agreement restricting occupation of the dwelling to a qualifying person, defined as either a Key Worker or a person with a Specific Local Need i.e. a person defined as *“The child of parents, who, along with the child, have for the preceding 10 years been, and still are, in continuous residence on the Isle of Scilly in permanent residential accommodation...and has attained the age of 25 years.”*

The S.106 was formally varied in January 2015 to include a mortgagee in possession clause.

Assessment

A S.106 agreement may be modified or discharged by the agreement of the relevant parties, which in this case would include the Council of the Isles of Scilly. The main consideration is therefore whether the S.106 agreement to secure a local occupancy restriction continues to serve a useful purpose.

Policy LC5 provides for the removal of an occupancy restriction on residential accommodation only 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.

The supporting statement sets out that the dwelling has been on the market since May 2024. The Island Properties website advertises the property for sale at a price of £595K. The applicants advise that they have had two viewings, and one offer from a buyer who does not meet the qualifying person definition. The applicants also state that they sold their home in Kent before purchasing Prospect Lodge and moving to Scilly. According to Mouseprice¹, the property was sold in 2022 for £555K. It is understood that Samantha Nicholls is a nurse and would therefore have met the definition of a qualifying person as a key worker. The applicants state that Mrs Nicholls has subsequently had to relocate to the mainland to be able to continue to work in nursing.

It remains the case, under the current Local Plan, that all new homes permitted must meet the local need requirement in accordance with policies LC1, LC2 and LC7. The Council also declared a housing crisis in January 2022. Whilst the relocation of Mrs Nicholls has resulted in the applicants' understandable desire to sell the dwelling and return to the mainland, personal circumstances do not outweigh policy requirements or the wider housing crisis on Scilly. Furthermore, the application is not supported by any evidence to demonstrate that the property has been marketed locally for an appropriate period (minimum 12 months) at an appropriate price.

The applicants have offered the view that the dwelling is not affordable to local people. However the S.106 does not secure the dwelling as an affordable home, only that the occupation of the dwelling must be carried out by a qualifying person i.e. a key worker or a person with a Specific Local Need.

Other Matters

The discharge of the S106 would result in an open market unit of residential accommodation contrary to policies LC1, LC2, LC5 and LC7. of the Isles of Scilly Local Plan 2015-30. The S106 therefore still serves a useful planning purpose in retaining a unit of accommodation for qualifying key workers and those with a Specific Local Need. As such, the Council is unable to agree to the discharge of the S.106 at this time.

Other Matters

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 Sections 66 and 72 of the

¹ <https://www.mouseprice.com/>

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	
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	

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.

Reason for Refusal

R1 The S.106 agreement continues to serve a useful purpose in restricting the occupation of the dwelling known as Prospect Lodge to qualifying persons, and is in conformity with policies LC1, LC2 and LC7 of the Isles of Scilly Local Plan (2015-30.)

Print Name: Lisa Walton

04/11/2024

Job Title: Chief Planning Officer

Signed:



Authorised Officer with Delegated Authority to determine Planning Applications
