

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 (1,260 sqm), demolish dwelling and outbuilding and erect replacement dwelling, garage and associated works.

LOCATION: Moulin Huet de Haut, La Rue Gros Jean, La Rue des Clotures, St. Martin.

APPLICANT: Moulin Huet Properties Ltd

I refer to the application referred to below received as valid on 22/04/2024 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 28/05/2024

Drawing Nos: Dualchas Architects - 994/010, 100, 101, 102, 200, 205, & 23-259-200B

Application Ref: FULL/2024/0666

Property Ref: J013300000

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 land that is the subject of this application is located within an Agriculture Priority Area (APA) where the loss of an existing farmstead, agricultural building or land would only be supported where it is demonstrated that the land cannot contribute positively to the commercial agricultural use of the APA or cannot practicably be used for commercial agriculture within the APA without adverse environmental impacts.

The proposed change of use of agricultural land to enlarge domestic garden associated with the property known as Moulin Huet De Haut, in connection with the redevelopment of the site, has not been satisfactorily justified in this case. The proposal, if permitted, would result in the unacceptable loss of agricultural land which would prejudice the wider APA. The proposal would not accord with the requirements of Policy GP15c) and OC5(A) 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/2024/0666
Property Ref: J013300000
Valid date: 22/04/2024
Location: Moulin Huet de Haut La Rue Gros Jean La Rue des Clotures La Rue des Clotures St. Martin Guernsey GY4 6EW
Proposal: Change of use of agricultural land to domestic garden (1,260 sqm), demolish dwelling and outbuilding and erect replacement dwelling, garage and associated works.
Applicant: Moulin Huet Properties Ltd

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

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OFFICER'S REPORT

Site Description:

The application site is situated to the southeast of La Rue Gros Jean close to the junction with La Rue Des Clotures. Vehicular access is shared with the neighbouring residential property, currently known as Driftwood Cottage. Moulin Huet De Haut is set back in its plot with mature gardens separating the dwelling from its neighbour. The bungalow has a gable facing northeast and hipped roof to the southeast and is constructed tight to the eastern boundary. Vehicular access serving the dwelling and associated agricultural land runs along the west boundary.

The definition of curtilage/garden of the dwelling was confirmed by the Authority in 2019. It relates to the land to the northwest of the dwelling, the dwelling and land to its west along with an area of garden to the southeast extending as far as the detached

outbuilding/shed. Land beyond this is currently recognised as open and undeveloped agricultural land.

The dwelling is relatively isolated with very little in the way of other residential development close by. Land to the north of La Rue Gros Jean along with land immediately surrounding Moulin Huet De Haut is all open and undeveloped agricultural land (west, south and east).

The site is located Outside of the Centres and within the Agriculture Priority Area (APA) as designated in the Island Development Plan. The site lies within the Cliffs (Cliff Tops) Landscape Character area as set out in Annex V of the Island Development Plan.

Relevant History:

CLU/2023/1514 - Regularise use of agricultural land (Use Class 28) to domestic garden (Residential Use Class 1) (1,000sqm) – refused.

Pre-application advice was sought in this case.

Existing Use(s):

01 dwellinghouse

28 agriculture

Brief Description of Development:

The application relates to the demolition of the existing bungalow and the erection of a detached, largely single-storey dwelling on the site. The footprint of the dwelling would push it beyond the recognised curtilage/garden for the site and therefore the scheme proposes the change of use of the remainder of the site from agricultural land to domestic garden in order to facilitate the construction of the dwelling proposed and to provide the new dwelling with garden to the southeast. The area of garden to the northeast of the site would be utilised for parking/turning with a bin store. A courtyard would be provided between the detached garage and main entrance for the property with two further courtyard gardens proposed between other elements of the building (west and south courtyards).

On the ground floor the development would comprise a detached double garage and store, an open plan kitchen/dining room, separate TV room, a living room, two ensuite bedrooms, separate WC, pantry, utility and plant room whilst the master suite and study area would be accommodated at first floor level.

The application has been accompanied by a Design Statement including matters relating to sustainable development (pg. 15) plus separate Landscape Proposals incorporating information regarding biodiversity. The application also incorporates a Site Waste Management Plan.

The submission also seeks to address the proposed change of use of agricultural land to domestic garden, stating “The historic use of this portion of land as planted ground for

the existing house demonstrate how it is integral to the usage of the existing house". The plan with the proposed dwelling and site arrangement is to unify the entire site "allowing the new house and garden to work cohesively with the surrounding landscape". The submission argues that access via the driveway for domestic properties, the size of the land and change in levels between the site and adjoining fields means that it cannot be used for agricultural purposes and that to remove part of the bank/hedgerow would result in environmental harm. Reference is made to other planning permissions granted for change of use of agricultural land to domestic garden (within or adjacent to the APA).

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

OC5(A): Agriculture Outside of the Centres – within the Agriculture Priority Areas
GP1: Landscape Character and Open Land
GP8: Design
GP9: Sustainable Development
GP13: Householder Development
GP15: Creation and Extension of Curtilage
IP6: Transport infrastructure and support facilities
IP7: Private and Communal Car Parking
IP9: Highway Safety, Accessibility and Capacity

Strategy for Nature Supplementary Planning Guidance

Representations:

None.

Consultations:

Guernsey Farmers Association – are responding to the question posed as to whether the land within the planning application would be useful to remain as part of the wider Agriculture Priority Area.

Having reviewed the plans, the area is relatively small for commercial agricultural purposes at the current time, and with the only access from the front of the property, it would be difficult to get large agricultural machinery onto the site.

That being said, there is also an argument that retention of the land within the APA creates an opportunity to increase connectivity between the surrounding fields providing access is created through small openings within the earth bank boundaries. This would also allow further protection of the surrounding land within the APA making farming more commercially viable.

The GFA takes a strong view against the loss of land within the APA and therefore would prefer to see the land in question retained for current use to improve field connectivity or for future use as farming practices change.

Summary of Issues:

The key issue in this case relates to the change of use of agricultural land to domestic garden, the principle of erecting a replacement dwelling on the site, the design and appearance of the proposed dwelling and its impact on the open landscape concerned and on residential amenity.

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.

Change of Use of Agricultural Land to Domestic Garden

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).

Whilst the policy approach is to generally support development for agricultural purposes in the APAs, these areas have been broadly drawn and include areas of land and sites which are not currently used for agricultural purposes and could not be expected to contribute positively to commercial agriculture in the future. The APAs are not intended to safeguard the land for agricultural use if it is not appropriate or is not required for that use or where the inclusion of an area of land into a larger land parcel for agricultural purposes would have a negative environmental impact. The Island Development Plan policies therefore allow for other forms of development within the identified APAs provided that they accord with all the other relevant policies of the Island Development Plan (Policy OC5A).

In order to protect Guernsey's best agricultural land, where appropriate, proposals for development which would result in the loss of an existing farmstead or agricultural holding in the APAs will only be supported where it is demonstrated that the farmstead, building or land is no longer required for agricultural purposes and any proposed new use accords with the other relevant policies of the Island Development Plan.

Policy GP15 makes provision for the extension and creation of curtilages to serve both domestic and non-domestic buildings, subject to compliance with a number of criteria.

The application submission argues that the site could not be used commercially for farming due to its size and due to the current access arrangements via domestic land. The access arrangement is not uncommon in Guernsey and consideration must be given as to whether a link access could be provided from one of the immediately adjoining fields (southwest, northeast and southeast). It is noted that there is a change in levels between the application site and the adjoining land however, the change in levels is not significant between the site and land to the southeast and southwest. The levels change would not preclude a sloped access being formed in any one of the site boundaries.

Although an access in the northeast boundary would likely result in the removal of trees and bank which could have an adverse environmental impact the removal of a section of bank to allow machinery access between the fields to the southeast and southwest is, without prejudice to the assessment of an application for such works, unlikely to result in such significant environmental harm that would warrant refusal on this basis. It is concluded therefore, that the site benefits from potential links to other land within this swathe of the APA and therefore the land could positively contribute to the commercial agricultural use of the APA without unacceptable adverse environmental impacts and therefore the proposal fails to comply with Policies GP15 c) and OC5(A) of the IDP.

The land to the southeast of the application site is largely screened from the adjoining roads by the site boundary features and those defining the other, mainly linear agricultural fields that surround the site, particularly to the northeast and southwest. The site and land would however, be visible from the coast path to the west at Saints Bay. The application proposes to introduce built development in the northwest section of the site where the proposed dwelling would be situated however, an extension of curtilage alone, to include the whole site is not considered to have a significant impact on the landscape character or openness of the area (GP15 a)).

Given the location of the site and site boundaries the change of use of land alone would not undermine the wider landscape character or the openness of the area in accordance with Policy GP1.

The change in use of the land is unlikely to result in a significantly different impact on the amenity of the adjoining property which is situated away, to the northwest of the site and the change of use of land alone would comply with criterion e) of Policy GP15.

Should the scheme be acceptable in all other respects it would be appropriate to consider whether the removal of exemption rights relating to boundary treatments or outbuildings would be appropriate. Given the open nature of the land and views of the site from the coastal path it may be appropriate to remove exemption rights relating to outbuildings and boundary treatments due to the urbanising effect that some domestic boundary treatments could have on this rural location.

The application site is not located within or adjacent to an Area of Biodiversity Importance it is therefore concluded criterion b) of Policy GP15 is not relevant in this case. The proposal would not result in the removal/replacement of boundary features therefore criterion d) would not be applicable.

The application has been accompanied by supporting information on Landscape Proposals and Biodiversity that seek to demonstrate how the change of use of land would address the requirements of the Strategy for Nature SPG. Leylandii hedgerow is proposed to be removed and replaced, a water feature, meadow area and native ornamental planting proposed. All these combined would represent a proportionate approach to offer biodiversity enhancements on this site, subject to planning conditions.

Although the submission notes that the agricultural land is integral to the existing use of the site it remains the case that the Authority does not recognise all the land within the application site as domestic garden. 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.

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.

As specified elsewhere in this report, the scheme would not accord with the key criteria of Policy GP15 and therefore a minor departure cannot be accepted in this case.

Other matters

Principle of replacement dwelling

Policy GP13 of the Island Development Plan indicates that demolition of existing and erection of replacement dwellings on a one for one basis will be supported where there is no significant adverse impact on the amenities of adjoining properties; the design, scale, mass and form of development does not detract from the character of an open area; and there is no adverse effect on the special interest of a Conservation Area, Area of Biodiversity Importance, Protected Building or Protected Monument. The scheme relates to the replacement of a dwelling on a one for one basis and therefore there is a policy gateway for replacement of the existing dwelling.

Demolition of the existing buildings

Policy GP13, whilst allowing for the erection of a replacement dwelling in principle, also requires consideration of the contribution that the existing building makes to the character of the area concerned. In this instance, the existing property is considered to make limited contribution to the character of the area and its demolition would not negatively impact on the character of the area.

Design, form, massing and scale of the proposed replacement building

The scheme proposes primarily single-storey development in order to limit its visual impact on the open landscape character of the area, within the Cliffs Landscape Character area (Annex V). Although this does not represent the most efficient and effective use of land because the scheme is not generally multi-storey when balanced against wider visual impacts on balance the scheme is appropriate for this particular site when considering efficient and effective use of land in line with the aims of Policy GP8.

There is no uniform design or palette of materials in the local area. The scheme relates to the erection of a primarily single-storey flat roof dwelling with a small two-storey element to the southwest. The scheme represents a contemporary building with elements taller than the one it replaces. Nonetheless, overall the development and palette of materials proposed represents a good standard of design that respects the local built and open landscape concerned in accordance with the aims of Policies GP8 and GP13 of the Island Development Plan.

The existing building on the site is located on a reasonable sized plot that would be capable of accommodating a larger building and Policy GP13 sets out that a comparison should not be made between the impacts of the existing dwelling compared with the impact of the new. The proposed dwelling would not however, sit within the recognised garden area and the change of use of agricultural land to domestic garden has already been assessed as being unacceptable in this case. The application site is not within a conservation area and does not affect a protected building or protected monument but is in an elevated position. In respect of Policy GP8 c. (built and open character), the application will also be assessed against Policy GP1: Landscape Character and Open Land (below).

The submission does give consideration to future landscaping of the site given the requirements of the Strategy for Nature SPG and if the scheme were acceptable in all other respects the matter of landscaping would be addressed by planning condition.

The proposed development will not result in unacceptable overshadowing or loss of privacy to the neighbouring residential occupiers. The scheme therefore meets the aims of Policies GP8, GP9 and GP13 in this respect. Overall, the scheme incorporates large areas of glazing to maximise solar gain and natural light, and courtyard external amenity space for the enjoyment of occupiers (GP8 and GP9).

The development provides bedrooms on both the ground and first floor when considering access for all. The accommodation is generously proportioned and will

enable access within the building for people of all ages and abilities. The building would also offer opportunities to be adapted, or extended, to meet the future needs of occupiers. The scheme will also incorporate level thresholds and allow for good access around the building/site in line with Policy GP8.

The replacement dwelling proposed will not have an unacceptable adverse impact on the character or quality of the built environment or the character and amenity of the locality and therefore the aims of Policies GP13 and GP8 of the Island Development Plan have been satisfactorily addressed in this respect.

Impacts on landscape character and open land

“The cliffs which run along the south and southeast coasts provide one of the most dramatic landscape types in Guernsey. The cliffs drop sheer from the Upland Plateau into the sea, cut by occasional short, steep valleys and backed by largely undeveloped agricultural top land. The combination of these features creates a dramatic open landscape which contrasts with the intimate enclosure of the Island’s interior.

The Cliff Tops immediately back the crest of the cliffs and covers approximately the first 300m of the southern edge of the Upland Plateau. Occasional glasshouses, trees and houses interrupt the flat open character of the landscape however, the top land still remains largely undeveloped.

Policy GP1: Landscape Character and Open Land seeks to ensure that proposals do not result in the unacceptable loss of distinctive features that contribute to the wider landscape character and the local distinctiveness of the area. The impact should be assessed in the wider context of the locality, *“In respecting the landscape character and openness of an area, a development need not be hidden from public view, but will be required to avoid undermining the wider landscape character and/or openness of an otherwise undeveloped area.”*

The detailed design of the development including architectural detailing and materials has previously been considered in the report (design, form, massing and scale of the proposed replacement building). Although a larger dwelling is now proposed, the linear form of the building also reduces its scale and bulk. The proposed building will not detract from the openness of the landscape character and the building will not appear as an obtrusive feature in the wider area.

The landscaping scheme would help assimilate into the existing landscape character. Overall, the scheme meets the aims of Policies GP1 and GP8 in relation to landscape character and open land.

Car parking provision and effects on surrounding highway

Policies IP7 and IP9 relate to private car parking and highway safety, accessibility and capacity respectively.

There is off-road parking, garaging and on-site turning to serve the property and therefore the aims of both Policy IP7 and IP9 have been satisfied in this case. The scheme does not incorporate a designated cycle store however, cycles could be accommodated in the proposed garage to offer the occupiers of the dwelling with an alternative mode of transport in line with the aims of Policy IP6.

Waste Management Plan

The application has been accompanied by a Waste Management Plan which is considered to be satisfactory in this case. The information is considered to meet the aims of Policy GP9 in this respect and can be managed by planning condition.

With regard to Policy GP9: Sustainable Development the scheme seeks to address matters relating to siting, orientation, layout and fenestration. There are no particular features, such as solar panels, permeable paving or EV charging points highlighted in the submission to contribute towards sustainable design and therefore it is not considered that the proposal as submitted would satisfactorily address the aims of GP9.

A bin store is shown to be situated adjacent to the northwest site boundary.

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

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: 24/05/2024

