

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: Convert, extend and alter packing shed and outbuilding to create a residential dwelling, change of use of agricultural land to domestic garden (2,066sqm).

LOCATION: Generotte Vinery, Ruelle De La Generotte, Castel.

APPLICANT: Mr S Rowe

I refer to the application referred to below received as valid on 02/11/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 23/12/2022

Drawing Nos: Chris Workman & Co. Ltd: SR:22:11/02A & /03, T&G Structural Engineers Observation Report and Nordman Tilesheeting

Application Ref: FULL/2022/1960

Property Ref: D012450000

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 application as submitted does not satisfactorily demonstrate that the existing buildings are of sound and substantial construction and are capable of conversion without extensive alteration or rebuilding. The scheme is therefore contrary to Policy GP16(A) 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/2022/1960
Property Ref: D012450000
Valid date: 02/11/2022
Location: Generotte Vinery Ruelle De La Generotte Castel Guernsey
Proposal: Convert, extend and alter packing shed and outbuilding to create a residential dwelling, change of use of agricultural land to domestic garden (2,066sqm).
Applicant: Mr S Rowe

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The application as submitted does not satisfactorily demonstrate that the existing buildings are of sound and substantial construction and are capable of conversion without extensive alteration or rebuilding. The scheme is therefore contrary to Policy GP16(A) c. of the Island Development Plan.

OFFICER'S REPORT

Site Description:

Generotte Vinery is a site situated to the east of Ruelle De La Generotte. It is accessed via a long track with buildings/structures set well back from the road. The north site boundary is marked by an earthbank and the section closest to the road is lined by trees whilst the eastern end of the north boundary is open above the bank level.

A small single-storey detached WC block is the first building, closest to the road with a container situated adjacent to this. The primary buildings to which this application relate are situated to the east of the WC building (to be demolished). A single-storey pitched roof building with render exterior and timber windows facing east is situated in close proximity to a larger, packing shed which has a blockwork exterior with a mix of timber and asbestos sheet clad walls and an asbestos roof covering. Timber shutters have been placed across the main doorway opening to the north elevation and a pedestrian door is situated in the west elevation of the building.

A former glasshouse remains on the site however virtually all the glass has been replaced by timber clad sides and a metal sheet roof. The boiler house to the north of the greenhouse is in a poor state of repair with the roof falling in. A tall building described in the submission as a garage is located in the northeast corner of the site. This has a metal clad exterior including the roof.

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

Relevant History:

Pre-application advice was sought in this case. It was noted that Policies OC1 and GP16(A) would make provision for the conversion of a redundant building to a dwelling however attention was drawn to GP16(A) c. *The existing building is of sound and substantial construction and is capable of conversion without extensive alteration or rebuilding.* The advice offered concluded by saying that based on the information available the building is not clearly demonstrated to address the requirements of criterion c. given that reference is made to a replacement roof on both buildings, new window openings and a “small amount of work to reconstruct some of the wall areas”. Based on the information available it was advised that planning permission would likely be recommended for refusal.

Historically, two glasshouses ran north-south at the eastern end of the site with a packing shed situated in the northeast corner (1938). By 1963 a total of eight glasshouses covered the majority of the site with a further boiler house to the north of the original glasshouses and further ancillary structures in the centre of the site. The situation remained largely unchanged until 1996 when the aerial photograph shows the northern section of the now only remaining former glasshouse as having a clad roof. By 2001 all bar the clad section of glass had been removed from the site. The large packing shed and small adjoining building remained on site along with the packing shed in the northeast corner, the WC building and boiler house and the situation has remained largely the same to date. The land to the south has been largely open and undeveloped with some additional planting having taken place.

Existing Use(s):

28 agriculture/horticulture

Brief Description of Development:

The application relates to the change of use of the packing shed and the smaller shed to its immediate west to a unit of residential accommodation. The scheme proposes an extension to connect the two buildings and will contain two bedrooms, a bathroom, a kitchen/diner and separate lounge.

The application has been accompanied by an Observation Report by T&G Structural Engineers dated 31/08/2022.

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

GP16(A): Conversion of Redundant Buildings

OC1: Housing Outside of the Centres

GP8: Design
GP9: Sustainable Development
GP15: Creation and Extension of Curtilage
IP7: Private and Communal Car Parking
IP6: Transport infrastructure and support facilities
IP9: Highway Safety, Accessibility and Capacity

Representations:

La Societe Guerneslaise - remains concerned over the reclassification of agricultural land to domestic curtilage. However, as the Island Development Plan currently permits the consideration of such applications, we seek to optimize ecological gains in such cases wherever possible.

We accept that the area is not viable for commercial agriculture, despite its designation as an Agricultural Priority Area.

We note that the applicant has referred to some broad proposals in terms of biodiversity measures which we welcome in principle. We support the inclusion of a mixed native hedge but would ideally like further details regarding stock size and numbers – it is better to use bare-root stock in season rather than larger containerized plants.

With regards to the proposed pollinator patch, it is quite likely that the existing grassland has some ecological value. With this in mind, it is often best to plant suitable additional native plants into the turf as plug plants rather than replace it completely. We appreciate that the proposals mention ‘retaining’ the area but again the details are sparse in this regard.

We wish to advise that La Societe would be able to assist with projects of this nature by arranging surveys of existing sites and providing suitable recommendations on how land can be enhanced in terms of its ecological value.

Secondly, we would like to highlight that outbuildings of this type can be used by roosting bats. This likelihood can increase when the property is located within a variable landscape with habitats such as farmland or woodland nearby. The ongoing Bailiwick Bat Survey has shown that there are bat populations in this particular part of the island. We would recommend that the outbuildings be inspected for current or recent use by bats by a suitably qualified person prior to any building works. This would reduce the risk of disturbing or destroying animals which are legally protected under the Animal Welfare Ordinance 2012. An informative note should be included on any permission to this effect.

Consultations:

None.

Summary of Issues:

The key issues in this case relate to the principle of the residential development and the level of rebuilding/alteration proposed to achieve the development.

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.

Policies OC1 and GP16(A) b. offer support for residential accommodation through the conversion of a redundant building, therefore there is a policy gateway for the proposed development.

Policy OC5(A) seeks to retain agricultural land within the APA however, in this case the land proposed to form the domestic garden associated with the proposed dwelling is limited to the existing access drive along the north boundary, the area of land between the packing sheds and former glasshouse which is currently hardsurfaced and the land to the immediate west of the buildings on site, south of the driveway area. The land to the south would remain open and undeveloped agricultural land. Historically this land to the west was a verge area in front of the glasshouses and following their clearance it has been a mixture of hardstanding and field edge, with tree planting undertaken around 2006. The land would not undermine the commercial function of the remaining large area of agricultural land and it is reasonable for a unit of residential accommodation to be served by external amenity space (GP8/Annex I). In this regard the scheme satisfies Policy OC5(A).

The buildings were former packing sheds associated with the historic horticultural use of the site which has long since ceased and the glasshouses substantially cleared. The retained glasshouse has been clad preventing its use for growing and is not of a size suitable for commercial horticulture. The buildings therefore are no longer required nor capable of being used as a packing shed because there are no glasshouses for them to serve (GP16(A) a.).

In the Island Development Plan, 'conversion' is defined for the purposes of the policy as development that involves works to an existing building that would facilitate an alternative use (e.g. conversion of a barn to a dwelling). Paragraph 19.17.3 goes on to state that: "proposals that would require significant works to the fabric of the structure, such as rebuilding of external walls, may be regarded as being 'new-build' rather than conversion."

The onus is on the applicant to demonstrate that a building is of sound and substantial construction (GP16(A) c.) and recent appeals considered by the Planning Tribunal have

indicated that such proposals should be accompanied by an appropriate Structural Survey. The report in this case sets out that the inspection was visual only with no opening up or intrusive investigations carried out.

In relation to the small building (shed 1) the report highlights that it is in reasonable condition with a blockwork exterior and asbestos roof. The existing timbers are considered to be capable of retention (subject to treatment for rot). It is recommended that the roof covering be replaced but that the loading associated with the proposed roof covering and insulation would be approximately the same as the existing. It notes that the building has been insulated and tanked on the south and west which could be linked to new damp proofing/tanking measures to the floor (not shown on the application drawings) that are covered by insulation and screed. The report also highlights the need to thermally insulate the walls which is noted on the drawing in relation to the west elevation only.

Turning to the large packing shed (shed 2) the report highlights that the floor and roof slope follow the line of the land. It is noted that the blockwork walls are in fair condition and sit on a concrete raft and floor slab. An existing crack is highlighted as needing repair/stitching. With regard to the upper sections of wall (450-500mm of wall) these are of stud construction covered in sheeting materials which are to be removed and replaced with blockwork. The existing studwork supports a pole plate which supports the roof and the report recommends that this is removed and new wall added. A new studwork lining wall would be required throughout this building, which would offer the necessary additional support for the building. Furthermore shed 2 will need the floor levelling, tanking and thermal insulation and a damp proof membrane will be necessary as none is evident. Comments relating to the roof covering reflect those above for shed 1. The report recommends the studwork to be removed and replaced with blockwork to both front and rear gable walls but acknowledges that defective studs could be replaced before being lined externally prior to rendering

Under criterion (c) of Policy GP16(A) the application assessment must also address the matter of “conversion without extensive alteration” and in this respect the current planning application proposal would require the following (which is not all clearly shown on the application drawings):-

- Demolish a chimney stack
- The plywood upper part of the gable end walls of the larger packing shed to be removed and replaced with blockwork
- The sheet cladding to the upper parts of the east and west elevations to be removed and replaced with blockwork (only works to the east wall are shown on the drawings)
- The existing asbestos roof covering removed and replaced with a tile effect metal roofing (and given the proposed removal of the upper parts of all four walls it is likely that the entire roof structure would be removed in order to carry out these works)
- Damp proof membrane (larger packing shed) and upgrade damp proofing (smaller shed)
- Studwork lining and thermally insulate walls

- Level the floor of the larger packing shed
- Render exterior of both buildings
- Four new window openings and a new door opening in the east elevation of the large packing shed
- Demolition of east wall of small shed (to create link between the two buildings)
- Two new window openings in the west elevation of the large packing shed
- Enlarge door opening in north elevation of small shed
- Lay patio to west of building

Two decisions reached by the Planning Tribunal in relation to developments assessed under Policy GP16(A) are considered critical for schemes such as this (La Pomare Farm and Rue Coutance).

The appeal at Rue Coutance makes reference to the importance of a “*comprehensive structural engineers report*” which has been largely addressed in this case and highlighting aspects of work required in connection with the proposed conversion scheme. The appeal decision at La Pomare Farm also addresses this matter, indicating that observations undertaken by a professional and utilising local knowledge are far from conclusive without further investigation. This appeal decision states “*the application should have been accompanied by a proper structural survey which would have revealed such basic information as the nature of the land on which the building sits, and of the foundations, if such exist. The absence of such information gives the Tribunal cause for concern ... without these matters having been addressed ... we are unable to conclude with confidence that the building as it presently exists is of sound and substantial construction.*”

The appeal decision for La Pomare Farm sets out that “*in the absence of a structural survey, we have no information about the possible effects on the integrity of the building from the carrying out of proposed works*”. In the case of the buildings at Generotte Vinery matters such as, the impact of internal lining/insulation on the loading of the buildings and new window and door openings as shown could have an effect on the loading of the structure and would be relevant in assessing whether the buildings are of sound and substantial construction and in terms of the level of alteration required in order to upgrade the structures to form habitable accommodation.

The application drawing notes state “take down existing sheeting and extend blockwork wall up to existing roof height” (east elevation). Similar works would be necessary to the west elevation but are not referred to on the drawings. The north elevation note states “take down existing plywood half gable and block up to existing roofline” and no such note is made in relation to the south gable which is currently clad in sheet asbestos. All four walls require the upper section to be demolished and rebuilt and there is no explanation provided in the submission as to how this would be achieved without the existing roof structure being removed which would contribute to the rebuilding of the larger packing shed.

In this case, no reference has been made to foundations or how the works deemed necessary in the Structural Report would impact on the building. Furthermore, the scheme proposes the removal of existing studwork and cladding to the upper sections of

all four walls of the larger packing shed and their reconstruction with blockwork. This alone does not represent a building that is of substantial construction given that a significant proportion of the structure would need to be removed and replaced. It is not possible therefore to establish that the buildings are both of sound and substantial construction capable of conversion without rebuilding contrary to Policy GP16(A) criterion c.

As outlined elsewhere in this report, the application drawings do not show all the works necessary and indicated in the Structural Report. The Authority must be satisfied not only that the building is of sound and substantial construction but also that all of the works required do not amount to extensive alterations or rebuilding. The conclusions of the Planning Tribunal regarding La Pomare Farm set out:

“The Tribunal considers that the works necessary to carry out the proposed conversion to make the building suitable for occupation – involving demolition, building, reconstruction and repair, introduction of new doors and windows, changes to the external appearance, internal works and provision of services, taken together may reasonably be described as extensive alterations. In the event that further works of underpinning or structural repair to the external walls was found to be required – matters on which we cannot confidently conclude in the absence of a structural survey, there is potential that the works as a whole could be judged as representing extensive rebuilding. However, even if that were found not to be necessary, we conclude that this element of criterion (c) would be breached”.

Given the lengthy list of works set out above which include building, reconstruction and repair, the introduction of new doors and windows, internal works and the provision of services the scheme could not be carried out without extensive alteration and is contrary to Policy GP16(A) c.

The application drawings also include a note relating to the retention and renovation of the garage but do not include any drawings associated with these works and how the building might comply with the requirements of Policy GP16(A). A visual inspection undertaken as part of the assessment of this application did not show a building in a good state of repair that could readily be repaired without substantial alteration or rebuilding.

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 GP16(A), 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' sake however, those matters that would be relevant are set out below.

The application is accompanied by a very brief paragraph that seeks to address the requirements of Policy GP9 and states that consideration will be given to energy saving, resources and materials. The submission does not however, provide site specific information to demonstrate how the design, method of construction and location of the proposal would help to achieve more a sustainable development nor how the scheme has been designed to maximise solar gain. It would appear that no consideration been given to the potential to install solar panels or installation of an electric charge point nor how the scheme considers climate change and flood risk and any measures to address these matters, such as permeable paving and the management of surface water run-off. As such the scheme does not comply with Policy GP9 criterion a. of the IDP.

In relation to Policy GP15, the area of land to be brought within the curtilage of the proposed dwelling is well associated with the building to which the application relates. The matter of the loss of land within the APA has been addressed above (OC5(A)). The site is not located in an Area of Biodiversity Importance.

The scheme does not relate to a Protected Building and nor does it propose an extension therefore Policy GP16(A) d. and g are not relevant in this case. The buildings are of no particular architectural merit given that they were designed as functional packing sheds for a vinery site. They do not represent buildings of character (GP16(A) d.) The proposed alterations to the building represent a good standard of design that would respect the local built environment (GP8). The link extension between the large packing shed and smaller shed is considered modest in line with the requirements of Policy GP16(A).

The level of hardstanding proposed to provide the driveway, parking and turning remains largely unchanged and are necessary to provide access to the dwelling, parking and proposed garage. The scheme indicates that the surface will be permeable and this is a matter that can be controlled by planning condition. In this respect the scheme does, on balance meet the aims of GP16(A) c.

The conversion and associated works would not have an unacceptable adverse impact on the character and openness of the landscape (GP16(A) f. and GP1).

Consideration must also be given to the impact of the proposals on residential amenity. The site is situated away from residential neighbours and the siting and layout of the accommodation is such that it will not result in unacceptable overlooking or loss of privacy to the occupiers of any surrounding dwellings.

With regard to the health and well-being of occupiers of the dwelling the scheme offers good levels of sunlight and daylight to the accommodation, provides access to external open space and is on a single level providing accommodation that is accessible to people of all ages and abilities. The internal layout of the existing buildings could be altered in order to offer more flexible/adaptable accommodation.

Parking and turning on site is considered to be ample to serve the dwelling proposed where Outside of the Centres schemes are considered on a case by case basis (IP7). Visibility from the existing access is limited to the north however given the unrestricted agricultural/horticultural use of the site at present the change of use to residential would be likely to see a reduction in vehicle movements to the site than if it were operational. The use of the access for a single domestic property would not be unacceptable and would comply with Policy IP9.

The scheme as submitted does not specifically address the requirement for secure and covered cycle parking however, if the garage were retained this could offer appropriate storage for cycles thereby enabling occupiers to travel by alternative modes of transport.

The area of land is well associated with the proposed dwelling and the outer boundaries of the site are clearly defined with no requirement for any established boundary features to be removed in connection with the change of use of the land. 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 new residential curtilage/garden 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. The change of use would accord with Policy GP15 a)- e). If the scheme were acceptable in all other respects it would be reasonable to consider the removal of exemption rights relating to boundary treatments given the open and undeveloped nature of land surrounding the site.

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 from 1 September 2021 all applications involving the change of use of agricultural land must be accompanied by information demonstrating environmental benefits in respect of biodiversity that will be incorporated should planning permission be granted. The scheme does include a Biodiversity enhancement Landscaping Plan and should permission be granted for the development this could be controlled by planning condition.

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; however, having regard to the Guernsey Court of Appeal judgement in *The Island Development Committee v Portholme* [2002] (Civil 320) these have been given limited further consideration in this case.

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: 22 December 2022

