

**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 and Mrs Boydens**

**AGAINST: Decision of the Department of the Environment to Refuse to Grant Planning Permission for a proposal to "*Demolish existing structures and construct 1 No. three bedroom dwelling with associated hard and soft landscaping*"**

**DECISION DATE: 28 June 2016**

**LOCATION: Former quarry to the East of Field No. 351, La Route de Petit Port, St Brelade**

**REFERENCE: P/2016/0460**

**APPEAL PROCEDURE: Hearing - 4 October 2016**

**SITE VISIT: 4 October 2016**

**DATE: 9 November 2016**

## **Introduction**

1. This report contains my assessment of the appeal made by Mr and Mrs Boydens against the decision of the Department of the Environment to refuse to grant planning permission for the erection of a dwelling.

## **The site and the surrounding area**

2. The site is referred to in the application documentation as 'Corbiere Stone Yard'. It forms part of a former gravel quarry, now in use as a yard for the storage of granite to supply to construction projects. It lies on the north side of La Rue de Petit Port and is accessed by a driveway between two residential properties, *Newlands* and *Holmsdale*.
3. The driveway access extends (and falls) northwards about 47 metres and then opens out into the main part of the site, which is more or less rectangular in shape, with a typical width of about 22 metres and a length of about 86 metres (at its midpoint). Most of this area is set at a lower level (due to the past gravel extractions) and the margins of the site form mounded banks. To the north and west is open land. To the south is the rear boundary of *Newlands*, a bungalow, and to the west are the gardens of five residential properties (*Holmsdale*, *Hazy View*, *Le Jardin*, *Son Vida* and *Southern Pines*).
4. When I visited the site, it contained a number of sheds, some machinery (for cutting stone) and quantities of granite stone, stored in the open.

## **The proposal and the Department's refusal decision**

5. The application sought planning permission to demolish all of the existing shed structures within the yard and to construct a single storey three bedroom dwelling with integral garage to the northern end of the site.
6. The dwelling itself (and its hard surfaced areas) would occupy just over a third of the main stone yard site. Immediately to the south of the proposed dwelling would be its main garden area (195 square metres) and, beyond this, would be a 'wildflower meadow' measuring approximately 16 metres by 14.5 metres (232 square metres).
7. The remaining area, leading up to the rear boundary of *Newlands* would be retained as a 'commercial storage area', the useable part of which would be about 14 metres by 16 metres (224 square metres). The submitted plans indicate additional tree and bush planting on the western and southern banks that would enclose the yard.
8. The planning application was refused by the Department on 28 June 2016 for three reasons which are reproduced below:

*Reason 1. The application site is located within a designated Green Zone (Policy NE7) wherein there is a starting presumption against all forms of development. Permissible exceptions to the presumption against development may include the redevelopment of an employment building(s), but only where, in the first instance, the redundancy of employment use is proven, as required under Policy NE7(10a) and Policy E1. The dated*

*marketing exercise fails to demonstrate that the site is unsuitable and financially unviable for any employment use. Moreover, the viability of the site as employment land is supported by the established ongoing commercial operation. The scheme therefore fails to prove the redundancy of employment use and is thereby contrary to policies NE7 and E1 of The Adopted Island Plan (Revised 2014).*

*Reason 2. Permissible exceptions to the presumption against development contained under Policy NE7 may include the redevelopment of an employment building(s), involving demolition and replacement for another use but only where, in part, the redevelopment gives rise to demonstrable environmental gains. The scale and visual mass of the proposed dwelling is such that it is significantly larger than the modest structures it is designed to replace and is thereby considered to have a more pronounced impact upon the landscape. The possibility of repairing and restoring landscape character is further diminished by the retention of a commercial operation within the proposed site. The scheme therefore fails to deliver demonstrable environmental gain and is thereby contrary to policy NE7 of The Adopted Island Plan (Revised 2014).*

*Reason 3. The key test under policy GD1 of The Adopted Island Plan 2011 (Revised 2014) regarding amenity is one of "unreasonable" harm. In this instance the conflicting relationship between residential occupiers and the movement of commercial vehicles is considered to pose an unacceptable risk to the safety and environment of the respective end users, amounting to an unreasonable degree of harm, contrary to policy GD1 of The Adopted Island Plan 2011 (Revised 2014).*

### **Background Planning history**

9. I was advised at the Hearing that the gravel quarrying operations ceased many years ago and, although a precise date was not known, the Appellants' advice that it was 'prior to 1969' was not contested. I was also advised that before the Appellants' ownership and use, the site had been used for lorry parking and haulage.
10. In 1991, Planning permission was granted for 'Change of use from quarry to granite storage – retrospective' (Reference 5268/D). The Applicant was Mr Boydens. The permission was subject to a number of Planning conditions. Condition 2 restricted the use to 'granite storage purposes only and for no other purpose'. Condition 3 required that the height of stored stone did not exceed the surrounding ground level. Condition 4 made clear that the permission was for the change of use only and 'not for any associated building works.'
11. It is clear to me that this stone yard use had operated for many years. It was also clear that the various shed structures on site are not covered by the 1991 permission or any subsequent permission. Furthermore, it is also apparent that some associated 'processing' works occur at the site i.e. cutting and finishing of granite stones (although I was advised that these processes are increasingly carried out on construction sites, rather than in the yard). However, these structures and activities appear to have existed

for a considerable period of time. The business appears to have operated without complaint from neighbouring residents.

12. In January 2013, an application (P/2012/1328) for a dwelling was refused. This proposal was, to all intents and purposes, identical to the current appeal proposal. Following a request for reconsideration, the Committee maintained the decision to refuse the application. There were two reasons for refusal that, in short, related to conflict with the NE 7 Green Zone policy and conflict with Policy E 1 concerning employment land.

### **The Island Plan and the Key Planning Policies**

13. There are three key policies in this case. These are Policy NE 7, Policy E 1 and Policy GD 1.
14. Policy NE 7 sets out a high level of protection from development in the Green Zone. It states that there will be a general policy presumption 'against all forms of development'. It specifies a number of development types that will not be permitted and these include the development of new dwellings (subject to some exceptions). Exception (10) states:

*10. the redevelopment of an employment building(s), involving demolition and replacement for another use, but only where:*

  - a. the redundancy of employment use is proven in accord with Policy E1: Protection of employment land or where the development involves office or tourism accommodation;*
  - b. and it gives rise to: demonstrable environmental gains, contributing to the repair and restoration of landscape character; reduced intensity of occupation and use; and improved design and appearance of the land and building(s).*
15. Policy E 1 presumes against the loss of employment land. It sets four criteria for exceptions from this presumption, any one of which could justify an exception. These include circumstances where it is demonstrated that sites are 'unsuitable and financially unviable' for employment use (Criteria 1); where community benefits outweigh any employment loss (Criteria 3) and where 'environmental problems' are resolved (Criteria 4).
16. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact (including the character of the countryside / Green Zone), impact on neighbouring uses and occupiers, economic impact, transport and design quality.

### **The Appellants' Grounds of Appeal – brief summary**

17. The Appellants' states two principal grounds of appeal:

*Ground 1 - Having regard to the site's circumstances: its former commercial use; its reduced level compared to adjoining land; its relationship with adjoining neighbouring residential properties; the environmental*

*enhancements it would bring, and, finally; the planning history following the previous refusal (P/2012/1328), justify approval of the application in accordance with Article 19(3) of the Jersey Planning Law 2002.*

Ground 2 – *The decision is inconsistent with other similar Planning consents.*

18. These grounds are expanded in the Appellants' detailed written submissions and through their contributions at the Hearing.

**The Department's response – brief summary**

19. The Department's officers contend that the reasons for refusal are justified as the site is within the Green Zone and none of the stated exceptions apply that would allow for a new dwelling in this location. It maintains its concerns about conflicts between the retained yard and the new dwelling and does not consider that other cases or other matters provide a justification for a departure from mainstream policy.

**The Main Issues and Assessment**

20. I assess that there are five main issues to consider in this case:
- (i) Compliance with the Policy NE 7 (Green Zone) general presumption
  - (ii) Policy NE 7 Exception 10 assessment
  - (iii) Residential amenity impacts arising from the proximity of the proposed dwelling and the retained commercial yard
  - (iv) The relevance of other cases
  - (v) Whether 'exceptional circumstances' justify granting planning permission in this case

*Issue 1 - Compliance with Policy NE 7 (Green Zone) general presumption*

21. The site is within the Green Zone. It is clear from the Appellants' submissions that they had a previous expectation that the site would be 're-zoned' and removed from the Green Zone. The Appellants referred to certain excerpts from the minutes of the April 2013 Planning Applications Panel that determined the earlier (identical) application (P/2012/1328). These records indicate some sympathy from certain Panel members to the possibility of rezoning. Accounts were also given of a site visit undertaken by the then Minister in 2014, which allegedly indicated support for 'rezoning'.
22. Whilst I note these records and apparent views of individuals at certain points in time, I do not consider that they can be afforded significant weight in this appeal. The fact is that the site was not rezoned and the decision maker must assess the compliance with Policy NE 7.
23. It is clear that the proposal would conflict with the Policy NE 7 general presumption '*against all forms of development*' which, specifically, includes

new dwellings. The proposal could therefore only accord with NE 7 if it complied with one of the Policy's stated exceptions. The only possible exception is NE 7 (10), which is assessed below.

*Issue 2 – Policy NE 7 – Exception 10 assessment*

24. There is no dispute that the site is 'employment land'. It has a long history of employment related use and remains a base for employment activities. Whilst there was nobody actually 'working' when I visited, the Appellants advised that up to 20 employees come to the site to pick up materials and tools for various construction projects around the Island.
25. As such, the site could, in theory at least, be a candidate for development for 'another use' under NE 7 (10). However, there are two key tests, both of which must be satisfied. The first is a demonstration of redundancy of the employment site and the second is that it would secure 'demonstrable environmental gains'.
26. On the first test of 'redundancy', NE 7 (10) cross references Policy E 1's Criterion 1, which requires documentary evidence that the site is not suitable or viable for employment use. A three month marketing exercise was undertaken in 2012 and the results used in support of the earlier application (P/2012/1328). It was not repeated to support the current application.
27. I am unable to conclude that redundancy has been demonstrated for a number of reasons. First, the marketing was undertaken over four years ago and is not sufficiently up to date. Second, the 2012 marketing only offered the land via a lease, which may have limited potential interest. Third, the Appellants' current intention to retain part of the yard in employment use. Fourth, the Appellants' indication (at the Hearing) that it may be necessary to find another location to accommodate the displaced business activities. These factors, individually and collectively, indicate that redundancy of the site is not demonstrated in accordance with Policy E1 and the proposal fails to meet the first test under NE 7 (10).
28. Notwithstanding the failing on the first test, it is still important to assess the second test of 'demonstrable environmental gains'. It is important because, if there are 'environmental gains', these need to be assessed and quantified and factored in to the overall Planning balance.
29. In environmental terms, the site has been described as a 'scar' on the landscape. Its appearance is indeed typical of former quarry workings. However, it is not a prominent site and its lowered level means that it is largely hidden from public views.
30. However, such a site clearly has the potential to deliver some environmental benefits through a different use and treatment. The wildflower meadow would represent some environmental gain in terms of landscape appearance and biodiversity. However, this needs to be weighed against the introduction of a not insubstantial dwelling (and associated hard surfaces and domestic garden areas) and the fact that a commercial yard use, of similar size to the 'wildflower meadow', would remain. When considering

these factors 'in the round', I do not consider that 'demonstrable environmental benefits' would result. Accordingly, I consider that the proposal would fail the second NE 7 (10) test.

31. The proposal does not accord with Policy NE 7 (10).

*Issue 3 – Amenity issues*

32. The Department's Reason 3 concerns the potential amenity and safety risks that may arise from the location of the proposed dwelling immediately adjacent to a working commercial yard. It is the Appellants' intention to occupy the new dwelling and for their son to operate the (reduced) yard operation. However, whilst these familial arrangements may assist in ensuring that conflicts are avoided, they are not strictly Planning considerations. Planning assessment must consider the land use implications as ownerships and occupancies will inevitably change over time.
33. I do agree with the Department's officers that commercial stone yards and residential dwelling are not the best of neighbours in Planning terms. However, the commercial yard and the dwelling would be comfortably separated by the intervening proposed wildflower meadow. I could envisage that there may be some conflicts between accessing the yard and the dwelling but, in my view, this is more likely to be an occasional inconvenience, rather than a fundamental safety issue.

*Issue 4 – Other cases*

34. The Appellants and the Department cited a number of other cases in their respective appeal submissions. I have looked at each of these and considered them and, whilst there are some similarities, I do not consider them directly comparable to the circumstances in this case.

*Issue 5 – 'Sufficient justification'*

35. Much of the Appellants' case was based on the view that the particular circumstances of the site history, topography, relationship to existing residential property, Ministerial and committee member views and environmental benefits, all combine to create the justification for departing from the mainstream Island Plan policy provisions.
36. This is a valid argument in law. Whilst there is a general legal presumption that proposals that are inconsistent with the Plan will normally be refused, Article 19 does provide some discretion for decision makers. That is to say, the Plan's provisions can be overridden if there is 'sufficient justification' for doing so but any inconsistencies (with the Plan) have to be fully justified in Planning terms.
37. Whilst I acknowledge that the Appellants felt that they were led to believe a 'rezoning' might occur, that did not happen and I cannot see that the current scheme presents a 'sufficient justification' for departing from the Plan. The tension with Policy NE 7 is substantial. This is further reinforced by the analysis against NE 7 exception (10) which demonstrates that this is

not a demonstrably redundant employment site, as part of it would remain active (and there is a question mark over what would happen to the displaced employment use) nor would it deliver much in the way of tangible environmental gains.

### **Conclusions and recommendation**

38. My conclusions are that this proposal is inconsistent with the Island Plan. It would conflict with Policy NE 7, which establishes a high level of protection from development in the Green Zone. I do not consider that the current scheme provides a sufficient justification for departing from the Island Plan.
39. Accordingly, I recommend that the appeal be dismissed.

*P. Staddon*

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