

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 (2,500sqm) and erect earthbank.

LOCATION: Lihou Cottage, Route De Lihou, St. Pierre Du Bois.

APPLICANT: Mr & Mrs S Kenyon

I refer to the application referred to below received as valid on 15/03/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 15/08/2022

Drawing Nos: Steve de Vial 201-748-1.

Application Ref: FULL/2022/0413

Property Ref: F00343A000+F000280000

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 land subject of this application is within an Agriculture Priority Area (APA) where the loss of an existing farmstead, agricultural buildings or land would only be supported where it is demonstrated that the land cannot contribute positively to the commercial agricultural use of the APA or cannot practicably be used for commercial agriculture within the APA without unacceptable adverse environmental impacts.

The proposed change of use of agricultural land to enlarged domestic curtilage associated with the property known as Lihou Cottage has not been justified in this case. The proposal, if permitted, would result in the unacceptable loss of agricultural land within the APA and would not, therefore, meet the requirements of Policies GP1, GP15 or OC5(A) of the adopted Island Development Plan.

2. Whilst revoking exemption rights could provide a degree of control over ancillary domestic structures and buildings, ancillary domestic structures and paraphernalia associated with a domestic use of land would result in the suburbanisation of this otherwise largely undeveloped rural environment, resulting in unacceptable harm to

the landscape character and openness of the area. The proposal would therefore be contrary to Policies GP1 and GP15.

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/2022/0413
Property Ref: F00343A000+F000280000
Valid date: 15/03/2022
Location: Lihou Cottage Route De Lihou St. Pierre Du Bois Guernsey GY7 9EJ
Proposal: Change of use from agricultural land to domestic garden (2,500sqm) and erect earthbank.
Applicant: Mr & Mrs S Kenyon

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

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OFFICER'S REPORT

Site Description:

The application site comprises a traditional, semi-detached dwelling located to the north of Route De Lihou. The property is served by a driveway to the east of the house and features an enclosed garden to the rear of the property.

A large field exists to the east of the dwelling, the subject of this application. The field is served by an independent access to the east of the site, off Route Du Longfrie. The field

backs onto a cemetery to the north, with further fields on either side of the road beyond. The field also partially backs onto agricultural land to the west of the site, although some of this land has been changed to domestic curtilage associated with the dwelling known as Maison De Lihou as part of planning permission FULL/2018/1935. Route De Lihou bounds the field to the south and features a protected monument known as the Feudal Court Seat of Fief Suart.

Relevant History:

FULL/2018/1935 F003430000 Maison De Lihou	Change of use of agricultural land to domestic garden, demolish water tower, convert existing boiler house to store and erect vine house and convert outbuilding into stables and store. Remove section of earth bank and widen existing vehicular access, remove hedge, erect post and rail fencing and gate and construct 1.2m high earth bank.	Granted
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Existing Use(s):

Lihou Cottage (Dwelling-house) – Residential Use Class 1
Agricultural land to the east of Lihou Cottage - Agricultural use class 28

Brief Description of Development:

Planning permission is sought to change the use from agricultural land to domestic garden (circa 2,500sqm as stated in the application form) and to erect an earthbank.

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

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:

The Authority has received two representations from two parties objecting to the proposal, one of which includes La Societe Guernesiaise. Grounds for objection principally relate to the following issues:-

- Inaccuracy of the claims made by the applicant.
- Unclear why the change of use is necessary as they are currently using the area as an extension of curtilage.
- Ignorance to native species.
- A species rich meadow should be required by a planning condition.
- Request that the Planning Laws are changed regarding classification of land.
- The proposal fails to comply with point 'C' of Policy GP15.

- The field as a whole measures over an acre in size and has a road access. There are also numerous commercially farmed fields in the immediate vicinity. Reducing the commercial field by half renders it less commercially viable.
- The field has been farmed in its entirety until very recently – it was intact for the habitat surveys of 1999, 2010 and 2018.
- It has been used for encroaching domestic curtilage within the last four years.
- It is recommended that the current activities be reduced significantly or removed entirely in order to restore the integrity of the field.

Consultations:

None generated.

Summary of Issues:

The main issues in deciding this application are centred on:

1. The impact on and the loss of agricultural land within the Agricultural Priority Area (APA).
2. The impact of the development on the openness and landscape character of the area.

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 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.

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.

The application was submitted after September 2021 and therefore it is required to demonstrate a biodiversity enhancement scheme to accompany the application, although no comprehensive scheme has been submitted for the size of the proposed extension of curtilage. However, it is acknowledged that the proposal would include a new earth bank to demarcate between the proposed extension of domestic curtilage and the agricultural field to the east, and what appears to be limited hedge and tree

planting. Consequently, they would provide a degree of biodiversity enhancement as a result of the proposal.

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 considered for such proposals. It is noted that *'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 field covers an area of circa 5,190sqm (as noted in the application form). The proposed change of use of agricultural land to domestic garden would see the agricultural land reduce in size by circa 2,500sqm, leaving an area of circa 2,690sqm (as noted in the application form).

The applicant's main points in support of the application are set out in the applicant's Supporting Statement (no date) and the most recent letter dated 28th June 2022 and are summarised as follows:

- The existing domestic curtilage is very small. The application seeks to establish a more reasonable domestic curtilage, whilst retaining a major part of the field as agricultural, as well as improving biodiversity.
- Part of the field have been used on a temporary and occasional basis including car parking, vegetable growing and recreation.
- The field has not been in agricultural use for many years and given the constraints of the site is unlikely to be used for such use in the future due to its isolated position and size.
- Although the parcel of land is in the APA, it is not considered to be part of an open landscape, or is adjacent to other open land.
- The site cannot be directly seen from public vantage points as it is bounded by high granite walls and mature trees.
- The land does not form part of any larger agricultural holding.
- It is not used for commercial agriculture now, or would be in the future, due to the size and scale of the land which makes it impractical.
- The proposal will result in the loss of only a small amount of agricultural land (2,500sqm)
- The land is not required by the agricultural industry at this time.
- Similar proposals have been approved at La Mont Saint Cottage (FULL/2021/1919) (400sqm), Les Petites Vallees (FULL/2021/1508) (382sqm) and Camp De L'Eglise (FULL/2021/2063) (2,173sqm).
- The field has not been used for agricultural purposes for over 20 years.
- There is a strip of agricultural land to the west but forming a link would require the loss of trees and vegetation, resulting in an environmental impact.
- The field was once recognised as two fields as noted in the conveyance document.
- The Guernsey Farmer's Association was consulted on two applications, it did not raise objections where the land had not been used for agricultural purposes for a long time. It is suggested to seek its opinion.
- There is no existing farmstead on this site.
- Reasons why the land cannot be used include its isolation, not well related to other fields, and has not been used for over 20 years so it is clearly not required. Similar arguments have been used and accepted on other approved applications.

- The existing field is a good size, but it is intended that a good sized field would remain.
- Access is onto a busy road with a history of accidents and the road becomes a Traffic Priority Route over a short distance to the south-east. The existing access is narrow and not fit for modern machinery.
- Capability of making a meaningful and viable contribution to the APA – not clear how it can make a meaningful and viable contribution if it hasn't been used in over 20 years. Expect that the GFA are consulted on this matter.
- Connectivity – the existing field has little connectivity to the surrounding APA. Part of the neighbouring field was granted permission for domestic use under the same policies.

Limited information has been submitted by the applicant to satisfactorily demonstrate that the land could not be used for commercial agriculture. It is noted that none of the points made have been substantiated by any independent advice which could give further weight to the claims made. It is also noted that no justification has been provided with regards to the condition of the land i.e. soil quality, topography, flooding/drainage and what the requirements of the agricultural industry are at this time as set out in the published guidance.

The land is relatively flat, with a gentle slope across the land, decreasing in an east-west direction, with a range of circa 3m between the Route Du Longfrie and the western most point of the field. The field is served by a vehicle access to the east of the site. The agricultural land quality is regarded as 'good' according to the Guernsey Soil and Land Classification map commissioned in 1988. It is therefore considered that this area of agricultural land should be retained for agricultural purposes unless there is convincing evidence to demonstrate otherwise.

It is understood from comments from La Societe that the site has been used for commercial agriculture in the past up until recently and therefore has the potential to be used for commercial agricultural use on its own, or in conjunction with a group of nearby agricultural fields in the future.

From a spatial analysis perspective, the total size of the field in question would be comparable to the size of other fields in the immediate locality, particularly to the east of Route Du Longfrie and south of Rue de la Madeleine, and other fields in the wider area of the Agriculture Priority Area.

In addition, the site has the potential to create a limited opening in the hedgebank along the west boundary of the site which would physically link and create a much larger parcel of agricultural land that could also be used on a commercial basis and 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 fields and holdings.

The application site is bounded to the west by a swathe of agricultural land and therefore it is considered to form part of a large area of contiguous agricultural land. In

addition, the field is located in close proximity to other fields in the immediate area to the north and east of the cemetery, and is an example of the style of farming practice on Guernsey which is made up of a patchwork of fields which individually and cumulatively contribute, or have the capability to contribute, to the Island's commercial agricultural industry. 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).

Overall, the level of information submitted does not provide 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.

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 Area."

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 Western Plateau subzone.

Annex V describes the characteristics of the Upland Plateau as:

“is 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”.

Annex V.29 describes the characteristics of the Western Plateau as:

“The Western Plateau is generally less affected by mid-to-late twentieth century development. The landscape consists of a series of broad erosion platforms stepping gradually down to the west and is much dissected by the deeply cut valleys. Open fields, divided by low earth banks, are interspersed with established farmsteads surrounded by mature trees. The open farmland on higher ground provides views out to the Western Bays and across the sub-zones from one church spire to the next.”

The land forms a parcel of undeveloped agricultural land which is relatively flat, with a gentle slope in an east-west direction.

The agricultural land provides a visual break in development patterns to the north and south of Route Du Longfrie and is considered to form part of a larger swathe of open and undeveloped land which extends to and beyond the cemetery to the north, north-east, and west of the site as described above.

The land is visible from public vantage points, particularly to the east of the site at the entrance to the field, with uninterrupted views up until the east elevation of the dwelling-house. Views into the site are also achievable in and around the east and south boundaries of the site.

Due to the extent of the proposed domestic curtilage extension i.e. almost half of the agricultural land would be lost, the proposal would result in a significant incursion into APA land and would in effect result in an extension of suburbanisation, 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.

Whilst the existing area of garden associated with the dwelling-house is currently limited, the requirements to ensure the protection of open land and landscape character outweigh the reasonable expectations of the landowner to incorporate additional land into the curtilage of the adjoining dwelling. The proposal is therefore 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.

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: 15 August 2022