

**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: Ms. S. Ransom**

**AGAINST: Refusal to grant planning permission for a change of use of Field No. 321 to domestic curtilage. Decision dated 23 April 2015**

**LOCATION: Field No. 321, Highfield Lane, St Ruettes, St. Saviour, Jersey, JE2 7HG**

**REFERENCE: P/2014/1753**

**APPEAL PROCEDURE: Written Representations**

**SITE VISIT: 7 December 2015 (accompanied)**

**DATE: 4 January 2016**

## **Introduction**

1. This report contains my assessment of the appeal made by Ms. S. Ransom against the decision of the Department of the Environment to refuse to grant planning permission for the change of use of a field to extend a residential curtilage.
2. Highfield is a substantial period property situated in an elevated position within its own grounds in the countryside to the north of St Helier. Based on the documents before me, the Appellant owns some 34.1 verges of land in total. About 28 verges is in agricultural use (arable, horse grazing and a small wooded area) and the house, gardens and swimming pool account for a further 3.34 verges. The remainder is accounted for by the appeal site, Field No. 321 and an adjacent former quarry area.
3. Field No. 321 lies immediately to the east of the Highfield country house and its gardens. It is an irregular shaped parcel of grassed land, with its banked southern boundary curving around the edge of the former quarry workings (there is a notable drop down from the site). The boundary to the north-east is straight and is formed with an adjacent farm field beyond (not controlled by the applicant). At present, access to the field is limited to a track from the rear of the house, although when I visited the site there was a car, a small mechanical digger and a wheeled hut on the appeal site. There was also a quantity of equestrian paraphernalia (horse jumps) present on the site.
4. The Department refused the application on 23 April 2015. The reason for refusal stated: "*The proposed change of use of part of Field 321 for the extension to domestic curtilage of Highfield House would result in an unreasonable loss of agricultural land causing harm to the character of the countryside and Green Zone by virtue of the impact of creeping urbanisation and the resultant cumulative impact of such development on the character of the countryside, contrary to Policies GD1, ERE1 and NE7 of the Jersey Island Plan 2011 (Revised 2014).*" A subsequent review by the Planning Committee upheld the refusal.

## **The main issues**

5. The main issues in this case relate 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.'

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

6. There is a general legal presumption that development in accordance with the Island Plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'<sup>1</sup> for overriding its provisions.

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

7. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Much of the island's countryside is defined as the 'Green Zone' and is afforded a high level of protection from development. The appeal site lies within the Green Zone. The Green Zone Policy, NE 7, sets out the general presumption '*against all forms of development*' and explicitly identifies the '*change of use of land to extend a domestic curtilage*' as one of the types of development that would normally be resisted. Indeed, the supporting text in the Plan states that there is the '*strongest presumption*' against such garden extension proposals (paragraph 2.133).
8. Policy ERE 1 seeks to safeguard agricultural land and makes a general presumption against the loss of good agricultural land for development or other purposes. The policy states that where exceptions are proposed, considerations will include: the impact on the viability of an agricultural holding; the nature of the proposed use; in the case of a dwelling, the requirement for reasonable private amenity space; the visual impact and the recommendations contained in the Countryside Character Appraisal.
9. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact (including specific regard to the character of the countryside), impact on neighbouring uses and occupiers, economic impact, transport and design quality.

### **The Appellant's Case**

10. The Appellant accepts that the appeal proposal is contrary to Policies NE 7 and ERE 1 but seeks to make a case for an exception, based on the particular circumstances in this case. The key elements of the exception case made by the Appellant are set out under the two principal policies – ERE 1 (protection of agricultural land) and NE 7 (Green Zone).
11. In response to Policy ERE 1, the Appellant argues that the land has not been in agricultural use for over 40 years and that it does not form part of an agricultural holding. Further, it is contended that due to its limited size, narrow width and irregular shape around the edge of a former quarry, along with its restricted access, the field is not suitable for cultivation by modern farm machinery. The Appellant also suggests that 'even with the existing perimeter fence' the site is not suitable for horse grazing due to the proximity of the quarry.
12. Under Policy NE 7 considerations, the Appellant argues that because of the nature and concealed location of the field, it does not positively contribute to the character of the countryside. The Appellant considers the proposal will not result in 'creeping urbanisation' as there are no building proposals and it is purely intended to lay the land out as gardens to Highfield. The Appellant counters the concern that allowing the proposal would create a precedent for others, with consequential cumulative harmful effects, by arguing that the particular site circumstances are such that other 'like for like' proposals would be rare, and even if there were a few, the proposal would still fall within the 'exceptional' category.

## Discussion and assessment

13. The policy position is clear. The complementary combination of Policy NE 7 and Policy ERE 1 provides a very clear presumption against the expansion of residential curtilages in the Green Zone and the loss of agricultural land respectively. These policies have a very strong connection with the Plan's overall strategy for Jersey. This case centres on whether there is sufficient justification for departing from these presumptions.
14. I do agree with the Appellant that Field 321 is relatively small, that it is of an irregular shape and that, next to it, there are some former quarry workings. However, the field pattern in this part of Jersey is a rich and varied mosaic. There are many fields that are larger than Field 321 but there are also fields that are smaller. Some fields are regular in shape, others are not. There is also a wide spectrum of uses that includes arable, pasture, grazing, equestrian use, woodland and some areas that show no particular signs of specific activity at all.
15. I have noted the Appellant's views, in response to Policy ERE 1, about the absence of agricultural use for some time and about the potential difficulties in terms of farm machine access and, if used for grazing, the danger to stock. However, I am not convinced by these arguments for a number of reasons. First, the presence of a car, a wheeled hut and a mechanical digger at the time of my visit all suggest that the site is accessible; there may well be issues about access by very large agricultural machinery, but that does not mean the land is not capable of mechanical cultivation. Second, the absence of active agricultural use on any field may be simply a landowner decision; the fact that a field has not been actively worked for some time does not mean that it could not be in the future. Third, although it is beyond my role to carry out primary research, when I was working out my route map for site visiting, I could not help but notice that the Google Earth image (dated 27 June 2005) appears to show the site as a cultivated field. Fourth, whilst there is a level drop to the former quarry beyond, I do not consider that this precludes grazing or livestock rearing on the site; there is not an open sheer drop and, if needed, the existing boundary treatments could be enhanced or supplemented.
16. In terms of the Policy NE 7 considerations, I do not share the Appellant's view that this field does not contribute to the character of this part of the countryside. As I have noted above, there is a rich and diverse rural patchwork and field 321 is a part of that pattern. I have some sympathy with the Appellant's objection to the allegation of 'creeping urbanisation' contained in the refusal reason and accept that the proposal does not involve the erection of buildings. Indeed, the Appellant has offered to accept a Planning condition restricting 'permitted development' rights if permission were to be granted. However, the Department's objection has a clear policy basis whereby the Island Plan seeks to protect the countryside and prevent its loss and dilution through development restraint.

17. The 'development' in this case relates to a change of use from a grassed field to a residential garden. Whilst some may not agree with the term 'urbanisation' to describe that change (and may prefer 'domestication'<sup>2</sup>), there is no escaping the fact that extending a domestic curtilage in to the countryside will create a material and discernible change. Its appearance and character will change; it will lose its role and appearance as part of the countryside and will typically become more manicured and formal. It is also likely to have the trappings and paraphernalia that would be expected in a garden (which would not be expected in a field). The expanded garden may well be very attractive when viewed in isolation (indeed many gardens are), but it can only be achieved by a diminution and dilution of the countryside that the Island Plan seeks to protect.

### **Conclusion and recommendation**

18. The appeal proposal is in serious conflict with the Island Plan's Green Policy NE 7 and Policy ERE 1, which seek to impose a strong level of development restraint in Jersey's countryside areas and to protect agricultural land. In my view, there is no sufficient justification in this case for departing from these important Planning policies.
19. 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 23 April 2015 (Reference P/2014/1753).

*P. Staddon*

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

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<sup>2</sup> 'Domestication' is the term used in Paragraph 2.133 of the Revised Island Plan 2011.