

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005
AND THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS)
ORDINANCE, 2007

NOTIFICATION OF GRANT OF PLANNING PERMISSION

PROPOSALS: Change of use of agricultural land to domestic garden (2,173sqm).
(retrospective)

LOCATION: Oak Lodge, Camp De L'Eglise, St. Saviour.

APPLICANT: Ms T Pham

This permission is granted under the terms of Sections 15 and 16 of the Land Planning and Development (Guernsey) Law, 2005 (the 'Law').

Date of Grant of Permission: 02/11/2021

This notification of grant of permission refers solely to the proposals referred to above as described in your application received as valid on 15/09/2021 and the drawings referred to below. This grant of permission is subject to the following conditions:-

Drawing Nos: SOUP Architects: 407_090 and 407_510(A).

Application Ref: FULL/2021/2063

Property Ref: E006720000

Conditions and reasons:-

1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Authority under the Law.

Reason - To ensure that it is clear that permission is only granted for the development to which the application relates.

2. Within two months of the date of this permission details of the biodiversity landscaping scheme set out in Appendix III of the Design Statement including full details of tree and hedge planting setting out planting schedules, noting the species, sizes, numbers and densities of plants shall be submitted to and agreed in writing by

the Development & Planning Authority.

Reason - To enhance the biodiversity of the site in accordance with the adopted Supplementary Planning Guidance note: Strategy for Nature, 2020.

3. The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting season following the grant of this permission, or in accordance with a programme previously agreed in writing by the Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

Reason - To enhance the biodiversity of the site in accordance with the adopted Supplementary Planning Guidance note: Strategy for Nature, 2020.

Expiry Date: This permission will cease to have effect on 01/11/2024 unless development is commenced by that date.

ADVICE AND OTHER REMARKS:-

Effect of planning permission:

Section 18 of the Land Planning and Development (Guernsey) Law, 2005 ('the Law') defines the effect of the planning permission hereby granted, namely:

(1) Planning permission ceases to have effect unless the development permitted by it is commenced within a period of three years immediately following the date on which it is granted (or such shorter period as may be specified in the permission).

(2) Planning permission enures for the benefit of the land concerned and of every person for the time being having an interest in it.

(3) Any conditions subject to which planning permission is issued are enforceable in accordance with the provisions of Part V of the Law.

(4) Planning permission for the erection of a building is only permission to use it for the purpose specified in the permission or, subject to any restriction so specified, for any other purpose for which it is designed.

(5) Planning permission is only permission to carry out the development specified in it (subject to any conditions so specified), and does not imply the giving of any other approval or consent required under this Law or any other enactment or under any rule of law.

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, on the merits against a decision to grant planning permission subject to conditions (except a building condition), to the Planning Tribunal, which is independent of the States of Guernsey. 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. The official Appeal Notice Forms are available on the States of Guernsey website at www.gov.gg/planningpanel and must be completed with all enclosures in multiples as requested and received within the six months deadline.

Copy of representations made:

In reaching this decision the 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 under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

Other Remarks:

Please note that any work which abuts or affects the public highway requires prior approval by Traffic and Highway Services. Please contact Traffic & Highway Services (highways@gov.gg) for further advice. You must also ensure that any access/es to the development are constructed to meet the existing road/footway levels in accordance with their requirements.

This document is not a Building Licence and confers no approval under the Building Regulations.

A separate Building Control Licence may be required and it is the responsibility of the developer to ensure that ALL necessary consents are obtained and that any pre-commencement conditions are discharged prior to development being commenced.

A J ROWLES

Director of Planning
Planning Service

PLANNING APPLICATION REPORT

Application No: FULL/2021/2063
Property Ref: E006720000
Valid date: 15/09/2021
Location: Oak Lodge Camp De L'Eglise St. Saviour Guernsey GY7 9FG
Proposal: Change of use of agricultural land to domestic garden
(2,173sqm). (retrospective)
Applicant: Ms T Pham

RECOMMENDATION - Grant: Planning Permission with Conditions:

1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Authority under the Law.

Reason - To ensure that it is clear that permission is only granted for the development to which the application relates.

2. Within two months of the date of this permission details of the biodiversity landscaping scheme set out in Appendix III of the Design Statement including full details of tree and hedge planting setting out planting schedules, noting the species, sizes, numbers and densities of plants shall be submitted to and agreed in writing by the Development & Planning Authority.

Reason - To enhance the biodiversity of the site in accordance with the adopted Supplementary Planning Guidance note: Strategy for Nature, 2020.

3. The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting season following the grant of this permission, or in accordance with a programme previously agreed in writing by the Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

Reason - To enhance the biodiversity of the site in accordance with the adopted Supplementary Planning Guidance note: Strategy for Nature, 2020.

OFFICER'S REPORT**Site Description:**

Oak Lodge (now Chateau Le Pham) is a two-storey detached dwelling with hipped roof and render exterior. The driveway is located to the north of the site adjacent to the earthbank and trees that form the boundary with the field to the north. A detached garage/outbuilding is located in the northwest corner of the site. The west, south and east boundaries are marked by banks, trees and hedgerow. The north site boundary is more open to allow for views towards the sea.

A substantial climbing frame and a number of vehicles were situated on the land that is the subject of this application at the time of the site visit and the application is therefore considered to be retrospective.

Historically a span of five glasshouses spanned the entirety of the agricultural land to the west of the dwelling and finished only a few metres from the west elevation of the dwelling. These glasshouses were substantially cleared between 1996 and 2001 when only northern half of the westernmost glasshouse was retained, closest to the former packing shed in the north-western corner of the site.

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

Relevant History:

None.

Existing Use(s):

01 dwellinghouse
28 agriculture

Brief Description of Development:

The application relates to the change of use of the land to the west of Oak Lodge from agricultural land to domestic garden (2173sqm). The application appears to be retrospective as the land shows evidence of current use as domestic garden.

The application has been accompanied by supporting information relating to the change of use of land which sets out:

- The existing curtilage is small and disproportionate to the size of the dwelling
 - there is no boundary feature between the garden and land that is the subject of the application
 - the enclosed and private visual and physical access is of huge benefit to the home owner
- The land is blanket zoned Agriculture Priority Area land and includes other large detached houses with large curtilages

- The field, with independent access, to the north within the same ownership and the application site will be retained in perpetuity
- The land is accessed only via the existing domestic driveway
 - The land is landlocked by established boundary and internal domestic features
- The boundaries are well established tree lined/hedgerow embankments which is very much a part of the character of the locality
- The land quality of this former glasshouse site is identified as Grade 1 (blue)
- The functional proposed curtilage figure will be lower than indicated because of the established driveway and earthbanks etc.
- Cadastre recognise the outbuildings as domestic for rating purposes
- The land has always been affiliated with Oak Lodge, since at least 2009 and not used for commercial scale agriculture since at least 2009
 - The land is not part of a farmstead or agricultural holding
 - It is not part of a large area of contiguous agricultural land
 - Any engineering work required to connect the land to other agricultural land would have unacceptable environmental impacts due to the excavation of the driveway. Loss of very distinctive boundary features, the loss of trees and the change in levels between the sites
 - There is little/no viable hope for the land to be used for commercial agricultural use in conjunction with the field to the north or any other adjoining fields
- The land is not visible from any surrounding public place or neighbouring property
 - The change of use of land proposed will not harm the landscape character which is that of an enclosed area of land between two residential dwellings. The enclosure is formed by established boundary features to be retained
- The application site is not within an Area of Biodiversity Importance
 - The application has been accompanied by a landscaping plan having regard to the Strategy for Nature, 2020 and based on the retention of existing landscaping and proposed additional landscaping
 - Existing boundary features are to be retained – they are very much part of the character and amenity of the locality

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

Island Development Plan policies:

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

GP1: Landscape Character and Open Land

GP15: Creation and Extension of Curtilage

Representations:

Paroisse De Saint Savueur – see no sound reason as to why this land should be rezoned as domestic curtilage.

The Douzaine comment on the application and accompanying information:

- The size of the domestic curtilage is proportionate to the property if compared to the nearest neighbour to the west which has a larger footprint than Oak Lodge but a similar/smaller domestic garden
- The land is zoned for agriculture and the simple justification that the current owner does not choose to use this land, for agriculture is their prerogative but is not a valid reason for rezoning such a substantial area of land
- Although the land is affiliated to Oak Lodge there is nothing preventing the owner from the enjoyment of the amenity as it is currently zoned, they could improve the biodiversity of the area as they have indicated without the need to rezone the area as domestic curtilage
- The Douzaine remind the Planning Service that in 2019 the Department advised:
 - Should owners of agricultural land which adjoins their property choose to mow, plant shrubs and trees and effectively use it as their garden amenity, then Planning had no powers to stop them from doing so ... [and] if owners of such land wish to carry out limited developments such as erect small sheds on such land then they may be able to do so by applying in the normal way.
- If the field to the north remains in perpetuity then the Douzaine would suggest that the application site, a significant piece of land also zoned as agricultural in the APA should remain in perpetuity or for at least as long as the current IDP is scheduled to be in force
- Whilst the established dwelling to the west does have a domestic curtilage of similar depth this depth is significant because of the driveway to that property
- The land can be considered as an area of contiguous agricultural land, it is adjacent to a field to the north and an adjacent field across the road to the south. It forms an important green corridor linking the open aspects and serving as a corridor for wildlife
- The Douzaine agree with the submission regarding the “unacceptable environmental impacts due to the excavation of an established driveway”. The agricultural land can be accessed via Oak Lodge which is the historical, well served and proven access to this parcel of land. There are many examples where agricultural land is accessed via domestic drive and there is no need to remove hedges, trees etc or to dig up the established drive
- This is a valuable area of agricultural land within the APA which forms a natural green corridor for wildlife and habitat and is also of viable agricultural size, it should be retained as agricultural land
- Should this land be rezoned then there are many such areas with similar access within close proximity for which it would then be unlikely for the Planning Service to be able to refuse a similar request which would have a serious impact on the rural aspect of the Parish, diminish the agricultural land stock, reduce green corridors, reduce natural habitats and apply additional pressure to wildlife

Consultations:

None.

Summary of Issues:

The key issues in this case relates to the principle of the change of use of agricultural land to domestic garden within the Agriculture Priority Area and the impact of the proposal on the locality.

Assessment against:

1 - Purposes of the law.

The objectives set out in Section 1(2) of The Land Planning and Development (Guernsey) Law, 2005, 'the Law', have been considered and this report forms part of the assessment, with policy issues set out in Section 2 below.

2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.

The IDP 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 (APA).

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 loss of a farmstead, building or land within the APA may be supported where it is demonstrated it is no longer required for agricultural purposes and any proposed new use accords with the other relevant policies of the Island Development Plan (Policy OC5A).

Policy GP15 makes provision for the extension and creation of curtilages to serve both domestic and non-domestic buildings, subject to compliance with a number of criteria.

- a. *it would not have an unacceptable detrimental impact on the landscape character; and,*

The land which forms the subject of this application is a substantially flat piece of agricultural land to the west of Oak Lodge and enclosed to the south west and east by mature banks, hedges and trees. The land is not largely visible from public vantage points given that it is situated to the rear/west of Oak Lodge. There are however, uninterrupted views to the coast to the north which would allow long distance views of the land within the open landscape when looking south. The application does not propose any built development on the site and the change of use to include the whole site is not considered to have a significant impact on the plateau landscape character or openness of the area in accordance with criteria a. of Policy GP15 and GP1 of the Island Development Plan.

- b. *it would not have an unacceptable impact on the biodiversity interest of an Area of Biodiversity Importance or, where negative impacts are unavoidable, they can be acceptably mitigated in accordance with a scheme to be agreed with the Authority in accordance with Policy GP3: Areas of Biodiversity Importance;*

The application site is not located within or adjacent to an Area of Biodiversity Importance it is therefore concluded b) of Policy GP15 is not relevant in this case. Nonetheless, following the adoption of Supplementary Planning Guidance Note: Strategy for Nature, 2020 an application for the change of use of land is expected to offer biodiversity enhancements of an application site, for instance through the planting of trees, introduction of animal habitats etc. This matter can be controlled by planning condition.

- c. *it is 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; and,*

The land forms part of an Agriculture Priority Area and is set well within the broadly defined APA area. The former use of the site for horticultural purposes with greenhouses demonstrates that the land is substantially flat. Following the removal of the glasshouses from the site the land reverted to agricultural land for planning purposes but has been used as domestic garden for some time and the application for the change of use of land is retrospective. How Cadastre, or other States Departments, recognised land and building has no bearing on the lawful planning use of the land.

The land is currently accessed via the domestic driveway associated with Oak Lodge, as would have been the case when the land was in commercial horticultural use. There would however, be the opportunity to provide an access through the northern earthbank to the large field to the north in order to enhance the connectivity of the land to the wider APA in order to contribute to the commercial function of the APA. The application makes reference to the

topography of the site and change in land levels. There is a change in the levels between the application site and field to the north however this is not considered to be so significant so as to prevent the formation of a usable access between the two sites.

Notwithstanding these facts however, there is an established bank to the boundary with five mature trees along its length. There are also trees along the east boundary, adjacent to the accesses that are significant in size and stature and which make a positive contribution to the character and appearance of the locality. The removal of some/all of the mature trees in connection with the formation of an internal field access would have an adverse environmental impact detrimental to the character of the locality.

The strong south boundary with Camp De L'Eglise and Protected Monument along this boundary would also present difficulties in forming a new field access in this location. Providing a suitable gradient for vehicles to access the site and balancing the need for a usable access (its width given the narrow nature of the lane) and the removal of established boundary landscaping which forms part of the character of the area could all be detrimental to the locality and Monument.

The land that is the subject of this application is separated from the fields to the north by the existing domestic driveway and further area of hardstanding along the length of the north site boundary. There is also an adjoining domestic driveway to the west of the site at Les Forgerons and this adjoining residential development further limits the options available for an independent vehicular access to the agricultural land that is the subject of this application. The lane to the south and east of the site combined with the location of Oak Lodge to the east rather than the western end of the site further divorce this land from the surrounding agricultural land and reduce its potential contribution to the commercial function of the APA.

In view of the above, in this case, the environmental impact of trying to form a new access to serve the agricultural land would outweigh the potential contribution the site would make to the commercial function of the APA. The scheme therefore meets the aims of Policy GP15 c.

- d. *it is demonstrated that it would not involve an unacceptable loss of established boundary features that contribute positively to the character of an area, unless the new or replacement boundary treatment makes an equal or enhanced positive contribution to the character of the area; and,*

The proposal would not result in the removal of any boundary features and the scheme meets the aims of criteria d.

- e. *it would not adversely affect the reasonable amenities of neighbouring residents.*

With regard to the impact on neighbouring properties, the proposal involves a change of use of an area of land to be included and managed as part of the residential curtilage and given the location of the land in relation to neighbouring residential properties and that adequate boundary screening separates the land from the neighbouring properties, the proposed change of use would not of itself have an adverse impact on or affect their amenities.

It is considered that the change of use would accord with Policy GP15 a)- e) and provided that the proposal accords with all other relevant policies of the IDP, the principle of change of use to domestic garden is considered to be acceptable in this particular location.

Given the location of the site between two residential properties and the established roadside banks which also benefit from tree and hedge planting it is not considered necessary to remove the majority of householder exemption rights. The introduction of high fences or walls to the north site boundary would however have an urbanising impact out of keeping with the open landscape concerned and it is considered appropriate to remove exemption rights regarding high walls and fences to this boundary alone.

3 - General material considerations set out in the General Provisions Ordinance.

In addition to the consideration of policy issues, Section 13 of the Land Planning and Development (General Provisions) Ordinance, 2007 identifies other material planning considerations which could be relevant. These include; the appropriateness of the development in relation to its surroundings in terms of design, layout, scale, siting and materials; the likely effect on the character and amenity of the locality; any possible fall-back position by way of extant planning permissions or exempt development; the likely effect on the reasonable enjoyment of neighbouring properties. These issues where relevant are considered above.

4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).

The proposal would have no adverse impact on protected trees, buildings or sites.

Date: 28 October 2021

