

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: Demolish existing glasshouses and erect replacement glasshouses on agricultural land.

LOCATION: Courtil Gravier Vinery, Route Militaire, Vale.

APPLICANT: Messrs C J & L E Kershaw

I refer to the application referred to below received as valid on 09/12/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 23/01/2023

Drawing Nos: JG Architecture - 2259 02.01 & 02.02

Application Ref: FULL/2022/2290

Property Ref: C012700000

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 proposal does not include the demolition and removal from the site of all the ancillary structures associated with the former horticultural use of the site as required by Policy OC7 of the Island Development Plan and the site would, if cleared of glass and ancillary structures, make a positive contribution to a wider area of open land. As a result the scheme does not accord with Policy OC7 b. and iv. of the Island Development Plan. Furthermore, the position of the replacement glasshouses in the southwest corner of the site would not make the most efficient and effective use of the land with the least negative visual impacts contrary to Policy OC7 iii. and Policy GP1 of the IDP.

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/2022/2290
Property Ref: C012700000
Valid date: 09/12/2022
Location: Courtil Gravier Vinery Route Militaire Vale Guernsey GY3 5RS
Proposal: Demolish existing glasshouses and erect replacement glasshouses on agricultural land.
Applicant: Messrs C J & L E Kershaw

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The proposal does not include the demolition and removal from the site of all the ancillary structures associated with the former horticultural use of the site as required by Policy OC7 of the Island Development Plan and the site would, if cleared of glass and ancillary structures, make a positive contribution to a wider area of open land. As a result the scheme does not accord with Policy OC7 b. and iv. of the Island Development Plan. Furthermore, the position of the replacement glasshouses in the southwest corner of the site would not make the most efficient and effective use of the land with the least negative visual impacts contrary to Policy OC7 iii. and Policy GP1 of the IDP.

OFFICER'S REPORT

Site Description:

Somerset is an early 20th Century, 1½ storey cottage, located on the western side of La Route Militaire. A former packing shed is situated to the west of the dwelling and appears to be used for storage, including for motorbikes/push bikes. Two timber glasshouses are situated in the southwest corner of the agricultural land and are in a poor state of repair. A small building/packing shed is situated to the immediate east of the northernmost glasshouse. A wall forms the west site boundary with bridge access to the land beyond which forms part of a Site of Special Significance.

The site is situated Outside of the Centres as defined in the Island Development Plan. The site is also identified as a redundant glasshouse site and a Site of Special Significance is situated to the west.

Relevant History:

FULL/2017/0493	Extend domestic curtilage.	FGNT
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Pre-application advice was sought regarding industrial development on the site. The response included the following:

In this case, there is open and undeveloped agricultural land around the site. Paragraph 2.2.14 of the Island Development Plan states that the Strategic Land Use Plan notes *“that there are valuable landscapes such as the coastal areas, open common, managed fields, valleys and escarpments that all contribute to the important local character of the rural environment”*. Following the removal of the glasshouses therefore, it is considered that the site would make positive contribution to the wider open land as a result the proposed development would be unlikely to meet the aims of the Island Development Plan (OC7: Redundant Glasshouse Sites Outside of the Centres).

Existing Use(s):

01 dwellinghouse
28 agriculture

Brief Description of Development:

The application relates to the removal of the existing glasshouses and ancillary structures from the site and the erection of replacement glasshouses on the site for non-commercial horticulture for personal recreational use for vegetable growing, fruit trees and house plants along with equipment required to maintain the glasshouses and site. A minor departure from OC7 of the Island Development Plan has been requested.

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

Island Development Plan policies:

OC7 Redundant Glasshouse Sites Outside of the Centres
OC9 Leisure and Recreation Outside of the Centres
GP1 Landscape Character and Open Land
GP8 Design
GP9 Sustainable Development

Representations:

None.

Consultations:

None.

Summary of Issues:

The key issues in this case relate to the principle of the proposed development and its impact on the wider open landscape.

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.

Redundant Glasshouse Site

Policy OC7 promotes the return of land into open agricultural use following the clearance of glasshouses in the first instance, where viable and practical and the Island Development Plan policies seek to maintain and protect large contiguous areas of agricultural land by prioritising agricultural use. The SLUP states that the IDP will identify those redundant glasshouse sites which, if cleared, are capable of making a positive contribution to open space or agricultural land provision within the Island. Outside the Centres and in limited circumstances, the IDP makes provision for certain forms of development on redundant glasshouse sites in order to make the most effective and efficient use of land.

The IDP and 2018 Supplementary Planning Guidance: Defining Redundant Glasshouse Sites defines the term "Redundant glasshouse site" as "a glasshouse or glasshouses together with ancillary structures and land where the glass and ancillary structures are no longer required or capable of being used for their authorised purpose. Often the condition of such structures will deteriorate over time through lack of use and management to leave only partial remnants of structures".

There are two elements to this definition. First, there must be a clear indication that glasshouses are no longer required or capable of being used for their authorised purpose for a site to be considered a redundant glasshouse site. Second, the purpose of the policy is to secure improvements in the physical appearance and quality of the landscape. To be able to fulfil the purpose of the policy a redundant glasshouse site must be one where there is visible evidence of substantial superstructures still remaining on the site, the clearance of which will have a positive impact on visual amenity and landscape quality and character.

In this case glasshouse superstructures are present on the site and are not being used for commercial horticulture. Therefore this site qualifies as a redundant glasshouse site and Policy OC7 provides a gateway to consider certain forms of development in principle on this site, although there remains a presumption that when a horticultural use ceases the site will be cleared of glasshouses and ancillary structures and returned to agricultural use.

This policy has previously been considered by the Planning Tribunal in relation to La Mare Vinery who concluded that "Proposals to develop redundant glasshouse sites are

supported subject to 8 criteria. The key criteria to consider are (a) and (b), which have to be met, irrespective of the remainder which relate to alternative forms of acceptable development”.

In this case, the site is not within or adjacent to an Agriculture Priority Area (this being situated approximately 50m south of the site). It is nonetheless necessary for the second part of criterion (a) to be considered before moving to consider other aspects of the policy. The Tribunal in the above case explained that this gives support to development where the cleared redundant glasshouse site cannot practically be used for commercial agricultural use without adverse environmental impacts. As the site is already substantially cleared of glass the removal of the remaining two, small spans of glass, would readily allow the land to be used for agricultural purpose and without adverse environmental impacts and does not therefore comply with this aspect of (a) of Policy OC7. The final part of (a) is not relevant as the development does not relate to renewable energy provision.

Paragraph 17.5.6 of the Island Development Plan states that where a redundant glasshouse site is located within or adjacent to a wider area of open land, it will be expected to contribute to the wider area of open land where capable of doing so positively. Criterion (b) requires consideration to be given to the contribution the land would make to a wider area of open land following the clearance of glasshouses and ancillary structures. In the case of Courtil Gravier Vinery there is visual access to the open land from Route Militaire to the east and from Sandy Hook and L’Islet to the west given the largely flat topography of the land further enhanced by the adjoining SSS. As a result criterion (b) is not addressed by the proposed development to clear the glass, retain the packing sheds, and for the erection of two new glasshouses.

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.

In this instance a request has been made for a minor departure in relation to Policy OC7. A minor departure can only be accepted where it relates to a very small element of the overall scheme and in all other respects the proposals must accord with the relevant planning policies. Where a proposal entirely conflicts with a policy in the Plan it cannot be considered a minor departure. As specified elsewhere in this report, the scheme would not accord with the key criteria of Policy OC7 and therefore a minor departure cannot be accepted in this case.

Notwithstanding the above minor departure requested, for the reasons given above and the identified conflict with OC7, the only lawful decision that can be reached is that planning permission be refused.

Other matters

The Island Development Plan recognises there is a balance between protecting open and agricultural land and other legitimate uses Outside of the Centres. As outlined above, the land represents a redundant glasshouse site and does not meet the aims of Policy OC7 and cannot therefore be considered against Policy OC9 of the IDP.

In addition to the criteria specified above a further 6 criteria must be addressed (i. – vi) for OC7 to be satisfied. The construction of replacement glasshouses would not have a detrimental impact on residential amenity nor on highway safety (i. and ii). Although the scheme does not propose any soft landscaping to comply with criterion v. this is a matter that could be managed by planning condition.

It would however, fail to comply with criterion iii. because, despite the existing glasshouse remnants on the site, the siting of new glasshouses in the southwest corner of the site would have a negative visual impact when considering the open landscape character. Furthermore, the scheme fails to comply with iv. of Policy OC7 because it does not relate to the demolition and removal from the site of all glasshouses and ancillary structures.

Policy OC9 incorporates Informal Leisure and Recreation which includes civic spaces and informal event spaces, nature walks, woodlands, cliff paths, commons, parks and formal gardens and allotments. The submission states the new structure would be for the “benefits of their personal, recreational use and enjoyment. Within the new glasshouses they would grow vegetables and fruit trees and house plant and machinery to support the maintenance of the agricultural land and the growth of produce”. Based on the information available with the submission the size of the proposed glasshouse structures would exceed what is usually considered to be domestic in scale whilst unlikely to be sufficient in size to be useful on a commercial scale. Whilst Policy OC7 requires redundant structures to be removed from the site the submission does not address why neither of the packing sheds could not be used for machinery storage and what existing agricultural or other storage is carried out from these buildings on agricultural land. Ultimately, based on the information provided the built development is not considered proportionate to the nature and scale of the informal leisure and recreation use proposed contrary to OC9 i.

The scheme also fails to comply with criterion ii. because the erection of glasshouses in the southwest corner of the site, separate from the frontage development of Route Militaire, would have an adverse impact on the open landscape character of the area by impacting on the wider open landscape and the connection to the adjoining SSS. This would also demonstrate that the scheme does not comply with Policy GP1.

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: 19 January 2023