

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 of agricultural land to domestic garden (2,908sqm).

LOCATION: Villa Du Haut, Route De La Marette, St. Saviour.

APPLICANT: Mr D Clark

I refer to the application referred to below received as valid on 10/12/2021 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 13/05/2022

Drawing Nos: Jason Hobbs Architectural Services Ltd: 6225/A/1

Application Ref: FULL/2021/2679

Property Ref: E004580000

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. The proposal does not include the demolition and removal from the site of the glasshouse structure as required by Policy OC7 of the Island Development Plan and the site would, if cleared of glass, make a positive contribution to a wider area of open land. As a result the scheme does not accord with Policy OC7 b. and iv. of the Island Development Plan.

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/2021/2679
Property Ref: E004580000
Valid date: 10/12/2021
Location: Villa Du Haut Route De La Marette St. Saviour Guernsey GY7 9XB
Proposal: Change of use of agricultural land to domestic garden (2,908sqm).
Applicant: Mr D Clark

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The proposal does not include the demolition and removal from the site of the glasshouse structure as required by Policy OC7 of the Island Development Plan and the site would, if cleared of glass, make a positive contribution to a wider area of open land. As a result the scheme does not accord with Policy OC7 b. and iv. of the Island Development Plan.

OFFICER'S REPORT

Site Description:

Villa Du Haut is a detached dwelling situated to the east of Route De La Marette. A glasshouse exists to the south of the dwelling and land to the rear is open and undeveloped but backs onto residential development fronting Rue Mahaut. The land to the immediate south of the site forms the domestic garden of Beachbrook, Rue Mahaut.

The site is located Outside of the Centres as designated in the Island Development Plan. The site is also identified as a redundant glasshouse site through the Plan.

Relevant History:

A span of glasshouses existed to the east of the dwelling, present in 1938, 1963 and 1979 maps but removed by 1990. The two-span glasshouse to the south of the dwelling has been present since between 1963 and 1979.

Beachbrook - FULL/2019/1499 - Change of use of agricultural land to domestic garden – granted

Existing Use(s):

01 dwellinghouse
28 agriculture/horticulture

Brief Description of Development:

The application relates to the change of use of agricultural land to domestic garden, specifically in relation to the glasshouse site to the south of the dwelling and the field to the east of the existing rear garden serving Villa Du Haut. The scheme does not propose the removal of the glasshouses from the site but, as amended, seeks a minor departure.

The application has been accompanied by a supporting letter regarding the change of use of land and providing standard information from the agent regarding suggested biodiversity planting for hedges, banks, walkways, under/gap fill and domestic gardens. The application was deferred to invite a more detailed and site specific biodiversity enhancement scheme to be provided and indicating that consideration would be given to a minor departure from the Island Development Plan (IDP) in relation to the retention of a small part of the existing glasshouse given that the existing glasshouse goes beyond the size and scale commonly recognised as being domestic in scale (OC7 – requiring the removal of the entire glasshouse) and the change of use of land to the south of Villa Du Haut to domestic garden including the partial retention of the glasshouse (GP15).

A letter was submitted in response to the Planning Service deferral expressing disappointment that the Authority consider the glasshouse to be redundant simply because it is not commercially viable. It is used for growing a wide variety of fruit and vegetables. The glasshouse is not an eyesore because it is well maintained. The letter sets out that where good quality glasshouses exist, they should not be required to remove them. Increasing costs (inflation, fuel etc.) means that this property can serve many needs and is, to some extent, self-sufficient. The retention of the glasshouse can contribute to a reduction in carbon footprint. Also, the letter identifies that the Planning Service has not specified the acceptable size of a domestic glasshouse.

With regard to biodiversity, the letter states *“with regard to biodiversity enhancements, you will note that nothing is altering at all, purely a change of use application. There is a mature hedge and planting around the entirety of the agricultural land. There is no intention to remove any of this. However, we will be happy to plant some additional hawthorn and blackthorn to thicken up some of the patches in the boundaries.”*

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

Island Development Plan policies:

OC7: Redundant Glasshouse Sites Outside of the Centres

GP15: Creation and Extension of Curtilage

OC1: Housing Outside of the Centres

Representations:

Paroisse De Saint Sauveur – The Douzaine sees no sound reason as to why this land should be rezoned as domestic curtilage and ask that the zoning remain as it is

currently. If DPA determine that this land is to be rezoned as domestic curtilage, the Douzaine requests that appropriate restrictions be placed to limit the extent of development on this land for the duration of the current Island Development Plan.

A substantial proportion of this land is covered by a glasshouse and therefore in accordance with Policy OC7 such sites, when no longer used for horticulture, such land should be returned to agricultural use. This land area of glasshouse along with the land area to the rear of Villa du Haut is, contrary to the statement in the application, a significant and viable section of agricultural land which, from the photos and plans provided, has secure gated access.

The application also states “There will be no impact on biodiversity of the proposal...” however the application only provides “Suggested biodiversity planter species...” but there is no actual plan of what will be put in place should this application be approved.

The application also states “There is no proposal to alter any of the existing boundary features...” Given that the land is currently already maintained in such a way that does not deprive the owner of the enjoyment of this area and it appears that they intend to make no significant changes to the layout or indeed improve the biodiversity; the Douzaine therefore sees no reason for this land to be rezoned as domestic curtilage. The Douzaine believe that this is an important area of open land which whilst having mature boundaries it forms part of a contiguous area of similar open space. This space is valuable to the rural aspect of the Parish, it provides a green corridor and its loss to formalised domestic curtilage would reduce natural habitat and apply additional pressure to wildlife.

La Societe Guernesiaise – remain concerned about the reclassification of agricultural land to domestic garden but recognises that the Island Development Plan currently permits such applications. La Societe seek to optimise ecological gains in such cases.

The biodiversity measures contained in the application are rather jumbled and contain a number of errors. A few of the bee-friendly species listed on the RHS website have been selected (seemingly randomly) to provide a mix which would not grow well together, if at all. For example, Sea Rocket and Sea Kale are coastal plants and generally only grow in pure sand or gravel – this raises the question over whether the applicant is planning on laying areas of gravel on the land. The proposed Creeping Thistle is a noxious weed under local legislation. Common Cowslip is non-native and does not persist when planted locally as it prefers an alkaline soil.

The information does not provide any indication on how the listed species will be planted or introduced, including the proportions of seed mixes, size of stock, numbers and location. Is the grassland area to be retained and if so, how will it be managed to ensure it supports wildlife? As such, it is not currently possible to determine whether any real biodiversity gains will be achieved. La Societe would recommend that the applicant be asked for further details on how the land is to be planted and maintained.

If permission is granted it is requested that suitable planning conditions are applied in order to prevent any future development of the land in the long term.

Consultations:

None.

Summary of Issues:

The key issues in this case relate to the principle of the change of use proposed, the retention of the glasshouse and the impact of the change of use on the character of the area and on residential amenity.

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.

Policy OC7 promotes the return of land into open agricultural use following the clearance of glasshouses in the first instance, where viable and practical and the Island Development Plan policies seek to maintain and protect large contiguous areas of agricultural land by prioritising agricultural use.

Within the Island Development Plan a 'Redundant glasshouse site' means: 'a glasshouse or glasshouses together with ancillary structures and land where the glass and ancillary structures are no longer required or capable of being used for their authorised purpose.' It is not disputed that the glasshouse is used on a domestic scale however, this glasshouse once formed part of a larger horticultural site with larger area of glasshouses. The remaining glasshouse does not represent a commercial horticultural site and in this respect is redundant for the purposes of the Island Development Plan.

There are two elements to this definition. First, there must be a clear indication that glasshouses are no longer required or capable of being used for their authorised purpose for a site to be considered a redundant glasshouse site. Second, the purpose of the policy is to secure improvements in the physical appearance and quality of the landscape. To be able to fulfil the purpose of the policy a redundant glasshouse site must be one where there is visible evidence of substantial superstructures still remaining on the site, the clearance of which will have a positive impact on visual amenity and landscape quality and character.

In this case a glasshouse superstructure is present on the site and is not being used for commercial horticulture. Therefore this site qualifies as a redundant glasshouse site and Policy OC7 provides a gateway to consider development on this site, although there remains a presumption that when a horticultural use ceases the site will be cleared of glasshouses and ancillary structures and returned to agricultural use. Paragraph 17.5.6

of the Island Development Plan states that where a redundant glasshouse site is located within or adjacent to a wider area of open land, it will be expected to contribute to the wider area of open land where capable of doing so positively. This is reflected in Policy OC7 b) of the Island Development Plan which only supports proposals to develop redundant glasshouse sites where the site would not contribute positively to a wider area of open land.

The site is situated on the Richmond Headland and has a low density of development in an exposed position on the coast. Residential development exists to the north, southeast and west of site and a number of sizable glasshouses exist (former horticultural sites) across the headland setting. The land to the rear/east of the house and glasshouse was cleared pre-1990 and is not considered to form part of the redundant glasshouse site for the purposes of OC7. Nonetheless, the site of the remaining glasshouse, to the south of the dwelling, does represent a redundant glasshouse site for the purposes of the IDP. Where a site, once cleared of glass, would not make a positive contribution to the wider area of open land or could not positively contribute to commercial agricultural use, other forms of development may be accepted which includes the incorporation of land into the curtilage/garden of a building subject to satisfying the requirements of Policy GP15: Creation and Extension of Curtilage.

The applicant in this case does not propose to remove the glasshouses from the site and although a minor departure has been requested the submission does not confirm which aspect of the relevant policies the minor departure would relate to. As no part of the glasshouse is proposed to be demolished it is reasonable to assume that the departure relates to Policy OC7. As the title indicates, a minor departure can only be accepted where it relates to a small element of the overall scheme and in all other respects the proposals must accord with the relevant planning policies. Where a proposal fundamentally conflicts with a Policy in the Plan, as in this case, it cannot legitimately be considered a minor departure.

In this case, given the low scale and density of development across the headland the clearance of the glasshouse would enable the land to make a positive contribution to the wider area of open land and because no part of the glasshouse is proposed to be removed the scheme cannot satisfy Policy OC7 b. (open land) nor OC7 iv. (requires the demolition/removal of glasshouses and ancillary structures). The retention of the glasshouse in its entirety does not represent a minor departure from Policy OC7. As a result there is no policy gateway to consider the proposals against Policy GP15.

Implications of *The Island Development Committee v Portholme* [2002]

In *The Island Development Committee v Portholme* [2002], the Court of Appeal held that “... if a plan allows for development only in certain identified circumstances, by necessary inference, development out with those circumstances is not to be allowed.”

Section 12(1) of The Land Planning and Development (General Provisions) Ordinance, 2007, is also clear that where the Authority has regard to any relevant Plan in determining an application for planning permission for development which would involve a departure from such a Plan then it must refuse the application (unless the

applicant has requested that the application be considered as a minor departure), and it need not take into account any other matter to which it is required to have regard under the Law.

Given the identified conflict with OC7, the only lawful decision that can be reached is that planning permission be refused.

Other matters

For the reasons set out above, other matters that would ordinarily be relevant to the determination of this application have not been the subject of a full and detailed assessment. For completeness's sake however, those matters that would be relevant are set out below, although it should be noted that the fact they do not form the basis for any additional reasons for refusal does not mean that this application is acceptable in those respects.

The Island Development Plan recognises there is a balance between protecting open and agricultural land and other legitimate uses Outside of the Centres. The designation of the Agriculture Priority Area represents the Island's most valuable agricultural area. As outlined above, the land to the south of the dwelling represents a redundant glasshouse site and does not meet the aims of Policy OC7 and cannot therefore be considered against Policy GP15. With regard to the land east of the dwelling and glasshouse however, this does not form part of the redundant glasshouse site and therefore OC7 would not apply. In relation to the change of use of that land only, consideration can be given to Policy GP15. In this instance, given that the land is outside of the Agriculture Priority Area, the balance would not be towards protecting this land for agricultural purposes. The area of land is well associated with the existing dwelling, Villa Du Haut, and is not located within an Agriculture Priority Area nor area of Biodiversity Importance. The outer boundaries of the site are clearly defined. The application does not propose the removal of any established boundary features. With regard to the impact on neighbouring properties, the proposal involves the land to be included and managed as part of the residential curtilage. 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. The change of use would accord with Policy GP15.

Policy GP1: Landscape Character and Open Land seeks to ensure that proposals do not result in the unacceptable loss of distinctive features that contribute to the wider landscape character and the local distinctiveness of the area. Although the site is undeveloped, given its setting, with established site boundaries the proposal would not undermine the wider landscape character or the openness of the area.

Concerns have been raised regarding biodiversity enhancements in connection with this change of use of land. In line with the States' Strategy for Nature, 2020, which has been adopted as Supplementary Planning Guidance, the Development and Planning Authority has directed that all applications involving the change of use of agricultural land to domestic garden must be accompanied by information demonstrating environmental

benefits in respect of biodiversity that will be incorporated should planning permission be granted. The application as originally submitted acknowledged the need for enhanced biodiversity on the site having regard to the Strategy for Nature 2020, and set out a range of species to be planted. Following the deferral of the application no further reference was made to a range of species to be planted on the site, instead the proposal focussed on infill hedge planting around the site boundary with no information relating to the precise location of the infill planting nor the biodiversity benefit this would offer. The application does not include a detailed plan illustrating a planting scheme and as such does not demonstrate that there will be any meaningful biodiversity net gain on the site. This information does not satisfactorily address the Supplementary Planning Guidance, Strategy for Nature.

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: 13 May 2022