

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 (305sqm), demolish dwelling and outbuilding and erect replacement dwelling, garage and associated works (Revised Scheme).

LOCATION: Moulin Huet de Haut, La Rue Gros Jehan, La Rue Des Clotures, St. Martin.

APPLICANT: Moulin Huet Properties Ltd

I refer to the application referred to below received as valid on 22/01/2025 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 08/04/2025

Drawing Nos: Dualchas: 994/002, 010, 100, 101, 102, 200, 205
Harris Bugg Studio: 23-259-200 Rev C

Application Ref: FULL/2025/0116

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 existing agricultural 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/2025/0116
Property Ref: J013300000
Valid date: 22/01/2025
Location: Moulin Huet de Haut La Rue Gros Jehan La Rue Des Clotures St. Martin Guernsey GY4 6EW
Proposal: Change of use of agricultural land to domestic garden (305sqm), demolish dwelling and outbuilding and erect replacement dwelling, garage and associated works (Revised Scheme).
Applicant: Moulin Huet Properties Ltd

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The land that is the subject of this application is located within an Agriculture Priority Area (APA) where the loss of existing agricultural 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.

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.

FULL/2024/0666 - Change of use of agricultural land to domestic garden (1,260 sqm), demolish dwelling and outbuilding and erect replacement dwelling, garage and associated works – refused on the grounds that the change of use of land here, within the APA would result in the unacceptable loss of agricultural land which would prejudice the wider APA contrary to GP15 c) and OC5(A).

Post decision and 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 the application proposes the change of use of an area of land (305sqm) from agricultural land to domestic garden in order to facilitate the construction of the dwelling proposed with an area of domestic garden to the southeast. The area of existing 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 addresses the matter of the change of use of an area of agricultural land (Use Class 28) to domestic garden (Use Class 1) and has sought to highlight other examples where the change of use of land has been supported by the DPA. The submission does not propose any defining boundary feature to mark the proposed extent of domestic garden. The submission sets out that the scheme relates to a small increase in domestic curtilage (25% of the existing 1225sqm area of the APA) to allow a large portion of the site to be retained for potential future agricultural use via possible links between adjacent fields although noting that such arrangements would be subject to legal agreements with all relevant landowners and the removal of banks/hedges/trees. The change of use of land proposed is requested to allow the proposed new house to make best use of the site in terms of orientation, massing, maximising views and natural light having regard to the requirements of Policy GP9 and will maximise the development's sustainability.

The application has been accompanied by a request for a minor departure from the Development Plan as follows: *Matters that the Authority may wish to take into account include the very small area of land involved, and that this represents a balance between the reasonable protection of open land, the future requirements of the agriculture industry and the reasonable expectations of the applicants in this case.*

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:

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

- The building is completely out of character for its location and surroundings
- The proposed materials are inappropriate and would not fit in with the rest of the area/other properties in the lane
- We need to value heritage and history otherwise it will be lost
- There is already a house within curtilage so why is there a need for more curtilage and why build on that land removing more agricultural land in the process?

- The current owners have already removed from the agricultural landscape without consulting the proper authorities – trees and shrubs have been removed

In addition, La Societe Guernesiaise highlight the environmental impact of light pollution on many types of wildlife such as birds, bats and insects. Such pollution can be particularly problematic when introduced into a landscape such as this one, where existing sources of artificial light are relatively sparse. We would ask that consideration be given to limiting the increased light pollution which may arise from this development within the rural landscape. Associated light pollution would extend over a large area of mostly agricultural land and adjoining wooded valley escarpments frequented by bats and other sensitive wildlife such as foraging owls.

We would also point out that Holm/Evergreen Oak (*Quercus ilex*) is not a native species to Guernsey (or Britain). It is a Mediterranean/Continental tree with very little associated wildlife value when planted locally. Further, it has a tendency to become quite invasive and as such, should not be planted in close proximity to SSS- or ABI-designated sites.

In connection with the previous application La Societe also drew attention to the use of the building by roosting bats given that there are bat populations in this part of the Island. An inspection, by an appropriately qualified person, for current or recent use by bats prior to building works was recommended.

Consultations:

Guernsey Farmers Association – The application remains questionable and questions remain about whether the location of the dwelling could be repositioned to prevent any loss of the APA. The GFA maintains that any loss to the APA is unacceptable, whilst this is said, the application does now offer a compromise in terms of allowing connectivity to the surrounding fields and minimises the loss to the APA. If this application is approved the GFA would like to see assurances made by the owners that the remaining land will be committed to agricultural use and/or used for the proposed purpose of a connecting surrounding fields.

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 site is located in the Agriculture Priority Area and Policy GP15 seeks to retain agricultural land that could contribute positively to the commercial agricultural use of the APA. IDP paragraph 19.16.7 recognises that competition for land can occur when a residential use adjoins open land and the householder would like to incorporate some of that land within the domestic curtilage/garden of the dwelling, nonetheless there is a requirement to protect open land and agricultural land from development to ensure the open character of the areas can be maintained. There is a *"balance to be struck between ensuring the reasonable protection of open land and the requirements of the agricultural industry and the reasonable expectations of landowners to add new or additional land to the curtilage around a building"*.

The scheme seeks to demonstrate the sustainability benefits of the proposed dwelling in the location shown, to take full advantage of the site and extending into the agricultural land within the site by 305 sqm to provide garden area of the property. The submission sets out that this represents a balance between the reasonable protection of open land,

the future requirements of the agriculture industry and the reasonable expectations of the applicants.

The orientation of the building has been driven by the linear form of the site and the building could be accommodated within the existing domestic garden area (with a reduced arrival courtyard area and external parking/turning). The revised positioning would not alter the proposed massing nor impact on natural light given the open nature of the site/site boundary, particularly to the southwest. The argument presented relating to “maximising views” is not material to the assessment of the application and cannot influence the assessment and determination of these proposals.

This is a site where the Authority does not recognise all the land within the application site as domestic garden. 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. The proposed dwelling substantially fills both the existing and proposed areas of domestic garden as the existing site would be used for areas of off-road parking and turning along with courtyard garden areas and the bulk of the new dwelling. An area of garden would be formed on part of the agricultural land, along with an element of the built form.

Although the current access arrangements to agricultural land is via domestic land this is not uncommon in Guernsey. The submission has sought to consider whether a link access could be provided from one of the immediately adjoining fields (southwest, northeast and southeast) and notes that this could be achieved on the retained agricultural land. The submission does argue however, that this would require agreement from all relevant landowners, and it is acknowledged that this may not occur.

The land is relatively flat thereby making it generally suitable for either arable or livestock use. The land itself was not surveyed as part of the 2018 Habitat Survey, but land to the southwest is recognised as arable land (short term ley) and the land to the southeast and east is improved grassland (land that is intensively managed, used for grazing and silage). The survey noted that this site is of “Lower ecological value than other grasslands, fluctuation at landscape level”. Feedback from the Annual Monitoring Report (2018) suggested that land farmed for dairy farming had increased by 2.2% since 2017 and this also noted that it would be conceivable that more grain and fodder crops could be grown which means that the land requirements of the agricultural industry are likely to grow.

This land is part of a wider block of open land with a mix of Arable Land and Arable Short-Term Ley as identified in the Habitat Survey (2018). This is not a particularly small piece of land for Guernsey and the IDP acknowledges that farmers operate across a scattered pattern of generally small fields which typifies the traditional, small scale and intricate landscape. The size of the site, as part of a wider block of open land would not preclude agricultural use.

Policy criterion c. and paragraph 19.16.11 provide an unambiguous statement of policy without any reference to exceptional circumstances. The SLUP and IDP requirement to

find a reasonable balance is provided for, in relation to APA land, by allowing APA land that can be demonstrated not to be able to contribute to commercial agriculture to change use, or where it can be demonstrated that there would be unacceptable adverse environmental impacts. In this case whilst it could be argued that there would be no significant impacts on the achievement of strategic policies (IDP 19.16.4) there would be a cumulative impact should many small areas of APA land, such as this, be converted to garden. This would then undermine the objectives of the SLUP and IDP for the most valuable agricultural land.

It remains the case that 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.

In view of the above, it is clear that the land could positively contribute to the commercial agricultural use of the APA and could practicably be used for commercial agriculture within the APA without unacceptable adverse environmental impacts. The site also benefits from potential links to other land within this swathe of the APA. The scheme does not provide overriding justification for the change of use proposed that would meet the requirements of policy. The scheme does not therefore, meet the aims of GP15 c and OC5(A) of the IDP.

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 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

Impacts on landscape character and open land

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 been considered elsewhere 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 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 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.

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.

If the scheme were acceptable a meaningful and substantial boundary treatment and gate would be necessary in order to protect the agricultural land from encroachment and overspill of the domestic use and domestic paraphernalia.

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.

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 and Sustainable Design

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. The revised application sets out that solar panels are to be located on the roof the first storey block and that paving will be permeable. An EV charging point is proposed within the garage. The provision of these features can be managed by planning conditions and as submitted the scheme 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: 07/04/2025

