

STATES OF JERSEY

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

APPEAL OF A DECISION UNDER ARTICLE 108

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Inspector appointed under Article 107

APPEAL BY: Ms. S. Johnson

AGAINST: Refusal to grant planning permission for *Outline application – Construct ground floor extension to east elevation to include roof terrace. Change of use and extension to outbuilding to form 2 no. one bedroom self-catering accommodation. Change of use to lower ground floor garage to form workshop. Alter vehicular access. Fixed matters: layout, scale, appearance and means of access. Reserved matters: landscaping.* Decision dated 10 December 2015

LOCATION: Le Petit Alva, La Rue du Petit Aleva, St Peter, JE3 7ET

REFERENCE: PP/2015/1096

APPEAL PROCEDURE: Written Representations

SITE VISIT: 13 May 2016 (accompanied)

DATE: 31 May 2016

Introduction

1. This report contains my assessment of the appeal made by Ms. S. Johnson against the decision of the Department of the Environment to refuse to grant planning permission for a range of proposed developments at her home / smallholding at Le Petit Alva in the Parish of St Peter.
2. Le Petit Alva is a modest three bedroom dwelling situated on the south side of La Rue du Petit Aeval. The wider site extends to some 16 verges and comprises the house itself (in the north-west corner), an outbuilding (which abuts the road), a driveway from the house to the road and gardens, along with fields to the south of the property (fields 516A, 516B, 517, 517A, 518A and 519). The site is understood to have once been part of the former Strawberry Farm complex which includes this and other lands in the area. Today, Le Petit Alva is operated as an organic horticultural smallholding business.
3. There are effectively three elements to the proposals and it is important to differentiate these at the outset, as they raise different Planning considerations.

A. Outbuilding extension / conversion to 2 no. 'holiday lets' proposal

The outbuilding that abuts La Rue du Petit Aeval is a rather utilitarian structure, constructed in rendered blockwork with a mono-pitch roof (which is lowest adjacent to the road). The building measures some 14 metres in length and 5 metres in depth and is internally sub-divided into four bays.

It is proposed to extend the building forwards by about 1.5 metres, add a new mono pitch roof (which would be highest adjacent to the road) and convert the extended building into two self-catering 'holiday let' units. Each unit would include a bedroom, bathroom and a kitchen / living area. It is the Appellant's intention that the accommodation would be "*aimed at visitors wanting to experience a horticultural vacation within a sustainable context.*"¹

B. The domestic alterations and extension proposals

There is an existing garage that protrudes eastwards from the main house. Due to the site levels, this is set below the ground floor of the dwelling. It is proposed to convert this garage to a workshop / boot room and to create a new stepped entrance to the house alongside it (on the north side of the garage).

Above the garage / workshop, an extension is proposed which would accommodate a kitchen and living area. It is also proposed to enlarge the master bedroom in the southern part of the dwelling, extending it eastwards by about 2 metres and southwards by about 1.5 metres. This extended bedroom and the new kitchen / living room extension would both open onto a proposed timber decked terrace, which would extend to some 54 square metres.

¹ Paragraph 3.1 of the Design Statement dated 7th July 2015

C. The driveway and parking proposals

It is proposed to widen and improve the access to the road by setting new radius curves defined by low granite walls. It is also proposed to widen the drive along its length – the extended width varies but, at its maximum, it is just over 1 metre. To the south of this extended drive, two sets of parking bays are proposed (4 spaces in total) to serve the house (2 spaces) and the proposed holiday lets (2 spaces).

The Department's refusal

4. The Department refused the application for two reasons:

Reason 1: The site is situated within the Green Zone, wherein there is a general presumption against any forms of development. The proposed creation of two self-contained holiday units of accommodation through the conversion of and extension to four existing storage units, and significant increase in occupancy would be contrary to Policies GD 1: EVE 1 & NE 7 of the approved Island Plan, 2011, Revised: (2014).

Reason 2: The proposed change of use of sections of Field 516A – Green Zone land, into domestic curtilage to provide 4 no. additional car parking spaces; the widening, in parts, of the internal drive way and creation of first floor terrace and area below for additional habitable and amenity space to Petit Alva, is contrary to Policy NE 7 of the approved Island Plan, 2011, Revised: (2014).

The Island Plan 2011 (Revised 2014) – policy considerations

5. There is a general legal presumption that development in accordance with the Island Plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'² for overriding its provisions.
6. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Much of the island's countryside is defined as the 'Green Zone' and is afforded a high level of protection from development. The appeal site lies within the Green Zone.
7. The Green Zone Policy, NE 7, sets out the general presumption 'against all forms of development'. Furthermore, it explicitly identifies the 'development of a new dwelling'; 'facilitating a separate household' and the 'change of use of land to extend a domestic curtilage' as examples of the types of development that would normally be resisted. However, the policy extends to allow the opportunity for some specified exceptions. These include domestic extensions (exception 1), subject to appropriate design, and to ensuring the proposals do not facilitate 'significant increased occupancy' and / or the creation of a separate household. There is also a possible exception for 'new cultural and tourism development' (exception 11) subject to it

² Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

being *'appropriate relative to existing buildings and its landscape context'* and that it *'does not seriously harm landscape character.'*

8. Policy EVE 1 supports tourism related development, including self-catering accommodation, 'within the identified built up area boundary'. The Policy goes on to state that 'within the Green Zone proposals for visitor accommodation, tourism and cultural attractions will be determined in accordance with Policy NE 7 'Green Zone'.
9. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact (including specific regard to the character of the countryside), impact on neighbouring uses and occupiers, economic impact, transport and design quality.

The Appellant's Case

Reason 1 – The holiday lets

10. The Appellant contends that exception 11 under NE 7 does allow for tourism development and that self-catering accommodation cannot be defined as 'residential development' (which is specifically excluded by NE 7). The Appellant reached this view based on the understanding that a 'change of use' permission would be required to convert a dwelling to a self-catering unit and *vice versa*, and hence the two uses cannot be the same.
11. The Appellant further asserts that the proposal complies with the NE 7 exception 11 criteria (and with the linked EVE 1 policy), being appropriate relative to the buildings and landscape and not harmful to the landscape character. The Appellant has also indicated that the outbuilding has in the past (between 1975 – 1980) been used as occasional 'spill over' residential accommodation when the site was part of the former Strawberry Farm.

Reason 2 – The curtilage extension

12. The Appellant considers that the refusal of the drive widening and domestic extensions is based on an erroneous notion that the residential curtilage would be extended. The Appellant argues that the Department has taken an arbitrary and subjective definition of where the domestic curtilage begins and ends and she considers this to be unreasonable.

Discussion and assessment

13. The main issues in this case relate to whether, and if so the extent to which, the proposals conflict with the Island Plan's provisions in respect of the defined 'Green Zone', the related policy approach to tourism related development within the Green Zone, and the conformity with 'General Development' policy considerations (GD 1). I assess each component individually.

Component A - the holiday lets

14. Policy EVE 1 is clear in its support for tourist related development (including self-catering units) within the built up area, but it defers to policy NE 7 in respect of proposals in the Green Zone. Accordingly, the issue here is whether exception 11 under Policy NE 7 allows for the development of holiday let accommodation. In my view, it does not. Indeed, when the policy is read in its entirety, along with its supporting narrative, it is clear to me that such accommodation is presumed against.
15. The Department is quite right in stating that the development of holiday accommodation is not identified as a potential permitted exclusion under Policy NE 7. The narrative in paragraphs 2.159 – 2.162 gives a range of possible tourist development examples and these, typically, relate to facilitating use, enjoyment and interpretation of the countryside. They do not relate to built accommodation, whether new build or by conversion / extension of buildings, for holiday lets.
16. I also consider that the Policy NE 7 treatment concerning new dwellings and households to be relevant here. Whilst it may be debatable whether these holiday units would comprise 'dwellings' or whether the intended holiday occupants could be deemed 'households', there is no escaping that the intended use is a residential one which would increase human occupancy and intensity in an area where the Plan is seeking to resist it. Indeed, the intensity of the activities arising from the constant guest party turnaround, servicing of the accommodation and frequent vehicular movements could actually be greater than a more conventional new 'household' (which is specifically disallowed by NE 7).
17. I do appreciate that the Appellant's intention is to operate the accommodation sensitively and in connection with the organic smallholding, but that does not override my conclusion that, in policy terms, the holiday let proposal is unacceptable and should be resisted. I do not consider that there is a sufficient justification to depart from the Island Plan's policy presumptions.

Component B – the domestic alterations and extensions

18. Setting NE 7 aside for a moment, the alterations and extensions to Le Petit Alva are, in my view, well mannered and relatively modest. There would be no increase in bedroom numbers and there are no issues arising in terms of design, overlooking, massing or amenity considerations (Policy GD 1 criteria). The proposal would improve and modernise a modest property and, in my view, enhance its appearance.
19. The issue here relates to the definition of domestic curtilage and the associated NE 7 implications. The Department's view is that the extension works (at least in part) would fall outside, and would therefore extend, the domestic curtilage, which conflicts with NE 7.
20. The Department bases its view on a line that appears on a plan. For ease of legibility of this report, I have reproduced an extract below. The line in question extends from the front (but not the corner) of the garage block

and arcs north-eastwards (south of the indicated drive track) up to La Rue du Petit Aeval. The Department consider that this line, and the walls of the house itself (around its southern part), define the curtilage. The Appellant disagrees.



Extract from Application plans showing alleged 'curtilage' line running from garage to road.

21. When viewed on site, the line is not at all discernible. It appears to me that the line may have been an historic field boundary, possibly from the days when it formed part of the wider Strawberry Farm complex. However, over time, the fragmentation of that large farm and the establishment and operation of Le Petit Alva as a separate smallholding has meant that any boundary definition that may have existed has been lost.
22. Today, the 'garden' areas and the wider horticultural lands just meld naturally into one another. However, the character of the area around the house and the drive is that of domestic curtilage and includes some domestic paraphernalia including the property's above ground oil fuel tank (which is just to the south of the garage).
23. I agree with the Appellant that a measure of pragmatism is appropriate and I am not convinced that the extensions would result in any tangible or discernible, and perhaps more to the point harmful, 'extension' of curtilage.
24. The NE 7 companion narrative explains (at paragraph 2.122) that it would be unreasonable to resist all forms of development to improve people's homes. The policy itself sets out the criteria for dwelling extensions and I consider that the extension proposals comply with these. The design is appropriate to the existing building (criterion a); does not facilitate increased occupancy (criterion b); would not create a separate household (criterion c) and would not seriously harm the landscape character (criterion d).

25. It is beyond my remit in considering this appeal to define where the curtilage should be drawn, but I do think a little breathing space around the building and south of the drive is not unreasonable. Should the Minister endorse my recommendations, this could be a matter that the Appellant may wish to revisit with officers. A fresh planning application for this particular component could be a vehicle for defining a more defensible domestic curtilage for future reference.

Component C – the driveway and parking proposals

26. My views on the driveway and parking proposals follow logically on from my findings on the other components. As I consider the 'holiday lets' units to be unacceptable, I see no need or justification for the creation of parking and a widened drive to serve those units. However, I see no objection to the works to improve the access arrangements to the road, as these could be considered reasonable, in any event, to improve accessibility to the dwelling house.

Conclusion and recommendations

27. The appeal proposal comprises a number of elements that raise differing issues and implications in terms of the Island Plan's Green Zone Policy NE 7.
28. The proposed 'holiday let' units are in conflict with NE 7 and I recommend that the appeal be dismissed in this respect and that the first reason for refusal be upheld in full.
29. I consider the alterations and extensions to Le Petit Alva to be well designed and to fall within the parameters set for the enlargement and improvement of homes within the Green Zone. I am not convinced that the works would amount to an extension of the domestic curtilage, which is not discernible on the ground. I also consider the road junction improvements to be acceptable. In these respects, I recommend that the appeal should succeed.
30. I have considered whether the acceptable elements of this proposal could be the subject of a recommended 'split decision'³. However, I have concluded that it would not be easy to disentangle the component elements. Furthermore, I do not know whether the Appellant would wish to pursue some components and not others. Accordingly, these matters are best pursued through further discussions with officers and, if appropriate, through a fresh application for planning permission. I therefore recommend a revised reason for refusal (in place of the Department's two reasons) which focuses on the development components that I have concluded are unacceptable.
31. For the reasons stated above, the Minister is recommended to dismiss this appeal. I further recommend that the Applicant be invited to consider making a fresh application for the domestic extensions and road access improvements, should she wish. My formal recommendations are set out below:

³ A 'split decision' is a Planning Permission that allows acceptable components of a development scheme to proceed, but excludes, via a Planning condition, other elements which are judged to be unacceptable.

- A. That the appeal be dismissed but that the two reasons for refusal stated in the decision notice be replaced with the following single reason:

Reason: *The site is situated within the defined Green Zone where the Revised 2011 Island Plan sets out a general presumption against all forms of development. The proposed conversion and extension of the outbuilding to create two self-contained units of holiday accommodation and the associated drive widening and car parking spaces would constitute an inappropriate development in the countryside, increasing human occupancy, intensity of activity and traffic generation, which would be contrary to Policies NE 7, EVE 1 and GD 1.*

- B. That the Appellant be invited to consider lodging a revised fresh application for the domestic extensions and road junction improvement works.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI