

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 (5,860 sq.m.).

LOCATION: 7 La Margion, Richmond, St. Saviour.

APPLICANT: Mr & Ms D Bates

I refer to the application referred to below received as valid on 23/03/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 07/07/2022

Drawing Nos: Paul Langlois Architects - 2165/05

Application Ref: FULL/2022/0456

Property Ref: E006970000

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 site straddles both Rue Mahaut and La Route De La Margion and provides a natural buffer between the built environment to the north and south of the application site. Notwithstanding the application site being located outside of an Agriculture Priority Area, Area of Biodiversity Importance and a Site of Special Significance, the site comprises a large swathe of undeveloped land that features a watercourse and a considerable area of dense vegetation. The site is also highly visible in various public vantage points, particularly along Rue Mahaut and La Route De La Margion, and is considered to positively contribute to the landscape character and appearance of the area.

Whilst revoking exemption rights would provide a degree of control over ancillary domestic structures and buildings, paraphernalia associated with a domestic use of land would result in the suburbanisation of this otherwise undeveloped and naturalised rural area. Due to the size of the site, visibility in public views together with its dense vegetation, the proposed development would represent an unnecessary loss of an undeveloped and distinctive area of land and therefore would

result in unacceptable harm to the landscape character. Overall, 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/2022/0456
Property Ref: E006970000
Valid date: 23/03/2022
Location: 7 La Margion Richmond St. Saviour Guernsey GY7 9XQ
Proposal: Change of use of agricultural land to domestic garden (5,860 sq.m.).
Applicant: Mr & Ms D Bates

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The site straddles both Rue Mahaut and La Route De La Margion and provides a natural buffer between the built environment to the north and south of the application site. Notwithstanding the application site being located outside of an Agriculture Priority Area, Area of Biodiversity Importance and a Site of Special Significance, the site comprises a large swathe of undeveloped land that features a watercourse and a considerable area of dense vegetation. The site is also highly visible in various public vantage points, particularly along Rue Mahaut and La Route De La Margion, and is considered to positively contribute to the landscape character and appearance of the area.

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OFFICER'S REPORT

Site Description:

The application site is situated Outside of the Centres as defined in the Island Development Plan.

No. 7, Le Margion comprises a detached bungalow facing onto La Margion estate. The south-west boundary of the site comprises a granite stone wall which demarcates between the dwelling-house and the area of agricultural land beyond.

The application site to the south-west of the dwelling comprises a dense area of mature vegetation that has naturalised following the cessation of the horticultural use. The 1979 orthophotograph indicates that all of the glasshouses were removed from the site.

Despite some remnants remaining on site including the chimney stacks (again visible in the 1979 orthophotograph), the site does not fall under the definition of a redundant glasshouse site for the purposes of the 'Supplementary Planning Guidance – Defining Redundant Glasshouse Sites'. The land also features a watercourse which runs through the middle of the site based on information available.

The land is visible in public views to the east and west of the site along Rue Mahaut and La Route De La Margion. Due to the dense vegetation, the land does not appear to be served by a vehicular access.

Relevant History:

FULL/2022/0450	Remove raised terrace and external steps, erect extension at first floor level with balconies and erect external steps to south (side) elevation, erect raised terrace to front.	Granted
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Existing Use(s):

"Fifield" (No.7 La Margion - dwelling-house) – Residential use class 1
Agricultural land to the south-west of the dwelling (former vinery site) - Agricultural use class 28.

Brief Description of Development:

Planning permission is sought to change the use of agricultural land to domestic garden. The proposed extension of domestic curtilage is 5860sqm as confirmed in the Application Form.

The agent's letter of 18th February 2022 sets out that the land has become overgrown and impenetrable. The streams cannot be properly maintained and therefore the land is water logged in some areas. The applicant seeks to keep the area as a natural haven and encourage biodiversity. The land would be managed by cutting back the overgrowth and clearing the streams so they are free flowing and it is intended to keep all the existing trees. New native shrubs and trees would be planted. The chimney from the original greenhouse boiler would be retained and restored.

Concerns were raised by the Service over the potential change of use of the site and the loss of undeveloped land as well as the retention of the chimney stacks.

The agent has responded as set out in their letter of 18th February 2022 (e-mail dated 10th June 2022). The salient points are that; the area of land is in a poor state, the site is overgrown and features noxious weeds which covers a dilapidated greenhouse; the ground is covered in broken glass. The site will not be put to agricultural use because of

its location and therefore will deteriorate further. Although it is an open 'green' space it needs attention and maintenance. The applicants are willing to produce a planting and maintenance strategy which could be required by a planning condition.

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

OC5(B)	Agriculture Outside of the Centres – outside the Agriculture Priority Areas
GP1	Landscape Character and Open Land
GP15	Creation and Extension of Curtilage

Representations:

The Authority has received 5 representations from 5 parties objecting to the proposal, including St. Saviour's Constables, La Societe Guernesiais and Agriculture, Countryside and Land Management Services. Grounds for objection principally relate to the following issues:-

- The area has become well naturalised.
- Erosion of the natural character of the area.
- The proposal would result in an unnecessary loss of open and undeveloped land and impact negatively on the open landscape character, contrary to policy GP1.
- All of the works proposed could be achieved without a change of use.
- The landowner is required by law to maintain the streams in a manner which allows the free flow of water to prevent land becoming waterlogged.
- Important area of open land which whilst having mature boundaries forms part of a contiguous area of similar open space.
- If approved, appropriate conditions must be applied.
- Highly likely that there are a wide variety of bats.
- Any clearance must be done very sensitively.
- Species noted in the application are not native.
- Waterlogging is not an issue in a wildlife area and could create seasonal ponds.
- The proposal does not comply with Policy GP15 and would be contrary to the Strategy for Nature.
- The site comprises of Dense Scrub habitat, mainly of Grey Willow, which supports a wide range of biodiversity, including nesting birds, small mammals and other wildlife such as bats and slow worms.
- It provides a natural wildlife corridor between the wider Fort Richmond headland and the 'South Vazon and La Grande Mare wet meadows' SSS.
- The land may qualify as an Area of Biodiversity Importance and would recommend that it be surveyed and assessed accordingly.

Consultations:

None generated.

Summary of Issues:

- Whether the change of use from agricultural land to domestic garden is acceptable.
- The impact of the development on the character and appearance of the area.
- The impact of the development on neighbour amenity.

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).

1 - Purposes of the law.

The objectives of the Law, as set out in Section 1(2), have been considered and this forms part of the assessment of policy issues as set out in 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.

Paragraph 19.16.4 of Policy GP15 states that:

"The Strategic Land Use Plan also states that land planning operates in the interests of the wider public good and is, by its nature, an encroachment into private property usage and, therefore, a balance needs to be struck between the public interest and personal choice. To achieve consistency with the Strategic Land Use Plan the Island Development Plan will apply a reasonable and proportionate level of control when considering proposals for the creation or extension of curtilages that respects the exercise of private choice in matters where there are no significant impacts on the achievement of the strategic policies of the States of Guernsey..."

"In some cases, the incorporation of land into the curtilage of a building will not undermine the overall objective of retaining and enhancing open land or supporting agriculture and there is a requirement to assess proposals carefully to ensure a reasonable balance is struck between achieving these objectives and enabling individuals to exercise personal choice in creating or extending curtilages."

The section of land which forms the subject of this application is not within an Agriculture Priority Area (APA). Policy OC5 (B) (Agriculture Outside of the Centres – outside the Agriculture Priority Areas) states that *"Proposals for development which*

would result in the loss of an existing farmstead, agricultural buildings or land will be supported where the proposed new use accords with the other relevant policies of the Island Development Plan”.

Policies GP15 (Creation and Extension of Curtilage) and GP1 (Landscape Character and Open Land) are also relevant in assessing this application and are set out below.

Policy GP15 relates to Creation and Extension of Curtilage. Taking each criterion of Policy GP15 in turn:

A proposal to create or extend curtilage will be supported where:

a. it would not have an unacceptable detrimental impact on the landscape character;

The landscape character of the site is regarded as falling under Coastal Landscapes (Western Bays) as set out in Annex V - Landscape Character of the Island Development Plan. Within the Western Bays designation there are 3 sub-categories including, Headlands, West Coast Road and West Coast Mares, with the application site most likely to fall under the West Coast Mares given its position between the coast and an escarpment. It is noted that:

“The West Coast Mares were originally lagoons in the low flat land between the Bays and the Escarpment at the mouths of the Valleys. Since the construction of sea defences, they have progressively been reclaimed as grazing land or, particularly in the late twentieth century, as sites for new development. This development impacts on their character as expanses of flat, open land at the foot of the escarpment. Despite agricultural change and development pressure, flower-rich wet meadows still remain at La Rue des Vicheries, La Claire Mare, La Grande Mare and in a small number of other areas.”

In addition to the description set out above, the application site is understood to be regarded as Dense Scrub as set out in the Habitat Survey 2018 where it is noted that Dense Scrub is a valuable habitat supporting populations of invertebrates, small mammals and nesting birds. The ADAs Agricultural Land Classification Map designates the site as being of moderate agricultural land quality with moderate/severe limitations, which is presumed to imply the extent of vegetation on the site.

The high density of vegetation on site makes it an important natural feature within the landscape. The site helps to visually distinguish and separate the built environment to the north and south of the application site, and therefore provides an important natural buffer that contributes to the character and appearance of the locality. In addition, the size of the land parcel coupled with its naturalised appearance is rare and distinctive in the landscape, which in turn increases the importance and protection of this feature from inappropriate and/or unnecessary development.

The dwelling-house forms part of a coherent and holistic development associated with La Margion estate. The rear of the property is separated by a boundary wall which demarcates between the residential development and agricultural land to the south-west. Allowing the change of use of land from agricultural to domestic curtilage is likely to create an unusual and disproportionate relationship between a dwelling-house and

associated garden, and a significant sized extension of domestic curtilage. The justification for the change of use is unconvincing as many of the desires and aspirations of the applicant can be achieved without planning permission, therefore the reason for change the use of land is unclear.

Whilst revoking exemption rights would provide a degree of control over ancillary domestic structures and buildings, the change of use of agricultural land to domestic garden is likely to lead to suburbanisation of this otherwise undeveloped and naturalised rural area by virtue of domestic paraphernalia such as children's play equipment, washing lines, tables and seating area and formalised landscaping. Domestic paraphernalia as set out above does not need planning permission and therefore is likely to result in unacceptable harm to the landscape character. Consideration should be afforded to protecting this area of undeveloped land given its valuable ecological and amenity contribution.

Due to the size of the site together with the extent and density of existing vegetation, it would also not be appropriate to allow a change of use on the premise that a supplementary biodiversity scheme could make a substantial contribution to the biodiversity of the site when in fact the enhancements to the site in this context are likely to be limited and would therefore not be justified.

In this case, the aspirations of the landowner to extend the domestic curtilage would not be 'reasonable' for the purposes of Policy GP15 and would undermine the protection afforded to landscape character and undeveloped land as set out in criterion a) of Policy GP15 and Policy GP1.

The proposal would not satisfy the provisions of Policy GP15 a).

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;

The application site is not located in an Area of Biodiversity Importance therefore criterion b) of Policy GP15 is not relevant in this case.

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;

The application site is not located in an Agriculture Priority Area therefore criterion c) of Policy GP15 is not relevant in this case.

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.

No boundary treatment would be lost based on the information submitted. Consequently, Policy GP15 d) has been satisfied in this case.

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

The proposal is not considered to adversely affect the amenities of neighbouring residents.

Policy GP1 relates to the Landscape Character and Open Land. Policy GP1 states that:

“Proposals will not be supported if they would result in the unnecessary loss of open and undeveloped land which would have an unacceptable impact on the open landscape character of an area.

Paragraph 19.2.1 of Policy GP1 states that: *“...The Strategic Land Use Plan identifies the underlying landscape character and the openness of the undeveloped parts of the Island as factors that contribute positively to its character. In this respect, it requires the Island Development Plan to implement policies that will retain and enhance the distinctive qualities and features of Guernsey’s countryside and to protect open land from unnecessary development.”*

The impact on the landscape character and open land has been carefully considered under the provisions contained within Policy GP15. In summary, the change of use of land would represent an unacceptable loss of undeveloped land, especially as the area of land is occupied by mature vegetation which significantly contributes to the character and appearance of the site and the wider area.

The parcel of land provides a natural buffer between the built environment to the north and to the south of the application site which therefore increases the importance of protecting this area of undeveloped land from unnecessary development.

Overall, the parcel of land is distinctive within the landscape by virtue of its naturalised character, appearance and visibility within the locality and forms an important ‘breathing space’ between the wider built environment. Consequently, the change of use of this land would not respect the landscape character and openness of the land for the purposes of Policy GP1. The change of use of land to domestic curtilage would result in the unacceptable loss of the distinctiveness of the area which contributes to the wider landscape character. Consequently, the development is not compliant with Policy GP1.

On this basis, the application is not compliant with the relevant Island Development Plan policies.

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

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. Where relevant the issues are considered in section 2 above.

All points in the letters of representation have been carefully considered and where appropriate have been addressed above in Section 2.

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

The proposal would have no impact on Protected Buildings, Trees or Monuments or on SSS's.

For the reasons set out within this report, it is recommended that the application be refused.

Date: 05/07/2022