

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. N. Miller

**AGAINST: Refusal to grant planning permission for a proposal to 'Demolish existing barn / store and construct 1 No. three bed dwelling'.
Decision dated 21 September 2017**

LOCATION: Les Ruettes Barn, La Rue de Coin, Grouville

REFERENCE: P/2017/0559

APPEAL PROCEDURE: Written Representations

SITE VISIT: 11 December 2017

Introduction

1. This report contains my assessment of the appeal made by Ms. N. Miller (the Appellant) against the decision of the Department of the Environment to refuse to grant planning permission for a proposal to demolish an existing barn / store and to erect a new dwelling house on the site.

The site and its surroundings

2. The appeal site currently comprises a two-storey barn and some adjacent land. It is situated within a small cluster of dwellings in a rural Green Zone location to the south of La Rue du Coin in Grouville. The site and neighbouring dwellings are accessed via a narrow track, which runs southwards from La Rue de Coin. It is about 150 metres from the road to the appeal site.
3. The 'red line' application area embraces the full length of the drive, the barn and an area of land to the rear (east) of the building. The barn is a two-storey building and the elevation facing the lane contains six sash windows (3 at ground floor, 3 at first floor), a 'garage' style door opening on the ground floor and an old loading door at first floor level. It has an 1841 date stone above one of the window openings. Behind the barn (to the east) the land rises up a bank to the farmland beyond.
4. To the south-east of the barn, and physically attached to it, is a former farmhouse which has been converted and extended (for residential use). To the north-west of the site is another dwelling, *Maison Mallet*, separated from the barn by a narrow gap; this house was undergoing some building / renovation works when I visited the site. To the south-west of the site, and on the opposite side of the lane, there is a bungalow and its detached garage block.

Planning history

5. The Department's officer report records that there have been previous applications in respect of the barn. In 1989, a proposal to convert the building into a dwelling was refused as being contrary to the Green Zone policy.
6. More recently, in 2011, a proposal to demolish the building and build a house was refused as being contrary to Green Zone policy. The report summarises the reasons as being the failure to demonstrate redundancy of employment use; failure to deliver demonstrable environmental gain; and an unacceptable change of use of land to residential land use.
7. Other than these summary facts, I have not been provided with any further details of these historical applications.

The appeal proposal and the Department's refusal of the application

8. The application was submitted in April 2017 and it sought Planning permission to demolish the barn and erect a house on the site. The proposed dwelling would be set back from the lane by a car's length to provide parking spaces. Its ground floor footprint would be larger than the existing barn, extending rearwards a further 5 metres (beyond the rear wall of the existing barn). The ground floor accommodation would include 3 bedrooms, each with *en-suite* bathrooms. The smaller first floor area would accommodate an open plan kitchen / lounge / dining area with balconies to the front and rear. The decked balcony to the rear is notated as 72 square metres in area and includes a stepped access up to the field beyond (which is at a higher level).
9. The application was initially refused in August 2017, under officer decision making powers. However, the Applicant requested a review which was heard by the Planning Committee at its 21 September 2017 meeting. The Committee resolved to confirm the refusal. The decision notice cites three reasons for refusal which are:

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. It is the responsibility of the applicant to provide evidence of a lack of demand, and ultimately to demonstrate that the site is inappropriate for any employment use to continue. In this instance the expressions of interest and the record of a formal offer are considered to demonstrate that there is a demand for the site. 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. In this instance there is no significant reduction in visual mass, scale and volume; there is no significant reduction in the intensity of use; nor does the proposal contribute to a sustainable pattern of development. The possibility of repairing and restoring landscape character is further diminished by the encroachment into the field/open land to the east. 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 - Policy NE7 highlights a presumption against the change of use of land to domestic curtilage (i.e. residential use). In this instance it is considered that no compelling grounds have been submitted to demonstrate that there is sufficient justification to permit a change of use to land to domestic curtilage as a departure from The Adopted Island Plan (Revised 2014). Moreover, securing compliance with the minimum standards for a private garden to a residential dwelling, as required under SPG6 and Policy GD1 of The Adopted Island Plan (Revised 2014), is reliant upon the unacceptable change of use of to domestic curtilage.

The Island Plan 2011 (Revised 2014) – policy considerations

10. 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 development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'¹ for overriding its provisions.
11. The Plan's overarching spatial strategy is set out in Policy SP 1. It seeks to concentrate new development within the Island's built-up area, which is defined on the Plan's proposals map. Policy SP 5 promotes economic growth and diversification and includes the protection of employment land and floorspace.
12. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Outside of the defined built-up area, the majority of Jersey's rural area is designated as 'Green Zone'. The appeal site lies within the Green Zone and such areas are afforded a high level of protection from development under the Island Plan's policies.
13. Policy NE 7 sets out a general policy presumption 'against all forms of development' in the Green Zone. The policy explicitly identifies that new dwellings will not be allowed. However, the Policy does allow for certain exceptions which may be acceptable. The exception category pertinent to this appeal is exception (10) which is reproduced below:

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;

¹ Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

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).

8. The linked Policy E 1 presumes against the loss of land for employment use, unless it falls into one of the four stated exceptions. The relevant exception category that is central to this appeal is E 1(1) which states that an exception may apply if:

"it is demonstrated that the site is inappropriate for any employment use to continue, having regard to market demand. Applications will need to be accompanied by documentary evidence that the size, configuration, access arrangements or other characteristics of the site make it unsuitable and financially unviable for any employment use and confirmation by full and proper marketing of the site on terms that reflect the lawful use and condition of the premises."

14. Policy E 1 is supported by a Supplementary Planning Guidance (hereafter 'the SPG') Advice Note, published in June 2012, which contains detailed advice on the approach and application of the employment related Planning policies.
15. 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. Policies SP 7 and GD 7 require developments to achieve a high quality of design.
16. Policies NE 1 and NE 2 set out requirements in terms of biodiversity and species protection.

The Appellant's Case

17. The Appellant's case is set out as a rebuttal of each of the Department's reasons for refusal.
18. In response to Reason 1, the Appellant contends that redundancy of the employment use has been demonstrated and that the proposal will deliver environmental gains. More specifically, the Appellant says that redundancy is confirmed by a structural engineer deeming the building unsound; a long period of use as a personal (rather than commercial) store; that the land left with the property is very steep and not viable to farm; and that expressions of interest were received but none were acceptable.
19. The Appellant further contends that environmental gains would be secured by clearing up and making safe the effects of a former landslide; providing

safe access to Field 650A, enabling it to be cultivated; the proposed property would be only 30 square metres larger; an independent environmental report supported the application. The Appellant also includes a Freedom of Information (FOI) request response, which confirms that, since the beginning of 2016, 57 residential developments have been allowed in the Green Zone, confirming that such developments are quite common.

20. The Appellant's Reason 2 rebuttal submits that the property was fully and properly marketed and whilst there were expressions of interest they were not considered financially acceptable. Furthermore, the Appellant contends that the barn is no longer viable as an employment building because swallows had used the barn as it was not water / weathertight; the property houses services for three nearby properties meaning that access is often required; the property is in a bad state of repair; landslide and loose rock face at the rear are dangerous; the barn no longer serves any purpose associated with the farm, as the land has been sold or gifted away; the area is now residential and introducing commercial use would be detrimental to residents.
21. Responding to Reason 3, the Appellant points out that Land Controls raised no objection to the proposal; that the land is shadowed by the barn thus restricting growing opportunities and that it is on a steep bank and landlocked. For these reasons, it remained fallow for over fifty years and there are compelling grounds for a change to a domestic curtilage.
22. The Appellant also provides a rebuttal to a submission made on behalf of objectors. This reaffirms the Appellant's view that the barn has no agricultural use and that it is redundant.

The Department's Response

23. The Department explains that its substantive case is largely set out in its officer report. However, it provides detailed responses to the Appellant's grounds of appeal.
24. With regard to the 'redundancy' arguments, the Department explains that no evidence has been produced to demonstrate that safety issues preclude re-use of the building for employment purposes; that the Appellant's own submissions confirm past commercial uses of the building; and the marketing exercise did not state a price as required by the SPG, and the fact that offers did not meet the Appellant's aspirations does not prove redundancy. The Department considers that the Appellant has not demonstrated redundancy as required by Policy E 1 and the SPG.
25. In terms of the Appellant's contended 'environmental gains', the Department argues that the proposed dwelling would actually represent an increase in visual mass, scale and volume and there would be no significant

reduction in intensity of use. It further considers that the proposed incursion of the development into the field to the rear would diminish the landscape character by changing its use to a domestic purpose. In failing to deliver 'demonstrable environmental gain', the proposal is considered to be contrary to Policy NE 7.

26. The Department made a second response, which dealt with two matters raised by other parties. The first matter concerned agricultural restrictions under Jersey's Land Controls system and the Department clarifies that, whilst there were no restrictions in place on the application site (the red lined area), the use of this land for domestic curtilage would still involve a change of use. The second matter related to the Countryside Character Appraisal 1999 (CCA) and the Department explains that the site fell within the Grouville - St Saviour Escarpment area where the CCA considered that there is *'very limited capacity to accept new development.'*²

The Views of Other Parties

27. Scott Le Breton submits that the redundancy for employment purposes has not been proven and that there is demand for the premises. He says there have been at least two tenants in the last few years and two offers have been made for the property. He further states that no valuation evidence has been provided and that he remains willing and ready to purchase the property.
28. A submission from BCR Law on behalf of 'the objectors' from the nearby property *Larn-A-Lod* provides a detailed objection to the proposal and the Appellant's case and concludes that planning permission should not be granted, due to the conflict with Island Plan policies.

Discussion and assessment

The Planning principle

29. The appeal site lies outside and beyond the built-up area and within a distinctly rural location which falls within the defined Green Zone. The Island Plan's spatial strategy (Policy SP 1), which directs and concentrates new development into the existing built up area, combined with the high level of development restraint in the Green Zone (under Policy NE 7), mean that this is not a location where new housing is generally considered acceptable.
30. Whilst the Appellant claims that the FOI response shows that other residential developments have been permitted in the Green Zone, no details are provided to demonstrate that any of the cases are directly comparable. I must base my assessment on the facts before me.

² The quote is taken from page 107 of the Countryside Character Appraisal 1999

31. The factual Planning policy position is that, in such countryside locations, there is a clear presumption against new housing development and a related presumption that environmental and landscape protection will take primacy. Consequently, the development could only be considered to accord with the Island Plan if it fully satisfied one of the Green Zone exceptions set out in Policy NE 7.
32. The relevant exception to consider is NE 7 (10) which can allow for the redevelopment of an 'employment building' for another use. Although there is some dispute about the nature and extent of the building's past commercial uses, I am satisfied that the structure can be regarded as an 'employment building' for Planning purposes. It appears to have a history of non-domestic uses and is described in the Appellant's own marketing material as 'warehouse / industrial'. However, to qualify under exception 10, the Applicant must demonstrate that a) the building is genuinely redundant for employment purposes and b) the proposal delivers demonstrable environmental gains.

Policy NE 7 (10) (a) – Proven redundancy of the employment use

33. A marketing exercise has been undertaken. There was interest in the premises for employment purposes ranging from £90,000 - £130,000. The Appellant's rejection of those offers for the property appears to be based on an aspiration to achieve a much higher financial return. The Appellant claims that a good return on rental property in Jersey is 7% and, based on a rental achieved in the past for the ground floor only of the barn, it would capitalise to a much higher property value (of £215,000 - £250,000).
34. In my view, the Appellant's approach appears to be somewhat speculative and arbitrary. A figure of 7% may well be a good return on certain types of property with certain specification levels. However, there is no evidence to confirm that the Appellant's rent / value aspirations are reasonable for this specific property which, it must be recognised, is fairly basic and requires work and upgrading (although the extent of the works required will depend on the nature of any intended employment use). The key here would be evidence of rent or sale values from genuinely comparable premises (scale, condition, facilities, access etc.). Such evidence has not been provided.
35. The Appellant further claims that the case for redundancy is supported by her structural engineer's report. However, that report appears to be premised on an assumed new scheme for 'a 2-storey domestic property' and its conclusion that a demolition and rebuild would be preferred to a conversion is unsurprising. The report does not provide evidence that the building is incapable of supporting an employment use (which may have much lower specification requirements than a domestic use).

Policy NE 7 (10) (b) – Demonstrable environmental gains

36. The second criteria requires proposals to evidence “..*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).*”
37. The supporting narrative to the Policy NE 7³ is helpful in giving some examples of what might constitute a demonstrable environmental gain. The first example is a ‘*significant reduction in visual mass, scale and volume*’ but, in this case, the proposal would replace the barn building with a larger dwelling house, along with a balcony extending to the rear. The second example (removing uncharacteristically large buildings) does not apply. The third example is where the proposal results in a significant reduction in intensity of use; I consider this unlikely and, indeed, it may well be the case that the proposed house generates greater intensity of use than a more low key employment use. The fourth example relates to ‘sustainability’, but the proposal would involve a house being built in an unsustainable location outside of the built-up area. The fifth and sixth examples relate to more sensitive design, siting and materials and, whilst the dwelling design is not poor, the proposal would entail replacing a traditional period building with a larger modern house. Overall, the proposal does not achieve any of the examples of demonstrable environmental gain set out in the Island Plan.
38. However, the above examples should not be seen as exhaustive and I have considered the additional gains contended by the Appellant. It is argued that the proposal would address former landslip issues and facilitate better access to, and allow cultivation of, Field 650a. However, I am unconvinced that these matters would represent demonstrable environmental gains or that such outcomes could not be achieved independently, without the need for this proposal. I have also noted the points made about the Appellant’s commissioned ‘environmental report’ but the assessment of a site’s biodiversity and taking steps to mitigate any harm arising from development (through a species protection plan) is simply required good practice. It does not constitute a ‘demonstrable’ environmental gain.

Conclusions and recommendation

39. The appeal proposal would be in conflict with the Island Plan’s Policy NE 7, which seeks to impose a strong level of development restraint in Jersey’s defined Green Zone to protect the natural environment. The proposals would also conflict with the Plan’s spatial strategy and sustainability objectives, which direct new housing to the defined built-up area. The proposal does not meet the Policy NE 7 (10) exception, as the redundancy of the barn for employment purposes has not been demonstrated (as required by Policy E 1

³ Revised 2011 Island Plan – Paragraph 2.156

and the SPG) and the proposal would not result in any demonstrable environmental gains.

40. In my view, there are no exceptional reasons that would provide sufficient justification for departing from the Island Plan's policy provisions.
41. For the reasons stated above, the Minister is recommended to dismiss this appeal and uphold the decision to refuse planning permission made by the Department of the Environment dated 21 September 2017 (Reference P/2017/0559).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

30 January 2018