

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005

AND SECTION 19 OF THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS) ORDINANCE, 2007

NOTIFICATION OF REFUSAL OF PLANNING PERMISSION

PROPOSALS: Change of use from agricultural land to domestic garden (2,250sqm).

LOCATION: Au Soleil, Rue De La Croix Creve Coeur, St. Saviour.

APPLICANT: Mr & Mrs S Walsh

I refer to the application referred to below received as valid on 07/09/2021 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 30/03/2022

Drawing Nos: G. E. Le Friec 2102/2B.

Application Ref: FULL/2021/1817

Property Ref: E00982B002

The Development & Planning Authority has decided to refuse your application under the provisions of section 16 of the Land Planning and Development (Guernsey) Law, 2005 for the following reasons:-

1. It has not been satisfactorily demonstrated that the land cannot positively contribute to the commercial agricultural use of an Agriculture Priority Area, or cannot practicably be used for commercial agriculture within an Agriculture Priority Area without unacceptable adverse environmental impacts. Consequently, the proposal would represent the unacceptable loss of agricultural land within the Agriculture Priority Area and therefore is contrary to Policies GP15(c) and OC5(A).

The land is predominantly flat with a suitable vehicular access located to the north-east corner of the site which could be used for agricultural machinery, vehicles and/or cattle. The land parcel forms part of a broader area of contiguous agricultural land extending to the west, with good connectivity to agricultural land to the north-east and east. The land in question could be used for commercial agricultural use on its own, or could potentially be amalgamated with the adjoining field to the west, or be used in association with nearby fields to the north-east and east. In addition, the loss of this parcel of agricultural land would fragment the large swathes of agricultural land to the north-east, east and west when viewed in a wider context, thus having a

detrimental effect on its potential use for commercial agricultural purposes, both by itself, or in conjunction with adjoining or nearby agricultural land.

2. The land the subject of this application forms part of a large swathe of open and undeveloped land which extends to the north-east, east and west and is visible from the public highway to the east. The proposal would result in a significant incursion beyond the extent of the existing residential property and would in effect close the existing gap between the cluster of properties along Rue De La Croix Creve Coeur to the north-west and south-east to the detriment of the wider open landscape and the landscape character of the area. In addition, there are concerns that the domestication of this land would adversely affect the landscape character and openness of the area, for example through the introduction of domestic paraphernalia. In this case the requirements to ensure the protection of open land and landscape character outweighs the reasonable expectations of the landowner to incorporate additional land into the curtilage of the adjoining dwelling. The proposal is contrary to Policies GP15(a) and GP1.

OTHER REMARKS:-

Right of appeal against planning decisions

Your attention is drawn to the provisions of Section 68(1) of the Land Planning and Development (Guernsey) Law 2005, which provides a right of appeal, against a decision to refuse an application for planning permission or outline planning permission to the Planning Tribunal on the merits. An appeal to the Planning Tribunal under section 68 of the Law against this decision must be made before the expiry of the period of six months beginning with the date on which the Authority made this decision.

Copy of representations made

In reaching this decision the Development & Planning Authority took into account any written consultations made under Section 11(1) of the Land Planning and Development (General Provisions) Ordinance, 2007 ('the Ordinance'). A copy of any consultation responses made to the Authority under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

A J ROWLES

Director of Planning
Planning Service



PLANNING APPLICATION REPORT

Application No: FULL/2021/1817
Property Ref: E00982B002
Valid date: 07/09/2021
Location: Au Soleil Rue De La Croix Creve Coeur St. Saviour Guernsey GY7 9NJ
Proposal: Change of use from agricultural land to domestic garden (2,250sqm).
Applicant: Mr & Mrs S Walsh

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. It has not been satisfactorily demonstrated that the land cannot positively contribute to the commercial agricultural use of an Agriculture Priority Area, or cannot practicably be used for commercial agriculture within an Agriculture Priority Area without unacceptable adverse environmental impacts. Consequently, the proposal would represent the unacceptable loss of agricultural land within the Agriculture Priority Area and therefore is contrary to Policies GP15(c) and OC5(A).

The land is predominantly flat with a suitable vehicular access located to the north-east corner of the site which could be used for agricultural machinery, vehicles and/or cattle. The land parcel forms part of a broader area of contiguous agricultural land extending to the west, with good connectivity to agricultural land to the north-east and east. The land in question could be used for commercial agricultural use on its own, or could potentially be amalgamated with the adjoining field to the west, or be used in association with nearby fields to the north-east and east. In addition, the loss of this parcel of agricultural land would fragment the large swathes of agricultural land to the north-east, east and west when viewed in a wider context, thus having a detrimental effect on its potential use for commercial agricultural purposes, both by itself, or in conjunction with adjoining or nearby agricultural land.

2. The land the subject of this application forms part of a large swathe of open and undeveloped land which extends to the north-east, east and west and is visible from the public highway to the east. The proposal would result in a significant incursion beyond the extent of the existing residential property and would in effect close the existing gap between the cluster of properties along Rue De La Croix Creve Coeur to the north-west and south-east to the detriment of the wider open landscape and the landscape character of the area. In addition, there are concerns that the domestication of this land would adversely affect the landscape character and openness of the area, for example through the introduction of domestic paraphernalia. In this case the requirements to ensure the protection of open land and landscape character outweighs

the reasonable expectations of the landowner to incorporate additional land into the curtilage of the adjoining dwelling. The proposal is contrary to Policies GP15(a) and GP1.

OFFICER'S REPORT

Site Description:

The site is situated Outside of the Centres and within the Agriculture Priority Area as designated in the Island Development Plan.

The application site comprises a dwelling-house known as 'Au Soleil' which is located towards the south-east corner of the plot, with the recognised domestic garden extending to the rear (west) of the property. The dwelling is accessed via a gravelled driveway which runs to the side (north) of the dwelling.

The remainder of the site to the north of the dwelling-house is recognised as agricultural land and is generally flat and laid to grass. The area of land in question is circa. 2,250sqm.

The area of agricultural land was unlawfully used as garden a number of years ago by a former householder and has since reverted to agricultural use following the clearance of domestic structures and paraphernalia.

The predominant character of the wider area is semi-rural, interspersed with clusters of residential properties. Residential properties are generally located to the north-west and south-east of the application site. The site is bounded to the east by Rue De La Croix Creve Coeur, with a number of agricultural fields to the north-east, east of the road. To the west of the site lies a large expanse of agricultural land which runs down to Vieille Rue which appears to be in commercial agricultural use. A large area of undeveloped land lies to the north of the field associated with Mirus House, which also appears to be agricultural land.

Relevant History:

None pertinent to this application.

Existing Use(s):

Agricultural use class 28 – field.
Residential use class 1: dwelling-house.

Brief Description of Development:

Planning permission is sought to change the use of a parcel of agricultural land (circa. 2,250sqm) to a domestic garden.

The application is accompanied by a letter dated 15th July 2021 from the agent referring to Policy GP15 and setting out comments in support of the application.

The application was deferred primarily over issues regarding the potential use of the land for commercial agricultural purposes.

The agent has responded by the submission of a letter dated 28th January 2022, to seek to overcome the concerns raised.

Relevant Policies of any Plan, Subject Plan or Local Planning Brief:

Island Development Plan Policies:

GP1: Landscape Character and Open Land

GP15: Creation and Extension of Curtilage

OC5(A): Agriculture Outside of the Centres – within the Agriculture Priority Areas (APAs)

Representations:

The Authority has received five representations from three parties objecting to the proposal. Grounds for objection principally relate to the following issues:-

- The IDP facilitates the ‘tidying up’ of redundant glasshouse land and isolated agricultural holdings that do not form viable entities and could be amalgamated or linked with other holdings to make them so. The current pattern appears to lead to the erosion of stock of viable agricultural land, contrary to the intentions of the IDP and the Strategic Land Use Plan.
- Native plants should be used to support wildlife and no proposals have been published of how this site is to be improved for nature.
- The proposal is not a ‘reasonable expectation’ that such a large area of agricultural land to be converted to domestic curtilage. Losing such a large area of open land would also be contrary to the requirement to protect open land and agricultural land from development.
- The proposal would be contrary to Policy GP15.
- The application should be required to take into account the Strategy for Nature despite the application being received prior to 1st September 2021.
- Irreversible loss of agricultural land.
- Inappropriate plant species and not site specific.
- Removal of exemption rights if approved.

Consultations:

None

Summary of Issues:

The main issues in deciding this application are the impact on the landscape character and openness of the area, and the loss of agricultural land within an Agriculture Priority Area.

Assessment against:

- 1 - Purposes of the law.**
- 2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.**
- 3 - General material considerations set out in the General Provisions Ordinance.**
- 4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).**

The proposal to change the use of the land to a domestic use falls to be considered principally under Policies OC5(A), GP15 and GP1 of the Island Development Plan.

The site is not within an Area of Biodiversity Importance and the application was submitted prior to September 2021 and is therefore not required to demonstrate a biodiversity enhancement scheme to accompany the application. No changes to the existing boundaries are proposed and the proposed use of the land for domestic purposes would have no significant adverse effect on the amenities of neighbouring residents.

Loss of agricultural land within the Agriculture Priority Area

The Island Development Plan recognises that agriculture plays a relatively small part in Guernsey's economy but is valuable for its land management function protecting and enhancing the countryside and providing visual access to open space.

The Strategic Land Use Plan requires a balance to be made between the protection of land for agriculture for the industry's current and future needs and recognising the role it plays in countryside management with ensuring land is available to meet other legitimate development requirements. The Island Development Plan has therefore identified large areas of contiguous agricultural land, and other areas well related to established agricultural operations, which represent Guernsey's most valuable agricultural land. These have been identified as Agriculture Priority Areas.

Whilst the policy approach is to generally support development for agricultural purposes in the Agriculture Priority Areas, these areas have been broadly drawn and include areas of land and sites which are not currently used for agricultural purposes and could not be expected to contribute positively to commercial agriculture in the future. The Agriculture Priority Areas are not intended to safeguard the land for agricultural use if it is not appropriate, or is not required for that use or where the inclusion of an area of land into a larger land parcel for agricultural purposes would have a negative environmental impact. The Island Development Plan policies therefore allow for other forms of development within the identified Agriculture Priority Areas provided that they accord with all the other relevant policies of the Island Development Plan.

In order to protect Guernsey's best agricultural land, where appropriate, proposals for development which would result in the loss of an existing farmstead or agricultural holding in the Agriculture Priority Areas will only be supported where it is demonstrated that the farmstead, building or land is no longer required for agricultural purposes and

any proposed new use accords with the other relevant policies of the Island Development Plan. The policies place the onus on the applicant to demonstrate that this is the case.

The Authority has published non-exhaustive guidance on matters that could be taken into account:

When assessing if a particular site or land parcel can make a positive contribution to the commercial agricultural use of an identified Agriculture Priority Area, the following matters could be taken into account:

- *What the requirements of the agricultural industry are at the time;*
- *The condition of the land (e.g. the grade and depth of the soil, any contamination, whether it is able to be used for agriculture or if not what may be required to make it available for cultivation or grazing);*
- *Whether the land can be used for agriculture without adverse environmental impacts;*
- *The size of the site/piece of land;*
- *How the site/piece of land relates to existing agricultural holdings;*
- *Access;*
- *Topography (including slope, gradient, etc);*
- *Flooding/Drainage;*
- *The nature of the proposed use (will the proposed use allow the long term use of the land for agriculture to remain).*

The land forms part of an Agriculture Priority Area. The proposed change of use of agricultural land to domestic garden would see the agricultural land reduce in size by circa. 2,250sqm or 0.5acres as specified in the applicant's letter of 28th January 2022.

The agent's main points in support of the application are set out in the agent's most recent letter (dated 28th January 2021(2022) and are summarised as follows:

- It is suggested in the Planning Service's deferral letter that the commercial scale within the APA that is only achievable by merging with the adjacent land masses to the west, or to the north.
- Is accessed by a shared access in the north-east corner of the site and via a domestic access only.
- The land is landlocked for the greater part.
- The curtilage extension can include biodiversity net gains via additional planting.
- The site falls under one cadastre and single ownership.
- Soil quality is poor.
- The individual size of the land is too small for commercial agriculture.
- Any mergence with surrounding land would result in significant level of engineering due to the width of earth bank and change in ground level. The loss of distinctive boundary features would cause environmental impacts through the loss of hedge banks and landscape features.
- The average size of a Guernsey field is considered less than 4 verges, or about 1.4 acres, therefore the land is a third of that size suggestion which supports this assertion in the deferral letter.
- The north-east gate is only accessible via a right-of-way over land belonging to Mirus House.

- Policy OC5(A) relates to any loss of an existing farmstead or agricultural holding.

Limited information has been submitted by the agent to satisfactorily demonstrate that the land could not be used for commercial agriculture. It is also noted that some of these claims, including the average size of a Guernsey field and soil quality, are not substantiated.

The land is predominantly flat with a suitable right-of-way access to the north-east corner of the site. Whilst on its own the land is of a relatively modest size, it could be used for commercial agricultural use in conjunction with a group of nearby agricultural fields, particularly to the north-east and east of the application site given the existing access arrangements.

Although more evidently, the site has the potential to create a limited opening in the low earthbank along the west boundary which would physically link and create a much larger agricultural field that could be used on a commercial basis and could potentially make a more meaningful and viable contribution to the APA. This in turn is likely to have a minor environmental impact and would be similar to other punctuated earthbanks seen across the island which often provide the connectivity of agricultural holdings.

The cumulative effect of the application site and the adjoining field to the west would also be comparable to the size of other commercial sites in the locality, particularly to the north-east of Rue De La Croix Creve Coeur.

In summary, the level of information submitted does not provide overwhelming and convincing evidence to satisfactorily demonstrate that the land cannot positively contribute to the commercial agricultural use of an Agriculture Priority Area or cannot practicably be used for commercial agriculture within an Agriculture Priority Area without unacceptable adverse environmental impacts.

The application site is bounded to the west by a swathe of agricultural land and is well related to a large swathe of agricultural land to the north-east and east and therefore it is considered to form part of a large area of contiguous agricultural land. If approved, the proposal would represent the unacceptable loss of agricultural land within the Agriculture Priority Area and is therefore contrary to Policies GP15(c) and OC5(A).

Impact on the landscape character and openness of the area

Paragraph 19.16.3 of Policy GP15 refers to the intentions of the Strategic Land Use Plan, where it is considered that whilst the domestication of the landscape generally runs counter to the desire to preserve the local character of our landscapes, *“minor shifts in the management style of small parcels of land not forming part of larger areas of open land and not visually prominent will not fundamentally alter the character of the Island”*.

Paragraph 19.16.7 acknowledges that:

“competition for land can occur when a residential use adjoins an open area of land and the householder would like to incorporate some of that open land within the domestic curtilage of the residential property” and that *“in these*

instances there will be a balance to be struck between ensuring the reasonable protection of open land and the requirements of the agricultural industry and the reasonable expectations of landowners to add new or additional land to the curtilage around a building. An assessment of proposals will take into account the impact on the wider areas of open landscape and Agriculture Priority Areas”.

Paragraph 19.16.8 states that:

“the character and openness of the landscape can be affected by the introduction or intensification of ancillary fixtures and features, such as car parking, bin storage areas or boundary treatments. It can also change as a result of physical change to landscape features, such as hedges or earth banks. Care should be taken to ensure that proposals to create or extend a curtilage do not result in the removal or introduction of features that would detract from the character or distinctiveness of an area”.

With regards to the impact on the landscape character and openness of the area, Policy GP1 also requires consideration as to whether the proposal would result in the unnecessary loss of open and undeveloped land, which would have an unacceptable impact on the open landscape character of the area; whether the proposal respects the landscape character type within which it is set; and whether the proposal would result in the unacceptable loss of distinctive features that contribute to the wider landscape character and local distinctiveness of the area.

Paragraph 19.2.12 of Policy GP1 sets out that:

“care will be taken to ensure that development does not result in the unnecessary loss of open space or erosion of the character of the particular landscape of the locality concerned”. It goes on to state that *“the value of the landscape and open and undeveloped land will be required to be assessed in a wider context rather than in terms of the impact development might have on an individual site. Development that affects landscape character or distinctive natural or built features will be considered in the wider context of the landscape value of a particular locality. In assessing development proposals, the Authority will balance the character of the locality concerned with the aspirations for development as set out above”.*

With regards to the loss of distinctive features that contribute to the wider landscape character and the local distinctiveness of the area, paragraph 19.2.5 sets out that *“an important contribution to the landscape character of an area is made by the particular features within them. Such distinctive features include boundary treatments, historic field patterns, trees and natural landscaping and are important elements in defining an area’s local distinctness.”*

In this case, the land the subject of this application is located within the Upland Plateau landscape as identified in Annex V of the Island Development Plan and the character of the area is most akin to the Central Plateau subzone. Annex V sets out that the Upland Plateau

“is characterised by a web of hedges, banks, hedgerow trees and tree-lined lanes, which enclose numerous small pastures. Interspersed through this field pattern are a series of small scattered settlements, usually in lower sheltered ground and surrounded by mature trees...In places, former green lanes have been upgraded to roads, but even the main roads are often no more than 14ft wide. A number of pastures have been replaced by glasshouses and residential development but the landscape fabric of hedges, banks and tree-lined lanes generally keeps views short, except in the more open west”.

The land forming the subject of this application is a parcel of undeveloped agricultural land which is largely flat, situated to the north of the dwelling. The agricultural land provides a visual break in residential development patterns to the north and south of Rue De La Croix Creve Coeur and forms part of a large swathe of open and undeveloped land which extends to the north-east, east and west.

The land is visible in public vantage points, particularly to the north-east corner of the site and across the gravel driveway of the property (south-east), with uninterrupted views extending to the treeline that forms the roadside treatment along Vieille Rue.

The proposal would result in a significant incursion beyond the reasonable extent of the recognised domestic curtilage and would in effect result in an extension of suburbanisation and help to close the existing ‘gap’ between the cluster of properties along Rue De La Croix Creve Coeur to the north-west and south-east of the application site, to the detriment of the wider open landscape and the rural character of the area.

In addition, there are concerns that the domestication of this land would adversely affect the landscape character and openness, particularly through the introduction of domestic paraphernalia. Whilst revoking exemption rights would provide a degree of control over ancillary domestic structures and buildings, ancillary domestic structures and paraphernalia associated with a domestic use of the land that does not need planning permission (such as garden furniture, children’s play equipment, ornamental landscaping) would result in the suburbanisation of the land and would cause unacceptable harm to the landscape character and openness of the area.

In this case the requirements to ensure the protection of open land and landscape character outweighs the reasonable expectations of the landowner to incorporate additional land into the curtilage of the adjoining dwelling. The proposal is contrary to Policies GP15(a) and GP1.

All material considerations as set out in the Land Planning and Development (Guernsey) Law, 2005 and the Land and Planning (General Provisions) Ordinance 2007 have been taken into account in the assessment of this application.

As set out above, the proposal does not accord with Policies OC5(A), GP15 and GP1 and it is recommended that the application is refused.

Date: 29/03/2022

