

Planning and Building (Jersey) Law 2002
Article 115(5)

Report to the Minister for the Environment

By

Linda Wride DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Mr S Le Blancq and Mrs A Le Blancq

Les Ruettes Barn, La Rue du Coin, Grouville

Application by Ms Nadia Miller

Hearing held on 9 July 2019 at the Employment Tribunal Offices, Bath Street, St Helier

Application Reference: P/2018/1829

Les Ruettes Barn, La Rue du Coin, Grouville

- The appeal is made under Article 108 of the Law against a decision to grant planning permission under Article 19
- The appeal is made by Mr & Mrs Le Blancq
- The application Ref PP/2018/1829, is dated 21 December 2018
- Planning permission was granted by notice dated 25 March 2019 subject to conditions
- Proposed development: Convert existing store into 1 No. 3 bed self-catering unit
- Address: Les Ruettes Barn, La Rue du Coin, Grouville.

Summary of Recommendations

1. I **recommend** that the third party appeal should be allowed and that permission should be refused for the reasons set out in the report.

Introduction

2. This is an appeal by third parties against the grant of planning permission. The appellants, Mr and Mrs Le Blancq, live at Larn-a-Lod, La Rue du Coin, a neighbouring property to the site of the development.

The scope of the report

3. Planning permission was granted subject conditions on 25 March 2019. Under Article 117(1) & (2) of the Law, the decision remains in effect, but the development may not take place until determination of the appeal.
4. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as the Minister may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.
5. The purpose of this report is to provide the Minister with sufficient information to enable him to determine the appeal. It focuses principally on the matters raised in the appellants' grounds of appeal. However, other matters are also addressed where these are material to the determination, and in order to provide wider context.

Appeal site and surroundings

6. Les Ruettes Barn is located in a small group of dwellings in Grouville, accessed off La Rue du Coin via a narrow, private single track approximately 150m long. The setting is rural in character, and lies within the Green Zone as defined on the Island Plan Proposals Map.
7. According to the date stone above one of the window openings, the barn was constructed around 1841, probably as an outbuilding to a 19th century farm house, *Les Ruettes Cottage*, now extended and in residential use. The former farmhouse is located immediately to the south east of the appeal building, and physically attached to it.
8. To the north west of the site is another dwelling, *Maison Mallet*, separated from the barn by a narrow gap. To the south west of the appeal site on the opposite side of the access, is a bungalow *Larn-a Lod* with a detached garage block. This is the home of the appellants, Mr and Mrs Le Blancq.
9. To the rear of the barn, a bank rises steeply to Field No 650A. The appellants own the northern area of Field No 650A, which is in part woodland and in part farmland. The remaining area of the field is owned by the applicant. A planning application¹ seeking retrospective permission for works to "re-profile" the eastern part of the field was approved in July 2019, following a referral to the planning committee.
10. The appeal building is two storeys high, with mixed blockwork and granite walls finished in painted render, under a shallow pitched metal roof. Internally, both floors are open plan at present.
11. Until a few months before it acquired by the applicant in October 2015, the building had been rented by the appellants and used to store agricultural equipment used in the upkeep of the three fields they own/rent out in the vicinity of the appeal site. Since then, it has been used for non-agricultural storage. It is currently used by a mechanic to store motor vehicles pending repair. Although the current occupier has a workshop off site, the appellants advise that on occasion repairs take place at the barn.
12. The planning authority considers the permitted use of the barn to be commercial storage, which falls within Use Class E of Schedule 2 of the Planning and Building (General Development) (Jersey) Order 2011. This view is disputed by the appellants. In their view, the barn should be treated as a agricultural building based on its long term use for

¹ P/2018/1847

agricultural storage prior to the applicant's acquisition of the site in 2015. I deal with this matter in more detail later in the report.

Description of proposal

13. In the appeal scheme, the existing building is proposed to be converted to provide an "upside down" self-catering unit with an open plan kitchen/dining/living room on the first floor, and three bedrooms (one *en suite*) and a bathroom on the ground floor.
14. The existing pattern of window and door openings would be largely retained but with replacement timber windows. One door on the north (side) elevation is proposed to be replaced by a window serving a bedroom, whilst one window on the east (rear) elevation is proposed to be blocked up. Two parking spaces are shown at the front of the property. No changes are shown to the profile of the bank at the rear of the building.
15. The proposed use of the barn for self-catering tourist accommodation falls within Use Class F(d) of Schedule 2 of the Planning and Building (General Development) (Jersey) Order 2011.

The Island Development Plan 2011 (Revised 2014)

16. The Island Plan has primacy in the determination of planning applications. There is a general legal presumption that development which accords with the Plan will be permitted, whilst development that is inconsistent with the Plan will normally be refused unless there is "sufficient justification"² for overriding its provisions.
17. The Plan identifies the protection of the environment as one of the key components of the strategic policy framework. The general thrust of the Plan's spatial strategy is therefore to concentrate new development in the Island's built up area, as defined on the Proposals Map (Policy SP 1) and to resist development elsewhere, including the Green Zone where the appeal site is located.
18. Policy NE 7 embodies a general presumption against all forms of development in the Green Zone, whilst allowing for certain exceptions subject to specific criteria being satisfied. The conversion of an existing building in employment use to another form of employment use is one such exception, provided the following criteria are satisfied:

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

- (a) It would accord with Policy E 1: Protection of employment land
- (b) The requirement for a coastal or countryside location can be adequately justified
- (c) In the case of an intensification of use, it does not create undue noise, disturbance or a significant increase in travel and trip generation
- (d) It does not cause serious harm to landscape character

19. Paragraph 2.145 of the text supporting Policy NE 7 indicates that the applicant may be required to set out what alternative locations have been considered, but does not clarify the circumstances which would trigger this requirement.

20. Strategic Policy SP 5 affords high priority to the maintenance and diversification of the economy and support for new and existing businesses. Policy E 1 embodies a presumption against development which would result in the loss of land for employment use, other than in specific circumstances. Policies E 1 and SP 5 are supported by Supplementary Planning Guidance (SPG) *Protection of Employment Land* adopted in June 2012. This SPG defines both agriculture and storage as employment-related activities, but expressly excludes tourist accommodation (including self-catering accommodation) in the use and application of Policies SP 5 and E 1.

21. By way of background to this exclusion, paragraph 4.5 of the SPG acknowledges that much tourist accommodation is already akin to residential use and usually offers little scope for change to other forms of business activity. Nevertheless, paragraph 4.6 advises that proposals to convert tourist accommodation to residential accommodation in the Green Zone or Coastal National Park will need to be considered on their merits given the restrictive policy regime for these areas, the clear presumption against new forms of development and, in exceptional circumstances, the requirement to deliver significant, demonstrable environmental gains.

22. Policy EVE 1 *Visitor accommodation, tourism and cultural attractions* requires proposals for visitor accommodation within the Green Zone to be determined in accordance with Policy NE 7.

23. Relevant to the appellants' case, Policy ERE 4 supports proposals for the change of use and/or conversions of traditional farm buildings to holiday accommodation (amongst other things) provided the building is redundant for agricultural use and the proposal accords with Policy GD 1 *General development considerations*. The redundancy of the building both to the farm unit and to agriculture as a whole must be

proved by the applicant. Policy ERE 6 embodies a strong presumption against proposals for new agricultural buildings, unless justified by specific circumstances.

24. The appellants have also referred to strategic Policies SP 1, SP 3 and SP 6 relating to spatial strategy, a sequential approach to development and reducing dependence on the car respectively.

Planning background

25. The planning background to the current proposal is material to the understanding of some of the grounds of appeal.

26. In 1989 an application to convert the barn into a 2 storey dwelling with a garage was refused permission. In the more recent past (since it has been in the applicant's ownership) there have been two planning applications seeking permission to demolish the existing building and construct a three bed roomed house, both of which have been refused³. An appeal against the 2017 refusal was dismissed in December 2017.

27. In summary, the reasons for refusal in these cases are given as the failure to demonstrate the redundancy of employment use; failure to deliver demonstrable environmental gain and an unacceptable change of use to residential land use. In these respects, the proposals did not accord with Green Zone Policy NE 7.

28. The appellants have drawn attention to the fact that the 2017 redevelopment proposal was supported by a structural engineer's report which (as noted by the Inspector on appeal) deemed the building unsound, whereas the same firm now considers the barn "salvageable in part".

The grounds of appeal

29. As noted earlier, the appellants dispute that the permitted use of the barn is for commercial storage. In their view, it should be considered as a building in agricultural use, based on its historic, long term use prior to 2015. This view underpins the grounds of appeal which are lengthy and detailed, but can be summarised as follows:

- (a) It has not been demonstrated that the barn is no longer viable for its existing (agricultural) use, as required by paragraph 5.23 of the text supporting Policy E 1 Protection of Employment Land

³ P/2106/1088 and P/2017/0559

(b) The proposed development would conflict with Policy NE 7 relating to the Green Zone, having regard to:

- The presumption against development in the Green Zone
- The failure to satisfy the criteria in Policy NE 7 (8)
- The failure to deliver significant environmental gains as part of any new tourism development in the Green Zone

(c) The provision of tourist accommodation on the site would not support the objectives of Policy SP 5 which seeks to maximise the economic contribution of employment sites

(d) There is a need/demand for agricultural storage in this area which the existing building could help satisfy; the erection of new agricultural buildings would conflict with Policy ERE 6, underlining the importance of retaining the barn in agricultural use. The proposal would therefore undermine the viability of an agricultural holding (Field 650A)

(e) Although complete demolition of the barn is not proposed in the appeal scheme, based on a visual inspection, little of the original fabric could be retained in the proposed conversion; detailed investigation may indicate that the entire structure would need to be replaced

(f) The proposal is a "back door" route to securing permission for a dwelling on the site, a form of development which conflicts with the adopted policy and which has been successfully resisted to date; it avoids the need to demonstrate that the site is no longer suitable for employment use. Permitting tourist accommodation would make it easier to subsequently secure permission for a residential use as (unlike most other employment uses) tourist accommodation is not protected under Policies SP 5 and E 1 and the related SPG

(g) The proposed change of use would harm the landscape character of the area, due to the risk of residential-type activities encroaching on the adjoining field given the absence of any outdoor amenity space for people staying in the accommodation

(h) The failure to show how surface water will be disposed of, in conflict with the requirements of Policy LWM 3

(i) The proposed development conflicts with the general thrust of policies relating to spatial strategy, the sequential approach to development and reducing dependence on the car

The case for the planning authority

30. The planning authority considers that the proposal accords with the relevant policies in the Island Plan in so far as the development would secure the continued use of the land and building for economic activity. Conversion from one type of employment use to another is a permissible exception to the general presumption against new development in the Green Zone embodied in Policy NE 7. The proposed use would not cause unreasonable harm to the amenities of nearby residents or result in unacceptable problems of traffic generation, highway safety or parking and would be delivered in a manner designed to safeguard protected species and their habitat.
31. The Department's statement of case stresses that "the permitted use of the barn is for commercial storage purposes only and there is no loss of agricultural land".
32. It emphasises that unlike the previously rejected applications, the approved scheme permits the conversion of the barn, not its demolition and replacement. Should demolition prove necessary, this would trigger the need for a new planning application which would be required to demonstrate compliance with relevant policies and criteria.
33. Furthermore, for planning purposes, a self-catering unit is regarded as tourist accommodation which is distinct from a residential dwelling (as previously rejected) and falls into a different Use Class. A change from tourist accommodation to a dwelling (and vice versa) is development which would require planning permission under the Law⁴.
34. Policy NE 7 allows certain sorts of development as exceptions to the general presumption against development in the Green Zone, including the change of use (including building conversion) from one type of employment use to another, as proposed in this case. There is no requirement in the prescribed policy criteria to deliver demonstrable environmental gains as part of the development.
35. The planning authority is satisfied that the proposal meets the criteria prescribed in Policy NE 7 for development in the Green Zone involving changing from one type of employment use to another. Permitting a self-catering unit would facilitate the continued use of the land for economic activity. There would be no loss of employment land or buildings in conflict with the aim of Policy E 1.

⁴ Article 5(2)(g) of the
Planning and Building (Jersey) Law 2002

The case for the applicant

36. The applicant has not submitted a statement of case, but relies on the covering letter submitted in support of the appeal and subsequent exchange of emails with the Department.
37. In summary, the covering letter points out that the proposed development falls to be assessed against Policy NE 7(8) which incorporates a different set of criteria than used to assess the redevelopment schemes previously rejected. A marketing exercise is not required when a property is converted from one type of employment use to another.
38. Use as tourist accommodation is likely to result in less noise, disturbance, travel and trip generation than could arise from the continued use of the barn as a commercial storage building with a floorspace of some 190 sq. m. Commercial and heavy goods vehicles associated with the storage use on this scale would be more harmful to neighbouring residential properties than traffic associated with tourist accommodation use. This would be a benefit given the narrow access which is substandard in terms of width, condition and visibility, and has no turning area.
39. As a conversion of an existing building, no serious harm to landscape character would arise as a result of the proposed development. A small garden could be provided with the clearance of the landslip at the rear of the property. The barn would be connected to the foul sewer as required by Policy LWM2.
40. In all these respects, the proposal would accord with the relevant Policy requirements of the Island Plan.

Main issue - Green Zone considerations

41. The main issue in this appeal is whether the appeal proposal accords with Policy NE 7 *Green Zone* and satisfies the criteria set out in section (8) of that policy such that permission can be granted as an exception to the general presumption against development in the Green Zone.
42. Although there is a presumption against development in the Green Zone, it is not an absolute moratorium, as noted earlier. The categories of development which may be acceptable as an exception to the general presumption includes the change of use of employment land and buildings (involving the conversion of a building) to other employment uses under section 8 of the policy.

43. I start my assessment by examining whether the appeal proposal fits into this category of development before considering whether the policy requirements set out in section 8 are satisfied.

Is the barn a building in employment use?

44. The short answer to this question is yes. The existing use of the barn for storing vehicles is described as "commercial storage" by both the Department and the applicant. This use falls into Use Class E of Schedule 2 of the Planning and Building (General Development) (Jersey) Order 2011 *Use as a wholesale (but not retail) warehouse or repository for dry storage.*

45. Whilst the planning authority refers to commercial storage as the "permitted use" of the barn, this view is challenged by the appellants who take the view that the barn should be treated as an agricultural building, which falls into a different use class, *Class D Agriculture.*

46. Paragraph 5.1 of the Island Plan makes it clear that in policy terms, both agriculture (which includes agricultural land and buildings) and warehousing (which includes buildings used for commercial storage) are employment uses. As such, regardless of whether the barn is used for agriculture or for commercial storage, it can be considered as a building in employment use.

47. Potentially, there are significant policy implications if the barn is treated as an agricultural building which I explore later in the report. However, as a starting point, I am satisfied that the barn is a building in employment use for the purpose of applying Policy NE 7.

Is the proposed use an employment use?

48. Tourism (including visitor accommodation) is a key element of the Island's economy. Self-catering accommodation is therefore treated as an employment generating activity and subject to employment policies in the Island Plan. However, as noted earlier, visitors accommodation is expressly excluded from those employment policies which seek to protect land and buildings in employment use.

49. At the hearing, I explored with the Department whether the self-catering accommodation proposed in the appeal scheme should be treated as an employment use when applying Policy NE 7, given that visitor accommodation is excluded from the application of employment policies SP 5 and E 1.

50. The Department confirmed that the exclusion of visitor accommodation relates specifically to the application of policies SP5 and E1. In all other respects, self-catering accommodation is deemed to be an employment use for policy application purposes, including Policy NE 7.

51. This view was not challenged by the appellant, although the Department's interpretation and application of employment policy E 1 was questioned at the hearing. I deal with this later.

52. Based on the discussion at the hearing, I am satisfied that the proposed use for self-catering visitor accommodation is an employment use for the purpose of applying Policy NE 7.

Does the appeal proposal involve the conversion of a building?

53. Policy NE 7 (8) is clear that this particular exception to the general presumption against development in the Green Belt applies only to changes in the use of employment land and the conversion of a building in employment use.

54. The appellants have questioned whether the works proposed to the barn to make it suitable for self-catering accommodation amount to a conversion. The structural engineer's reports by Tarxian, submitted in relation to the 2017 scheme to redevelop the site with a dwelling, together with the subsequent report by the same firm in support of the current appeal scheme, are key to answering this question.

55. I have not been given the report relating to the unsuccessful proposal to construct a new dwelling which was dismissed on appeal in 2017. However, paragraph 18 of the 2017 appeal decision notes that the building was deemed unsound by the structural engineer at that time. Paragraph 35 of that same appeal decision, refers to the structural engineer's conclusion that it would be preferable to provide a two storey domestic property by demolishing and rebuilding the existing building rather than converting the structure.

56. Although the appeal proposal before me is for self-catering visitor accommodation, my understanding is that Building Regulations would require the barn to be brought up to a standard similar to that deemed necessary for a residential dwelling. This was confirmed by the appellant's architect at the hearing.

57. It is worth noting that the Structural Appraisal Report dated January 2019/Rev B, submitted in support of the current appeal, describes the proposal as a "redevelopment" on the same footprint as the existing building, rather than a conversion of the existing structure.

58. Based on a visual assessment of the accessible structure, the report concludes that only "a very limited portion of the existing structure is considered salvageable, predominantly the perimeter walls". Extensive works would be required "to maintain and incorporate any such salvageable structure into any new scheme, assuming a two storey domestic property on the same footprint".
59. It is clear from the report that - at best - only the external walls of the existing structure are likely to be retained. All other parts of the building would need to be removed and replaced, including roof coverings and ground floor concrete slab, and structural elements such as roof purlins and trusses, steel beams and timber joists at first floor level, and the steel lintel over the main entrance.
60. If salvageable, the external walls would need to be propped during what the engineers describe as the "reconstruction" phase, when the lateral support currently provided by the roof structure and internal floor is removed pending replacement.
61. The report indicates that to meet current standards, any salvageable external walls would need to be strengthened and additional restraints would have to be provided on all levels. In addition, even if the foundations of the existing walls are found to be adequate on further investigation, it would probably be necessary to underpin the retained walls when a new ground floor slab is reconstructed at a lower level to allow for insulation and screed over sump, radon barrier, drainage etc.
62. Furthermore, it seems likely that the existing rear wall of the barn (which is in part a retaining wall) would need to be demolished to remove the landslip at the rear of the building, assess the condition of the bank behind and carry out any stabilisation works necessary to prevent future landslips.
63. As well as the structural works identified above, other works would be necessary to bring the building up current standards, including works to improve damp and thermal characteristics of any retained building fabric, replace all rainwater goods; provide a new foul water drainage system; replace windows and doors and bond new render to the masonry substrate.
64. I am mindful that the works described above are based on a visual inspection of those parts of the building which are accessible. The appraisal did not include any assessment of adjoining or adjacent structures or intrusive investigations. A more thorough assessment

may well indicate the need for other major works, and possibly cast doubt on the feasibility of salvaging any part of the existing structure.

65. Given the scale and nature of the works required, at the hearing I invited the Department to clarify its opinion as to the stage when the "conversion" of an existing building becomes a "reconstruction". In response, I was advised that in the Department's view, as long as the external walls were retained, such works would be a "conversion".
66. I do not share the Department's view on this matter. In my opinion, the extent of demolition and the scale and nature of new structural works considered necessary for the building to meet current standards for the proposed new use, go a long way beyond what might sensibly or reasonably be described as a conversion.
67. The concept of a conversion has inherent limits which distinguish it from a rebuild. In simple terms, a rebuild starts where a conversion finishes. The UK courts have held that it is a planning judgement as to where the line is drawn between the two⁵.
68. In my judgment, the works needed to alter the existing barn so that it could be used as a self-catering unit are of such a magnitude that for practical purposes it would amount to a rebuild, fresh build or "redevelopment" on the same footprint as the existing building (to quote from the structural engineers report) rather than a conversion of the existing structure.
69. In some circumstances, the difference between the conversion and the redevelopment of an existing building may not be critical when assessing a development proposal. However, where a site is located in the Green Zone (as in this case) the distinction is significant. The exception to the general presumption against development in the Green Zone under Policy NE 7(8) for land and buildings in employment use only applies where a building is converted (*my emphasis*) from one employment use to another. This exceptional policy context reinforces the need to consider very carefully where the works proposed in this appeal fall on the dividing line between conversion and rebuilding.
70. The barn is not capable of functioning as accommodation for visitors without the proposed works being undertaken. Having regard to the nature, extent and scale of the demolition and rebuilding required to use the structure as a self-catering unit, in my judgment, the proposed

⁵ *Hibbitt and another v Secretary of State for Communities and Local Government and another* [2016] EWHC 2853

works go beyond what might reasonably be described as a conversion for the reasons stated. Consequently, I do not consider the appeal scheme falls into the category of exceptional development embodied in Policy NE 7 (8). Nevertheless, for the sake of completeness, I have considered whether the proposal would satisfy the requirements set out in the policy criteria.

Criterion a - Would the proposal accord with Policy E 1 Protection of Employment Land?

71. The parties agree that both the existing use of the barn (whether as an agricultural or commercial storage) is an employment use, and the proposed self-catering use is also an employment use. In short, the proposal would recycle an existing employment site for use by new employment activities.

72. When the works required to make the building fit for the new use (whether by conversion or reconstruction) are finished, the floorspace in employment use would be the same. On this basis there would be no loss of employment land and consequently Policy E 1, which sets out the circumstances in which the loss of employment land may be acceptable, is not engaged.

73. In reaching my view on this matter, I acknowledge the point drawn to my attention by the advocate representing the appellants. This relates to the text supporting Policy E 1 which states at paragraph 5.23 that

"All proposals to re-develop or convert employment sites (my emphasis) will need to demonstrate that they are no longer viable for the existing use before they are considered for alternative uses...Supplementary planning guidance will be written to provide guidance on what is required to demonstrate that a site is no longer viable and has been subject to full and proper marketing."

74. Considered in isolation, this paragraph does indeed appear to require the redundancy of the current use to be demonstrated before any alternative use (including a different type of employment use) is considered. As noted by the appellants, no such evidence has been requested or submitted in support of the appeal scheme.

75. However, considered in the context of the wording of both the Policy and the SPG *Protection of Employment Land Practice Advice Note, June 2012*, I do not find the appellants' interpretation of paragraph 5.23 of the Island Plan compelling.

76. Policy E 1 is worded such that it relates specifically to development proposals which would result in the loss of land for employment use. It is only in these circumstances that documentary evidence is required to demonstrate that the land or building is inappropriate for any employment use to continue, having regard to market demand.

77. This approach is clarified in the SPG which states at paragraph 5.4

"An applicant seeking to redevelop land that is currently in employment use to alternative non-employment based use (my emphasis) will need to clearly demonstrate that there is no demand for the site and that it is not viable to retain in employment use. Consideration for the redevelopment of alternative non employment-based uses (my emphasis) will also be given where it can be demonstrated that sites are not suitable for either the current or any alternative employment uses..."

78. With regard to the above, and taken in the round, I cannot agree that viability/redundancy/marketing evidence is required for a change of use from one type of employment use to another. In my view, this only kicks in when non-employment uses are proposed, or if required by a specific policy, for example Policy ERE 4 *Conversion of traditional farm buildings* which I consider this later in the report.

79. However, the text at paragraph 5.23 in the Island Plan lacks clarity in this respect and could be misinterpreted as a result, as has happened in this appeal. Inserting the phrase "to non-employment based uses" after "proposals to re-develop or convert employment sites" in the first sentence of this paragraph would remedy this lack of clarity and ensure consistency with the policy wording and the supporting SPG.

Criterion b - Is the requirement for a coastal or countryside location adequately justified?

80. The letter submitted in support of the application refers to the qualified support for cultural and tourism development in the countryside under Policy NE 7 (11) and expresses the opinion that a tourist would expect to stay in a converted former agricultural building.

81. The Department's report states that it is reasonable to suggest that tourism accommodation will be provided beyond the boundary of built up area. It also refers to the benefits of delivering a low key benign use relative to the existing storage use. These two factors are considered sufficient justification for a countryside location, in the planning authority's view.

82. I have no issue with the opinions expressed above. I agree that some visitors will wish to stay in a rural location, and will find a barn conversion an attractive proposition as a place to stay. Such considerations explain why Les Ruettes Barn might be considered an attractive proposition for someone looking to provide self-catering accommodation outside the built up area. There may also be benefits in permitting a use which, if implemented, would extinguish a commercial storage activity in the middle of a small rural enclave with a difficult access and no turning area.

83. However, the policy wording expects the "requirement" for a countryside location to be justified. I am not convinced that the arguments set out above justify a requirement for the self-catering accommodation to be provided in this countryside location.

84. I would usually expect the requirement for a particular location to be justified on operational, feasibility or business grounds, supported by information to demonstrate that the activity cannot reasonably be located elsewhere given its particular needs. Alternatively, the locational requirement might be justified by demonstrating an unmet need/demand in the area for a particular type of development which is lacking at present.

85. For example, in this case, it would have been helpful to have information to show whether there is any shortfall in the availability of self-catering accommodation in rural locations generally, or in this part of the island in particular, or to indicate a gap in the market for self-catering accommodation of the size proposed in the countryside. Such considerations might justify the requirement for a three bed self-catering unit to be provided in this rural location.

86. While noting the reasons put forward by the applicant and the Department, I am not satisfied that the requirement for a countryside location has been adequately justified, in accordance with criterion b of Policy NE 7 (8) for the reasons stated.

Criterion C - Would the proposal result in an intensification of use, and if so, would it create undue noise, disturbance or a significant increase in travel and trip generation?

87. Notwithstanding the views of the parties on this question, there is no hard evidence relating to the existing or proposed uses on which to reach a view on whether the appeal proposal would result in an intensification of use. Clearly, the two uses are different in character, level and patterns of activity.

88. The existing storage use appears to be relatively low key. However, with no restrictions in place, this could change if the premises were occupied by a business trading at a higher, more intensive level. Whilst a storage use in itself is unlikely to create noise or disturbance, loading and unloading goods, together with the traffic movements to and from the site, could have a negative impact on those living nearby during business hours, especially if vehicles used to transport goods are of a commercial size/nature and having regard to the width of the track, poor visibility at one end and no turning area at the other.
89. The proposed use for visitor accommodation would result in a different pattern of activity. Assuming guests are respectful of their residential neighbours, I don't think that the occupation of the barn as a holiday let would in itself create undue noise or disturbance, bearing in mind that there is no outdoor amenity space so activity would, in the main, take place inside the building.
90. However, comings and goings are likely to take place at different times of the day and night compared to the current use, including in the evenings and at weekends when a business operation is less likely to be trading. Bearing in mind the likelihood that most visitors will be traveling to and from the barn by hire car given the relatively inaccessible location by public transport, those living nearby might find such "out of hours" activity noticeable at times when the access is not usually used by the business currently occupying the barn.
91. In terms of level of use, it is impossible to say with confidence whether the proposed use would be more intensive than the existing use, only that it would be different for the reasons given. I think this is a case of "swings and roundabouts", where the benefits and disadvantages of the existing and proposed uses probably balance out. However, this opinion is based on experience, rather than any evidence provided.
92. Even if the proposed use turns out to be more intensive than commercial storage, on balance, I doubt whether any such intensification would create undue noise or disturbance to use the policy wording. However, without any comparable trip generation for commercial storage and visitor accommodation use, I am unable to reach a view on the traffic/trip generation aspect of criterion (c).

Would the proposed use cause serious harm to landscape character?

93. The appellant's argument that in the absence of any dedicated outdoor amenity space for visitors, there is a risk that activities might take place on that part of the agricultural field at the rear of the barn which is in the applicant's ownership. Paraphernalia associated in any such

outdoor activity, such as tables, chairs, outdoor games would harm the landscape character of the area.

94. Whilst I can understand this concern, I think it unlikely that accommodation in the barn would attract visitors for whom private outdoor space is high on the list of holiday accommodation priorities. Should such activity occur and cause harm, the Department has powers to deal with any consequent breach of planning control.

95. Bearing in mind that the appearance of the barn would be largely unchanged once the reconstruction works are completed, I do not consider that the proposal would cause serious harm to the landscape character of the area.

Conclusion on the main issue

96. Policy NE 7 sets a high bar to protect the Green Zone from development other than in exceptional circumstances, including the change of use (involving the conversion of a building) from one employment use to another employment use, subject to specific criteria being satisfied. Whilst I consider that some of the specified criteria are met, others are not for the reasons stated above.

97. More fundamentally, based on the information before me and the discussion at the hearing, in my judgement, the works proposed to bring the barn up to a standard required for its proposed use as self-catering accommodation go beyond what can reasonably be described as conversion. In my view, it amounts to a rebuilding/reconstruction. In this respect, I conclude that the appeal development cannot be treated as an exception under part 8 of the policy, even if all the qualifying criteria were to be satisfied.

98. In reaching my conclusion on this issue, I note that Policy NE 7 (7) supports the redevelopment of an employment building involving demolition and replacement, but this is only where the replacement building is for the same use (not a different use, as proposed in the appeal scheme) and provided the proposal gives rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character. As no such gains have been demonstrated in this appeal, there is no scope to consider the proposal as an exception to the general presumption against development in the Green Zone under that particular arm of the policy.

Other matters

99. The “authorised” use of the barn is a matter of dispute between the parties. The Department states its permitted use is “commercial storage”. The appellants say that it should be treated as an agricultural building. Given these very different views, I sought the parties views at the hearing on the following matters for clarification:

Historic use

100. It appears that part of the building may have originally been built and/or used - in part at least - as a cottage, given the domestic fireplace still in position on the ground floor. However, the large barn-type door opening (as opposed to a domestic scale front door) and the loading door above suggests that for many years, the building’s role has been that of an outbuilding or barn, associated with Les Ruettes farmhouse and farm.

Information in the Planning Register

101. A review of historic buildings in 2011 notes that the building has been much altered since it was first constructed. Modern interventions, such as steel beams and trusses, are visible internally. However, these works appear to pre-date current records, if indeed they required planning permission.

102. The earliest entry in the planning register is the 1989 application to convert the barn into a 2 storey dwelling with garage. At this time, the barn was described as an “outbuilding”. An unimplemented 1996 permission to convert part of the barn into a living room also described the structure as an “outbuilding”.

103. Although the Department has treated the barn as having a “permitted” use for commercial storage, there are no entries in the planning register to indicate that such a purpose has been specifically authorised by the grant of planning permission.

Use for agricultural storage prior to October 2015

104. At the hearing, Mr Le Blancq explained that his grandparents had run Les Ruettes farm and used the barn to store agricultural machinery prior to 1983, when I understand that the farm was broken up and parcels of land and buildings sold or gifted to others. Mr Le Blancq advised that since that time, the barn had been rented out and used by the appellants to store agricultural equipment used in nearby fields. This use had continued until a few months before the sale of the Les

Ruettes property to the applicant in 2015. In short, the use of the barn for agricultural storage had been taking place for some 30-40 years, prior to 2015.

105. When questioned about this historic use, the planning officer said that he had no reason to dispute Mr Le Blancq's statement concerning the history of the barn's use. The appellant highlighted that the previous owner had been a fisherman. However, as noted by the appellants advocate, the planning status of a building is based on its use rather than the owner's occupation.

Use for commercial storage post-October 2015

106. At the hearing, I was provided with the estate agents sales details from 2015 when Les Ruettes was put in the market. These particulars described the appeal building as a "storage barn". I was advised that based on this description, the property had been purchased on the assumption that the barn could be used for commercial (i.e. non-agricultural) storage. It has been rented out for that purpose since coming into the applicant's ownership.

107. In the view of the appellant's advocate, describing a building as a "barn" usually implied an agricultural use.

Assessment of the "authorised" use

108. I acknowledge that since the autumn of 2015, the barn has been used for non-agricultural storage and this commercial storage use has not been challenged by the Department. However, notwithstanding the Department's assertion, the barn does not have an *authorised* or *permitted* use for commercial storage under Use Class E of the Planning and Building (General Development) (Jersey) Order 2011.

109. Given its undisputed historic function as a farm outbuilding and its long term use for the storage of agricultural machinery and equipment up until the autumn of 2015, in my opinion, Les Ruettes Barn should be treated as a building for agricultural purposes under the General Development Order Class D *Agriculture*.

110. Given its scale, proportions, utilitarian design/appearance and the remains of the original granite construction, I see no reason why Les Ruettes Barn should not be considered as a traditional farm building for planning policy purposes, notwithstanding the modern interventions in the building's fabric. This would bring the barn within the ambit of Policy ERE 4, whereby conversion proposals must satisfy additional requirements over and above those enshrined in Policy NE 7 (8).

111. In particular, it requires the applicant to prove that the building is redundant both to the farm unit and to agriculture as a whole. No such proof has been provided or requested as part of the application process due to the way the appeal scheme is described and has been assessed. However, when the same issue was raised in the 2017 appeal, the Inspector did not find the redundancy evidence compelling, and the Minister agreed. Together with presumption against new agricultural buildings enshrined in Policy ERE 6, these considerations reinforce my recommendation that permission should be refused.
112. Having regard to the planning history of the appeal site, I can understand the appellants' concern that the appeal proposal may be a "back door" route to getting permission for residential development on the appeal site following three refusals of permission for such a development, the most recent of which was dismissed on appeal.
113. This concern stems in part from the fact that if tourist accommodation is permitted, it would then be easier to obtain permission to change the use of the property to a dwelling house given that the protection offered to most employment uses by Policy E 1 does not extend to visitor accommodation.
114. However, regardless of the applicant's motive in seeking permission for self-catering accommodation, if such an application were to be submitted in the future, it would be determined in accordance with Policy NE 7 (9) and other relevant Island Plan policies.
115. In respect of other matters raised in the grounds of appeal, while Policy SP 5 supports in particular small footprint/high value businesses, it also acknowledges that protecting and maintaining existing employment floorspace has a role to play in supporting the economy. The appeal proposal would accord with the policy in this respect.
116. Having concluded that the appeal proposal would not accord with Policy NE 7, it follows that the proposal no longer benefits from the support enshrined in Policy EVE 1 for tourist self-catering accommodation in the Green Zone, which is subject to compliance with the Green Zone policy.
117. In reaching my conclusion, I have considered the requirements of Policy GD 1, having particular regard to the effect of the development on the living conditions of nearby residents, the maintenance and diversity of the Island's economy, and traffic generation (insofar as I have information to reach a view on these issues). Matters relating to

drainage and species protection can be dealt with by planning condition, as indicated on the decision notice.

Overall conclusion and recommendation

118. I have considered all other matters raised in written submissions and oral evidence given at the Hearing. None of these considerations affect my conclusion and recommendation that the appeal be upheld and the decision to grant planning permission subject to conditions made by the Department dated 25 March 2019 (Ref P/2018/1829) should cease to have effect for the following reasons:

Refusal Reasons

1. The site is located in the Green Zone where there is a presumption against development, other than in exceptional circumstances including the change of use of employment land and buildings (involving the conversion of a building) to other employment uses.

The building works required to bring Les Ruettes Barn up to a standard whereby it could be occupied as self-catering accommodation go beyond what can reasonably be described as a conversion, having particular regard to the extent of demolition, new structural work and reconstruction required. Furthermore, the requirement for a countryside location has not been adequately justified and there is insufficient information to assess whether the development would generate a significant increase in travel and trip generation.

As a result, the proposal does not fall within the exceptional category of development which may be permitted in the Green Zone under Policy NE 7 (8), nor does it meet all the criteria which must be satisfied to accord with this policy. There is insufficient justification to override the provisions of this policy.

2. In the absence of any information to prove that the barn is redundant to agriculture as a whole, its use for self-catering holiday accommodation would not accord with Policy ERE 4 *Change of Use and/or conversion of traditional farm buildings*.

Linda Wride

Linda Wride Dip TP MRTPI

30 July 2019