

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: Erect 3-storey building for use as a premises of multiple occupation (Use Class 6) to north of site with associated works and bike store to west boundary.

LOCATION: Bardigiana, Le Bouet, St. Peter Port.

APPLICANT: Mr D Taylor

I refer to the application referred to below received as valid on 22/02/2024 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 02/04/2024

Drawing Nos: J G Architecture Ltd: 2059/02.01, .02, .03 & .04.

Application Ref: FULL/2024/0283

Property Ref: A105220000

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 development represents an overdevelopment of this site at an excessive density and given the height, scale and mass of the building it would reduce the degree of separation between properties to an unacceptable level resulting in a building that would appear obtrusive, out of keeping with and harmful to the character and appearance of the Conservation Area. The scheme is therefore contrary to Policies GP8a. and c., GP4, GP9 b. and, by extension, Policy MC2 of the Island Development Plan.

2. The proposed sole means of access to the proposed building, via the existing Premises in Multiple Occupation, would not constitute an acceptable means of pedestrian access or means of escape to this premises for multiple occupation. Furthermore, aspect and outlook from windows in the north elevation of the building would be unsatisfactory given the close proximity of the building to the north site boundary where the windows would face across a palisade fence and adjoining commercial car park, currently associated with the Energy Centre which would be harmful to the amenities that the occupiers of the building could reasonably expect to

enjoy. The scheme does not therefore, represent a good standard of design and is contrary to Policy GP8 a. and Annex I, and also Policy MC2 of the Island Development Plan.

3. By virtue of the size of building proposed and therefore the high level of occupancy, the proposed development, if permitted, would be severely detrimental to the amenities of occupiers in the area resulting from an unacceptable degree of noise and disturbance arising from the increased level of pedestrian movements between the front of the site in Le Bouet, through the existing building currently known as Bardigiana, and crossing the amenity space to the rear of the site which directly adjoins existing residential dwellings. The scheme is therefore contrary to Policies GP8a. and d. and GP9b. and, by extension Policy MC2 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

Application No: FULL/2024/0283
Property Ref: A105220000
Valid date: 22/02/2024
Location: Bardigiana Le Bouet St. Peter Port Guernsey GY1 2AZ
Proposal: Erect 3-storey building for use as a premises of multiple occupation (Use Class 6) to north of site with associated works and bike store to west boundary.
Applicant: Mr D Taylor

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The proposed development represents an overdevelopment of this site at an excessive density and given the height, scale and mass of the building it would reduce the degree of separation between properties to an unacceptable level resulting in a building that would appear obtrusive, out of keeping with and harmful to the character and appearance of the Conservation Area. The scheme is therefore contrary to Policies GP8a. and c., GP4, GP9 b. and, by extension, Policy MC2 of the Island Development Plan.
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OFFICER'S REPORT

Site Description:

Bardigana is a mid-terrace two and a half-storey property located to the north of Le Bouet. The roadside boundary is marked by a low painted, granite wall with pillars either side of a pedestrian access. The property incorporates a single-storey flat roof extension to the rear. The boundaries with the properties to either side are marked by granite walls/fencing.

The property occupies a substantial plot that widens beyond the existing patio area to an open space with established vegetation (overgrown at time of site visit). A cros, Phoenix Way exists to the northwest of the site with parking areas adjacent to the site. To the east is The Energy Centre, a retail showroom functional in design and appearance, with a hipped roof and parking area to the immediate east of the application site. Le Bouet generally comprises residential properties although the Co-op and Jamaica Inn are situated close by. The site is also visible from the car park to the south of the Energy Centre associated with the Longstore Co-op and when travelling west along Le Bouet from the sea front.

The site is located in a Main Centre Outer Area and Conservation Area as designated in the Island Development Plan.

Relevant History:

Pre-application advice was sought in this case.

Existing Use(s):

Residential use class 6: Premises in multiple occupation

Brief Description of Development:

The application relates to the erection of a three-storey building within the rear garden area to the north of the site for use as a Premises or House in Multiple Occupation (HMO). The proposal also relates to the erection of a detached cycle store to serve the site situated in the southwest corner of the garden. Access to the proposed HMO would be via the existing property.

The HMO comprises a kitchen/dining area, living area, utility and two WCs on the ground floor and 15 en-suite bedrooms over the three floors.

The building has been designed with various pitched slate roofs incorporating dormers, rooflights and solar panels whilst the exterior of the building would be primarily white render with an element of timber/composite cladding to the ground floor of south, west and east elevations.

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

MC2: Housing in Main Centres and Main Centre Outer Areas

GP4: Conservation Areas

GP8: Design

GP9: Sustainable Development

Representations:

Seven letters of representation (including two from a single household) have been submitted objecting to the application and raising the following points:

- The property was formerly a lodging house, after purchase in 2014 it is used for construction workers associated with the applicant
- Where other property development has been permitted this has formed housing for local stock (locals/permit holders)
- The area of green land is important for wildlife and its loss would be harmful
- The existing HMO forms part of a terrace and is a house that has been in the area for c. 100 years (it was previously protected)
- The terrace comprises mainly family homes with gardens with an open aspect to the rear
- The current use as an HMO has resulted in nuisance to surrounding residents during the summer (loud parties, climbing on the flat roof, fights) and tripling the number of occupants will create chaos harmful to the amenities of surrounding occupiers
- The police were called very recently to a fight (glasses were smashed)
- The boundary walls are c. 5ft high therefore occupiers will be seen and heard by neighbours – worsening the existing situation (more movements, more noise and disturbance)
- The development will be oppressive and overbearing to existing neighbours and generate overshadowing of gardens, this will be worsened by the garage/bike store
- The development will overlook adjoining properties and gardens, harmful to amenities
- Trees shown on the drawings will also generate more shade and block aspect
- The design of building gives it the appearance of being four storeys in height
- It is unacceptable to build in the garden with no access other than through the hallway of Bardigiana particularly given the size of property and number of occupants – this will be difficult for Emergency Services to attend to deal with incidents (fire, police or ambulance)
- Emergency Services should be consulted
- The public footway is on the opposite side of the road to the application site, pedestrians and occupiers currently walk in the road causing a risk to themselves and others
- The bike store could house 33 cycles with the associated coming and goings causing nuisance to neighbours
- Although the applicant claims there is plenty of parking locally this is entirely dependant on the time of day and evenings/overnight parking is difficult due to

the number of properties without private parking and with customers visiting the restaurants/pubs in the area

- There will be more noise from the refuse vehicles as there will be more rubbish/recycling to collect
- The cycle store may be used as a smoking shelter in bad weather causing nuisance to adjoining residents
- Vehicles park/block the footpath to drop and collect people from the property/making deliveries to the site and this will worsen as a result of the proposal
- How will the construction take place without adverse impacts on neighbours?
- The shadow drawings do not address the impact of the cycle store or trees
- Despite the submission stating that bedrooms would not be in double occupancy, There could be 50 people between the two HMO buildings
- The site plan is out of date as it shows a greenhouse and shed to the rear of Laurel Villa that have been removed
- This proposal will set a precedent for other, similar developments
- This could be a stepping stone for other development
- The development will have a negative impact on property value

Consultations:

Office of Environmental Health and Pollution Regulation - there are a number of issues of concern.

Fire Safety is the greatest concern in this property as the suggested escape route is through the existing HMO and on to the street. The proposed HMO will come under existing fire safety legislation; therefore Guernsey Fire and Rescue are best placed to comment on this matter.

The ground floor kitchen intended for use by 20 occupants shows sufficient cooking facilities for 15 occupants. Advice has been given previously and the applicant may wish to consider further amendments to the layout and facilities to provide less eating/amenity space and spread the cookers, sinks etc better through the kitchen.

Attention is drawn to <https://www.gov.gg/housingstandards> which details the current minimum standards for rental accommodation. It should be noted that the States of Guernsey passed the Housing (Standards and Regulation) (Enabling Provisions) Law in 2021. The purpose of this law is to enable the drafting of legislation which will improve rental property housing standards, including houses in multiple occupation. The applicant is advised to consider the applications in relation to future legal requirements.

Building Control – The internal layout would not be correct as the rooms would require two door protection. This may affect the positions of the windows on all elevations or even the number of bedroom in the building.

Consult is required from Guernsey Fire and Rescue Service on the principles of escape and firefighting access.

Consultation between Building Control and Guernsey Fire and Rescue Service identified fundamental issues with respect to means of escape through another building and access for the Fire Service. Building Control recommend rejection.

Fire and Rescue Service – After carefully considering the application, I would like to advise that we have severe concerns with regards to the proposed development, as the application does not appear to satisfy requirements for access and facilities for the Fire Service as stipulated in the Guernsey Technical Standard B, Fire Safety Volume 2 – Building other than dwellings. We also determine that there is an absence of suitable means of escape in the case of fire, which is a requirement of the Fire Services (Guernsey) Law, 1989 as amended.

We do not therefore support this application for development as presented.

Summary of Issues:

The key issues in this case relate to the principle of the proposed development, the design and layout of the building along with its impact on the character and appearance of the Conservation Area and on residential amenity and the health and well-being of neighbours and future occupiers.

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 purposes of the Land Planning and Development (Guernsey) Law, 2005, are to protect and enhance, and to facilitate the sustainable development of, the physical environment of Guernsey.

Section 38 of the Law explains the general functions of authorities in respect of conservation areas. This states that:

In the exercise, with respect to any building or other land in a conservation area, of any powers under this Law or any other enactment, special attention shall be paid to the desirability of preserving and enhancing the character and appearance of that area.

In respect of these statutory duties, the word 'preserve' is taken in its ordinary meaning as set out in Chamber's dictionary, which is 'to keep safe from harm or loss'.

The purposes of the Law are reflected in the Island Development Plan, the principal aim of which is to help maintain and create a socially inclusive, healthy and economically strong Island, while balancing these objectives with the protection and enhancement of

Guernsey's built and natural environment and the need to use land wisely. Relevant policies will be addressed below in assessing the key issues.

Section 13 to Part IV of The Land Planning and Development (General Provisions) Ordinance, 2007, sets out a number of general material considerations, the following of which are considered to be relevant in this instance:

- (b) the character and quality of the natural and built environment which is likely to be created by the development,
- (c) the appropriateness of the development in relation to its surroundings in terms of its design, layout, scale, siting and the materials to be used,
- (d) the likely effect of the development on the character and amenity of the locality in question,

Policy MC2 supports housing development in this location and plot sizes in the locality are varied, utilising the rear garden space of Bardigiana for further development will not be at odds with the local character (GP8 c.). The site is currently in use for multiple occupation purposes and the proposal would extend this use. The scheme proposes multi-storey development which therefore represents efficient and effective use of land (GP8 b.) and the external materials would be reflective of other properties in the locality (GP8a. and c., GP4 and GP9 b.).

A reasonable area of external amenity space would be retained for occupiers of Bardigiana and to serve the proposed building and sunlight and daylight would be satisfactory to the proposed accommodation, although rooms are single aspect. It is also noted that the site is within easy reach of the coast, beaches and amenities available within St Peter Port (GP8 d. and Annex I of the IDP). Outlook from rooms with fenestration to the south would be satisfactory with views across the proposed garden area.

Notwithstanding the above, a development should not come at the expense of the character and appearance of the Conservation Area or the amenities of surrounding occupiers.

Means of escape (good design)

It has been highlighted through the public consultation and via formal consultees that the access arrangement to the proposed building would be unsatisfactory as a means of escape, and also in terms of amenities of occupiers of the existing building (discussed further elsewhere). Although a sprinkler system could be introduced it is inappropriate to require occupiers to exit the site, particularly in an emergency situation, via the existing building. Furthermore, this does not take into account that the building would effectively be landlocked should the fire/emergency take place in the frontage building thereby providing no means of escape.

Scale and mass

The application has been accompanied by massing drawings and the scheme has been designed with various pitched roofs, albeit with a consistent roof height, in order to seek to reduce the overall scale and massing of the building. The property will be visible in Le Bouet from the corner opposite Capstan Walk (substation) and from the car park area of the Longstore Co-op. Other properties are two/three storeys in height but to introduce a building of the height, scale and bulk proposed, in between the frontage development of Le Bouet and the clos development, would impact on visual access to open space between buildings that the site currently offers. Although Policy GP1 relates primarily to Outside of Centres locations it also addresses opportunities to improve visual and physical access to open and undeveloped land in built up areas. The proposal would diminish visual access to open land and would not, therefore, enhance visual access to open land thereby failing to address Policy GP1. The scheme would result in an overdevelopment of the site by reducing the degree of separation between buildings which would result in a form of development that would be harmful to the character of the locality, within a Conservation Area (GP8 a. design and c. respect the local built environment, GP4 conservation areas and GP9 b. conservation areas).

Residential amenity

- **Overshadowing**

The proposed building will be situated to the north of properties in Le Bouet, with The Energy Centre situated to the east and north of the site and parking/turning areas associated with Phoenix Way to the northwest. Adjoining garden areas are situated to the west of the proposed building. The scheme has been accompanied by a shadow survey for the summer and winter solstices which show that overshadowing will generally be across the parking area at The Energy Centre, the off-road parking/turning in Phoenix Court and some overshadowing to the northernmost part of the garden of an adjoining property for part of the morning. The building will not result in unacceptable levels of overshadowing to adjacent dwellings or sensitive areas of garden, which are generally considered to be the areas closest to the house (GP8 d.). The development will impact on aspect/outlook from surrounding properties given the height, scale and mass of the building although it is noted that it will be situated c.25m from properties in Le Bouet so this alone would not be sufficient grounds on which to refuse permission (GP8 a. design and d. health and well-being of neighbours).

- **Overlooking**

Fenestration in the west elevation has been limited to ground floor level, screened by existing/exempt boundary treatments and only two upper floor windows which are small and serve en-suite bathrooms and can reasonably be required to be obscure glazed. The property is set away from neighbouring properties, including Bardigiana itself in order to manage overlooking/mutual overlooking to the south. With the Energy Centre building and car park to the east and north respectively there would be no issues resulting in a loss of privacy from fenestration currently proposed (GP8a. design and d. health and well-being of neighbours).

- Disturbance and nuisance

An HMO represents a residential use and the site is within a primarily residential area therefore the two uses are, in principle, compatible. Nonetheless, the matter of noise and nuisance has been raised through the public consultation given previous experiences at Bardigiana.

The number of occupants traversing the site daily would be significant, whether all at one time or at varying times throughout the day. Although existing and exempt boundary treatments may help to mitigate some noise and nuisance caused by these movements between the front and rear of the site, the HMO proposed and access arrangements would, in this regard, not be compatible with adjoining residential uses. The scheme does not, therefore, represent a good standard of design and would impact on the health and well-being of neighbours of the development (GP8 a. good design and d. health and well-being of neighbours).

The scale of development proposed would impact on residential amenity due to the volume of residents accessing the proposed development via the existing property because all new residents would be passing through their building to the street (and vice-versa), past 'front'/bedroom doors. This would generate disturbance and nuisance which would be detrimental to the amenities which can reasonably be expected by occupiers contrary to the aims of the IDP. The submission sets out that a limit on the number of occupiers would be imposed and consideration could be given to whether a planning condition covering occupation (present a written log of tenants to the DPA within a specified timeframe) would be enforceable if the scheme were acceptable in all other respects. There would be no way to control against guests staying.

- Outlook from development to north

Outlook and aspect to the north of the site would be less than satisfactory given that views would be across the palisade fencing that marks the boundary with the Energy Centre and the car parking associated with this (GP8a. and Annex I).

Cycle storage

Although public consultation has highlighted the challenge of parking locally there is no requirement for a development in a central location such as this to incorporate any off-road parking. Parking standards in the Supplementary Planning Guidance would be maximum provisions for a site in this area.

The scheme incorporates cycle storage for the existing and proposed building which would necessitate cycles being brought through Bardigiana to Le Bouet. At present cycle parking takes place in the front garden area and the proposal seeks to centralise this in a secure and covered area for security and the appearance of the Conservation Area. In some respects the cycle parking will be less convenient for occupiers however, bringing cycles through the property is not uncommon for terrace houses with no side/rear access to the garden area.

The site is located in a sustainable location with easy access to public transport, coastal cycle/footpaths and the scheme seeks to promote sustainable modes of transport. It

would be reasonable to impose a condition requiring the cycle store to be provided and, as Bardigiana falls within the application site area a condition could be imposed specifying that cycle parking should not take place in the frontage area of the site given the purpose-built storage proposed at the rear. The scheme therefore addresses Policy IP6 of the IDP.

The single-storey bike store would largely be screened by existing/exempt boundary treatments and would not result in overshadowing or loss of privacy to the occupiers of surrounding properties.

Sustainable development

The application incorporates a written statement as part of the covering letter that seeks to address Sustainable Development (GP9) highlighting the use of insulation and materials that offer their own thermal mass benefits along with responsibly sourced products, cladding being a recycled material and slates being suitable for re-use at the end of the building life cycle. Solar panels are also proposed. This offers limited site-specific information to demonstrate how the design, method of construction and location of the proposal would help to achieve a more sustainable development (IDP paragraph 19.10.4). The scheme does not specifically consider climate change and flood risk although the matter of paving to external spaces can be managed by condition to ensure that it is permeable to contribute, in addition to solar panels, towards sustainable design. The scheme is considered to comply with Policy GP9.

Other matters

The application cannot affect the existing use of Bardigiana itself and how individuals/families choose to use their garden area is not a material planning consideration.

The behaviour of occupants would primarily be a management issue with involvement by the Police and/or Office of Environmental Health and Pollution Regulation should matters of anti-social behaviour or noise nuisance become problematic in connection with the proposed development. This would not represent sufficient justification to warrant the refusal of planning permission.

The comments relating to the comings and goings between Bardigiana and the proposed building resulting in nuisance and congregation of residents in the bike store (as a smoking shelter) are noted. It would not be reasonable or enforceable to address the matter of smoking/vaping in the shed.

The site does not represent designated land such as an Area of Biodiversity Importance or Site of Special Significance in relation to the protection of wildlife. It would be possible to include an informative note as part of a decision referring the developer to their responsibilities to protect wildlife under separate legislation, the Wildlife Ordinance (2012).

The matter of disruption, noise and nuisance during the construction phase cannot prevent development taking place although where appropriate a CEMP can be required by planning condition in order to manage harm caused.

Conclusion

In view of the above however, it is recommended permission is refused for the proposed development due to harm to the character and appearance of the area, impact on residential amenity and in relation to design, particularly in relation to the proposed access arrangements, via the frontage building.

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: 28/03/2024

