

**STATES OF JERSEY**  
**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**  
**APPEAL OF A DECISION UNDER ARTICLE 108**  
**REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**  
by Mr Philip Staddon BSc, Dip, MBA, MRTPI  
an Inspector appointed under Article 107

**APPEAL BY: Mr T. Wilcockson**

**AGAINST: Refusal to grant planning permission for a proposal to construct a three car garage and bin store. Decision dated 27 March 2015**

**LOCATION: Land to the south of Robin Hood Cottage, Les Mont de Vignes, St. Peter, JE3 7BD**

**REFERENCE: P/2014/2232**

**APPEAL PROCEDURE: Written Representations**

**SITE VISIT: 12 October 2015**

**DATE: 26 October 2015**

## **Introduction**

1. This report contains my assessment of the appeal made by Mr T. Wilcockson. The appeal is made against the decision of the Department of the Environment to refuse to grant planning permission for the erection of a three car garage and bin store on land adjacent to Robin Hood Cottage.
2. Robin Hood Cottage is situated in an attractive wooded hillside location and lies on the east side of a lane that runs northwards from a narrow road known as Les Mont des Vignes. The lane provides access to the cottage and three further properties to the north. I understand that a planning application to demolish the cottage and build a replacement dwelling further to the north on the plot was submitted in 2014 but later withdrawn.
3. The current application and appeal documents refer to the site address as 'Robin Hood Cottage'. On a procedural point, this is not strictly correct, as the appeal site is not part of the cottage's immediate domestic curtilage as it lies on the other side of the lane and forms part of the largely wooded Field 1001 (albeit within the Appellant's ownership). I consider that the site address is more accurately described as 'land to the south of Robin Hood Cottage'.
4. The appeal site itself is a small part of the wider Field 1001 and lies adjacent to, and above, the level of the lane. It contains trees and vegetation including sycamore, bay and bamboo.
5. There is a clearing amongst the trees that has, I understand, been used for casual parking purposes for many years. However, whilst there is evidence of parking activity, it is not formalised in terms of any hard surfacing or physical structure. There was a small vehicle under a tarpaulin when I visited the site.

## **The appeal proposal**

6. The proposal comprises the erection of a three car garage and bin store. The garage would be located in the north-western part of the site and be of a 'sunken' design, set into the hillside between two banks. It would have a 'green' roof. Being set into the ground, three of the garage walls (north, south and west) would be retaining structures.
7. The east elevation would include three timber clad garage doors opening on to an access / manoeuvring apron, which would be surfaced in a grass grid paving system. This area would be bounded to the south by a 'timber crib' retaining structure, part of which would include a recessed bin store. Overall, the scheme would involve some quite significant excavation and site remodelling to create the garage and its manoeuvring area.
8. The application documents state that no trees would be removed and that the site would be landscaped, including the removal of non-native / invasive shrub species and replacement with native species.

## **The refusal and the main issues**

9. The planning application was refused by the Department on 27 March 2015. The reason for refusal related to the 'Green Zone' location of the site within which buildings and changes of use (to residential purposes) would not normally be allowed, as they are considered harmful to the natural environment.
10. The main issue in this case relates to whether, and if so the extent to which, the proposal conflicts with the planning policies set out in the Island Plan, most notably in terms of its provisions in respect of the defined 'Green Zone' and its 'general development considerations.'

## **The Island Plan 2011 (Revised 2014) – policy considerations**

11. The Island Plan has primacy in decision making on planning applications. There is a general legal presumption that development in accordance with the plan will be permitted and that development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'<sup>1</sup> for overriding its provisions.
12. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Parts of the island are designated as Coastal National Park (CNP) areas, within which development is very strictly controlled. The countryside outside the CNP is defined as the 'Green Zone' and is afforded a high level of protection from development. The appeal site lies within the Green Zone.
13. Policy NE 7 sets out a general policy presumption 'against all forms of development' in the Green Zone and clarifies that this includes any changes of use to extend a domestic curtilage. The policy does allow some very limited exceptions under defined development categories. Under the 'residential' category, ancillary buildings may be allowed within existing curtilages, subject to specified criteria. These include being of a modest scale, appropriate design and absence of any serious landscape harm. The exception category for 'minor development' includes similar criteria.
14. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality.

## **The Appellant's Case**

15. The Appellant contends that the proposal contributes positively to the criteria established under Policy GD 1 and sets out a case structured around the GD 1 considerations along with a rebuttal of the officer's report.
16. The key points of the Appellant's case under GD 1 can be summarised. First, he considers that the proposal would replace the intrusive and visually harmful surface parking, encourage biodiversity, offer a practical solution to

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<sup>1</sup> Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

bin storage and provide a charge point for an electric vehicle, along with secure cycle storage. Second, he argues that the proposal would remove, rather than cause, harm to the environment through its removal of the surface parking and its comprehensive approach to landscaping and ecology. Third, it is contended that there would be no undue impact on neighbours, and arguably some benefits, such as avoiding vehicle turning movements on their properties. Fourth, it is felt that the scheme contributes to transport objectives by seeking to improve the existing parking situation and by providing storage for sustainable transport modes (bicycles and an electric car). Fifth, the design is considered to be of a high and sensitive standard.

17. In terms of the Green Zone policy NE 7, the Appellant explains how the proposal was considered to offer advantages over an alternative garage siting (on the appeal site).
18. There are some other matters raised in the Appellant's case concerning possible land swaps and policy considerations in respect of loss of agricultural land. However, any land swap proposal is not part of the substantive proposals before me and the reason for refusal does not include any reference to agricultural land loss. Accordingly, I do not consider it necessary to comment further on these matters.

## **Discussion and assessment**

### *The principle of the development*

19. Policy NE 7, which defines the Green Zone and the development management regime within it, is the most significant policy to consider in terms of establishing whether the broad principle of development is acceptable. The policy adopts a high level of development restraint. Indeed, its presumption is that development is generally not acceptable in principle; environmental and landscape protection takes precedence in policy terms.
20. As the appeal site lies outside and beyond the curtilage of the cottage and is, effectively, within open countryside, the development cannot benefit from the 'residential' exceptions set out in the policy. Similarly, I do not consider that it can claim to be a 'minor development' exception 'incidental to the primary use of land'<sup>2</sup>, given that Field 1001's primary use is not residential.
21. Whilst I note that there has been some parking activity on the site over the years, the precise nature and Planning status of this is unclear. In any event, such activity does not establish a principle that necessarily supports development proposals which, in their context, involve quite substantial engineering and building works.
22. Accordingly, the principle of the development does not generally accord with the Island Plan. However, it is important to consider whether there are any other considerations that would provide sufficient justification for departing from this high-level presumption.

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<sup>2</sup> The term used under exception 12 in Policy NE 7 of the Revised 2011 Island Plan.

*Are there reasons to depart from the NE 7 presumption?*

23. I do agree with some of the arguments put forward by the Appellant under Policy GD 1. For example, there is no doubt that the design is of a high standard and care has been taken to achieve a scheme that minimises its visual impact and includes positive landscaping and ecological opportunities. However, whilst these elements are commendable in their own right, they are not sufficient justifications to set aside the NE 7 presumption. Indeed, the appeal proposal does not fall within any of the exceptions specified in the policy and I do not consider that partial compliance with some of Policy GD 1 criteria can outweigh the provisions of the Green Zone Policy NE 7 in this particular case.
24. In reaching my view, I have noted the Appellant's comments on the spectrum of 'harm' (to the natural environment) that might arise and whether and how that can be mitigated. I accept that there is often a degree of debate and subjectivity about quantifying harm. However, it is important to recognise that the designated Green Zone and the associated Policy NE 7 are of strategic significance to the protection of the identity and character of Jersey's countryside. In that context, even well designed and carefully conceived schemes can be harmful and alien, and to allow such built developments would undermine and dilute a fundamental element of the Plan. Accordingly, I am not convinced that the case made by the Appellant provides a sufficient justification for setting aside Policy NE 7.

### **Conclusion and recommendation**

25. The appeal proposal is in conflict with Policy NE 7, which seeks to impose a strong level of development restraint in Jersey's countryside areas to protect the natural environment. There are no exceptional reasons that would provide sufficient justification for departing from Policy NE 7.
26. For the reasons stated above, the Minister is recommended to dismiss this appeal and uphold the decision made by the Department of the Environment dated 27 March 2015 (Reference P/2014/2232).

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**