

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 3 self-catering units (Visitor economy Use Class 8) to 3 dwellings with associated works (Residential Use Class 1).

LOCATION: Les Brehauts Farmhouse, Route Du Longfrie, St. Pierre Du Bois.

APPLICANT: Mrs J Duquemin

I refer to the application referred to below received as valid on 23/08/2023 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 03/11/2023

Drawing Nos: Arch+ - 152-3-301 A & 302.

Application Ref: FULL/2023/1406

Property Ref: F001110000

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 self-catering accommodation remains in active use and furthermore, it has not been demonstrated that the establishment is no longer required for its current or last known purpose given that the establishment has not been marketed for lease nor has the application submission been accompanied by any appropriate information that supports the basis of the valuation on which the site was marketed for sale. As a result the scheme fails to comply with Policies GP16(A) a. to demonstrate that the establishment is redundant and OC8(C) ii. as it has not been demonstrated to the satisfaction of the Authority that the establishment has been appropriately marketed for sale or lease.

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/2023/1406
Property Ref: F001110000
Valid date: 23/08/2023
Location: Les Brehauts Farmhouse Route Du Longfrie St. Pierre Du Bois
Guernsey GY7 9RX
Proposal: Change of use of 3 self-catering units (Visitor economy Use Class 8) to 3 dwellings with associated works (Residential Use Class 1).
Applicant: Mrs J Duquemin

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The self-catering accommodation remains in active use and furthermore, it has not been demonstrated that the establishment is no longer required for its current or last known purpose given that the establishment has not been marketed for lease nor has the application submission been accompanied by any appropriate information that supports the basis of the valuation on which the site was marketed for sale. As a result the scheme fails to comply with Policies GP16(A) a. to demonstrate that the establishment is redundant and OC8(C) ii. as it has not been demonstrated to the satisfaction of the Authority that the establishment has been appropriately marketed for sale or lease.

OFFICER'S REPORT

Site Description:

Les Brehauts Farmhouse is situated on the corner of Route du Longfrie and Rue de la Corderie. The property is a traditional two-storey property. To the rear is a lean-to single-storey extension and two sets of external staircases as the extension forms two self-catering units at the site (Cider Cottage and Seacroft Cottage). Vehicular access is via Rue de la Corderie and a detached outbuilding forms a further unit of self-catering accommodation known as the Stable. A shared parking and turning area serves the house and self-catering accommodation. To the rear of the Stable, which also houses the laundry, is a further outbuilding which is identified as the shed/garden store associated with the main house and its associated wing. An area of amenity space is provided in the northwest part of the site along with a more private area to the rear/north of the Stable.

The site is located in a Local Centre and is a pre-1900 building.

Relevant History:

Pre-application advice was sought in this case.

Existing Use(s):

01 Dwellinghouse
08 Visitor accommodation

Brief Description of Development:

The application relates to the change of use of the three, 4 star rated self-catering units at Les Brehauts Farmhouse to three dwellings.

The application has been accompanied by supporting information including a letter from Aurigny which outlines that the accommodation has been used by its employees as winter lets and during lockdown and highlighting the issue of staff being able to find suitable accommodation. A local estate agent has also commented on the proposal indicating that there is no interest from buyers for self-catering units as a going business. The agent indicates that the accommodation has been in decline both pre and post pandemic and was appealing during the 1970s and 1980s. The estate agent also highlights that there is a lack of activities on island and the high travel costs as disincentives to come to Guernsey. Latest visitor surveys show self-catering is down 36% and based on available information Les Brehauts is not likely to attract interest as a going concern.

The planning agent has provided accompanying information regarding the application confirming that the property has been marketed for sale for 30 months since June 2019 at below the market average but that the applicant is no longer able to continue running the business. The applicant has already received a significant level of interest in the proposed residential units. Global economics and visitor preferences mean that the applicant cannot rely on tourism alone to provide a sustainable income to maintain the units and provide a salary.

The applicant has not put the property on the market for rent as Les Brehauts Farm is a family home and would have resulted in the applicants themselves being forced to leave, to rent or buy (unachievable) elsewhere.

The submission confirms that the holiday cottages have been run as self-catering accommodation by the same person for 20 years but for health reasons is now unable to manage the buildings and effective change over days. It is difficult to obtain seasonal or reliable cleaning staff so the applicant continues to operate by closing each cottage for a day or two between guests for less income but also less pressure. The applicant wishes to retire and will need to close the business if the property cannot be sold. The change of use will provide much needed residential units, making efficient use of existing buildings.

The submission highlights that the running costs (TRP, electric, website/marketing, laundry costs, welcome packs etc.) have increased significantly and exceeds the nightly rates advertised/that the units could be marketed for. Although a few years ago there would be one change over day a week with visitors staying for 7 days, now guests take shorter breaks. There is also evidence that there has been a significant financial impact as a result of the Covid 19 pandemic.

The units have their own electricity meters although water and wifi is shared and no building work is required to be undertaken in connection with the proposals. Each unit has and can be provided with designated parking space. With regard to amenity space the Stable has its own rear terrace with gated access and Cider and Seacroft cottages can be provided with private amenity space to the side/front of each unit with planting or fencing. Cycle parking is also indicated to be provided.

Although the units may not be technically redundant for the purposes of planning policy they are not economically viable and will become redundant by default. The application also refers to a possible request for a minor departure from Policy OC8(C) if necessary. It is argued that the loss of these three units would have a negligible effect on the overall stock of visitor accommodation.

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

OC8(C): Visitor Accommodation Outside of the Centres - Change of Use

OC1: Housing Outside of the Centres

GP16(A): Conversion of Redundant Buildings

GP8: Design

GP9: Sustainable Development

IP6: Transport infrastructure and support facilities

IP7: Private and Communal Car Parking

IP9: Highway Safety, Accessibility and Capacity

Visitor Accommodation SPG (2016)

Representations:

None.

Consultations:

Marketing & Tourism – commented on the pre-application enquiry and have confirmed their general resistance to the loss of visitor accommodation such as this. Evidence has been submitted regarding an attempt to market and sell the whole site for at least 24 months in line with the relevant planning policy for change of use of visitor accommodation without success. Evidence of financial income and expenditure has also been submitted.

At 3 self-catering units, Les Brehauts Farmhouse falls outside of policy OC8(C) whereby if there were less than 3 units of self-catering accommodation that were reverting to a

single dwelling the change of use would be supported. In this case there are 3 self-catering units on the site, rather than less than three, and the proposal is to separate them into three distinct residential dwellings, rather than to revert to a single dwelling.

The Committee for Economic Development's view is that as this request does not fall within the parameters of Policy OC8(C) it does not support the proposal for a Change of Use from visitor accommodation to residential accommodation given the precedent that this could set for other similar sized self-catering sites that are currently classed as visitor accommodation who may also wish to convert to residential use.

Summary of Issues:

The key issue in this case relates to the principle of the proposed change of use away from visitor accommodation.

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.

Policy OC8(C): Visitor Accommodation Outside of the Centres - Change of Use sets out specific criteria against which any proposal for the change of use of visitor accommodation to a non-visitor accommodation use will be assessed, requiring it to be demonstrated that it is not technically feasible for the accommodation to meet the required standard for the particular type of accommodation involved (criterion a), or where it is technically feasible (criterion b), to demonstrate (i) that it would not be possible to return a reasonable operating profit, and (ii) that the establishment has been actively and appropriately marketed for sale and lease for a period of 24 consecutive months and an appropriate offer has not been made.

Paragraph 3.2 of the Visitor Accommodation SPG (2016) and Policy OC8(C) identify the relevant criteria that need to be satisfied to allow for a change of use or redevelopment of existing visitor accommodation to non-visitor accommodation use.

Paragraph 4.1 of the SPG states that *"for both criteria 'a' and 'b' of the policies it will be necessary to submit evidence with a planning application to demonstrate that the establishment does not meet the standard for the type of visitor accommodation (as identified by any relevant States of Guernsey strategy for visitor accommodation) relating to the establishment."*

Criterion b. relates to sites where it is technically feasible to refurbish/adapt the accommodation to meet the standard for the type of accommodation but that to do so would not be financially viable and return a reasonable operating profit combined with

24 consecutive months of appropriate and active marketing (for sale and for lease). The submission seeks to highlight the changing requirements and demands of visitors to the island, the personal circumstances of the applicant and that to market the property/site for rent would leave the owner in need of new private accommodation. The property has been marketed for sale however, this was undertaken some time ago. The site was on the market with Cooper Brouard Estate Agents, for over 30 months from June 2016 and again from 2019. Recent advice from estate agents indicates that there is not a general appetite for self-catering business operations and the best course of action would be to present the site for sale with a residential use only.

The site remains in use at the current time and there is no indication through the submission that any particular upgrade works are required at the current time. On this basis, any changes or upgrade work would likely therefore, be minor and would remain financially viable. Consideration must then be given as to whether the site returns a reasonable operating profit in order to comply with b)i) of Policy OC8(C).

The information provided in relation to income shows a decline since 2017 however it should not be dismissed that there would be a clear gain in the change of use of the site away from self-catering accommodation. The value of the self-catering parts of the property need to be function of its income/profit and the remainder of the property needs to be valued on a comparable basis. The property was marketed for in excess of £1 million which poses a question in relation as to whether the viability test has been skewed by an aspirational value which effectively ignores the self-catering use class that exists.

The marketing of the property at £1.5 million as confirmed through the submission is considered more akin to the marketing of a solely residential property/site even when taking into account the uplift to today's values. In this case no evidence has been provided to support the basis of the valuation/marketing undertaken to establish whether this was "appropriately" marketed for sale.

Furthermore, the site has been marketed for sale only and does not therefore, comply with the requirements of Policy OC8(C) which specifies that a property should be "actively and appropriately marketed for sale and for lease for a period of 24 consecutive months". Although the submission implies that this would leave the owner in search of a new home, with associated rent or mortgage payments, it does not take into account the possibility of the self-catering operation being marketed separately for lease, with the operator being located off-site, as is the case with other establishments on the Island.

Criterion a) of Policy GP16(A) sets out that it must be demonstrated that the building is no longer required or capable of being used for its current or last known purpose. It appears that the accommodation remains in active use and has not been marketed for lease. In addition, it has not been demonstrated that the establishment was "appropriately marketed" given its current mixed use. On this basis the application would also fail to comply with this aspect of Policy GP16(A).

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 case, having regard to the conflict with both Policy OC8(C) and GP16(A) a) and the views of Marketing and Tourism and the Committee *for* Economic Development on the proposal, the application does not relate to a minor departure from IDP Policy.

Given the identified conflict with Policy OC8(C) and GP16(A) a), the only lawful decision that can be reached is that planning permission be refused.

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 no 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: 03/11/2023

