

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

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

### **REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**

**By Mr Philip Staddon BSc, Dip, MBA, MRTPI**

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Appellant: Harmony Produce Limited

Site address: Les Tours Farm, La Rue Des Nouettes, St. Clement JE2 6SJ

Application reference number: P/2022/0267

Proposal: 'Demolish 3 no. glasshouse blocks and various minor commercial structures. Return land to agriculture. Construct 5 no. three bedroom and 2 no. four bedroom residential dwellings. Construct 2 no. metal clad warehouses for commercial storage, extension to South elevation of existing warehouse and 1no. shed for community use, all with associated parking. Alter existing vehicular access to industrial site and form 2no. new vehicular accesses onto Rue des Nouettes for Tours-Sur-Nouettes residential development. Alterations to parking layout for existing staff accommodation building to East of site. Reduce size of the existing reservoir to create wildlife pond and woodland amenity area. 3D Model Available.'

Decision notice date: 11 November 2022

Procedure: Hearing held on 4 April 2023

Inspector's site visits: 3 April 2023

Inspector's report date: 5 May 2023

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#### **Introduction**

1. This report contains my assessment of the planning appeal made by Harmony Produce Limited. The appeal is against the decision of the department for Infrastructure and the Environment (I&E) to refuse to grant planning permission for the redevelopment of a glasshouses site for a mixed-use scheme of housing, commercial buildings and associated works, along with the return to agriculture of part of the land.

#### **Procedural matters**

2. The appellant cited 14 wide-ranging grounds in its appeal form. Its Statement of Case sets out its submissions structured around each of the refusal reasons, with reference to the original grounds. For clarity and effectiveness, I considered that the Hearing should be structured around the 4 refusal reasons, followed by a session summing up overall compliance with the Bridging Island Plan (BIP).

## **The appeal site**

3. The site comprises a nursery complex located in the Green Zone in the rural south-east corner of the Island, within the parish of St Clement. It has a road frontage to Rue des Nouettes, which is a narrow 15mph parish road that runs roughly south-eastwards from its junction with La Grand Route de Saint Clement (the A5).
4. The site covers some 26,581<sup>1</sup> square metres, the greater part of which is covered by 3 large glasshouse structures, along with a staff accommodation block and a former packing shed. I understand that the nursery complex used to produce vegetables for UK supermarkets, but that ended around 2013 and the last cropping under glass was of potatoes in 2015, after which the glasshouses have remained unused.
5. The former packing shed, which is on the west side of the site, has been repurposed for use by Agri-Co Ltd, a business that sells and maintains agricultural machinery and equipment. The accommodation block is occupied and I was informed this is for workers in connection with The Jersey Royal Company's operations (off-site).
6. Between the site's north-west boundary and the A5, there is a cluster of dwellings in a short cul-de-sac, along with a former farmhouse and outbuilding, both of which are Listed and now occupied as dwellings. To the east of the site, and on the opposite side of Rue des Nouettes, there are agricultural fields, along with an array of commercial glasshouses. To the south there are open fields. To the west there are playing fields (St Clement's Football Club) and beyond that is the open countryside.

## **Relevant Planning history**

7. One of the application documents<sup>2</sup> indicates that the 3 large glasshouses were erected in 1981 (northernmost glasshouse), 1977 (south-western) and 1968 (central), and were used for the growing of tomatoes above ground and potatoes in the ground.
8. At my request, I&E searched the archive for the original planning approvals. Two permissions were found; one dated from May 1973 (Ref 4/6/4148L) and related to 'glasshouse and reservoir development', and the other was granted in May 1975 (Ref 4/3/4148N) for replacement glasshouses 'adjacent to playing field'.
9. The archive history appears incomplete and not entirely aligned with the dates of erection indicated in the appellant's documents. However, it is clear that all 3 glasshouses have been in place for a considerable period of time. It is also the case that the known permissions predate the practice of imposing 'disuse or disrepair' conditions, requiring the structures to be removed from the site and the land restored to agricultural use, as no such conditions appear on the permissions.

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<sup>1</sup> According to the appellant's Planning Statement (February 2022) page 5

<sup>2</sup> ERS Preliminary Risk Assessment 2021 (page 13, paragraph 4.2)

10. There have been a number of more recent minor and change of use applications which are listed in the I&E officer report and the appellant's Planning Statement. I have noted this planning history, but it has limited relevance to the assessment of the main issues in this appeal.

### **The appeal proposal and the refusal decision**

11. The application sought planning permission to demolish the 3 glasshouses and minor structures, but retaining the Agri-Co Ltd building and the staff block, and to redevelop the site. The redevelopment would comprise 7 dwellings in the north-east part of the site, served by a proposed new access from La Rue des Nouettes. It would also include a range of commercial buildings and an extension to the Agri-Co Ltd unit in the western part of the site, with associated hard surfacing for parking and servicing, including a lorry turning circle area. The commercial uses would be served by an improved/widened existing access to La Rue des Nouettes. The southern part of the site would be returned to agriculture and the reservoir in the southernmost part would be largely infilled and reduced to a smaller pond within an area that it is indicated would be enhanced for wildlife. The scheme also includes a new car park (10 spaces) and cycle park (10 spaces) adjacent to the accommodation block.
12. The application included a set of detailed plans and a range of supporting documents, which included a Planning Statement, design and visual impact statements, and reports covering: glasshouse condition, safety and feasibility reports; transport; heritage; public art; flood risk and drainage; ecology; contamination; marketing and community engagement.
13. The application was initially refused by officers under delegated powers on 8 July 2022. Following a review request, the application was considered by the Planning Committee at its 10 November 2022 meeting. The committee resolved to endorse the officer decision. The 4 reasons for refusal were:
  1. *The proposals constitute an inappropriate form of development outside of the defined built-up area within the Green Zone, contrary to the Island spatial strategy. Insufficient evidence has been provided demonstrating that the existing glasshouses are derelict or redundant, with the proposed development considered to result in additional urban encroachment into the open countryside, thereby resulting in a detrimental impact upon the site's intrinsic rural character and landscape setting. The proposals would further fail to protect or improve the setting of surrounding listed buildings as a result of increased urbanisation of the site and degradation of landscape character and setting. The development is therefore contrary to Policies SP2, SP3, SP4, PL5, GD5, GD6, H3, H9, EI1, ERE1, ERE6, NE3 and HE1 of the Bridging Island Plan 2022.*
  2. *In the absence of sufficient information and evidence provided demonstrating that the commercial/industrial element of the proposals would be compatible with surrounding residential uses, it cannot be satisfactorily ascertained that the development would safeguard residential amenity. The proposals are therefore contrary to Policies EI1 and GD1 of the Bridging Island Plan 2022.*
  3. *The proposals fail to provide sufficient information and evidence that the vehicular traffic associated with the development could be reasonably accommodated within the local*

highway network. Due to the unsustainable and remote location of the site and the reliance of ends users on private vehicles, the development has the potential to result in a detrimental impact upon the safety and capacity of the local highway network. The proposals are therefore contrary to Policies TT1 and TT2 of the Bridging Island Plan 2022.

4. *Insufficient information has been provided with respect to surface water and foul sewerage associated with the proposals, whilst insufficient evidence has been provided to demonstrate that the proposed development could be sufficiently accommodated by the foul sewerage network, contrary to Policies WER6 and WER7 of the Bridging Island Plan 2022.*

## **Summary of cases of the parties**

### *The Appellant*

14. The appellant's case is set out in 14 individual grounds cited in the appeal form and a Statement of Case produced by BCR Law containing 190 paragraphs, with 2 appendices, one setting out a procedural chronology and the other the wording of relevant BIP policies.
15. The appellant also submitted a supporting bundle of documents which included application documents; expert reports; plans; consultation responses; public responses; legislation and policy documents; caselaw; feasibility study (Colin Smith); response to public consultation; drainage documents; insurance and viability correspondence; committee minutes and site notice documentation.
16. The appellant rebuts each of the refusal reasons and concludes that:
  1. *The Appellant submits that the Planning Officer and thereafter, the Committee, fell into error in a number of material respects in its consideration of the Application. Those errors render the Officer's recommendation and, ultimately the Committee's decision, unsafe and liable to challenge.*
  2. *In determining the Application, the Committee failed to consider - either properly, or at all - all of the material evidence which the Appellant had submitted in support of the Application. Those failures place the Committee in breach of the statutory duty imposed upon it by **Article 19(1) of the 2002 Law** (which duty is expressed in mandatory terms).*
  3. *The Appellant avers that but for those failures, any reasonable Committee, acting reasonably, would - on the evidence before it - have granted planning permission on the basis that either:*
    - a) *The Application satisfied all of the relevant **BIP 2022 Policies** it engaged; or alternatively*
    - b) *To the extent that the Development proposed by the Application was in any way contrary to any of the **BIP 2022 Policies**, which is not admitted, there was sufficient justification (within the meaning of **Article 19(3) of the 2002 Law**) for departing from those policies and granting permission (subject to the imposition of conditions, if necessary), notwithstanding.*
  4. *In light of the above, the Appellant respectfully invites the Inspector to recommend to the Minister that the Appellant's appeal should be allowed and planning permission granted*

*in respect of the Application, if necessary subject to any such conditions that are considered to be absolutely necessary.*

17. At the Hearing the appellant's case was presented by Advocate Pearce, with contributions from the appellant and family members.

*The Planning Authority (I&E)*

18. The I&E case is set out in the officer report, a response document and a second response.

19. The concluding summary of the officer report states:

*The principle of development outside of the defined built-up area is considered to be unacceptable and contrary to the Island's spatial strategy. In particular, it is not considered that sufficient evidence has been supplied demonstrating that the existing glasshouses are redundant, let alone derelict, and in any case the proposals are considered to result in a more harmful impact upon wider landscape character and the setting of listed buildings than the current level and nature of development on site.*

*Furthermore, insufficient information has been provided evidencing that the proposed commercial/industrial element would ensure that the amenities of surrounding residential properties, in addition to the amenities of the proposed residential element of the scheme, would be safeguarded.*

*The proposals would further result in a detriment impact upon the safety and capacity of the highway network, with insufficient information provided demonstrating that the impact of the development in this regard would be acceptable.*

*Likewise, insufficient information has been provided with respect to the means of providing surface and foul water drainage associated with the development, nor has confirmation been provided that the network could accommodate the additional foul sewerage associated with the proposals.*

*The proposals are therefore considered to be unacceptable and contrary to the relevant policies of the Bridging Island Plan 2022, namely policies SP2, SP3, SP4, PL5, GD1, GD5, GD6, NE3, HE1, EI1, ERE1, ERE6, H3, H9, TT1, TT2, WER6 and WER7.*

20. The response and second response documents rebut the appellant's grounds of appeal and maintain that each refusal reason was justified, that officers and the committee did not misdirect themselves, and that policies were properly applied.

21. At the Hearing, the I&E case was presented by Mr Gladwin, with contributions from Mr Vautier (Department for the Economy – Rural and Marine Sector) and Ms Ingle (Historic Environment Team).

*Other parties*

22. At the application stage, 10 representations were received covering a wide variety of issues, some in opposition and others in support. At the appeal stage, 3 further submissions were made and one was from Mr John Carney who attended the Hearing to represent the owners of *Les Tours Farm*, a property which abuts part of the northern site boundary. I have considered all of these submissions and representations in my assessment.

## **INSPECTOR'S ASSESSMENT**

### **Location and setting – refusal reason 1**

23. The first reason for refusal contains a very long list of policies which all in some way relate to the location and setting of the proposed development. The wide range of policies cited does create a challenge in terms of structuring an assessment. However, in my view, it should start with the locational characteristics of the site, then consider the BIP spatial strategy (SP2), before looking at other policies, including those relating specifically to glasshouses and the historic environment.

#### *Locational status*

24. It is a matter of fact that the appeal site is located in the Green Zone and outside the built-up area (BUA), as defined in the BIP. Indeed, the location is well over 250 metres across fields to the nearest point of the BUA on Rue de Causie to the west, a similar distance to the south to Rue du Bourg, and about 850 metres to the BUA to the east (the settlement along the A4). The location is therefore a distinctly rural one and not close to the BUA. This is an important starting point under this main issue, as it has implications for a range of other policies cited in reason 1.

#### *SP2 – spatial strategy*

25. Strategic policy SP2 states that outside the defined BUA, within the countryside, around the coast and in the island's marine environment, development will only be supported where a coast or countryside location is justified, appropriate and necessary in its location. SP2 also offers support for the appropriate development of previously developed land (PDL) and of under-utilised land, but the policy's explanatory text makes clear that this does not extend to redundant and derelict glasshouses which are considered to be temporary structures associated with the agricultural use of the land, i.e., glasshouses are not considered to be PDL for policy purposes.
26. The strategy concentrates new development within the defined BUA. The policy further directs the greatest amount of development to Town, 'more limited' amounts to local centres and 'much more limited' amounts within smaller settlements. Outside the BUA in the countryside, where the appeal site is located, the policy's key test for any development is whether the (countryside) location is *justified, appropriate and necessary*.
27. Notwithstanding other policies and exception provisions, which I review later, the erection of open market houses in this location clearly fails the SP2 test at the first hurdle. Indeed, the appeal site location is the antithesis of where the BIP seeks to direct new housing delivery.
28. The appeal proposal also involves a substantial amount of commercial floorspace. Whilst there is the outline of a justification case<sup>3</sup> for the 154 square metre extension to the Agri-Co Ltd business, it is light on evidential detail and the case is not fully made, in my view. With regard to the

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<sup>3</sup> Appellant's Planning Statement (February 2022) – paragraph 6.3

remainder of the commercial space, this comprises 8 units with a combined floorspace of 658.90 square metres<sup>4</sup>. The justification evidence before me is remarkably flimsy and unconvincing, amounting merely to a bullet point list of intended occupiers<sup>5</sup>. Significant elements of this proposed commercial floorspace appear to be intended for users and occupiers that have no strong, if any, connection with the rural economy, including a diamond drilling company, a firm specialising in hygienic cladding for health and catering settings, and a bicycle workshop. Some of the space would be built 'on spec' for an unknown occupier, further space is intended for 'personal use', and another unit for storage of a carnival float.

29. Given the clearly expressed policy restraint on new development in this Green Zone countryside location, there is a need to provide a clear justification for each element of the proposed commercial floorspace. That justification is largely absent in this case.
30. The proposal fails to demonstrate that the housing and most of the commercial space and its associated parking, servicing and turning areas meet the SP2 policy test of being justified, appropriate and necessary in this countryside location. There is therefore a significant prima facie conflict with policy SP2.

#### *H3 and H9 – housing policies*

31. Policy H3 addresses the provision of homes and allows for the supply of 'up to 4,300' homes up to the end of 2025 in the island's BUA and on sites specifically allocated for the provision of affordable homes.
32. H9 addresses housing outside the BUA and says such development 'will not be permitted' unless it meets one of the stated exceptions. Exception 6 states that 'in the case of redevelopment of existing buildings in employment use, involving demolition and replacement, where redundancy is proven and the principle of change of use to residential development is acceptable having regard to other policy considerations, significant environmental gains can be delivered through improved design and appearance of the land and building(s); the repair and restoration of landscape character; and reduced intensity of occupation and use.'
33. The proposal would conflict with policy H3, as its location is not within the BUA, nor is it a site allocated for the provision of affordable homes. It would further conflict with policy H9, as it would not meet any of the exceptions for allowing new housing development outside the BUA. Whilst noting the appellant's submissions that the scheme would deliver much needed housing in line with the Government objective to deliver more homes, this could be said of any housing proposal in the countryside and does not provide a basis for allowing new homes in a location where the BIP dictates that they should not be built.

#### *EI1 – existing and new industrial sites and premises*

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<sup>4</sup> Based on the sum total of the floorspace figures notated on drawing 4219/201/RevP1

<sup>5</sup> Appellant's Planning Statement (February 2022) – paragraph 6.1 and 6.2

34. EI1 states that proposals for the development of new or the redevelopment, renewal, or intensification of existing light industrial uses and buildings outside the BUA will only be supported where they support rural diversification; or make use of existing buildings. It says that in all cases of light industrial/warehousing and storage/rural economy development, there will be a need to ensure that the proposed development does not harm the amenity of neighbouring uses; or the local character of the area.
35. The proposal would conflict with policy EI1 as my SP2 analysis above is that a substantial amount of the commercial space proposed has little, if any, connection with the rural economy. Indeed, it was openly acknowledged by the appellant that certain occupiers sought low-cost premises which were either not available or affordable within the BUA. This view was supported by Mr Carney. This may well highlight a constraint issue for smaller businesses, but there is no policy provision for such matters to be addressed by building units in the Green Zone without a clear planning justification. I address other EI1 policy issues under reason 2.

*ERE1 – protection of agricultural land*

36. ERE1 resists the loss of agricultural land. It does allow for loss under 'exceptional circumstances'. The first is where the proposal will not lead to the loss of high-quality agricultural land, having regard to a number of factors. The second is where 'the nature of the proposed use genuinely necessitates and is appropriate to its proposed location.'
37. The proposal would conflict with policy ERE1, as only a fraction of the existing gross site area would be returned to agricultural use. I was not provided with precise area details at the Hearing, but the area of the 2 small fields<sup>6</sup> that would be restored to agricultural use appears to be well under half of the overall site area. This means that the greater part of the site would be lost to agriculture and replaced with housing, commercial units, hard surfaces and roads. In my view, exceptional circumstances justifying this permanent loss of agricultural land have not been demonstrated.

*ERE6 – redundant and derelict glasshouses*

38. ERE6 is a central policy in this appeal, as it does provide a potential route for a glasshouse site redevelopment to be considered under its exception provisions. I therefore explore it in some depth.
39. The first part of the ERE6 policy is unequivocal in stating: '*The redevelopment of redundant and derelict glasshouses for non-agricultural uses will not be supported. When glasshouses are redundant to the horticultural industry or are derelict, they should be removed, and the land restored to agricultural use.*'
40. However, the policy goes on to state that '*in only the most exceptional circumstances, the development of derelict glasshouse sites may be considered for other uses, provided that the amount of development is the*

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<sup>6</sup> The hatched areas notated as 'land returned to agricultural use' shown on Drawing No 4219/010/P3



*minimum required to deliver an overall improvement to the landscape character of the countryside through the removal of glasshouses and supporting infrastructure; and the restoration of agricultural land, or an appropriate environmentally-beneficial use. Any such proposals must be accompanied by adequate information which demonstrates the redundancy of the glasshouse to the holding and the industry; and details which support and justify the extent of development sought relative to the costs of the removal of the glasshouses. Any such development will be conditioned to prevent further changes of use; and if the approved use ceases, that the land will revert to agricultural use.'*

41. At the Hearing, there appeared to be a consensus between the main parties that the glasshouses were 'redundant'. This represented a shift from the I&E officer view at the application stage, as captured in the officer report, where the position appears to be one where officers regarded redundancy as not proven. The consultation response of Mr Vautier (Department for the Economy – Rural and Marine Sector) appeared to be significant here. Whilst there was some dispute about the dates of his submission, and whether his views should have been sought earlier, I have no reason to doubt his professional view that the age of the glasshouse structures, and the economic challenges facing food production, means that *'these units are not considered to offer a realistic opportunity of being utilised for commercially viable horticulture'*. I therefore assess that the glasshouses are effectively redundant and unlikely to ever be repaired and restored for crop production.
42. With regard to whether the glasshouses have become 'derelict', I have had regard to the various submitted safety and maintenance reports, and to observations made on my site inspection. Whilst there is evidence of failure of the structures in places, notably of the valley gutter systems, and loss of glass in localised areas, the overall physical appearance is not one of dereliction and abandonment. I do not therefore consider the glasshouses to be 'derelict' for the purposes of applying ERE6.
43. As Advocate Pearce pointed out, in terms of policy ERE6's wording<sup>7</sup>, either redundancy or dereliction can engage the policy. However, establishing either redundancy or dereliction, or both, does not necessarily trigger a development opportunity for non-agricultural uses. The policy is clear in that the redevelopment of such glasshouse sites for non-agricultural uses 'will not be supported' and the supporting narrative explains that this is a 'strong presumption'. As the proposal involves non-agricultural uses, i.e., housing and a large proportion of commercial space, which I am not convinced is justified under SP2, it conflicts with the primary stated policy, i.e., the first sentence of ERE6. Moreover, as the proposal does not restore the glasshouses site to agricultural use, it conflicts with the second part of ERE6 and the underlying principle that glasshouses are temporary structures, which should be removed when they have reached the end of their economic life and the land returned to agricultural use.
44. As a result, the proposal's only prospect of satisfying ERE6, is through its exception provisions, which are set out in the third section of the policy.

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<sup>7</sup> The second sentence of ERE6 refers to redundant 'or' derelict glasshouses.

This element of the policy requires some careful analysis. It begins by stating (underlining added) that '*in only the most exceptional circumstances the development of derelict glasshouses may be considered for other uses...*' My reading of this part of the policy is that the exception provision only relates to derelict structures, albeit further on the policy does include a redundancy test, but the exception is not triggered by redundancy *per se*. This is an important point because, in this case, redundancy is accepted, but I have judged the structures not to be derelict. I do not consider that the exception provision can be engaged in this case.

45. At the Hearing, there was some debate about the BIP supporting narrative<sup>8</sup>, which says that the strong presumption against redevelopment of glasshouses for non-agricultural uses was designed to encourage the removal of derelict structures and disincentivise allowing glasshouses to fall into disrepair. I have noted the view that, in practical terms, there may be an unintended consequence of promoting dereliction to engage the exception provision (which redundancy alone does not achieve).
46. Even if I were to accept that the structures were derelict, I am unconvinced that 'most exceptional circumstances' have been demonstrated. That term is not defined but, in my assessment, it must mean that there is a very special case for departing from a strong policy presumption, and that such a case would be unusual. When read alongside the policy's explanatory text, it is quite apparent that ageing and redundant glasshouses are not exceptional in themselves. Indeed, they are quite a normal feature in the Jersey countryside. The text states<sup>9</sup> that since 2013, the total area of land farmed under glass has decreased by 37%, and of the glasshouses that remain (at just under 155,000 sqm), nearly 97% were more than 15 years old (at the end of 2017), with only just over half of the area under glass being actively used for production in the previous twelve months. I have noted the wider case made in support of the application proposal, but in my assessment, none of this amounts to most exceptional circumstances that would depart from a strong policy presumption that applies to unused glasshouses in Jersey.
47. The appellant has submitted that, if any tension is found with policy ERE6, sufficient justification can be found to justify the proposal through policies SP2 in making the most efficient use of the land which optimises density of development; policy H3 in providing 7 high quality family homes for the open market; and policy EI1 in providing new commercial space to support businesses in the rural economy and those not engaged in the rural economy. However, I find these arguments to be somewhat contrived and flawed, because in the case of each policy, the proposal offends its primary purpose in terms of the acceptable location for new development i.e., the appeal site is not in a location where SP2, H3 and EI1 support the new housing and commercial development proposed.

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<sup>8</sup> BIP page 183

<sup>9</sup> BIP page 183

48. Notwithstanding my findings above, for completeness, I assess the remaining elements of ERE6 and I also assess comparability with other cases that have been raised in submissions.
49. For 'most exceptional circumstances' cases, the policy requires the amount of development to be the 'minimum required' to deliver an overall improvement to landscape character through removal of the structures and land restoration. There are clearly costs associated with decommissioning and removing the structures and the appellant's consultant estimates this to be £664,408, including landscaping<sup>10</sup>. The appellant's consultant has also provided a high-level financial appraisal for the appeal development; this suggests a Gross Development Value of £12.46 million, with costs of £11.31 million and profit on cost of circa £1.15 million.
50. Notwithstanding some differences of views about some of the appraisal assumptions, it is quite apparent to me that the proposal would be substantially in excess of the minimum necessary to remove the structures and restore the land. Moreover, the development itself would act to substantially reduce the amount of agricultural land that would be restored. Advocate Pearce accepted that the development was more than the minimum needed, but sought to justify this on the basis of SP2's encouragement to make the most efficient use of land. However, in my view, this argument fails, as SP2 directs that this type of development should not occur in this Green Zone location at all, and it is also the case that glasshouse sites are not treated as PDL, which finds SP2 support for 'appropriate development'.
51. With regard to other cases that might offer some comparison, the appellant made particular reference to a permission granted for the redevelopment of a glasshouses site in St Lawrence<sup>11</sup>. I have only been provided with limited details of this case. However, it appears to involve a not dissimilar area of glasshouses, but there do appear to be some important differences, notably in terms of the undisputed derelict state of the structures, the majority of the land being returned to agricultural use, and a very limited amount of non-agricultural development to enable that restoration (a single dwelling house).
52. Mr Gladwin cited some other examples<sup>12</sup> of exceptional circumstances glasshouse developments that had been permitted. He suggested that all involved very limited enabling development, typically 1 or 2 dwellings, to deliver the removal/restoration benefits over the majority of the wider respective sites. It is important to note that I had not been provided with any details of Mr Gladwin's cited cases ahead of the Hearing and that means that I can only apply very limited weight to such evidence. In any event, each case must be decided on its own merits.

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<sup>10</sup> Colin Smith Partnership Feasibility Study (January 2022)

<sup>11</sup> Planning application reference P/2021/1968

<sup>12</sup> PP2016/0368; PP/20161010; and P/2020/1489

53. Based on what I have gleaned from other cases, I assess that these do not provide any meaningful precedent or justification that would amount to support for the appeal proposal.

*SP3, SP4, PL5, GD6, NE3 – design, placemaking and character policies*

54. SP3 addresses 'placemaking' and requires all development to reflect and enhance the unique character and function of the place where it is located. It states that new development must contribute to the creation of aesthetically pleasing, safe and durable places that positively influence community health and wellbeing outcomes and sets out criteria against which proposals will be tested to achieve this.
55. SP4 gives a 'high priority' to 'protecting and promoting Island identity' by ensuring that, amongst other matters, all development should protect or improve the historic environment; respect the landscape, seascape or townscape character of the area in which it is proposed to be located and make a positive contribution to the local character and distinctiveness of a place; and, where appropriate, include the provision of public art.
56. PL5 states that development proposals in the countryside, around the coast and in the marine environment should protect or improve its character and distinctiveness. It states that to protect the countryside and coast and to ensure development is concentrated in the most sustainable locations, the development of new homes will be supported in limited circumstances including the conversion, extension and/or sub-division of existing buildings. It also states that agricultural land will be protected and economic development that supports the maintenance and diversification of the rural and island economy will be enabled, where the location of development is justified and appropriate; or where it involves the reuse or redevelopment of already developed land and buildings, where it is appropriate to do so.
57. GD5 addresses demolition and replacement of buildings. It states that demolition and replacement of a building will only be supported where it is demonstrated that i) it is not appropriate in sustainability terms, and/or economically viable, to repair or refurbish it; ii) the proposed replacement building or part of a building represents a more sustainable use of land having regard to the density of existing and proposed development, overall carbon impact, waste generation, and the use and performance of materials and services; or iii) there exists a demonstrable aesthetic and practical benefit to replace over refurbishment.
58. Policy GD6 addresses 'design quality'. It states that 'a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting will be sought in all developments, in accord with the principles of good design'. It then sets out a list of key principles, which include the relationship to the existing character and form of the area; the use of materials; impacts on neighbouring uses; integration with the existing area; designing out crime; protection and enhancement of green infrastructure; operational usability; and the sustainable use of resources.

59. NE3 requires new development to protect or improve landscape and seascape character. It states that proposals that do not protect or improve landscape/seascape character will not be supported, unless they meet a range of criteria including being demonstrably necessary; there being no reasonable alternative; that harm has been avoided, mitigated and reduced as far as reasonably practicable; and that the public benefit of the proposal outweighs the harm to the landscape and seascape character and where the nature of that benefit to the public is clear, direct, and evidenced.
60. Given my findings on the spatial strategy and related policies concerning location and planning principle, there are consequential tensions with these 5 design and placemaking policies. This is because the proposal seeks to introduce a substantial amount of development into a rural setting of a type that strategic and other BIP policies direct to be unacceptable.
61. In this regard I have considered the appellant's submission on such matters, including the detailed Design and Access Statement. I do not dispute that much care and effort has gone into the design process, and that the housing scheme seeks to adopt a farmstead cluster layout, and employ sensitive designs and high quality materials. However, this does not override the policy tensions that I have identified and indeed it creates more policy tensions.
62. It creates conflicts with the placemaking purpose of SP3, the island identity purpose of SP4, policy PL5's approach to development in the countryside, the GD6 approach to design quality, and the NE3 requirement to improve landscape character. This is because its introduction of substantial housing, associated gardens and domestic paraphernalia, along with significant commercial buildings with parking, servicing and roads, does not enhance the rural character and function of this countryside location. However well designed the proposal may claim to be, it nonetheless represents an urbanisation of the countryside and an erosion of its rural character and distinctiveness through inappropriate development.

#### *GD5 – demolition*

63. GD5 is included in the reason 1 list of policies. It addresses demolition and replacement of 'buildings'. It says that demolition and replacement of a building will only be supported where it meets specified criteria. However, given the BIP's definition that glasshouses are 'temporary structures associated with the agricultural use of land'<sup>13</sup> rather than permanent buildings, I do not consider that this policy is engaged and I find no conflict with GD5.

#### *HE1 – historic environment*

64. Policy HE1 addresses 'protecting listed buildings and places, and their settings'. It states that proposals that could affect a Listed building, or place, or its setting, must protect its special interest, and that all proposals should seek to improve the significance of Listed buildings and places.

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<sup>13</sup> BIP narrative page 183 (printed version)

65. There are no Listed buildings within the site, but there are a number to the north of the site within the ribbon of development that follows La Grande Route de St Clement. From west to east these are *Clairval* (grade 4), *Homefields* (grade 4), *Les Tours Villa* (grade 3), *Les Tours Farm* (grade 4) and *Les Tours* (grade 2). All appear to date from the nineteenth century and have origins as farmhouses and farm building groups.
66. It is common ground between the parties that the proposal would not have any direct physical impact on any heritage asset. However, HE1 includes a requirement that proposals that do not protect the setting of a Listed building or place will not be supported unless exception criteria are met, although I do not consider that any would apply in this case. The 'setting' of a Listed building or place is explained in the supporting narrative and defined in the BIP glossary as 'the surroundings that it is experienced in'. It makes plain that this can extend beyond the building's curtilage and is not dependent on there being public access or public views to it. It is also important to recognise that the setting is not simply confined to the particular features identified in the Listing.
67. I have noted the content of the appellant's Heritage Statement and I have similarly considered the views of Ms Ingle's consultation response and contributions at the Hearing. On my site inspection, I assessed the settings of each Listed building.
68. I am satisfied that the setting of *Homefields*, being on the north side of La Grande Route de St Clement and with the intervening Clos de Tours development, will not change and could therefore be regarded as protected. However, the settings of *Clairval*, *Les Tours Villa*, *Les Tours Farm* and *Les Tours*, will experience change through the introduction of the housing and commercial unit development in relatively close proximity. Prior to the erection of the glasshouse structures, this area will have been open fields. The absence of permanent buildings within their settings contributes to the experience of the buildings and the understanding of their relationship with the countryside. The settings would therefore be eroded and not protected by the development. I have noted the benefits that would be gained by removing the glasshouses, but these are low slung temporary structures which are a feature of the Jersey countryside, and their removal would not provide a heritage policy justification for allowing the proposal.

### **Compatibility of residential and commercial uses – refusal reason 2**

69. The second reason for refusal alleges that there was insufficient evidence provided demonstrating that the commercial/industrial element of the proposal would be compatible with surrounding residential uses, both existing and the new proposed dwellings. The relevant policies are EI1 and GD1, which are premised on protecting amenities of neighbouring uses. GD1(d) lists matters within the policy's scope as including emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions
70. At the application stage, the Environmental Health officer's consultation response identified details that needed to be provided including the exact

usage of the units, the nature of any plant, power sources, hours of operation, external lighting etc. and flagged the possibility that a Noise Impact Assessment and other assessments may be required.

71. It does appear that there was little, if any, engagement between the main parties on these matters at the application stage, primarily because of the officer's assessed 'in principle' objection. However, it will be apparent from my earlier analysis that the precise nature of the unit occupiers is less than clear. As a result, I cannot say with any certainty that the living conditions of existing residents to the north of the site, or future residents within the 7 proposed houses, would be protected from unreasonable harm. There is therefore a tension with policies GD1 and EI1.

### **Highway capacity and safety – refusal reason 3**

72. The third reason for refusal states that the proposal did not provide sufficient information and evidence to demonstrate that the traffic associated with the development could be reasonably accommodated within the local highway network, with regard to highways safety and capacity. The referenced BIP policies are TT1 which requires developments to address 'integrated safe and inclusive travel', and TT2, which requires a demonstration that proposals have prioritised 'active travel' in terms of walking and cycling.
73. The application was supported by a Transport Statement (TS) which proposed a change to the local road network, which would make Rue des Nouettes one-way from its junction with Le Grande Route de St Clement, south eastbound towards Rue Au Tchian, which it says would '*vastly improve safety at the junction .....by removing the sub-standard visibility issue at the junction and conflict with vehicles exiting from Rue des Nouettes.*'
74. The TS also sets out that the existing access would be improved, turning space would be provided for refuse and fire vehicles, and that predicted trip generation would be an additional 10 vehicles in the morning peak and 8 in the evening peak, which it says will have no major significant impact on the highway network.
75. The I&E Transport consultation response sets out a range of concerns. These include the lack of a footway connection between the site and the nearest bus stop (Les Tours); that the one-way proposal will just divert movements to another substandard junction; and concerns about the TS modelling, including trip rates and a failure to take account of other developments. It also states that a contribution towards the Eastern Cycle Network would be required.
76. The starting point here is that the site location is distinctly rural and detached from the BUA. It is served by the narrow Rue des Nouettes, which is a two-way lane, but of insufficient width for two vehicles to pass and its junction with the A5 has very restricted visibility, due to the granite wall on its west side and a house on its east side. Public transport and active travel accessibility is limited. It is therefore not an ideal location for

accommodating residential and commercial traffic, over and above that which may, in line with the policy SP2, be considered to be 'justified, appropriate and necessary' to this countryside location.

77. I recognise that the commercial growing operations would have generated traffic, including larger vehicles transporting produce for shipment to the UK, but that traffic has not existed for a considerable period of time and is not currently part of the traffic patterns in the area. The commercial traffic that currently emanates from the site now appears to be primarily limited to the Agri-Co Ltd business.
78. Whilst the TS assumptions on trip generation from the 7 proposed houses seem reasonable, the TS appears to treat the potential commercial traffic generation in a cursory manner and assumes that this will result in just 1 additional trip in the am and pm peaks. It bases this trip generation assessment on information drawn from a recognised UK database (TRICS). However, the data used relates to 'warehousing (self storage)' and originates from 2 urban locations in East Anglia and Yorkshire/North Lincolnshire. As well as being very different in locational terms to rural St Clement, self storage uses are known to be low trip generators. Those trips to that specific use type also tend to involve smaller vehicles, i.e., customers using cars and vans to take and retrieve their stored items. The data used does not therefore appear to be a good proxy for the appeal proposal and I am unconvinced by the TS estimation that the commercial space proposed would generate very little traffic.
79. What is actually proposed is quite a significant amount of new commercial floorspace in this Green Zone location, served by a narrow lane, with substandard junctions, and limited public transport accessibility. The known existing operator, Agri-Co Ltd, specialises in large farm vehicles, such as tractors and large farm equipment, such as telehandlers. As noted earlier, the other businesses that may occupy the commercial unit space come with scant information, but are likely to have the potential to generate car, van and potentially larger vehicle trips through their operational hours, which are unspecified.
80. Whilst I note that there is no record of serious accidents at the junction with La Grande Route de St Clement, that does not mean that it is safe to accommodate additional daily residential and commercial traffic. Moreover, no swept path analysis has been provided for the junction or for the alternative junction, should the one-way proposal progress, which I am advised would require Ministerial approval. There is also no submitted road safety audit. I therefore cannot be sure that the proposal would not result in unacceptable highway safety risks.
81. On this main issue, I conclude that, in transport terms, this is an unsustainable location for new housing and for commercial development. I consider that the potential residential and commercial trip generation would increase vehicle movements on narrow lanes and through substandard accesses, giving rise to well-founded highway safety concerns. In these regards, I find clear conflict with policies TT1 and TT2.



### **Surface water and foul drainage – refusal reason 4**

82. The fourth reason alleges that insufficient information has been provided with respect to surface water and foul sewerage, contrary to policies WER6 and WER7.
83. With regard to surface water drainage, the application was supported by a flood risk assessment and a 'drainage philosophy' based on sustainable drainage principles. I consider that this amounts to 'sufficient information' as required by WER6 and that the removal of large areas of glass could provide a betterment opportunity in terms of surface water drainage. At the Hearing, it appeared to be common ground that the detail of surface water drainage design could be addressed by a suitable planning condition and that policy WER6 could be satisfied.
84. With regard to foul flows, it does not appear that detailed information was submitted at the application stage. At the Hearing it was claimed that there was an existing pumping station with capacity to serve 27 homes, but I do not have that detailed information before me. Advocate Pearce drew attention to a 2013 permission<sup>14</sup> where foul drainage details were addressed by a planning condition. However, that decision predates the BIP and its current policy WER7 states (underlining added) that '*development proposals must be accompanied by sufficient information regarding the means of sewage disposal to allow a proper assessment of the proposals. Where this information is not adequately provided, the development will not be supported.*' In the absence of sufficient information, I cannot be certain that WER7 can be complied with.

### **Conclusion and recommendation**

85. On the first refusal reason, I conclude that the proposal to replace the glasshouses with 7 houses and the development of commercial units on this Green Zone site outside of the BUA would fundamentally conflict with the BIP spatial strategy as set out in SP2. It would also conflict with other policies that determine the appropriate location of new housing (H3 and H9) and employment development (E11 and ERE1). It would conflict with policy ERE6 which specifically addresses 'redundant and derelict' glasshouses and presumes against their redevelopment for non-agricultural use, and I assess that the most exceptional circumstances have not been demonstrated to permit this proposal. I further assess tension with the BIP's design, placemaking and character, and historic environment policies (SP3, SP4, PL5, GD6, NE3, and HE1). Individually and collectively these policy breaches weigh very heavily against the proposal.
86. With regard to the second refusal reason, I share the planning authority's view that insufficient information has been provided through the application to demonstrate that the commercial uses could co-exist alongside the existing and the proposed housing, without causing an unreasonable loss of amenity.

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<sup>14</sup> Planning application reference P/2011/1215

87. On the third reason, this is an unsustainable location for new housing and for commercial development and its associated vehicle trips, which would increase vehicle movements on narrow lanes and through substandard accesses, giving rise to well-founded highway safety concerns, in clear conflict with policies TT1 and TT2.
88. Concerning the fourth reason, I am satisfied that sufficient surface water drainage information has been provided and that detailed drainage design could be secured by a planning condition to satisfy policy WER6. However, no foul drainage information has been provided and this results in a conflict with WER7.
89. For all of the above reasons, I recommend that the Minister dismisses the appeal.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**

Appearances at the Hearing

For the Appellant: Advocate George Pearce; Mr Kevin Herve (the Appellant)

For I&E: Mr Jonathan Gladwin (appeals officer); Mr John Vautier (Department for the Economy – Rural and Marine Sector); Ms Tracey Ingle (Historic Environment Team)

Interested parties: Mr John Carne on behalf of the Freeholders of Les Tours Farm (neighbours to the proposed development)