

Council of the Isles of Scilly Delegated Planning Report Other application

Application Number: P/24/077/PRIAPP

UPRN: 000192000312

Received on: 10 September 2024

Valid on: 1 October 2024

Application Expiry date: 26 November, 2024

Neighbour expiry date: 24 October, 2024

Consultation expiry date: 24 October, 2024

Site notice posted: 03 October 2024

Site notice expiry: 24 October, 2024

Applicant: Mr Ian Sibley

Site Address: Mumfords
Hugh Street
Hugh Town
St Mary's, Isles of Scilly
TR21 0LL

Proposal: Application to determine if prior approval is required for a proposed: Change of use of from Commercial, Business and Service (Use Class E) to mixed use to include one flat (use Class C3).

Application Type: Prior Approval

Recommendation: Permit

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: 21/11/2024

Although this is a Councillor application, this is not an application for Full Planning Permission but an assessment of prior approval. The lead member is happy to delegate this application on this basis. The use falls under Class G of Part 3 of Schedule 2 of the GPDO but Class G1 requires us to assess whether they meet all of the five conditions, as set out below.

Site Description and Proposed Development

The application site is Mumfords, a Grade II listed retail shop in the centre of Hugh Town on the Island of St Mary's. The shop consists of retail and storage space at the ground flood level, with stairs to the rear of the shop providing access to a first floor stockroom, WC and office.

The shop is adjoined by an associated residential dwelling, with separate access, including separate first floor access. This is an adjoining dwelling and is therefore considered to be a separate planning unit.

The application seeks the change of use of the shop using permitted development rights into a mixed use development with the ground floor remaining as a shop and use of the first floor as a residential flat. Access to the first floor flat would be via a separate access from Garrison Lane, independent of the shop.

Consultations and Publicity

The application has had a site notice on display for 21 days. The application appeared on the weekly list on 07 October 2024. 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
Environment Agency	11.11.2024	Standing advice provided for change of use to a 'more vulnerable' use within an area at risk of flooding
Waste and Refuse Collection	15.11.2024	<p>Internal and external provision is recommended for the adequate storage of domestic waste and recycling arising from this property and to consider recycling service changes from March 2025. The property residents would be required ensure all material is containerised prior to collections being made. Collections are made by the Council in this area inside the gate on Garrison lane.</p> <p>Domestic waste collections made by the Council: Residents are required to purchase their own waste sacks and containers to secure waste before it is collected. The council's waste service recommends domestic sized wheelie bins (90l, for example), lidded bins or seagull proof sacks. From March 2025 the recycling service for householders is changing to enable improved segregation of recycling material, which will include the provision of three new reusable sacks for paper and card, glass bottles and jars and plastic and tins.</p>

Representations from Residents:

[0] letters of representation have been received.

Relevant Planning History:

None relevant.

Constraints:

- Conservation Area
- Area of Outstanding Natural Beauty
- Grade II LB
- Historic Landscape Character Landscape Type: Settlements.
- Partial FZ3/St Mary's Flood Prone Land

Planning Policy and Legislation

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.

The Town and Country Planning (General Permitted Development) (England) Order 2015: Schedule 2, Part 3 Class G) pertains to the change of

use of commercial, business and service or betting office or pay day loan shop to a range of mixed uses.

Prior Approval is not a permission in itself. The permission is contained in the GPDO. To be lawful, the development must still comply with the relevant terms and conditions of the GPDO and the Granting of Prior Approval simply means that the condition is satisfied.

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 SS2 (1d)** supports development proposals that appropriately address issues of privacy, overlooking, overshadowing, overbearing impacts and unreasonable noise and disturbance.
- **Policy SS7 (1)** requires development proposals in areas shown to be at risk of flooding to be supported by a Flood Risk Assessment demonstrating how flood risk will be managed.
- **Policy OE3 (1):** supports development proposals where it can be demonstrated that there would not be any adverse impact on human health, the natural environment or general amenity.
- **Policy OE5 (2)** requires development proposals to demonstrate best practice in addressing waste management solutions, must align with the waste hierarchy.

Planning Assessment

The application is a prior approval to establish whether full planning permission is required to convert the existing shop and ancillary first floor office space into a mixed-use development including the existing shop and a proposed first floor flat using permitted development rights.

Schedule 2, Part 3, Class G(a) of the General Permitted Development Order 2015 (as amended) grants permission for development consisting of a change of use of a building from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats, subject to a number of conditions. The developer must also apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (i) Contamination risks in relation to the building;
- (ii) Flooding risks in relation to the building;
- (iii) Impacts of noise from commercial premises on the intended occupiers of

- the development;
- (iv) The provision of adequate natural light in all habitable rooms of the dwellinghouses;
 - (v) Arrangements required for the storage and management of domestic waste.

In assessing this application, the Local Planning Authority therefore has two considerations:

- 1) To determine whether or not the proposed development meets the conditions of Part 3 Class G of the GPDO and therefore is indeed permitted development; and
- 2) Whether the Prior Approval of the Local Planning Authority is required for the change use of the building when considering matters relating to contamination, flooding risks, noise impacts, amenity of future occupants in terms of daylight and waste management.

These issues are considered in more detail below.

1) Is the proposal permitted development?

Class G permits development subject to a number of conditions. An assessment of the development under the Class G conditions is made below to determine whether prior approval (or planning permission) is required.

G.1 (a) sets out that development is permitted under Class G providing that *some or all of the parts of the building used for a use within...Class E of Schedule 2 to the Use Classes Order is situated on a floor below the lowest part of the building used as a flat.*

The existing retail shop, which falls within Class E of Schedule 2 of the Use Classes Order, would be situated on the ground floor level. The space proposed to be used as a flat would be sited at first floor level in its entirety. The proposal is therefore accords with Condition G.1(a)

G.1(b) sets out that development is permitted under Class G providing that *where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat.*

The existing shop of Mumfords has a display window, however, no part of the ground floor level would be used as a flat. The proposal therefore accords with Condition G.1(b)

G.1(c) sets out that development is permitted under Class G providing a *flat must not be used otherwise than as a dwelling (whether or not as a sole or*

main residence)—

(i) by a single person or by people living together as a family, or

(ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents.)

The applicant has not provided details of the prospective occupancy of the flat; however its dimensions could not practicably accommodate more than 6 residents. The proposal is therefore considered to accord with Condition G.1(c)

The proposal meets the Class G conditions a)-c) and is therefore considered to be permitted development. The plans show the size of the accommodation is above the minimum requirement of 37 square metres¹.

2) Prior Approval

Condition G.1(d) sets out that development is permitted under Class G providing that, before beginning development, the developer applies to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (i) Contamination risks in relation to the building;
- (ii) Flooding risks in relation to the building;
- (iii) Impacts of noise from commercial premises on the intended occupiers of the development;
- (iv) The provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (v) Arrangements required for the storage and management of domestic waste.

These matters are considered in detail below.

(i) Contamination risks

The Accompanying Statement sets out that there are no known contamination risks at the property.

The first floor has been used for office space and storage in association with the newsagents shop. These uses are unlikely to pose any risk of contamination,

¹ Permitted Development is required to satisfy Section 3 Permitted Development (9A) which states Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—
(a) where the gross internal floor area is less than 37 square metres in size; or
(b) that does not comply with the nationally described space standard issued by the Page 13 of 282) Department for Communities and Local Government on 27th March 201536.

and the application is therefore considered to be in accordance with policy OE3.

(ii) Flooding risks

The Environment Agency has provided standing advice for developments involving a change of use to a 'more vulnerable' use in areas of flood risk. A change of use which results in a 'more vulnerable' development will only be acceptable if it can be designed to be safe for occupants over the lifetime of development. For simple changes of use the sequential test does not need to be applied. However, for all development within Flood Zone 3 a site specific Flood Risk Assessment is still required to assess the flood risks/hazards, demonstrate whether the development will be safe from flooding over its lifetime, and show how occupants will be able to access/egress the building safely during a flood event. It will also need to demonstrate that the development would not increase flood risks elsewhere and whether it can help to reduce flood risk overall.

The use does not require significant works to convert the building, or the subdivision of an existing residential unit, and a sequential test is therefore not considered to be necessary.

The Accompanying Statement and Flood Risk Assessment sets out that:

- The site is within Flood Zone 3 (tidal) with no other sources of flooding identified;
- Hugh Street has been subject to minor flooding from storm surge during periods of exceptional high tides, low pressure and strong winds, with rising sea levels likely to increase the frequency and severity of tidal surges;
- Upgraded storm surge flood defences have recently been installed along (i) Porthcressa Bank and (ii) Strand by the Council of the Isles of Scilly;
- According to the flood risk map, the maximum depth of flood water over a 200-year timeframe is between 0-250mm;
- The lowest point (road level outside the entrance to Mumfords Newsagents): is 0mm (Ordnance Datum)
- The access to the property is from Garrison Lane, which has a higher ground level than Hugh Street;
- The road level outside the proposed entrance to the new flat is 450mm Above Ordnance Datum (AoD);
- The threshold to the flat entrance is 520mm AoD, meaning that there is a 270mm upstand over and above the highest predicted flood depth, and there has never been water ingress at the property;
- The living accommodation would be located at first floor level, and is not at

direct risk of flooding;

- The following precautionary measures are proposed:
 - A demountable flood gate will be provided for the main entrance;
 - All ground floor services will be installed at a minimum height of 500mm above finished floor level;
 - Ground floor wall finishes will be in non-Gypsum-based materials; and
 - Ground floors will be in solid concrete / screed with a ceramic / stone tiled covering.
- Egress from the site in the event of flooding would be via the higher ground of Garrison Lane to avoid areas of standing water.

The submitted Flood Risk Assessment has taken into account up to date information, including site levels and Environment Agency data and has followed the appropriate gov.uk flood risk guidance. The risk from flooding is considered to be low/negligible given the specific circumstances of the site, and first floor nature of the accommodation. In any event, the proposed mitigation of a demountable flood gate provides certainty that flood risk can be avoided as a result of development, and will not cause increased flood risk elsewhere.

In summary, the proposal is considered to be safe from flooding over its lifetime, will safely manage flood risk, and will not increase flood risks elsewhere. The application is therefore considered to be in accordance with policy SS7.

(iii) Impacts of noise

The Accompanying Statement sets out that the premises are situated in a mixed-use area which includes a number of commercial uses. The ground floor shop premises at the subject property already has residential accommodation overflying part of it. The existing owner of Mumfords also has a first floor lounge adjoining what is proposed to be the new residential flat and does not suffer noise issues. The conversion of the flat will also be carried out in accordance with current Building Regulations standards and will therefore have appropriate sound insulation installed during the building project.

The commercial (shop) use that will be carried on within the ground floor is not considered to be a use that will generate significant noise, and as such there is unlikely to be any impact from noise upon future occupants of the flat. The proposal is therefore in accordance with policy SS2.

(iv) The provision of adequate natural light

The Accompanying Statement sets out that all habitable rooms will utilise existing windows (South and East facing) to provide adequate natural light.

The submitted plans indicate that the kitchen/living room would be served by two windows facing south and east, and the bedroom would be served by a single window facing east. The building is an end-of-terrace with no adjoining building to the south or east.

It is therefore considered that all habitable rooms will be served by adequate natural light, in accordance with policy SS2.

(v) Waste management.

The Accompanying Statement sets out that domestic waste will be stored within the ground floor access passage at the rear of the shop, which opens onto Garrison Lane. No concerns have been raised by the Waste team.

The proposed waste management is considered to be acceptable, and in accordance with policy OE5.

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 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.

Recommended Conditions:

C1 The development hereby permitted shall be carried out in accordance with the approved details only including:

- **Location Plan**
- **Proposed Floor Plan (received 14/11/2024)**
- **Flood Risk Assessment**

Reason: For the avoidance of doubt and in the interests of proper planning and to comply with the limitations of Schedule 2 Part 3 Class G.1 of the Town and Country Planning (General Permitted Development) Order 2015.

C2 Notwithstanding the details provided, this decision does not allow for any external changes of the building or its historic fabric which may require Planning Permission and/or Listed Building Consent. Reason: The building is a Grade II Listed Building and consent has not been sought or granted for any alterations that may impact the historic interest or architectural character of this building.

Print Name: Lisa Walton

21/11/2024

Job Title: Chief Planning Officer

Signed:



Authorised Officer with Delegated Authority to determine Planning Applications
