

Council of the Isles of Scilly

Delegated Planning Report

Certificate of Lawful Use Application

Application Number: P/25/028/CLE

UPRN: 000192001057

Received on: 6 March 2025

Valid on: 7 March 2025

Application Expiry date: 2 May 2025

Neighbour expiry date: 09 April 2025

Site notice posted: 19 March 2025

Site notice expiry: 9 April 2025

Applicant: Francis Roberts

Site Address: Broomfields
Old Town Road
Old Town
St Mary's
Isles Of Scilly
TR21 0NA

Proposal: Application for a Certificate of Lawful Use for the porch at Broomfields

Application Type: Certificate of Lawfulness – Existing

Recommendation:

That a certificate is GRANTED.

1. On the basis of the evidence submitted with the application it is considered that, on the balance of probability, the porch, as outlined in red on the submitted location plan (Received 13 March 2025) has been substantially completed for at least a ten (10) year period prior to the submission of the application for this Certificate of Lawfulness, dated 06.03.2025.
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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: 09/05/2025

Site Description and Proposed Development

The application site is Broomfields, a residential dwelling along Old Town Road to the east of Hugh Town on the Island of St Mary's.

A Lawful Development Certificate is requested for an existing porch on the rear elevation of the dwelling. The precise location of the porch subject to this application can be seen outlined in red on the submitted location (Received 13 March 2025).

Consultations and Publicity

The application has had a site notice on display for 21 days (19/03/2025 – 09/04/2025). The application appeared on the weekly list on 10th March 2025. Due to the nature of the proposal no external consultations are required.

Representations from Residents:

Neighbouring properties written to directly:

- **Penold, Old Town Road**

[1] letters of objection have been received and includes the following points: The letter confirms that they are the owners of the land on which the porch has been constructed and have no knowledge of the agreement between the applicant and the previous owners of Penold. Objections are made on the grounds of:

1. The Porch is built on land owned by Penold
2. The porch is built on top of a shared foul drain which regularly blocks.
3. The porch restricts the space available for vehicular access and turning for penold garage.

[0] letters of support have been received and include the following points:
[0] letters of representation have been received.

Relevant Planning History:

Application No	Proposal	Decision	Decision Date
P4960	Erection of a conservatory and garden shed.	REF	24.04.2001
P5031	Erection of conservatory on front elevation and erection of summer house style shed.	PER	04.10.2001
P5790	Extension to lounge.	PER	16.01.2006
P/16/117/TWA	Removal of x3 Monterey Pine Trees	PER	15.12.2016

Constraints:

- Conservation Area
- National Landscape (AONB)
- Historic Landscape Character Landscape Type: Settlements.

Planning Assessment

Legal Background and Government Guidance

Sections 191 and 192 of the Town and Country Planning Act 1990 (the Act) allow for anyone to apply to the local planning authority for a Lawful Development Certificate (LDC). A LDC is a statutory document certifying that, in the case of an application under s191, the lawfulness for planning purposes of existing operations which have been carried out in, on, over or under land, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of s191 (2)(a), uses and operations are 'lawful' if no enforcement action may be taken against them and they are not in contravention of any Enforcement Notice, which is in force.

Section 171B of the Act sets out the relevant time periods in respect of when enforcement action may be taken. Where the building, engineering, mining or other operations in, on, over or under land has been undertaken, no enforcement action may be taken after the end of a period of ten years, beginning with the date on which the operations were substantially completed.

The advice given in the National Planning Practice Guidance (NPPG) states that if the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a certificate to that effect and in any other case they shall refuse the application. The applicant's own evidence does not need to be corroborated by independent

evidence to be accepted. The relevant test is 'balance of probability'. In the case of applications for existing use or operations, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The NPPG points out that the planning merits of the use, operation or activity do not have any relevance to the consideration of purely legal issues, which are involved in determining such applications. It goes on to stress that a certificate should indicate precisely the area of land to which it relates and precise details of what use or operations are found to be lawful, why and when. It is important to state the limits of the use at a particular date, as details will be a yardstick against which any subsequent change or intensification may be measured.

The determination of this application turns on matters of fact and in particular whether, on the balance of probability, the porch subject to this application has been in place continuously for a period of more than ten years.

Supporting information

The applicant has provided the below evidence to demonstrate the porch has been substantially completed a period of ten years.

- Broomfields Back Porch Supporting Statement
- Appendix H - Elevation and Floor Plan of Porch (BF-PE-FR)
- Appendix G - Broomfields Elevations of Conservatory
- Appendix F - Historic England Aerial Photography

Examination of information

The applicant has provided a copy of proposed floor plans and elevation (BF-PE-FR) for an 'Extension to the lounge' which was submitted in support of application 'P.5790. This plan shows the porch and was approved within P/5760 on 16th January 2006.

The applicant has also provided historic aerial imagery. The Porch is visible within 'Aerial Photo - 29031_041', which has been submitted by the applicant and is also available within the Historic England 'aerial photo collection'. The Historic England website states this photo was taken on 12 June 2014.

In addition, the porch is visible within Google Satellite Aerial imagery dated 1/1/2005.

The applicant has also provided some information that the glass panels used within the porch were originally intended for use within the glazed conservatory approved in September 2021.

The test with this certificate of lawfulness is that the Authority is content that on the balance of probability, the applicant's evidence cumulatively demonstrates that the porch has been substantially completed for ten years. In this instance, the evidence provided, notably the historic aerial imagery, demonstrates on the balance of probability that this is the case. Third party objections, that there is no agreement to construct the porch on land belonging to the neighbouring property, are not relevant in this case. Issues of land ownership disputes are a civil matter and not under consideration in this case.

Conclusion

The application has been assessed and determined on the basis of the evidence provided by the Applicant and evidence gathered by the Authority, and the plans noted below. After careful examination of all the available information it is concluded that this evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the porch, as outlined in red on the submitted location plan (Received 13 March 2025) has been substantially completed for a period of 10 years.

Thereby the granting of a certificate of lawful use is recommended.

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 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

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.

Conditions

- C1 On the basis of the evidence submitted with the application it is considered that, on the balance of probability, the porch, as outlined in red on the submitted location plan (Received 13 March 2025) has been substantially completed for at least a ten (10) year period prior to the submission of the application for this Certificate of Lawfulness, dated 06.03.2025.**

Print Name: Lisa Walton

09/05/2025

Job Title: Chief Planning Officer

Signed:



Authorised Officer with Delegated Authority to determine Planning Applications
