Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Minister for the Environment

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Mrs Margaret Thompson

Site at L'Emeraude, 4 Clos de la Ferme Rose, La Rue de la Pigeonniere, St Brelade JE3 8DE

The Appeal was considered by way of written representations

An accompanied visit to the Appeal site and surroundings was held on 5th February 2018

Department of the Environment Reference: P/2017/0813

Site at L'Emeraude, 4 Clos de la Ferme Rose, La Rue de la Pigeonniere, St Brelade JE3 8DE

- The appeal is made under Article 108 of the Law against a decision of the Environment Department to refuse planning permission under Article 19.
- The appeal is made by Mrs Margaret Thompson
- The application Ref P/2017/0813, dated 8th June 2017, was refused by notice dated 23rd November 2017.
- The development is described on the application form as *Change of use of agricultural land to domestic curtilage. A proposed pool house and pool to the west of the existing house with a bar, changing rooms and gym (revised application within 6 months of refusal).*

Summary of Recommendations

1. I **recommend** that the appeal should be allowed and permission granted subject to conditions as set out in the Annex to this report.

Introduction

2. This is an appeal considered by way of written representations against the refusal of planning permission. Following the site visit, I have sought additional information and comment from the parties and I have taken their responses into account in making my recommendation.

Procedural and Legal Matters

Scope of the report

3. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as he may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.

4. The purpose of this report is to provide the Minister with sufficient information to enable him to determine the appeal. It focuses principally on the matters raised in the appellant's grounds of appeal. However, other matters are also addressed where these are material to the determination, including in relation to the imposition of conditions; and in order to provide wider context.

5. The proposed development was described on the application form as given in my preamble. On the Refusal Notice, this was altered to: *Change of use from agricultural land to residential use in connection with L'Emeraude. Construct swimming pool and pool house to west of property.* The differences are not material.

Description of development

6. It is proposed to construct a 9.6 x 6 metre outdoor swimming pool together with a single-storey, L-shaped pool house wrapping around one side and an end, with maximum dimensions of approximately 15.8 x 13 metres. The floor space has been calculated by the appellant as 95 sq metres, plus a semi-covered barbecue element of 22 sq metres. The Department provides a similar figure of approximately 116 sq metres. The building would be located between the gable end of the house *L'Emeraude* and its garden boundary to the west, beyond which is the gable end of another large dwelling. The land rises to the west and south, into which *L'Emeraude,* having 2 storeys and a pitched roof, is partly set down. The floor of the pool house would be somewhat above the lower floor of the house, but would also be partly cut into the rising land both to the west and the south. The proposal includes provision of areas of planting to compensate for the loss of existing landscaping on the west of the site.

Reasons for refusal

7. The reasons for refusal are:

    1. *The application site is located within a designated Green Zone (Policy NE 7) wherein there is a general presumption against development, including the change of use of land to residential use. In this instance the resultant change of use of land would interrupt the significance of the landscape buffer to the western perimeter of the site and form an unacceptable incursion into the Green Zone. To permit such development would represent a departure from the Adopted Island Plan (Revised 2014) for which there is not considered to be sufficient justification. Consequently, the presumption against development contained under Policy NE 7 prevails.*

    2. *The proposed development would result in the introduction of a substantial single-storey building which, by virtue of its excessive built footprint and floor area, is not considered to amount to a modest and proportionate ancillary residential building. As such, the proposal is contrary to Policy NE 7(2) of the Adopted Island Plan (Revised 2014)*

The grounds of appeal

8. The appellant's grounds of appeal are:

1. *The applicant was effectively invited to apply for a reduced scheme (as proposed) by the Committee following refusal of an earlier planning application.*

2. *The proposal meets the necessary tests set by the Green Zone policy.*

3. *The proposal meets the reasonable expectations of a resident wishing to improve their home in the Green Zone.*

4. *The proposal does not involve the change of use of agricultural land to residential.*

5. *The proposal improves a strategic buffer at the expense of a non-strategic buffer.*

6. *The proposal results in an increase in the area of land to provide a buffer.*

7. *Planning permission was granted to a neighbouring property, also in the Green Zone, for a more prominent ancillary building*

Planning Policy

9. Policy NE 7 *Green Zone* of the Island Plan includes a general presumption against all forms of development in the zone including specifically the change of use of land to extend a domestic curtilage. The supporting text (paragraph 2.133) says there is the strongest presumption against extensions of residential curtilage which can result in incremental loss and erosion of landscape character to domestication in the countryside.

10. With respect to residential development, the Policy identifies a number of permissible exceptions to the general presumption. Amongst these (Exception 2) is the development of an ancillary building and/or structure, but only where (a) it is modest and proportionate to other buildings on the site; (b) is well-sited and designed, relative to other buildings, the context, size, material, colour and form; and (c) does not cause serious harm to landscape character.

Main Issues

11. From my assessment of the papers submitted by the appellants and the Department, from what I saw and noted during the site visit, and from additional information submitted since at my request I consider that there are 3 main issues in this case:

    1. *Whether the proposed development represents a change of use of land and, if so, whether it involves the change of use from agricultural land to residential curtilage;*

2. *Having regard to the history of the site and all other material considerations,* w*hether the proposed development is acceptable having regard to the provisions of Island Plan Policy NE 7 relating to development in the Green Zone; and*

3. *In the event that it is concluded that the proposed development is inconsistent with the provisions of the Island Plan, whether sufficient justification exists to grant permission.*

Reasons

The site and background to the proposed development

12. Planning permission was granted in 2012 [ref P/2012/0992] for the redevelopment of the former Rose Farm campsite, described as: *Discontinue camp site operation. Remove existing camp site buildings. Refurbish existing dwelling. Convert existing store into 1 No. dwelling. Construct 4 No. dwellings. Various landscaping works*. *L'Emeraude* is the last (westernmost) of the 4 new dwellings, sitting in a plot that extends principally to the west and north, served by a short cul-de sac extension to Rue de la Pigeonniere.

Change of use

13. There is dispute over whether the proposed development would give rise to a change of use of land; and, if so, whether such a change would be from agricultural land to domestic curtilage. Such a change is one of the specific types of development to which the Policy NE 7 presumption against development applies.

14. I propose first to address the question of whether the land should be regarded as being agricultural. Although the reasons for refusal do not refer to a change of use from agricultural land, that is the description given in the application form and in the refusal notice. It is a matter of dispute between the appellant and the Department; and consideration of the matter will unavoidably take some time.

15. The application form refers to a change of use from agricultural to residential curtilage, and the submitted Existing Site Plan (ref MSP-2321-PL02) shows an area, including some proposed to be occupied by the proposed development, as *Outline of Existing Agricultural Land*. However, the appellant's agent says that these references do not represent his client's view, and were included simply to satisfy the Department, which it is said would otherwise have refused to register the application. Irrespective of that, in my view, neither the description of the development on the form nor a reference on a submitted plan should be taken as evidence of the lawful use of land.

16. The assertion by the Department that the proposed development would involve the change of use of agricultural land has its origins in

the permission for the redevelopment of the former campsite. However, the formal description of the development in that permission makes no specific reference to a change of use of land to agriculture. Nonetheless, under the heading of *Reasons for Approval*, the decision notice states that *"most significantly, over half of the site (61.6% of the total site area) is to be returned to agricultural use as part of the scheme"*, and that *"significant new planting will also be required to help the scheme blend in".* Condition 1 purports to give effect to the former, as follows: *"Prior to its first occupation, the development hereby approved shall be carried out entirely in accordance with the plans and documents permitted under this permit. For the avoidance of doubt, this extends to: (b) the re-zoning / re-classification of commercial land to agricultural land, as shown within the approved plans. No variations shall be made without the approval of the Minister for Planning and the Environment"*.

17. In that context I have been referred by the parties to 3 plans, to which I refer as Plans A, B and C.

18. Plan A (plan 108 *Proposed Overall Site Plan / Land Classification*), dated 24th July 2012, is a plan approved when permission was granted. It shows certain areas coloured by reference to a key entitled *"Proposed land use classification"*. So far as the appeal site is concerned, a strip along the northern, western and southern boundaries are coloured orange, described as *"… existing commercial land to be redefined as Class B equine, meadow, orchard etc."*. The plan is annotated *"to be defined as Class B"*, though some is also shown as *"reinforced woodland"*, with its precise extent unmarked.

19. Plan B (*Proposed Landscaping Plan* ref 201 Rev 01), is overprinted with "Application P/2012/0992 *Condition No 5 Date discharged 03 February 2014".* It shows certain areas around the 4 new houses defined by coloured dashed lines. It is annotated as follows: *"Blue dashed line indicatively indicates site boundary of original Rose Farm Campsite. Exact setting out and line of boundary to be confirmed by client*". So far as the appeal site is concerned, this runs some distance inside, and roughly parallel to a continuous red line which is shown as *"assumed site boundary"*. On the same alignment as the blue dashed line to the north and west of the new houses, and separating each, are dashed orange lines, annotated as indicating *"assumed plot boundaries",* but also *"approximate line of ownership and domestic curtilage. exact location tbc by client. Landscaping scheme to private gardens subject to further detailed design."* With respect to *L'Emeraude*, the land immediately to the north and west is shown as *"Domestic Garden to Proposed House 4 extent of ownership tbc with client"*. In the area between the blue/orange dashed lines and the continuous red line the plan shows tree planting, with that to the north stated *"to provide food for wildlife next to existing woodland".* Unlike on Plan A, there is no reference to agricultural use. There is a note which says *"Plans are shown for indicative purposes only"* and *"Proposed use of land is to be confirmed by Land Controls, Environment and Planning Departments".*

20. Plan C (*Drawing No 001, Rev 07 Proposed Overall Site Plan*), dated 8th October 2014 is mostly the same as Plan B (including the annotations concerning boundaries) but incorporates an accommodation schedule and other minor amendments including to the access, none of which appear material to the appeal proposal. It is annotated with *"Minor amendment date approved 27 October 2014".* Again, there is no reference to agricultural use of land.

21. It is difficult to say exactly how the details shown on plans A and B / C relate to each other, as the detailed boundaries appear inconsistent. Comparison is not assisted by the fact that the copy of Plan A that I have is not reproduced to scale. The strip of orange land along the north and west of the redevelopment site in that plan equates very roughly with the strip between the blue/orange lines and the continuous red line on Plans B and C, but appears broader. As for the position on the ground, I would estimate that the plot of *L'Emeraude* appears to extend to the west to the continuous red line, thereby including part of the orange strip that would be affected by the proposed development. I have no information as to how or when the precise curtilage boundaries were finally determined, as anticipated in Plans B and C.

22. What is certain is that, on the ground, all of the land associated with *L'Emeraude*, including land within the Plan A orange land to the west has been incorporated as domestic curtilage. That includes some planting which, incidentally, does not appear to match that shown on Plans B and C. None of the land is in agricultural use, practically speaking.

23. I have sought clarification from the Department as to what is meant in Condition 1(b) to "*re-zoning / re-classification"*, which are not terms used in planning law. I have been told that it was intended to facilitate the repair and restoration of the landscape character of the area and to distinguish this from the residential area. Although not specified on the planning permission, I am given to understand that the process by which this was to have been achieved was through the provisions of the Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974 ("the 1974 Law"), administered by the Land Controls Section of the Department of the Environment.

24. Although the reason for so doing is not clear, the Department takes reference to "Class A" and Class B" on Plan A to refer to <u>conditions</u> (a) and (b) which may be attached to a consent under Article 2 of the 1974 Law for a contract for the sale or transfer of any agricultural land. However, it acknowledges that the two systems of control (planning and agricultural land) are governed by different laws.

25. The Department has directed my attention to its website, which provides wording for "typical" conditions (a) and (b). In short, (a) limits the occupation of land to those wholly or mainly engaged in work of an agricultural nature in Jersey. (b) limits the use of the land

to agricultural or horticultural purposes only, excluding the grazing of equine animals and the growing of trees without the written consent of the Minister.

26. I have been provided with documents showing that, on 10th September 2013, consent ("the consent") was given under the 1974 Law to 2 transactions affecting the current appeal site. The greater part of the appeal site, together with the other land which was to be developed with the 4 new houses, was included in *"field 758 and land to the east of field 758"*. The remainder, a narrow strip at the southern end of the appeal site, was included within a transfer covering *"fields 737, 757, 760, part of 761, 762"*. In both cases the application forms (for consent) stated that the land was *"Non-Agricultural"* and was described on one as *"disused campsite"* and on the other as *"disused campsite and woodlands".*

27. The consents were conditioned. The first as: *"unconditional – the issue of this consent is purely permissive and does not exempt the purchaser from any other statutory controls. In particular the permission of the Planning Department may be required before any of the land is considered to be part of the domestic curtilage of the property"*. The second applied different conditions to different parcels of land. Some, described as *"that part of field 757 and the gardens and land attached to Rose Farm*...", which includes the narrow strip of land at *L'Emeraude*, were subject to the same condition, whereas the rest (fields 737, part of 757, 760 and 762) were to be used for agricultural or horticultural purposes only, which was also to allow for the growing of trees and the grazing of equine animals.

28. With respect to the conditions applying to the appeal site, I do not know definitively what was meant by *"the issue of consent is purely permissive"*. Given the context, I have assumed that it means nothing more than consent had been given for the relevant transactions. As for the reference to the permission of the Planning Department being required before any of the land is considered to be part of the domestic curtilage of the property, I regard this as purely advisory. A consent under the 1974 Law cannot require anything to be done under planning law.

29. I am concerned about the confusion over the use of the expressions "Class A and B" and "Conditions (a) and (b)". It is far from clear that they were intended to be interchangeable. However, in the event, this may not be critical to this appeal, as conditions (a) and (b) were not imposed on the consents in relation to the land in question. Nonetheless, it is interesting to note that the second consent drew a distinction between land that was to be used for agricultural or horticultural purposes and the land which was *"unconditional"*, including the appeal site. The implication may be drawn that the "unconditional" land was purposely distinguished from the agricultural land. A decision had seemingly been taken not to limit its use to agriculture.

30. The Department claims that it is by means of the consent process that the site should be regarded as agricultural land, adding that, in planning terms, the re-classification of the land was "facilitated" by the delivery of a scheme of landscaping as required under Condition 5 of the planning permission (ie Plan B). Condition 1(b) of the planning permission certainly includes *"the re-zoning/re-classification of commercial land to agricultural land"* within the requirement that the development should be carried out entirely in accordance with the permitted plans and documents. The inference may be drawn that some process would have to be gone through to achieve that end. However, even if consent under the 1974 Law was necessary to meet the requirements of that (separate) legislation, the process cannot be taken as having discharged the planning condition or having effected a change of use of land in planning terms. The consent makes it clear that it is pursuant to the 1974 Law, not planning law and, in any event, the land transfer was not subject to the land being used for agriculture.

31. Moreover, a consent under the 1974 Law specifically relates to transactions for the sale or transfer of agricultural land. It is not a planning process for considering changes of use to agricultural land. Plan A and the applications for consent indicate that the land was in commercial use at the time. While this is not definitive as to its use, the wording of condition 1 of the planning permission appears to show that it was accepted by the Department. In my view, the consent procedure under the 1974 Law was inappropriate for the purpose the Department had in mind – ie of establishing an agricultural use for land not formerly in that use.

32. As for the approval of the landscaping scheme under condition 5, I do not understand how that could as claimed have discharged condition 1 or effected a change of use to agricultural land. The approval explicitly discharged condition 5 - but that relates solely to landscaping, not to agriculture. Although Plan B showed indicative curtilages, the approval related only to the landscaping scheme; and, as late as October 2014, Plan C still showed the curtilages as "to be confirmed". I do not know how or when the boundary of the domestic curtilages was confirmed.

33. Neither Plans B or C referred to the use of the land in question for agriculture; and none of the approved landscaping was related to such a use – for example as windbreaks or for containing stock or crops. Mass planting of trees as shown (some at 2 metre spacing) would practically militate against the use of the land for agriculture; and no separate access to the land for agricultural purposes was shown. It is arguable that these later, more detailed approved plans, have superseded the originally approved layout plan (Plan A), which is the only one that refers to an agricultural use.

34. The Planning and Building (General Development) (Jersey) Order 2011 defines agricultural land as land to which the Protection of Agricultural Land (Jersey) Law 1964 applies. That Law defines agriculture as

including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, market gardens and nursery grounds; and states that references to "agricultural land" shall be construed accordingly. The use of land as landscape planting (implicitly required in association with residential development) does not fall within that description. Indeed, planting could have the practical effect of preventing the land being put to any of the listed purposes in any meaningful way.

35. There is no dispute that the land in question is in any case incapable of being used practically or viably for agricultural purposes, in view of its very small extent, impractical shape and poor access through a residential curtilage. This was acknowledged by the Land Controls Section its consultation response to the planning application for the houses – saying that the fields had not been used for agricultural use for many years; that they slope and have limited agricultural use. Nonetheless the Section opposed the application due to the "permanent loss of the land from the agricultural land bank".

36. It is clear from the evidence before me that the perceived value of the land in question relates not to any claimed status as agricultural land but as a landscaped "buffer". It is to this buffer that the Department has referred in the first reason for refusal rather than to the loss of agricultural land.

37. Taking all of those considerations together, I conclude that:

    (a) the reference to a change of use from agricultural land to residential on the application form for the present appeal proposals and on the submitted plans is not conclusive of the present use of the land in question;

    (b) it is apparent from Plan A and the planning permission as a whole that it was the original intention that a proportion of the land covered by the permission for the redevelopment of the former camp site should be accorded the status of agricultural land as part of the development, though the precise form that this would take, and the process by which the change was to be effected was unclear.

    (c) it is equally apparent that a proportion of the land would be used for significant new planting to *"help the scheme blend in"*. Plan A suggests strongly that some of the land shown for agriculture, including that to the west and north of *L'Emeraude* would be occupied by woodland. It is reasonable to suppose that this illustrated some of this planting, details for which were later approved under the landscaping scheme.

    (d) The Department intended to put in place a permission for the redevelopment of the Rose Farm campsite with conditions the effect of which would be to ensure that some of the land formally acquired agricultural status for planning purposes.

This was regarded as a demonstrable gain. However, through poor drafting of the planning permission and reliance on Land Controls Law and procedures, the outcome has become confused and the subject of dispute;

(e) the meaning of the expression *re-zoning / re-classification of commercial land to agricultural land* in condition 1(b) of the redevelopment permission is uncertain. So far as I am aware it is not a phrase found in planning law. But the implication of the condition is that some formal process would be required to effect a change of use. The change was not effected by the permission itself;

(f) the land in question was not in agricultural use prior to the granting of permission for the houses. Condition 1 of the planning permission confirms its pre-existing use as commercial. Even if the previous commercial use has been lost by virtue of the development having taken place, the formal written description of the development on the planning permission did not explicitly convey any change of use of part of the land to agriculture;

(g) the planning permission did not specifically limit any land to agricultural use by condition, other than by implication (ie reference in condition 1 that the development should be carried out entirely in accordance with the permitted plans and documents, which included the reference in Plan A to re-zoning or re-classification for agriculture). However, it is arguable that the later, more detailed approved plans (Plans B and C), have superseded the originally approved layout plan (Plan A);

(h) the 1974 Act does not have the power to authorise or confirm the change of use of land <u>in planning terms</u>; and the consents issued did not have that effect. The consents draw a distinction between land which was to be used for agriculture or horticulture and land, including the appeal site, which was unconditional. The reference in the consent conditions to the need for the approval of the Planning Department regarding use of land as domestic curtilage is purely advisory;

(i) the approval of the landscaping details under condition 5 did not authorise a change of use of any land to agriculture and the details approved are in any case inconsistent with agricultural use. The later approved plans make no reference to agricultural use. They illustratively identify the extent of the domestic curtilage(s) but are not definitive in that regard. The land outside the illustrative curtilages is not defined for agricultural or any use other than planting for landscaping or wildlife purposes. It does not in any meaningful way contribute to the agricultural land bank, nor does it have the potential to so contribute;

(j) the absence of any evidence of use does not imply an agricultural use as a default position, nor does it demonstrate conclusively that the land should be regarded as being either within or outside the curtilage of *L'Emeraude*;

(k) in purely factual terms the land at issue is presently in use as part of the domestic curtilage of *L'Emeraude*.

38. By reference to the above points, I take the view that, whether with regard to the Rose Farm planning permission; to subsequent approvals under it; to the consents under the 1974 Law; to the description of the appeal development, or to any of the available evidence, the land in question is not in agricultural use. However, one must accept as a matter of logic that it has a use in planning terms. It functions as domestic curtilage, but that in itself is not proof of a lawful use; and I have no firm evidence that it should be so regarded. Its clear intended function under the planning permission is to provide planting *"to help the* (housing) *scheme to blend in"* – ie a landscape buffer. That does not fall within a formal Use Class, but it would not be unreasonable to regard it as *sui generis* – that is, in a class of its own kind, or unique. For the purpose of progressing this appeal, I propose to regard it as such when applying Policy NE 7.

Policy NE 7

39. The proposed development would intrude into the area defined for landscaping on the approved plan. On the basis that the landscape strip is to be regarded as a *sui generis* use, this would amount to a change of use to domestic curtilage, against which Policy NE 7 presumes. There are no explicit exceptions to this presumption within the policy, and so the change of use must be regarded as inconsistent with the Island Plan.

40. Separately, Policy NE 7 includes ancillary residential buildings and structures as development that may exceptionally be permissible provided certain criteria are met (Exception 2).

41. The relevant reason for refusal says that the proposed development would not amount to a modest and proportionate ancillary building. This concern relates directly to criterion (a). There is nothing in the reason which indicates any concern with the other criteria. The matters referred to in the reason for refusal are that the building would be *"substantial"*; and that it would have an *"excessive built footprint and floor area"*.

42. The floor area of the proposed pool house is by no means small. In plan form, it does appear to have a substantial footprint. However, its profile would be very low both in absolute terms and in comparison with the house and its neighbour. This would be further limited by being set down into rising land on two sides. Taking the scale and mass of the building as a whole and in context, I agree with the views

expressed in the Department's report that it should be regarded as modest and proportionate to the house and thereby conforms with criterion (a).

43. Although not forming part of the reasons for refusal, I am also satisfied that the proposal would meet the requirements of criteria (b) and (c). The building would be well sited inasmuch as it would relate well to *L'Emeraude* and be almost totally screened from public viewpoints by the nearby buildings and the lie of the land. Its design is simple in form and choice of materials, so that it would be visually as well as functionally subservient to the house. Importantly, in view of the statement in the supporting text to Policy NE 7 that the key test of acceptability of ancillary residential buildings will be the impact on landscape character, I am satisfied that any impact would be negligible. On my visit I was not invited to view the site from any surrounding viewpoint that might demonstrate any visual harm.

44. I note that Paragraph 2.120 of the Island Plan says that in the Green Zone there is a need to provide for the reasonable expectation of residents to improve their homes, having regard to the capacity of the landscape to accommodate development without serious harm. Having regard to the relevant policy criteria, I conclude that this development may be accommodated satisfactorily and that the development is consistent with Exception 2 of the policy.

Whether sufficient justification exists to make a decision inconsistent with the provisions of the Island Plan

45. Article 19(2) of the Law states that, in general, planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan. However, Article 19(3) adds that, despite that paragraph, planning permission may be granted where the proposed development is inconsistent with the Island Plan if the Planning Committee is satisfied that there is sufficient justification for so doing.

46. In this case, I have concluded that the change of use would be inconsistent with Policy NE 7 by reason of the change of use.

47. The officers' report considering the application took the view that although part of the land intended as a landscaped buffer would be occupied by the development, this loss would be compensated for by the proposed inclusion of additional land, presently within the undisputed residential curtilage, into the landscaping. A condition was proposed, requiring the retention of this compensatory landscaped area. The approach by both the applicant and the officers was, in my view, commendably pragmatic. There would be a change of use, but the landscaping would not in practice be diminished in area.

48. Furthermore, I agree with the appellant that the compensatory landscaping would have greater value than the area that would be lost

as a result of the development. While the latter simply separates the house and a neighbouring dwelling and functions as little more than an amenity for the respective occupiers, the former would separate the garden of *L'Emeraude* from undeveloped, sloping land to the south and north, having a greater potential *"to help the scheme to blend in"*. In short, in addition to providing some screening for the proposed development, it would amount to a modest enhancement to the approved landscaping scheme.

49. Overall, and notwithstanding that the extension of domestic curtilage is inconsistent with Policy NE 7. I conclude that the proposed development would result in little or no harm to any material consideration. Neither the purpose of the Green Zone nor the original intention of the redevelopment scheme would be compromised; and the provision of compensatory landscaping has the potential to support both. Taking this, together with the supporting text to Policy NE 7 into account, I am satisfied that there is sufficient justification that the present case is one to which the flexibility afforded by Article 19 should reasonably apply.

Other matters

50. No objections to the proposed development have been received. The Land Controls section of the Department had no comment.

51. With respect to the other grounds of appeal, I note the contention that the appellant believed that she had been effectively invited to apply for a reduced scheme (as proposed) by the Committee following refusal of an earlier planning application. Whether or not that is the case, the proposal must be considered having regard to its individual merits, not whether it is considered superior to an earlier unsuccessful application. I have therefore considered the appeal on its individual merits, rather than comparing it to the earlier design.

52. I also note that permission was granted for a garage at a neighbouring house that is both taller and more prominently sited that what is presently proposed. Development proposals are rarely directly comparable and I do not know the circumstances surrounding that permission. Again, I have approached the appeal on the basis of its individual merits.

Conditions

53. In the event that the appeal is allowed, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately. In recommending approval of the application, the Department's officers suggested just 1 condition in addition to the normal conditions relating to the timescale for implementation and requiring the development to be carried out in accordance with the approved plans and so forth. It concerns the carrying out of the approved soft landscaping works prior to first

occupation of the building.

54. While I agree in principle with the need for the landscaping works to be carried out in a timely fashion, some, for example tree planting, should be carried out only at certain times of the year. The link between completion of the works and the occupation of the building is I believe unreasonable in that context, by potentially denying the appellant the opportunity to benefit from the development for some time. I have therefore substituted a revised wording, requiring works to be carried out in accordance with a timetable to be first agreed in writing by the Department. I have also made some further minor amendments in the interests of reasonableness.

Overall Conclusions

55. For the reasons given above, I recommend that the appeal should be allowed

Jonathan G King

Inspector

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ANNEX

CONDITIONS THAT MAY BE IMPOSED ON THE PLANNING PERMISSION IN THE EVENT THAT THE APPEAL IS ALLOWED

A. The development shall commence within 3 years of the decision date.

B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

1. Prior to commencement of the development hereby approved, a timescale for the implementation of the soft landscape works indicated on the approved plan shall be submitted to and approved in writing by the Department of the Environment. The works shall be carried out in full accordance with the approved plans and timescale and the landscaped areas shall thereafter retained as such. If within the first 5 years following planting, any tree or shrub dies, is removed, or becomes seriously damaged or diseased, it shall be replaced in the next planting season with another of a similar size and species or as otherwise approved in writing by the Department of the Environment.

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