

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 (195sqm)
(Revised Scheme).

LOCATION: Le Fontenil, Rue De Reveaux Au Falle, St. Pierre Du Bois.

APPLICANT: Mr & Mrs R Hemans

I refer to the application referred to below received as valid on 16/05/2022 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: Sexton Green Landscapes: SGL309 - 01 and document entitled
Island Development Plan Statements
Hillstone Guernsey Ltd letter dated 14/04/2022

Application Ref: FULL/2022/0922

Property Ref: F014060000+F014070000

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 proposed change of use of agricultural land to domestic garden would result in the loss of agricultural land that could contribute to the commercial function of the Agriculture Priority Area given its siting and access arrangements, surrounded by other open and undeveloped agricultural land Outside of the Centres and with the APA. The scheme therefore fails to accord with the aims of Policy GP15 c) 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/2022/0922
Property Ref: F014060000+F014070000
Valid date: 16/05/2022
Location: Le Fontenil Rue De Reveaux Au Falle St. Pierre Du Bois
Guernsey GY7 9DH
Proposal: Change of use of agricultural land to domestic garden (195sqm)
(Revised Scheme).
Applicant: Mr & Mrs R Hemans

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The proposed change of use of agricultural land to domestic garden would result in the loss of agricultural land that could contribute to the commercial function of the Agriculture Priority Area given its siting and access arrangements, surrounded by other open and undeveloped agricultural land Outside of the Centres and with the APA. The scheme therefore fails to accord with the aims of Policy GP15 c) of the Island Development Plan.

OFFICER'S REPORT

Site Description:

Le Fontenil is a detached dwelling located to the north of Rue Des Fontenils and surrounded by open and undeveloped agricultural land. Sparse residential development is found in the vicinity of the site. To the southwest of the dwelling was a single glasshouse that sat parallel to the road however, this has recently been removed and the site returned to an open and undeveloped field.

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

Relevant History:

FULL/2021/0574 - Demolish dwelling and erect replacement, infill existing vehicle and pedestrian access and create new access - granted

FULL/2021/1156 – change of use of agricultural land to domestic garden – refused

Existing Use(s):

01 dwellinghouse
28 agriculture

Brief Description of Development:

The application relates to a revised scheme for the change of use of part (196sqm) of the agricultural land to the rear/south-west of Le Fontenil to domestic garden.

The submission has been accompanied by a letter dated 14 April 2022 which sets out that the glasshouse on the site has been removed since the refusal of the earlier application and that biodiversity enhancements are proposed and shown with the submission. The letter outlines that the proposed change of use is minimal when considering the overall site area (less than 2% of the site) and sets out that the change of use, even in the Agriculture Priority Area, should be balanced against the expectations of the property owner and how they wish to use the land. It is noted that the land has not been used for agriculture for many decades given the redundant glasshouse on the site but is now viable for agricultural purposes. Nonetheless, it is argued that the minimal change of use of land would not affect the capability of the site for being used for grazing or the cultivation of crops. The submission concludes by stating that the current owners would not actively use the land for agricultural purposes given the close proximity of the boundary between the existing and agricultural land for their own enjoyment and privacy. The change of use of land proposed would however, offer separation enabling agricultural use of the site to be undertaken without undue conflict with the residential occupation of Le Fontenil.

A statement has also been submitted to address Policy GP15 and biodiversity enhancements for the site as a whole and not only in relation to the area of land proposed as domestic garden.

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:

None.

Consultations:

La Societe Guernesiaise – no comments received.

Summary of Issues:

The key issues in this case relate to the principle of the proposed change of use, the impact on the Agriculture Priority Area and landscape character concerned.

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) (Policy OC5(A)).

Contribution of the land to the commercial function of the APA

The site is located in the Agriculture Priority Area and Policy GP15 seeks to retain agricultural land that could contribute positively to the commercial agricultural use of the APA. IDP paragraph 19.16.7 recognises that competition for land can occur when a residential use adjoins open land and the householder would like to incorporate some of that land within the domestic curtilage/garden of the dwelling, nonetheless there is a requirement to protect open land and agricultural land from development to ensure the open character of the areas can be maintained. There is 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".

The site sits within the APA and is surrounded by open and undeveloped agricultural land and it has good connectivity to other agricultural land in the vicinity. The proximity of fields in relation to domestic properties is rather a matter of choice, necessity or by historic arrangement and in this case the choice of the applicant would be to not have livestock kept on the land. This does not however, mean that the land could not be used for agricultural purposes if under different ownership/management. Although the applicant may not wish or intend to use the land for commercial agricultural purposes the land could contribute to the agricultural function of the Agriculture Priority Area. Furthermore, consideration must be given to the needs of the agricultural industry in

perpetuity, or until new evidence emerges or a policy decision is made that less land, or land of a different type, is needed for the future requirements of the agricultural industry.

The land is categorised as Improved Grassland within the 2018 habitat survey which is land that is intensively managed, used for grazing and silage. Feedback from the Annual Monitoring Report (2018) suggested that land farmed for dairy farming had increased by 2.2% since 2017 and this also noted that it would be conceivable that more grain and fodder crops could be grown which means that the land requirements of the agricultural industry are likely to grow.

The land that is the subject of this application could be used for agriculture without the need to remove any banks, hedgerows, trees, etc and is not designated as a Site of Special Significance or Area of Biodiversity Importance. Furthermore, no such designations are found adjacent to the site. The size of land within the APA proposed to change to garden is 196 sqm and this is part of the non-curtilage section of the overall land parcel that includes the dwelling and former glasshouse site (approximately 1,430 sqm). This land is part of a wider block of open land to the northwest (32,000 sqm of which 9,000sqm fall within the applicant's ownership). To the south of the site there is Arable Short-Term Ley, with Arable land to the south of that which has been identified in the Habitat Survey (2018). This is not a particularly small piece of land for Guernsey and the IDP acknowledges that farmers operate across a scattered pattern of generally small fields which typifies the traditional, small scale and intricate landscape. The size of the site, as part of a wider block of open land that is accessible and not isolated by boundary features or topography would not preclude agricultural use. It is also noted that there are dairy farms nearby and a significant number of fields in this part of the island used for grazing.

Criterion c. and paragraph 19.16.11 provide an unambiguous statement of policy without any reference to exceptional circumstances. The SLUP and IDP requirement to find a reasonable balance is provided for, in relation to APA land, by allowing APA land that can be demonstrated not to be able to contribute to commercial agriculture to change use, or where it can be demonstrated that there would be unacceptable adverse environmental impacts. In this case whilst it could be argued that there would be no significant impacts on the achievement of strategic policies (IDP 19.16.4) there would be a cumulative impact should many small areas of APA land, such as this, be converted to garden. This would then undermine the objectives of the SLUP and IDP for the most valuable agricultural land.

In view of the above, it is clear that the land could positively contribute to the commercial agricultural use of the APA and could practicably be used for commercial agriculture within the APA without unacceptable adverse environmental impacts. The scheme does not provide overriding justification for the change of use proposed that would meet the requirements of policy. The scheme does not therefore, meet the aims of GP15 c) 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 GP15, the only lawful decision that can be reached is that planning permission be refused.

Other Matters

The site is located in the Upland Plateau, Western Plateau, as identified in Annex V: Landscape Character of the Island Development Plan. The Plateau is characterised by a web of hedges, banks, hedgerow trees and tree-lined lanes, which enclose numerous small pastures and the Western Plateau has been less affected by mid-late 20th Century development where the landscape is formed by a series of erosion platforms stepping down to the west and dissected by deeply cut valleys and open fields are surrounded by and divided by low earthbanks. In this case, the site is not considered to be situated in a settlement, is outside any of the Local Centres and is in open countryside with scattered residential development only. The site is mainly flat and enclosed by low earthbanks. The site overall makes a positive contribution to a wider area of open land however, the change of use of agricultural land to domestic garden would not have an unacceptable detrimental impact on the landscape character (Policy GP15 a) and GP1 of the IDP).

The relatively flat area of land is well associated with the existing dwelling, Le Fontenil, and is not located within an Area of Biodiversity Importance. The boundaries of the site are clearly defined and access to the field is via a point to the immediate west of the field off Rue Des Fontenils and from a point to the immediate east of the dwelling in Rue Des Fontenils. The application does not require any established boundary features to be removed in connection with the change of use of the land. The scheme proposes new hedge planting to the roadside boundary along with new earthbanks. This, in addition to the voluntary glasshouse clearance both provide environmental benefits to the locality that would make a positive contribution to the character of the locality in line with 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, the proposed change of use would not of itself have an adverse impact on or affect their amenities.

Given the relationship of the land to the dwelling and road it would not be necessary or reasonable to remove exemption rights regarding domestic development within the curtilage of a dwellinghouse should the application be considered acceptable in all other respects.

The site is not located in an Area of Biodiversity Importance however the application is accompanied by supporting information setting out the biodiversity enhancements proposed to the site. Following the adoption of the Supplementary Planning Guidance Note: Strategy for Nature, 2020 biodiversity enhancements are required and the application satisfactorily addresses this matter. A condition could be imposed on the permission regarding the implementation of the landscaping scheme in order to secure the biodiversity benefits proposed should the scheme be supported in principle.

The expectations of any one property owner and how they may wish to use the land is not a material planning consideration and providing a dwelling with a “reasonable” curtilage given its size or because an applicant chooses to significantly extend the dwelling thereby reducing the available garden are not reasons given in the Island Development Plan to support the change of use of agricultural land to domestic garden.

None of these matters however, outweigh the reason to refuse planning permission.

Conclusions

In view of the above it is recommended that planning permission is refused for the change of use proposed.

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