

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

**Appeal under Article 108 against a decision made under Article 19 to
refuse planning permission**

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellants:

Portelet Hotel Ltd.

Application reference number and date:

P/2017/1629 dated 23 November 2017

Decision notice date:

26 July 2018

Site address:

Noirmont Farm, La Rue Voisin, St. Brelade JE3 8AT

Development proposed:

"Demolish existing dwelling, outbuildings and portacabins. Construct 1 No. five bed dwelling with associated parking and landscaping".

Inspector's site visit date:

8 November 2018

Hearing date:

9 November 2018

Introduction

1. This is an appeal by the applicants against the decision taken under delegated powers to refuse planning permission for the development described above.
2. Three reasons were given for the decision, as follows: -
 - "1. By virtue of scale and increase in floorspace of the replacement dwelling/outbuildings, the proposal would facilitate a potential significant increase in residential occupancy. As such, the proposal

conflicts with Policy NE7 of the Adopted Island Plan 2011 (Revised 2014) which seeks to limit occupancy in the Green Zone to protect the environment and support the principles of sustainable development.

2. The scheme seeks to replace a number of single storey buildings/structures which are temporary in nature with an unduly large dwelling of a design which is at odds with Jersey vernacular and out of character with the Green Zone. Accordingly the scheme is not considered to significantly reduce the visual mass, scale and volume and therefore fails to deliver demonstrable environmental gains contrary to Policy NE7 of the Adopted Island Plan 2011 (Revised 2014). Furthermore, by virtue of design and scale the proposal is considered to be visually dominant and intrusive, thereby causing harm to the character of the area contrary to Policies GD1, GD7 and NE7 of the Adopted Island Plan 2011 (Revised 2014).
3. The application is contrary to Policies E1, SP 5 of the Adopted Island Plan 2011 and SPG: Protection of Employment Land June 2012, in that it proposes residential redevelopment of employment buildings. Insufficient information has been submitted to demonstrate that the employment buildings have been marketed for redevelopment for alternative employment uses, nor has it been adequately demonstrated that it is not financially viable to retain these buildings in employment use."

Description of the site and its surroundings

3. The main building on the site is a two-storey farmhouse, which has a single-storey addition with roof space. The farmhouse has two reception rooms on the ground floor, two bedrooms on the first floor and an attic room in the roof space. It is not lived in at present and is in part used for storage purposes. The site includes open land around the farmhouse and a range of unused agricultural outbuildings near to the farmhouse. It also includes the access road to the farm from La Rue Voisin and the adjoining Field 675, which is no longer in active agricultural use.
4. There are portacabins in part of Field 675 that have in the past been used by charitable organisations, but which are now unoccupied. They were granted planning permission in 1997 (Reg. No. 5387/F) on an application made by Portelet Hotels Ltd. The permission is subject to a condition, which states: "That the development hereby approved shall be for a period of five years only, after which time the building shall be removed unless this consent is further renewed by the Planning and Environment Committee". It was the renewal of an earlier permission granted to Portelet Hotels Ltd in 1989, which contained a similar condition. The permission has not been further renewed, but the Department consider that, since it is more than eight years since the failure to comply with the condition arose, it is too late to take enforcement action to require the portacabins' removal. The Department take the view, however, that "They remain unauthorised and should by the wording of the Conditions, be removed".
5. There is residential development on the north side of the access road and on the south side of Field 675. Fields between the site and La Rue Voisin separate the site from the more substantial residential development on the western

side of La Rue Voisin. There is open agricultural land to the east and north-east of the site, as far as La Route de Noirmont in the distance.

Details of the proposed development

6. All the buildings on the site would be demolished and the portacabins would be removed. A five-bedroom house with a parking area would be built on the part of the site presently occupied by the farmhouse and the outbuildings. Field 675, including the area now occupied by the portacabins, would be laid out as an orchard. Landscaping would take place around the new house.

The case for the appellants

7. The appellants disagree with the reasons for refusal and maintain that the policies in the Island Plan that have been referred to would all be complied with. They maintain that all the buildings on the site are beyond economic repair and that there is no demand for replacement employment uses. They indicate that all the buildings on the site would be consolidated into one single dwelling with a reduced floor space overall. There would be no significant increase in occupancy and there would be significant environmental gains. The landscape character of the area would be improved and the proposal would be sustainable development.
8. The appellants draw attention to various other residential developments in the locality and the wider area, which the appellants consider lend support to the acceptability of the development now proposed.

The case for the Growth, Housing and Environment Department

9. The Department's case is set out in the reasons for refusal quoted in paragraph 2 above. In summary, the Department maintain that the development proposed would replace a former farmhouse and outbuildings with a single, unduly-large dwelling, which would facilitate a significant increase in residential occupancy and have a visual mass, scale and volume that would be dominant and intrusive, harming the character of the area without delivering demonstrable environmental gains. The Department also maintain that the policies protecting employment land (Reason 3) have still not been satisfied.
10. The Department have explained why, in their opinion, none of the other residential developments referred to by the appellants is directly comparable to the development now proposed.

Representations made by others

11. The Natural Environment Team are satisfied with the findings of the appellants' ecological surveys and have indicated that, if the proposed development is approved, a condition should be imposed to ensure that the measures set out in the Species Protection Plan are implemented.
12. There are four outstanding letters of objection from members of the public. These relate to landscape character, the scale of the proposed development, traffic and public transport, wildlife habitat and the loss of potential stabling and grazing facilities for horses.

Island Plan Policies

13. The appellants and the Department are in agreement that the Island Plan Policies of particular relevance to this appeal are Policies NE 7, E 1, SP 5, GD 1 and GD 7. These policies are summarised below.
14. Policy NE 7 is applicable because the site is in the Green Zone. The policy states that the Green Zone will be given a high level of protection from development and that there will be a general presumption against all forms of development, with certain exceptions which may be permissible where they do not cause serious harm to landscape character.
15. These exceptions include "Residential" and "Employment". Categories 3 and 10 are relevant to the appeal. They are: -
 - "3. the redevelopment of an existing dwelling and/or an existing ancillary residential building and/or structure, involving demolition and replacement, but only where the proposal would;
 - a. not facilitate a significant increase in occupancy; and
 - b. give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character."
 - "10. the redevelopment of an employment building(s), involving demolition and replacement for another use, but only where:
 - a. the redundancy of employment use is proven in accord with Policy E1: Protection of employment land or where the development involves office or tourism accommodation;
 - b. and it gives rise to: demonstrable environmental gains, contributing to the repair and restoration of landscape character; reduced intensity of occupation and use; and improved design and appearance of the land and building(s)."
16. The supporting text to Policy NE 7 contains several passages indicating how the provisions of the policy should be applied in this appeal, as follows: -
 - 2.118 There will be "a general presumption against any development in the Green Zone in order to retain the quality and distinctiveness of the Island's countryside here and to ensure that the distinct character of the zone remains intact. The quality and distinctiveness of the landscape character areas of the Green Zone still makes them sensitive to the effects of intrusive development whilst having a greater capacity to accept some change".
 - 2.119 "Whilst there is a presumption against new uses or buildings that would detract from its landscape character, there may be opportunity to secure the repair and restoration of it through exceptions where the development of existing buildings or land uses provide opportunities to repair or reduce their existing harm to landscape character".
 - 2.121 "Accordingly, Policy NE7 sets a presumption but not an absolute moratorium against development within the Green Zone: the key test is the capacity of the site and its context to accommodate development without serious harm to landscape character. This is the starting point for the consideration of development proposals".

2.127 “The principle of demolition and replacement of existing dwellings is supported only where demonstrable environmental gains can be delivered”.

2.128 “Comprehensive proposals of this type can offer the possibility of repairing and restoring landscape character which might be achieved by environmental gains including some or all of: reduced visual scale, mass and volume of a building; more sensitive and sympathetic siting and design; materials, colours and finishes more sensitive to the character [of the] area”.

2.129 “Replacement buildings should not facilitate a significant increase in occupancy. Intensification of domestic use would place more pressure upon a fragile environment, limited infrastructure and services and be likely to increase trip generation”.

2.153, 2.154 & 2.156 “The principle of allowing the redevelopment, involving demolition and replacement for alternative uses ... of existing employment buildings is supported where significant environmental gains can be delivered. ... Such proposals will need to satisfy the requirements of Policy E1: Protection of employment land in the first instance ...”.
“Comprehensive development of this type offers the possibility of repairing and restoring landscape character of the area ...”.

17. Policy SP 5 states: “A high priority will be given to the maintenance and diversification of the economy and support for new and existing businesses, particularly where development can attract small footprint/high value business from elsewhere and foster innovation, in the following ways:

1. the protection and maintenance of existing employment land and floorspace for employment-related use;
2. the redevelopment of vacant and under-used existing employment land and floorspace for new employment uses;
3. the provision of sufficient land and development opportunities for new and existing employment use”.

18. Policy E 1 states: “There will be a presumption against development which results in the loss of land for employment use as supported by the Strategic Policy SP 5 'Economic growth and diversification', unless;

1. it is demonstrated that the site is inappropriate for any employment use to continue, having regard to market demand. Applications will need to be accompanied by documentary evidence that the size, configuration, access arrangements or other characteristics of the site make it unsuitable and financially unviable for any employment use and confirmation by full and proper marketing of the site on terms that reflect the lawful use and condition of the premises, or;
2. the existing development is predominantly office or tourist accommodation, or;

3. the overall benefit to the community of the proposal outweighs any adverse effect on employment opportunities and the range of available employment land and premises; or,
 4. the existing use is generating environmental problems such as noise, pollution, or unacceptable levels of traffic and any alternative employment use would continue to generate similar environmental problems”.
19. Supplementary Planning Guidance *Protection of Employment Land* “has been prepared to explain what is required, as part of a planning application, to:
- test the viability of the continued use of employment land and buildings in employment use and;
 - demonstrate and evidence the full and proper marketing of a site.” (paragraph 1.4)

The Guidance contains detailed advice about what is needed to demonstrate that Policy E 1 has been complied with.

20. Policy GD 1 states: “Development proposals will not be permitted unless the following criteria are met such that the proposed development ...”. There follows a list of criteria, one of which is: -

“1. contributes towards a more sustainable form and pattern of development ... and in particular it;

a. will not replace a building that is capable of being repaired or refurbished”.

21. There was a Policy GD 2 in the 2011 version of the Island Plan, which stated that the demolition or replacement of a building or part of a building would not be permitted unless the proposed development fulfilled certain criteria. This policy was deleted when the Plan was revised in 2014, but the words in Policy GD 1.1.a. quoted in paragraph 20 above remained unchanged. On 1 June 2018 in the case of *Therin v Minister for Planning and Environment & Warwick*, the Royal Court held: -

“88. The removal of policy GD2 means that that policy no longer exists, but it does not mean that one should ignore references to demolition of existing buildings which appear in other policies. Indeed, policy GD1.1(a) was itself amended in 2014 with the revisions to the Island Plan which led to the exclusion of policy GD2. The States therefore must have contemplated that what was left of policy GD1.1(a) remained a relevant planning policy. If it is correct to say that there is no longer a presumption against the demolition of existing buildings, it is in my judgment not correct to say that policy GD1.1(a) can therefore be disregarded; I would prefer to describe that policy as a light presumption against demolition – if a building is capable of repair and/or refurbishment, a proposed development which involves its demolition will not contribute to a more sustainable form and pattern of development in the Island. At that point, the different policies referred to in GD1 need to be balanced and a judgment call made as to where that balance comes down.”

22. Policy GD 7 indicates that “A high quality of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and the built context will be sought in all developments ... ” and that “Where the design of proposed development does not adequately address and appropriately respond to the following criteria, it will not be permitted”. These criteria include:
- “1. the scale, form, massing, orientation, siting and density of the development, and inward and outward views;”
 - “2. the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting;” and
 - “4. the use and maintenance of landscape to enhance new development and the degree to which this makes use of local features and an appropriate mix of materials and plant species suited to both the landscape and wildlife interests of the locality;”.
23. The appeal site is within Character Area E2 South-west Headlands (St Brelade) as defined in the Countryside Character Appraisal of 1999. The Appraisal indicates that the Area has a limited capacity to accept new development. It advises that it has accommodated a substantial amount of new development in the past and that the emphasis should now be on the conservation and enhancement of the surrounding countryside.

Inspector's assessments

24. The policy framework indicates that there should be satisfactory answers to the following questions. I have considered each of these in turn and recorded my conclusions on them.

Would the development facilitate a significant increase in occupancy?

25. The farmhouse and the residential part of its single-storey addition have a total floor area, including roof space, of about 266m². The property appears to have been occupied in the past as a two-bedroom dwelling, but the appellants consider that the roof space could be converted so as to provide a total of five bedrooms.
26. The new dwelling would have a total floor area of about 567m². The application plans show that it would have five bedrooms. As the Department have pointed out, there would be scope to use other parts of the first floor as additional bedroom space.
27. In my view, planning conditions could not in practice reasonably attempt to control how the internal space in the new dwelling was used or adapted or how many occupants were permitted to live in the dwelling. It seems obvious that new residential development that provides more than double the floorspace of the residential development it replaces will facilitate a significant increase in occupancy, contrary to criterion 3.a. in Policy NE 7.
28. However, in my opinion, this does not mean that in principle a larger dwelling could not be created by replacing employment buildings on a site by residential development in accordance with criterion 10 of Policy NE 7 and combining it with residential development that complied with criterion 3.a. The

appellants maintain that if this is done in this instance the new dwelling's floorspace will be less than the total floorspace it replaces on the site. There is, however, still a need to demonstrate environmental gains in accordance with criteria 3.b. and 10.b, to prove redundancy of employment use in accordance with criterion 10.a. and to assess whether the terms of Policies GD 1.1.a. and GD 7 would be complied with.

Would the development give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character?

29. This criterion calls for harm to landscape character to be identified and for demonstrable environmental gains to be shown to arise from the development. For the reasons set out below I do not consider that this will occur as a result of the development.
30. The landscape character of the site and its surroundings is as described in paragraphs 3 to 5 above. It is typical of the Character Area E2 South-west Headlands (St Brelade), referred to in paragraph 23 above, in that it has accommodated a substantial amount of new development in the past and has a limited capacity to accept more new development. The farmhouse and its outbuildings, the farmyard and the adjoining fields are in keeping with the landscape character, apart from those outbuildings that are beyond repair and the portacabins. The proposed development would result in the demolition of all the buildings on the site, including those that cause no harm to landscape character.
31. In general, a property's disrepair should in my view be accorded only limited weight in assessing compliance with Policy NE 7, since there could otherwise be an incentive for landowners to allow a property's condition to deteriorate in order to increase the possibility of obtaining planning permission for development in the Green Zone. Here, the outbuildings that are beyond repair are likely in any event to have to be demolished in view of their condition, whether or not the development takes place.
32. The portacabins are an eyesore. Their continued presence is in breach of planning control and they ought to be removed as required by the planning condition. The proposal to remove them if planning permission is granted for the development should in my opinion carry little, if any, weight in the determination of this appeal.
33. The proposed dwelling would be a large, two-storey structure, measuring some 40m from east to west. It would be a stand-out feature in the landscape, compared to the farmhouse, and have an extensive domestic curtilage in contrast to the typical farmyard surroundings that exist at present. The impact would not be significantly alleviated by the landscaping proposals that have been put forward, since they would not assimilate the dwelling and its curtilage into its rural background to a satisfactory extent.
34. Overall, the approval of the proposed development would represent a significant failure to take forward the policy emphasis on the conservation and enhancement of the countryside in this area. The harm to landscape character would in this instance be serious in my view.

Has the redundancy or inappropriateness of employment use been demonstrated?

35. This has been demonstrated as far as the re-use of the outbuildings that are beyond repair and the portacabins are concerned. The outstanding issue is whether it has been demonstrated as regards the loss of land for agricultural use. This relates to the re-usable outbuildings and the farmyard area and adjoining farmland, since the proposed development would keep Field 675 in agricultural use as an orchard. (The Island Plan treats agriculture as an employment use.)
36. The provisions of Policy E 1 and the Supplementary Planning Guidance concerning marketing have not been complied with at all in respect of the site. The appellants have submitted a report prepared by professional advisers, which concludes: "a comprehensive marketing exercise was not necessary to demonstrate redundancy of the site, and that alternative employment uses are not viable within either the existing buildings or potentially redeveloped buildings".
37. The Department state that they are "aware of a continuing demand for agricultural related development", based on planning applications received and the level of interest shown when the results of marketing exercises are made known to the Department. They have examined the sales particulars produced by the appellants in respect of agricultural sites that were marketed unsuccessfully and comment that the level of interest has not been recorded. The wording of some of the sales particulars suggests that some sites may possibly not have been marketed in earnest for continuing agricultural use.
38. The obvious way for this matter to have been resolved would have been for the appeal site to have been marketed in accordance with the terms of the policy and the guidance. In the absence of this step, I do not consider that redundancy or inappropriateness of employment use has been demonstrated to the extent called for in this instance.

Would a building that is capable of being repaired or refurbished be replaced?

39. It seems to me from the structural report submitted by the appellants and my own inspection that the main, two-storey part of the farmhouse is still structurally sound, although in need of extensive refurbishment. The report indicates that the expense involved would not make the works cost effective, although the detailed basis on which this conclusion has been reached is not apparent in the absence of any costings or market valuations. I share the Department's view that it has not been shown that the new dwelling would not replace a building that is capable of being repaired or refurbished.

Would the development achieve an adequate quality of design?

40. The new dwelling would have an eye-catching design and layout with many interesting features. Granite would be used extensively externally and many sustainability features would be incorporated in its construction. In my opinion a dwelling with this quality of design would be acceptable in a suitable location, but here for the reasons already explained the design would not achieve the standards called for by Policy GD 7.

Are there other material considerations that should be taken into account?

41. Planning applications are all assessed individually, but consistency in decision-making is an important part of the process. I have considered all the examples of similar developments that the appellants have referred to and have concluded that they can all be distinguished from the proposed development because of differences in site-specific circumstances and/or policy considerations.
42. I have also considered whether the continued use of the site for employment purposes could be more disturbing to nearby residents than the use of the proposed development. This is a possibility, but amenity considerations would be taken into account when planning applications were submitted for employment purposes. I do not consider that this possibility outweighs the planning objections to the proposed development that I have identified above.

Inspector's overall conclusion

43. For the above reasons, and having assessed the proposed development in detail on its planning merits, I have concluded that the development would not be in accordance with the Island Plan, that the drawbacks resulting from it would not be outweighed by its advantages and that there are no other material considerations that would justify making a decision that would not be in accordance with the Island Plan.

Inspector's recommendations

44. I recommend that in exercise of the powers contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended) the appeal should be dismissed.

Dated 25 January 2019

D.A.Hainsworth

Inspector