

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 (1,048 sq.m.), remove section of hedge and erect earth bank to north-west.

LOCATION: L'Etoile Du Matin, La Ruelle Julienne, Castel.

APPLICANT: Mr & Mrs R Marino

I refer to the application referred to below received as valid on 19/04/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 29/06/2022

Drawing Nos: The Drawing Room - 317 B1 and A2

Application Ref: FULL/2022/0669

Property Ref: D003550000

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 that is the subject of this application is located within an Agriculture Priority Area (APA) where the loss of an existing farmstead, agricultural building 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 adverse environmental impacts.

The proposed change of use of agricultural land to enlarge domestic garden associated with the property known as L'Etoile du Matin has not been satisfactorily justified in this case. The proposal, if permitted, would result in the unacceptable loss of agricultural land which would prejudice the wider APA. The proposal would not accord with the requirements of Policy GP15c) and OC5(A) of the Island Development Plan.

2. The introduction of an earthbank, to subdivide the existing field, would interrupt the field pattern and thus be detrimental to the West Coast Scarp, escarpment landscape character as defined in Annex V: Landscape Character of the Island

Development Plan. The scheme would not accord with the aims of Policies GP1 and GP15 a. 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/2022/0669
Property Ref: D003550000
Valid date: 19/04/2022
Location: L'Etoile Du Matin La Ruelle Julienne Castel Guernsey GY5 7LB
Proposal: Change of use of agricultural land to domestic garden (1,048 sq.m.), remove section of hedge and erect earth bank to north-west.
Applicant: Mr & Mrs R Marino

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The land that is the subject of this application is located within an Agriculture Priority Area (APA) where the loss of an existing farmstead, agricultural building 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 adverse environmental impacts.

The proposed change of use of agricultural land to enlarge domestic garden associated with the property known as L'Etoile du Matin has not been satisfactorily justified in this case. The proposal, if permitted, would result in the unacceptable loss of agricultural land which would prejudice the wider APA. The proposal would not accord with the requirements of Policy GP15c) and OC5(A) of the Island Development Plan.

2. The introduction of an earthbank, to subdivide the existing field, would interrupt the field pattern and thus be detrimental to the West Coast Scarp, escarpment landscape character as defined in Annex V: Landscape Character of the Island Development Plan. The scheme would not accord with the aims of Policies GP1 and GP15 a. of the Island Development Plan.

OFFICER'S REPORT

Site Description:

L'Etoile Du Matin is a detached dwelling situated on the junction of Ruelle Julienne and Rue Du Dos D'Ane. The property currently benefits from garden to the west of the dwelling and to the south, adjacent to Rue Du Dos D'Ane and with off-road parking to the east.

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

Relevant History:

None relevant.

Existing Use(s):

01 dwellinghouse

28 agriculture

Brief Description of Development:

The application relates to the change of use of agricultural land to the west of L'Etoile Du Matin to domestic garden along with the removal of a section of hedge that currently separates the garden from the field. An earthbank is proposed to the west field boundary.

The application has been accompanied by a letter that seeks to address the requirements of Policy GP15: Creation and Extension of Curtilage. This outlines that the site is sloped and at a lower level than the land to the south. On the whole established boundary features would not be altered and a new earthbank to the west boundary along with biodiversity enhancements would ensure that the impact on landscape character and the openness of the area would be minimal.

It is noted, by the applicant, that the field is within the Agriculture Priority Area but land such as this is not desirable for modern agriculture due to its small size and sloping nature. Although the land may be suitable for cultivating or grazing its size and access mean the land is not commercially viable for farming. The land is linked to a small parcel of land to the west which then links to larger and more useful areas of open land but the change of use is not considered to have an impact on the crucial link via the neighbouring field (owned by La Folie). The new earthbank is considered to offer superior planting in place of the Bay hedge to be removed making a positive contribution to the character of the area and the scheme would not have an adverse impact on the reasonable amenities of neighbouring residents.

With regard to biodiversity enhancements the submission refers to fruit tree planting, compost heaps, pollinator and wildflower areas and a new earthbank.

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

Island Development Plan Policies:

GP1: Landscape Character and Open Land

GP15: Creation and Extension of Curtilage

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

Representations:

Two letters of representation have been submitted regarding the application and raise the following points:

- 9 species of tree/shrub species proposed are non-native
- Some areas of the island are better left as banks as they are a traditional feature of Guernsey and have their own flora and fauna and planting trees may not be desired in certain situations
- Any pollinator patches should be from locally collected seed and should be of native species, better still would be a management plan that encourages the creation of species rich grassland
- The land does not need to be rezoned to make changes to benefit wildlife
- The fact the existing curtilage is small for the size of the property is irrelevant
- The slope on this site would not prohibit agriculture
- There is no facility in the Island Development Plan that would enable this land to become curtilage
- The loss of agricultural land has become an Island wide issue and the Planning Service have, at its discretion, the power to hold an Open Planning Meeting to discuss such proposals

Consultations:

Guernsey Farmers Association - from the information provided, no agricultural reason for this change of use has been identified. The area of land within the APA is in an area of agricultural importance close to many of the Island's dairy farms and can be used for grazing or forage production. As has already been noted the area within the application, its proximity to other areas of land mean it forms a beneficial and commercial part of the APA.

Whilst it is noted the owners plan to use native planting and wildflowers which is beneficial, the benefit from agricultural to domestic would be difficult to justify.

In conclusion the GFA do not support the application and believe the area or land can and should continue to be used for commercial agricultural use.

Summary of Issues:

The key issues in this case relate to the loss of agricultural land within the Agriculture Priority Area and the impact of the change of use of land on the 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 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).

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 (Policy OC5A).

The application submission argues that the site could not be used commercially for farming due to its size and topography and because the land is not part of a wider piece of land. There is however, open and undeveloped agricultural land to the immediate north and west of the application site. There is also open land to the east and south of the site but separated from it by roads. The application submission noted a link to other fields but concluded the proposed change of use is not considered to undermine the wider area of open and undeveloped agricultural land.

The land, within the Agriculture Priority Area, along with areas of undeveloped agricultural land to the north is considered to contribute to the commercial function of the APA, particularly when having regard to the dairy farming industry. The application submission does not provide overriding justification that demonstrates that the site could not contribute to the commercial function of the APA and the proposal does not meet the aims of Policies GP15 c. nor OC5(A).

The character and openness of the landscape can change as a result of physical change to landscape features, such as hedges or earth banks. Policy GP15 sets out that the repositioning of established features, such as those contributing to a field pattern, earth banks or other landscape features, should be avoided where possible.

The site falls within an Escarpment landscape character as identified in Annex V of the Plan and the escarpment is divided into the West Coast Scarp and Inland Scarp of which the site forms part of the West Coast Scarp. This land rises *“approximately 60 metres above the West Coast Mares and the lower parishes, acting both as a physical division and as a visual backdrop which can be seen from the lower ground throughout the north and west of the Island. From the crest of the Escarpment, long views extend over the lower parishes and coast to the sea. ... where development has spread up the scarp slopes, the flow of the Escarpment is interrupted and the landform partially obscured.”* The fields in the locality are varied in their layout but frequently enclosed or divided by earthbanks. A number of fields have an almost square form (north of the site) but others are rectangular, long and narrow (in Rue Du Marais and north of the dwelling currently known as Sous les Arbres in La Rue Du Hamel).

A new earthbank is proposed to mark the proposed domestic garden which, whilst characteristic of the area, in line with Policy GP15 d. would see the field divided. Although considered by the applicant to not impact on the wider landscape area, on assessment, this bank would interrupt the existing field pattern which in turn would impact on the landscape character. The land which forms the subject of this application is a piece of agricultural land which, although has a steep bank to the south (La Conchee) has a more limited change in level across the site to the north. The site, given its sunken nature, is not highly visible from Rue du Dos D’Ane to the south but views are possible from the north. The application does not propose any built development on the site however, the proposal would see a field subdivided and split (part garden, part agricultural land). The proposed field subdivision associated with the change of use of land proposed would interrupt the field pattern and landscape character contrary to Policies GP1 and GP15 a. of the Island Development Plan.

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 Policies OC5(A), GP1 and GP15, the only lawful decision that can be reached is that planning permission be refused.

Other matters

The application site is not located within or adjacent to an Area of Biodiversity Importance it is therefore concluded that part b) of Policy GP15 is not relevant in this case. Consideration must be given however to the SPG Strategy for Nature and the fact this type of application must be accompanied by information demonstrating environmental benefits in respect of biodiversity that will be incorporated should planning permission be granted. The application includes reference to biodiversity enhancements although reservations exist regarding a number of species proposed which are non-native.

The proposal indicates that an existing bay hedge would be removed between the existing garden and agricultural land. This hedge does not make a particular contribution to the character of the area when considering Policy GP15 d.

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 and boundary topography 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.

If the application were acceptable in all other respects, it would be appropriate to consider the removal of exemption rights, particularly in relation to the site boundaries as high walls or fences could have an urbanising impact on the open and rural landscape.

The scheme does not comply with Policies OC5(A), GP1 and GP15 criteria a. and c. and is therefore recommended for refusal.

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: 29 June 2022

