

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: Outline application to erect up to 12 dwellings including details of means of access.

LOCATION: Land to rear (south) of, Treetops & Hunters Haven, Saltpans Road, St. Sampson.

APPLICANT: Shire Limited

I refer to the application referred to below received as valid on 11/01/2024 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 17/04/2024

Drawing Nos: A7 Design: 23-1490 OP/01

Application Ref: OP/2024/0035

Property Ref: B008680000

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 proposal does not conform to a comprehensive scheme for the whole allocated housing site and it has the potential to compromise or inhibit the most effective and efficient use of this allocated housing site. The proposal does not accord with Policies MC2 or GP10.

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: OP/2024/0035
Property Ref: B008680000
Valid date: 11/01/2024
Location: Land to rear (south) of Treetops & Hunters Haven Saltpans Road
St. Sampson Guernsey GY2 4LY
Proposal: Outline application to erect up to 12 dwellings including details
of means of access.
Applicant: Shire Limited

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The proposal does not conform to a comprehensive scheme for the whole allocated housing site and it has the potential to compromise or inhibit the most effective and efficient use of this allocated housing site. The proposal does not accord with Policies MC2 or GP10.

OFFICER'S REPORT

Site Description:

The site comprises of an open agricultural field situated to the rear (south) of neighbouring residential properties which front onto Saltpans Road. The site forms part of the Franc Fief allocated housing site and is within a Main Centre Outer Area. The site is bounded to the west by an Area of Biodiversity Importance.

Relevant History:

12/05/2023 – PREA/2023/0750 – Pre-application advice regarding residential development.

Existing Use(s):

Agriculture use class 28

Brief Description of Development:

Outline planning permission is requested to erect up to 12 dwellings on the site and includes details of the access to the site, with all other matters to be the subject of subsequent Reserved Matters or detailed planning applications.

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

Policy MC2: Housing in Main Centres and Main Centre Outer Areas

Policy GP1: Landscape Character and Open Land

Policy GP3: Areas of Biodiversity Importance

Policy GP8: Design

Policy GP9: Sustainable Development

Policy GP10 : Comprehensive Development

Policy IP6: Transport Infrastructure and Support Facilities

Policy IP7: Private and Communal Car Parking

Policy IP9: Highway Safety, Accessibility and Capacity

Representations:

Four representations were received, main points as follows:

- Road safety and traffic management issues, including the ability of the surrounding road network to cope with this and other developments in the area.
- No Development Framework has been completed to enable a planned and cohesive development of the entire Franc Fief site.
- No Traffic Impact Assessment has been completed.
- No affordable housing is proposed.
- The proposed piecemeal development of the site would enable a series of similar proposals to be made without a Traffic Impact Assessment or contributing to affordable housing.
- Concerns raised about the density of the development and lack of community and amenity space.
- Concerns raised about the lack of a landscaping plan and properties located up against the boundary of the adjacent Area of Biodiversity Importance.

Consultations:

The Office of Environmental Health and Pollution Regulation, 31/01/2024

"I have reviewed the proposed plans for Hunters Haven, Saltpans Road which were received by email on 16th January 2024 and there are a number of issues of concern that I must raise. Firstly, I have reviewed the historic records and there is a history of greenhouses on the site, although the records do not indicate they were heated I would be concerned about contaminated land from this industry. Additionally, aerial images of the site also show a possible builder's yard and I would be concerned about contamination from this former use. Furthermore, the historic records also indicate that somewhere on the site there has previously been a workshop and a forge, as such I would be specifically concerned about metal and hydrocarbon contamination arising from this past use. Therefore, as a result of these varied and polluting industrial activities, I would be inclined to recommend the below contaminated land condition.

Secondly, due to the size of land parcel and the fact there are several properties in close proximity to the development. I am inclined to recommend the below condition in regard to a Construction Environmental Management Plan (CEMP).

Finally, as the application is essentially for the development of a housing estate. I would expect there to be some form of lighting assessment or plan to be submitted as part of this application. As such, I am recommending the below condition in regard to an external lighting assessment.

Potential Contaminated Land Condition

Please note this is one condition with multiple sub-sections:

(i) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by Planning Services: (A desktop study shall be the very minimum standard accepted. Pending the results of the desk top study, the applicant may have to satisfy the requirements of b and c below, however, this will all be confirmed in writing).

- (i) (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 BS10175:2001+A2:2017 - Investigation of Potentially Contaminated Sites - Code of Practice;

and unless otherwise agreed in writing by Planning Services,

- (i) (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 BS10175;

and, unless otherwise agreed in writing by Planning Services,

- (i) (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) The development hereby permitted shall not be occupied or brought into use until there has been submitted to Planning Services verification by a competent person approved under the provisions of condition (i)c that any remediation scheme required and approved under the provisions of condition (i)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of Planning Services in advance of implementation). Unless otherwise agreed in writing by the local planning 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 condition (i) c.”

Information/Advice Notes

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 conditions that the applicant has reference to Land Contamination risk management available at <https://www.gov.uk/guidance/land-contamination-risk-management>.

Construction Environmental Management Plan (CEMP)

Prior to any demolition a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Authority. Agreed details shall be carried out as approved unless otherwise agreed in writing by the Authority. At a minimum the following should be included:

- I. A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme)
- II. A scheme of how the contractors will minimise complaints from neighbours regarding issues such as noise and dust management, vibration, site traffic and deliveries to and from the site
- III. Details of hours of construction including all associated vehicular movements
- IV. Details of the construction compound
- V. A plan showing construction traffic routes

The construction shall be carried out in accordance with the approved CEMP.

External Lighting

No development shall take place until details of external lighting have been submitted to and approved in writing by Planning Services. The external lighting shall be installed in accordance with the approved details and thereby retained as such unless a variation is subsequently submitted to and approved in writing by Planning Services.

I would be grateful if these issues are considered during the determination of this application”.

Constables of St Sampson, 09/02/2024

“Thank you for requesting the Douzaine’s comments in respect of the Outline Planning Application (OPA) for the above proposed development which is commonly referred to by our community as Franc Fief.

You will recall that the Douzaine has requested, in our letter dated 14 April 2023 regarding the Pre-Plan Consultation in respect of the Island Development Plan (IDP) Focused Review, that Franc Fief as a Housing Allocation Area (HAA) be removed. When

the IDP was adopted, it is our understanding that the extant HAAs were simply rolled over without any significant consideration in regards to best practice of selecting sites based on infrastructure needs and topography in terms of low lying land and associated flood risks.

Therefore it is counterproductive for us to make further objections at this time to this HAA but as it stands admissible at this point in time, we set out below our concerns.

The applicant is seeking an OPA for a site which is part of an extensive HAA. It is strongly believed this extensive HAA needs a full Development Framework (DF) to ensure that it conforms to the Strategic Land Use Plan (SLUP) and Island Development Plan (IDP) principle aims of development *“that most effective and efficient use is made of the finite land....”*

This is a specific, large scale HAA which is complex due to its location and fulfils the requirements for a DF. A DF will ensure that this potential large scale development is well planned and the area considered comprehensively from the outset. Crucially, a DF will be subject to public consultation prior to approval meaning that our community will have the opportunity to study and comment on the development principles and for these comments to be taken into consideration before a DF is finalised and adopted. There is a level of consultation and public awareness that far outstrips an OPA especially one such as this which requests so many matters to be reserved.

This OPA is not in accordance with other relevant policies of the IDP and even though the applicant has asked for all other matters to be reserved, except crucially as referred to in their letter (2.2) that *‘other than means of access to the site (which is to be taken from Saltpans road as “existing access/egress”*. This would fall under IP9 (Highway safety, Accessibility and Capacity) and GP8 (*GP8 “(f) demonstrate accessibility to and within the building for people of all ages and abilities”*) as well as GP10 (Comprehensive Development) because the HAA is a comprehensive development and is not limited to one portion of the HAA.

In fact the applicant states in 8.2 of their letter *“challenges associated with the highway network serving and surrounding the site”* but then seemingly assumes that by simply putting in one access point and trying to push forward with one part of this HAA, that if it is done piecemeal, these challenges are either ignored or left to others to resolve which is unacceptable.

Policy MC2

“Development that is unlikely to inhibit the implementation of future housing development, or inhibit the implementation of a Development Framework or prejudice the comprehensive development of allocated housing sites, may be supported where it is in accordance with all other relevant policies of the Island Development Plan.

A Development Framework will be required for proposals of 10 or more new dwellings, for sites of over 0.25 hectares (1.5 vergées), and for proposals exceeding 2,000 square metres of gross floor area. An approved Development Framework will be taken into account when considering proposals for the site to which it relates”.

It is clear from the OPA that this is part of a very large site and it is of grave concern that progressing a partial but crucially important section of this site, due to its immediate proximity to the only existing access point, without a DF will inhibit the implementation of future housing development within this HAA. To be explicit, the area of the HAA that this OPA relates to has the only existing access point from Saltpans road; access that would need to be granted and shared with any future development of the HAA which could include hundreds of dwellings and which would continue to add vehicle movements to Saltpans road. Therefore, there is arguably an impact on IP9 and the Planning Authority should take this into account when considering this proposal. If there is no DF for the entirety of this site, a DF which would clearly need a Traffic Impact Assessment (TIA) due to the potential yield of dwellings within this HAA, it is unclear how the Planning Authority could be convinced that this development is unlikely to inhibit the implementation of future housing in this HAA as required under MC2. Consideration also needs to be given to how this will inhibit the implementation of a DF and how it will prejudice the comprehensive development of this HAA.

Policy IP9 Highway safety, Accessibility and Capacity

"In considering proposals for development the Authority will take into account:

- a. the existing public road network's ability to cope with any increased demand as a result of the development and may require physical alterations to the highway or the implementation of an operational scheme to manage the impact of the development on the road network (a Traffic Impact Assessment may be required); and,*
- b. the access requirements of people of all levels of mobility and health".*

This application for a partial development of the site is proposing 12 additional dwellings, but it is clear that the site is part of a HAA which could yield many more. There will be a tipping point where the existing road network will impact highway safety and capacity and that may already be the case due to the recent new build estate and another property in the immediate vicinity also seeking planning application which could potentially double the level of vehicle movements in the immediate area.

The applicant has tried to imply precedent to other developed sites in the immediate vicinity (GHA development – Pont Colliche) in regards their belief that it will be highly unlikely that there would be a materially harmful impact on highway safety should further development in this immediate area go ahead. It should be noted that the access point to Pont Colliche is almost directly opposite the intended development site; it is of course arguable with the already numerous new dwellings and density of those dwellings, that it would have a materially harmful impact on those members of our community under IP9 (b) *"the access requirements of people of all levels of mobility and health"*.

Saltpans road is narrow, with blind corners and other sharp corners; it has no pavement and is hard to transverse safely for example but not limited to; as a pedestrian, in a wheel chair or whilst pushing a pram or walking with young children. Further, cyclists can also be confronted by vehicles travelling in the opposite direction encroaching on their side of the road due to the narrowness of the road. Any more vehicles in the

immediate area will increase the risk of near misses, will put the existing road infrastructure under more pressure with road users and will materially impact *“the access requirements of people of all level of mobility and health”*. The only way this can be negated would be by a change to the road network as per IP9 (a).

This may be challenging as IP9 also seeks to ensure that there is no adverse impact on the landscape character or distinctive built features whilst trying to ensure that any proposals enhance and contribute positively to the character of the wider area, an area which has been historical been known as a quiet road used primarily for access to properties that have been in the area for a long period of time with previous lower volumes of vehicle movements. It is reasonable to expect from the new builds at Pont Colliche as well as the expected yield of properties in the HAA that IP9 will need due consideration and a full DF that would include a TIA to determine access within the HAA as well as to the site which may require road network changes, also noting that the junction on to Route Militaire has poor visibility and there have been several recent accidents recorded there.

It is unclear from the application if the applicant will grant access to the rest of the HAA to use the existing access point or if alternative access points will be agreed and shared. Without a DF it is unknown as to how the rest of this extensive HAA could be utilised, including but not limited to, how it will be accessed.

Access within and access to the site has not been requested as a reserved matter. However, there is no indication and there is no demonstration that accessibility to the site under *“GP8 (f) demonstrate accessibility to and within the building for people of all ages and abilities”* will be upheld. There is dedicated access that is immediately on the site but there is no accessibility illustrated to the building site for people of all ages and abilities from Saltpans road. For example but not limited to, it is notable that there are not even very basic accesses for pedestrians as there are no pavements and there is no separation from vehicles or other road users in the immediate vicinity to this HAA.

Policy GP3 (Areas of Biodiversity Importance (ABI))

It is noted that this application is adjacent to an ABI. It is the case that this applicant has asked for it to be a reserved matter but it is hard to understand if the plans attached to the application are appropriate site layouts and/or how boundaries will be treated noting that there should be no adverse impact on this ABI area. In fact 19.4.4 of the IDP states *“In these areas it will be expected that the impacts of development on bio diversity will be considered at the outset of the design and development process....”*. We do not believe the request to consider this policy as reserved matters should be upheld.

Policy GP10 Comprehensive Development

“In considering proposals for development the Authority will take into account the need for individual proposals to conform to a comprehensive scheme for the whole site or area in order to make the most effective and efficient use of the land. Proposals will not be supported where their implementation in isolation would compromise the most effective and efficient use of land”.

It is strongly believed that only with a DF for the entire HAA can GP10 be upheld. It is notable that in considering this proposal for development the Authority will be unable to take into account the need for this individual proposal because it cannot conform to the comprehensive scheme for the whole site because, as a matter of fact, there is no comprehensive scheme, there is no DF. Without this then it cannot be deemed in accordance with this policy.

Further, it is not demonstrable that this one area of the site makes the most effective and efficient use of the land that is part of a much broader HAA.

It is believed that this proposal should not be supported because its implementation, in isolation, could compromise the most effective and efficient use of this HAA. In principle, by stating how many dwellings and being for a partial area of this HAA it means that the OPA does not abide by the principles as set out in Policy GP10.

Policy GP11

At 6.2 of the applicant's letter it is stated that there is no guarantee any of the remainder of this HAA will come forward. Although there is no guarantee, it is nonetheless a very large HAA. The application implies a reluctance to consider granting access rights to other applicants, owners of the land incorporated within the HAA. More worryingly, is the implication that from this very large HAA, no affordable housing will come forward if applicants submit OPAs such as this in isolation and by doing so, argue that they do not have to consider GP11. This could set a precedent of developers submitting numerous OPAs, for parts of large HAA's ensuring that they are below the threshold for GP11. In the applicant's conclusion they state (8.1) *"Given the current housing crisisit is critically important that the DPA adopts a supportive position in regards to proposal for residential developments"*. It is our belief that a proportion of the residential development which is critically important, is affordable housing and by agreeing to a piece meal approach such as this OPA, GP11 will be side stepped.

It is strongly suggested that the Authority refuse this application and continue to work toward a DF that will enable this HAA to be developed should it remain as a HAA and within the policies of the IDP and the overarching SLUP".

Summary of Issues:

The main issues in deciding this application are:

1. The principle of housing development on this site.
2. Whether the proposal constitutes comprehensive development.
3. Road safety and traffic management.

Assessment against:

- 1 - Purposes of the law.**
- 2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.**
- 3 - General material considerations set out in the General Provisions Ordinance.**
- 4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).**

Section 15 of the Land Planning & Development (Guernsey) Law, 2005 (the '2005 Law') provides that planning permission or outline permission may be granted by the Development & Planning Authority on an application duly made to it, or on appeal. Outline permission is defined in Schedule 2 to the 2005 Law as planning permission subject to the reservation of particular matters for subsequent approval. These matters are known as 'reserved matters' as listed in section 18(1) of the General Provisions Ordinance and comprise siting, design, external appearance, means of access and landscaping. An outline planning permission usually sets high level land-use and design parameters and allows for subsequent reserved matters applications to be made for specific developments on individual sites in compliance with those outline parameters.

The site forms part of the Franc Fief allocated housing site. Policy MC2 sets out that *"Allocated housing sites identified on the Proposals Map can only be developed for housing and, where appropriate, complementary development appropriate to the site and location, as part of a comprehensive scheme taking into account any Development Framework for the site which has been approved by the Authority. Where there is an approved Development Framework it will be taken into account when considering proposals for the site or area to which it relates."*

Development that is unlikely to inhibit the implementation of future housing development, or inhibit the implementation of a Development Framework or prejudice the comprehensive development of allocated housing sites, may be supported where it is in accordance with all other relevant policies of the Island Development Plan."

Policy GP10 sets out that it is vital that in considering proposals for development that the most effective and efficient use is made of the finite land resource available on the Island. The Policy goes on to state that *"In considering proposals for development the Authority will take into account the need for individual proposals to conform to a comprehensive scheme for the whole site or area in order to make the most effective and efficient use of the land."*

Proposals will not be supported where their implementation in isolation would compromise the most effective and efficient use of land".

There is no approved Development Framework for the Franc Fief allocated housing site at the present time. Although matters relating to the siting, design, external appearance and landscaping are requested to be 'reserved matters', the proposed piecemeal development of the allocated housing site is premature, particularly prior to the preparation of a Development Framework for the entire Housing Allocation and the preparation of a Traffic Impact Assessment for the entire Housing Allocation and the surrounding area. The proposal does not conform to a comprehensive scheme for the whole allocated housing site and it has the potential to compromise or inhibit the most effective and efficient use of this allocated housing site. The proposal does not accord with Policies MC2 or GP10.

The requirement for allocated housing sites to be developed in a comprehensive manner in order to ensure the most effective and efficient use of land is a fundamental

element of Policies MC2 and GP10 and consequently the proposal cannot be considered as a minor departure.

Having regard to the Guernsey Court of Appeal judgement in The Island Development Committee –v- Portholme [2002] (Civil 320), as the proposal fails to satisfy the requirements of Policies MC2 and GP10, then the proposal must be refused as no policy gateway applies and no further consideration of the proposals is necessary.

It is recommended that the application is refused.

Date: 17/04/2024