

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005
AND THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS)
ORDINANCE, 2007

NOTIFICATION OF GRANT OF PLANNING PERMISSION

PROPOSALS: Change of use of agricultural land to domestic garden (902 sq.m.).

LOCATION: La Mer Et Ciel, Route Des Houguets, St. Saviour.

APPLICANT: Mr & Mrs R Smith

This permission is granted under the terms of Sections 15 and 16 of the Land Planning and Development (Guernsey) Law, 2005 (the 'Law').

Date of Grant of Permission: 07/08/2024

This notification of grant of permission refers solely to the proposals referred to above as described in your application received as valid on 24/06/2024 and the drawings referred to below. This grant of permission is subject to the following conditions:-

Drawing Nos: G.E Le Friec - 2115/1. Guernsey Gardens Ltd - 001-017--2024
& Landscape Management Plan

Application Ref: FULL/2024/1119

Property Ref: E00469D1A0

Conditions and reasons:-

1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Authority under the Law.

Reason - To ensure that it is clear that permission is only granted for the development to which the application relates.

2. The development hereby permitted shall be begun within 3 years from the date of grant of this permission.

Reason - This condition reflects section 18(1) of the Land Planning and Development (Guernsey) Law, 2005 which states that planning permission ceases to have effect unless development is commenced within 3 years of the date of grant (or such shorter period as may be specified in the permission).

3. The development hereby permitted and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of The Building (Guernsey) Regulations, 2012 as are applicable to them, and no operation to which such a requirement applies may be commenced or continued unless (i) plans relating to that operation have been approved by the Authority and (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Authority when approving those plans, for the purpose of securing that the building regulations are complied with.

Reason - Any planning permission granted under the Law is subject to this condition as stated in section 17(2) of the Land Planning and Development (Guernsey) Law, 2005.

4. (i) Prior to the approved planting scheme being implemented the following shall be submitted to and approved in writing by the Authority:

(a) A desktop study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Land Contamination Risk Management (LCRM) and

B510175:2001+A2:2017 - Investigation of Potentially Contaminated Sites - Code of Practice;

and unless otherwise agreed in writing by the Authority,

(b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with B510175;

and, unless otherwise agreed in writing by the Authority,

(c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works.

(ii) If determined to be required the development hereby permitted shall not be occupied or brought into use until there has been submitted to the Authority verification by a competent person approved under the provisions of subsection (i)c of this condition that any remediation scheme required and approved under the provisions of subsection (i)c of this condition has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Authority in advance of implementation). Unless otherwise agreed in writing by the Authority such verification shall comprise:

a) as built drawings of the implemented scheme;

b) photographs of the remediation works in progress;

c) certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under subsection (i)c of this condition

Reason - In order to manage risk to safety and the removal/remediation of currently unknown contaminants on the site.

5. The landscaping scheme shall be fully completed, in accordance with the approved landscaping scheme, 001-017-2024 and accompanying Management Plan (11/06/2024) in the first planting season following this grant of planning permission. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

Reason - To secure biodiversity improvements in line with the Strategy for Nature Supplementary Planning Guidance.

Expiry Date: This permission will cease to have effect on 07/08/2027 unless development is commenced by that date.

ADVICE AND OTHER REMARKS:-

With reference to condition 4 a desktop study shall be the very minimum standard accepted. Pending the results of the desktop study, the applicant may have to satisfy the requirements of criteria (b) and (c) of that condition, however, this will all be confirmed in writing. The phased risk assessment should be carried out also in accordance with the procedural guidance and UK policy. The site is known to be or suspected to be contaminated. Please be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. It is strongly recommended that in submitting details in accordance with the above condition that the applicant has reference to Land Contamination risk management available at <https://www.gov.uk/guidance/land-contamination-risk-management>.

Effect of planning permission:

Section 18 of the Land Planning and Development (Guernsey) Law, 2005 ('the Law') defines the effect of the planning permission hereby granted, namely:

(1) Planning permission ceases to have effect unless the development permitted by it is commenced within a period of three years immediately following the date on which it is granted (or such shorter period as may be specified in the permission).

(2) Planning permission enures for the benefit of the land concerned and of every person for the time being having an interest in it.

(3) Any conditions subject to which planning permission is issued are enforceable in accordance with the provisions of Part V of the Law.

(4) Planning permission for the erection of a building is only permission to use it for the purpose specified in the permission or, subject to any restriction so specified, for any other purpose for which it is designed.

(5) Planning permission is only permission to carry out the development specified in it (subject to any conditions so specified), and does not imply the giving of any other approval or consent required under this Law or any other enactment or under any rule of law.

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, on the merits against a decision to grant planning permission subject to conditions (except a building condition), to the Planning Tribunal, which is independent of the States of Guernsey. 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. The official Appeal Notice Forms are available on the States of Guernsey website at www.gov.gg/planningpanel and must be completed with all enclosures in multiples as requested and received within the six months deadline.

Copy of representations made:

In reaching this decision the 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 under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

Other Remarks:

Please note that any work which abuts or affects the public highway requires prior approval by Traffic and Highway Services. Please contact Traffic & Highway Services (highways@gov.gg) for further advice. You must also ensure that any access/es to the development are constructed to meet the existing road/footway levels in accordance with their requirements.

This document is not a Building Licence and confers no approval under the Building Regulations.

A separate Building Control Licence may be required and it is the responsibility of the developer to ensure that ALL necessary consents are obtained and that any pre-commencement conditions are discharged prior to development being commenced.

A J ROWLES

Director of Planning
Planning Service



PLANNING APPLICATION REPORT

Application No: FULL/2024/1119
Property Ref: E00469D1A0
Valid date: 24/06/2024
Location: La Mer Et Ciel Route Des Houguets St. Saviour Guernsey
GY7 9UJ
Proposal: Change of use of agricultural land to domestic garden (902
sq.m.).

Applicant: Mr & Mrs R Smith

RECOMMENDATION - Grant: Planning Permission with Conditions:

1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Authority under the Law.

Reason - To ensure that it is clear that permission is only granted for the development to which the application relates.

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(c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works.

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Reason - In order to manage risk to safety and the removal/remediation of currently unknown contaminants on the site.

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Reason - To secure biodiversity improvements in line with the Strategy for Nature Supplementary Planning Guidance.

INFORMATIVES

With reference to condition 4 a desktop study shall be the very minimum standard accepted. Pending the results of the desktop study, the applicant may have to satisfy the requirements of criteria (b) and (c) of that condition, however, this will all be confirmed in writing. The phased risk assessment should be carried out also in accordance with the procedural guidance and UK policy. The site is known to be or suspected to be contaminated. Please be aware that the responsibility for the safe development and secure occupancy of the site rests with the developer. It is strongly recommended that in submitting details in accordance with the above condition that the applicant has reference to Land Contamination risk management available at <https://www.gov.uk/guidance/land-contamination-risk-management>.

OFFICER'S REPORT

Site Description:

La Mer et Ciel is a detached two-storey dwelling with garden to the west and parking to the front/east with access from Route Des Houguets. The boundary between the garden and agricultural land is currently open. The south boundary of the field that is the subject of the application is marked by a low wire fence and landscaping and a shed at the adjoining property. The north boundary of the field is marked by a fence and timber pedestrian gate. The west boundary is marked by a high earthbank which has a long, grassed covering. The domestic garden north and south boundaries is marked by a 1.8m high timber fence.

The site is located Outside of the Centres as designated in the Island Development Plan.

Relevant History:

FULL/2017/2012 - Demolish existing dwelling and erect a new dwelling and remove a section of hedge on front east boundary – granted

FULL/2021/1835 - Change of use of agricultural land to domestic garden (902 sqm) – withdrawn.

La Cachette

FULL/2018/2257 - Change of use of agricultural land to domestic garden – granted (field retained to east of dwelling.

FULL/2021/1186 - Demolish existing dwelling and erect replacement dwelling and erect glasshouse/coldstore to north boundary – granted

FULL/2023/0230 - Erect earthbank to east boundary (retrospective) – granted

Existing Use(s):

01 dwellinghouse

28 agriculture

Brief Description of Development:

The application relates to the change of use of agricultural land (902 sqm) to the west of la Mer et Ciel to domestic garden. The existing earthbank along the west boundary is noted on the application drawings as is an orchard planted on land to the west, outside the applicant's ownership/control.

The submission provides information regarding land ownership and the clearance of the site, following the removal of the previous glasshouses in the 1990's, work in relation to land contamination was also undertaken (car batteries and asbestos). The submission explains that the land has been planted to meadow grass and an earthbank constructed by a neighbour of the applicant (FULL/2023/0230). The submission sets out that access to the application land is via the domestic garden of Mer et Ciel where access is limited to 1.5m in width. The area of land has been separated from any adjoining agricultural land by the earthbank and is insufficient in size to be suitable for commercial agriculture. Attention is drawn through the submission to the extent of domestic garden of the properties to the north and south of the application site. Reference is also made to other sites/applications granted permission for the change of use of agricultural land.

The application includes a landscaping plan and supporting written statement in order to address the matter of biodiversity enhancement and the Strategy for Nature SPG. A native mixed hedge is proposed inside the western earthbank and along the north site boundary along with fruit tree planting in the northwest and southeast corners of the site with under planting for wildflowers. Four further trees are proposed in total, two to the west and two to the north site boundaries (Field Maple and Silver Birch).

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

GP1: Landscape Character and Open Land

GP15: Creation and Extension of Curtilage

Representations:

One letter of representation has been submitted, objecting to the application and raising the following points:

- The proposal is contrary to the designated land use in this area.
- The change of use of land has previously been rejected
- The land was perfectly viable and used as a hay crop
- An earthbank has been erected detaching the land from the larger field it was once part of and which now restricts access for agricultural equipment and impedes agricultural use – this is self inflicted and should not be used to add weight to the proposed change of use
- The land is maintained as mown, open grassland and there is no reason why this cannot continue (with an agricultural land use designation)
- This would set a dangerous precedent for other such proposals
- Concern over future development of the site

Paroisse De Saint Sauveur – have reviewed the application for change of use from agricultural use to domestic garden and would like to register our objection:

- The land has been the subject of a number of applications over recent years, all of which have been rejected due to the land being of obvious agricultural benefit
- The current land owners were aware, when they purchased the land, that it was restricted to agricultural use and that the change of use had been turned down in the past
- There are no special grounds to overturn the current restriction for agricultural use
- To overturn the agricultural use due to recent manipulation of the topography of the land (the high bank) may well set a precedent for other land
- The change of use will lead to garden structures and other hard landscaping which will further diminish the agricultural character of the area generally

Consultations:

Office of Environmental Health and Pollution Regulation - there are some issues of concern that I must raise about land contamination.

It is evident from the applicant's cover letter that contamination has previously been identified at the site, namely asbestos and car batteries that have been removed by the current landowners. Although the asbestos and car batteries are no longer present, I have concerns that there could be residual contamination at the site. Additionally, I have interrogated the States' Digimap system and records which show that heated greenhouses were historically located on neighbouring land parcels.

I note that the application proposes to plant fruit trees as part of the domestic garden and therefore, due to the known contamination of the asbestos and car batteries in addition to the historic heated glasshouse use, I recommend that a condition with multiple sub-sections condition is attached to any granted permission.

Summary of Issues:

The key issues in this case relates to the principle of the proposed change of use as the land is situated within the Agriculture Priority Area and whether the matter of biodiversity enhancements has been appropriately addressed.

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 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).

The Agriculture Priority Areas 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 Agriculture Priority Areas provided that they accord with all the other relevant policies of the Island Development Plan (Policy OC5A). Proposals for development which would result in the loss of an existing farmstead or agricultural holding in the Agriculture Priority Areas 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 which are addressed in turn below:

- a. it would not have an unacceptable detrimental impact on the landscape character; and,*

The land which forms the subject of this application is largely a flat piece of agricultural land to the west of la Mer et Ciel, situated between the domestic gardens of dwellings to the north and south. The change of use of agricultural land to domestic garden in this instance, including the formation of an earthbank as indicated is not considered to have a significant impact on the landscape character or openness of the area.

Concerns have been raised through public consultation regarding the impact of future built development on the character of the locality. The land would be situated between other domestic gardens and domestic structures and would be largely screened from public view. When looking east across the open land to the west any such exempt development would be largely screened by the approved existing earthbank and proposed planting. Furthermore, it would be viewed in the context of the existing built development. When considering the tests associated with the imposing of planning conditions it would be unreasonable to remove exemption rights relating to domestic outbuildings in this case. As two existing outbuildings are situated within the existing curtilage for Mer et Ciel further such development would also not meet the exemption tests and would require planning permission in any case, any such application would be considered against the relevant policies in place at that time.

As the west boundary is marked by a high earthbank it is also not deemed necessary to remove exemption rights regarding high walls and fences given that such exempt structures would not be widely visible beyond the site boundaries in terms of the appearance of such features and their impact on the wider landscape character of this area.

- b. it would not have an unacceptable impact on the biodiversity interest of an Area of Biodiversity Importance or, where negative impacts are unavoidable, they can be acceptably mitigated in accordance with a scheme to be agreed with the Authority in accordance with Policy GP3: Areas of Biodiversity Importance;*

The application site is not located within or adjacent to an Area of Biodiversity Importance it is therefore concluded b) of Policy GP15 is not relevant in this case. Based on the landscaping proposals submitted the scheme satisfies the aims of the Supplementary Planning Guidance Note: Strategy for Nature, 2020 and the provision of the proposed planting etc. can be managed by condition.

- c. it is demonstrated that the land cannot positively contribute to the commercial agricultural use of an Agriculture Priority Area or cannot practicably be used for commercial agriculture within an Agriculture Priority Area without unacceptable adverse environmental impacts; and,*

The agricultural land forms part of a parcel of open and undeveloped agricultural land that is curtailed by residential development to the west, extends to Rue Coliche Effard to the south but extends a considerable distance to the north with connectivity to further land within the APA to the east of Route Des Houguets. Currently, there is no means of vehicular access to the area of land within the application site boundary due to the layout of La Mer Et Ciel and the existence of an authorised earthbank to the west. Although public consultation has highlighted the effect of such an approach by various land owners on the ability of the land to contribute to agriculture, each application must be considered on its own merits and against the policies in place at that time.

The land is 'locked in' by domestic gardens to the south and north and to create access/connectivity to the adjoining agricultural land to the west, southwest and northwest would require established boundary features (the boundary earthbank and other hedgerow) to be partially/totally removed to offer access which could have adverse environmental impacts. On balance therefore, it is considered that the site would not make a positive contribution to the commercial use of the APA in line with c. of Policy GP15.

- d. it is demonstrated that it would not involve an unacceptable loss of established boundary features that contribute positively to the character of an area, unless the new or replacement boundary treatment makes an equal or enhanced positive contribution to the character of the area; and,*

The proposal would not result in the removal of any boundary features. The north, west and south boundaries of the site are already demarcated.

- e. it would not adversely affect the reasonable amenities of neighbouring residents.*

The proposal would extend the curtilage in close proximity to the boundary with the gardens of adjoining dwellings to the north and south. The change in use of the land is however unlikely to result in a significantly different impact on the amenity of the adjoining property.

Although the site is undeveloped, given its setting, with established site boundaries the proposal would not undermine the wider landscape character or the openness of the area and accords with the aims of Policy GP1.

Both the application submission and public consultation note the extent of adjoining gardens to the north and south of the application site. These historic arrangements, as set out in the Planning History above, do not set a precedent for the change of use of agricultural land proposed. There has been a material change in the policies in place since the Hampton House site was redeveloped and in any event, each application must be considered on its own merits.

The OEHPR have expressed concern relating to land contamination at the site particularly with regard to the proposed planting to be undertaken (fruit trees). It is noted that the applicant has undertaken site clearance but it is not possible to establish from the information provided whether all contaminants associated with the former horticultural use of the site have been fully addressed.

Although overall there will be no development and minimal disturbance of the land for planting, as the area has already been laid to lawn/meadow grass, the phased condition recommended to manage contamination should be imposed in the interests of safety. An associated informative note is also recommended highlighting that a desktop study is the minimum requirement to satisfy the condition but the outcome of that study will establish whether any further exploratory or mitigation measures are necessary in this case.

In view of the above it is recommended permission is granted for the proposed change of use.

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: 02/08/2024

