

## **REPORT TO MINISTER FOR THE ENVIRONMENT**

**By Graham Self MA MSc(Eng) DipIC FRTPI**

Applications for Planning Permission by JAJ Properties Ltd.

Sites at Retreat Farm, Rue de la Frontière, St Mary and Rue des Varvots, St Lawrence.

---

### **PART 1: INTRODUCTION**

1. I held a public inquiry into these applications at the Société Jersiaise on 19-22 February and 13-14 March 2018. I inspected the sites and surroundings on 19 and 23 February.
2. This report is in four parts. Part 1 records details of the applications and then provides a description of the application sites and surroundings. In Part 2, I report certain events at the inquiry, comment on aspects of the applications and discuss various legal issues. Part 3 provides summaries of what I term the "planning merits" cases for the applicant, the Department of the Environment, and other parties. In part 4, I present my assessment of the legal and related issues, and conclude with my recommendation. A list of appearances is attached.
3. As will be apparent, the recommendation may or may not result in a supplementary report, depending on the decision you make following receipt of this report. The structure of this report is also unusual, because for reasons explained later, I am not including here any assessment or recommendation on the planning merits or demerits of the proposed developments.
4. I am assuming that all relevant documents including the statements of case, proofs of evidence, application plans, written representations from interested parties, and all the documents and plans submitted during the inquiry will be available for you to examine to the extent you consider necessary.
5. Submitted documents are listed in Appendix 1 of this report. The document numbering system I have used is:
  - Documents submitted by the applicant relating to the "east" site are numbered AE 00, AE 1, AE 2 etc.
  - Documents submitted by the applicant relating to the "west" site are numbered AW 00, AW 1, AW 2 etc.
  - Documents submitted by the applicant relating to both sites are numbered AB 1, AB 2 etc.
  - Documents submitted by the Department of the Environment are numbered DoE 1, DoE 2 etc.
  - Documents, including plans, submitted during the inquiry are numbered IQ 1, IQ 2 etc.

(Note: The numbering relates to paper copies. Some documents have "grouped" numbers, eg Document AB 11-13, because this is one bound volume,

although the electronic copies were split into separate documents for transmission.)

6. The application plans are referred to by their drawing numbers, but to avoid repetition the first part of the number is mostly omitted in this report. For example, Drawing 17003-121 Revision 05 may be referred to as Drawing 121 Revision 5. Most of the dates shown in the bottom right hand title panel of the submitted drawings do not correspond with the date of the drawing - they refer to the date of the *original* (unamended) version. The dates of revisions are usually shown in a panel towards the top right hand corner. The numbering of revised drawings is not necessarily sequential, because (rather confusingly) some of the revisions were apparently made to drawings which were not submitted in evidence. For example, there are versions of Drawing 121 labelled as Revision 5, Revision 7 and Revision 10 - the last two having been submitted during the inquiry - but the intermediate revisions are not among the submitted plans.
7. The location plans for the two sites do not have drawing numbers, so I have given them document numbers (Document AE 00 for the east site and AW 00 for the west site). Because there have been changes to the site boundaries since the applications were made, these documents each consist of three plans. None of them appear to have dates or titles (other than a reference to Retreat Farm). The latest versions of this group of plans are those submitted in December 2017, although plans submitted later for the applicant showed further changes to site boundaries.
8. References to the application numbers in this report are also mostly shortened to avoid repetition: thus P/2017/0805 and P/2017/1023 are referred to as applications 0805 and 1023. "The Department" or "DoE" means the Department of the Environment.

### **The Applications**

9. Two sets of descriptions for each application are recorded here, because the descriptions in documents published by your Department are not the same as the descriptions in the applications. The application dates also differ. Early in the inquiry I was told that the Department did not obtain the applicant's agreement to the altered descriptions. Later, I saw a copy of an email from the Department to one of the applicant's agents (relating to an amended fee), which stated: "Please confirm both the Department description and the amended fee total"; but there is no evidence that the alterations were agreed in writing.
10. Details of the two proposed developments, as described in the applications, are set out below.

#### Application Reference P/2017/0805

The application is dated 5 June 2017. The site address is stated as: Retreat Farm, La Rue des Varvots, St Lawrence.

"Demolish existing glasshouse and restore land into an open agricultural field. Erect new dwelling on existing tourist attraction car park. Relocate tourist attraction car park to overspill car park on Rue de la Frontiere."

#### Application Reference P/2017/1023

The application is dated 17 July 2017. The site address is stated as: Retreat Farm, Rue de la Frontiere, St Mary.

"Demolition of existing packing station, box-making factory, boiler room, nursery and other ancillary operations. Erect 13 No 2 bed single storey self-catering lodges, 14 No 3 bed self-single storey [*sic*]<sup>1</sup> self-catering lodges, and 4 ancillary buildings. Construct a new car park for Tamba Park (168 spaces) to replace existing car park off La Rue des Varvots, a communal car park for the self-catering lodges (27 spaces) and overspill parking (33 spaces). Widen La Rue de la Frontiere road and form a new pedestrian route behind a new roadside bank linking Tamba Park to new off-site bus stops. Associated landscaping."

11. Details of the two proposed developments, as described in documents published by your Department,<sup>2</sup> are set out below.

Application Reference P/2017/0805

The application date is stated by the Department as 16 June 2017. The application was validated on 16 June 2017. The site address is stated by the Department as: Car Park and Field No. L78, Retreat Farm, La Rue des Varvots, St Lawrence.

The Department's description of the proposed development is:

"Demolish glasshouses to Field No. L78. Alter vehicular access onto La Rue de la Frontiere. Construct 1 No. four bedroom single storey house, detached three car garage and swimming pool to car park South of Field No. L78 with associated landscaping and parking. 3D model available.

AMENDED DESCRIPTION: Additional plans and documents received in support of submission and in response to representations received.

AMENDED PLANS RECEIVED."

Application Reference P/2017/1023

The application date is stated by the Department as 21 July 2017. The application was validated on 24 July 2017. The site address is stated by the Department as: Retreat Farm, La Rue de la Frontiere, St Lawrence/St Mary.

The Department's description of the proposed development is:

"Demolish glasshouse and ancillary structures in Field 770. Construct 13 No. two bed and 14 No. three bed self-catering accommodation units and ancillary structures with associated hard and soft landscaping. Change of use of resulting agricultural field to car park, including hardstanding and associated works. Widen La Rue de la Frontiere and alter vehicular access. Construct bus shelter and form footpath to South-West of site. Construct terraced seating area to North of existing café. 3D model available.

AMENDED DESCRIPTION: Additional plans and documents received in support of submission and in response to representations received.

AMENDED PLANS RECEIVED: Environmental Impact Statement (EIS) submitted."

## **Sites and Surroundings**

12. This description is probably best understood by referring to the application plan labelled "Existing Overall Siteplan Layout in Context" (Drawing 118 Revision 2), together with the location plans (Documents AE 00 and AW 00) and the bundle

---

<sup>1</sup> "Self-single storey" in this description was clearly a mistake and was meant to read "single storey".

<sup>2</sup> These include the information on planning applications published in the gov.je website.

of 1:1000 scale maps showing the location of nearby properties (Document IQ 8). However, the thick blue and thin red boundary lines shown (partly coinciding) on Drawing 118 Revision 2 are inaccurate and were subject to later amendment.

13. For simplicity I shall label the site subject to application 0805 the "east site" and the application subject to application 1023 the "west site". Several changes were made to the extent of the both sites during the progress of these applications. When the planning applications were first made the two sites overlapped. The description here relates to the amended, separated sites.
14. Both sites are located in the north-central part of Jersey, in an area which has a predominantly rural or semi-rural character but also contains dwellings, small hamlets and other built development, including the glasshouses on the application sites and development associated with the tourist attraction known as Tamba Park. The sites are about 1 kilometre south-east of St Mary's village and 1 kilometre north-west of Carrefour Selous. To the east of La Rue de la Frontière, south of the west site and west of the east site, there is an open field.
15. The east site is accessed off La Rue des Varvots, a narrow lane which leads generally eastwards off La Rue de la Frontière and then meets La Rue du Douet further to the east.<sup>3</sup> The southern part of this site is laid out as a car park, and roadside signs direct visitors to Tamba Park to this car park. A paved footpath leads from the north-west corner of the car park into a building where there is a pedestrian entrance to Tamba Park (the building coloured grey on Drawing 118).
16. The northern part of the east site is mostly taken up by a large glasshouse. The roof has a serrated or zig-zag shape formed by a series of linked ridges. The floor is partly concreted and partly covered by compacted shingle overlaid by a membrane material. Much of this glasshouse is occupied by work-benches with rollers on top.
17. Immediately west of the car park mentioned above there is a tarmac-surfaced area which appears to be a residents' parking area for use by the occupiers of a terrace of cottages. A little further to the west is Retreat Farm House, which is a detached two-storey property (referred to in evidence as a listed building) with slate roof, rendered walls and sash windows.
18. To the north-west and west is a cluster of other residential properties including numbers 6-9 Retreat Farm: these are in a stone-faced cottage-style terrace which appears to have been fairly recently converted from what were originally farm buildings. A woven wattle fence about 4 metres high separates the strip of land next to these cottages and the adjacent residents' car park from the nearby glasshouse and the pathway where the entrance to Tamba Park is located.
19. There are other dwellings on the north side of La Rue des Varvots, including Clear Cottage and Little Clear Cottage. On the opposite (south) side of La Rue des Varvots is a property known as Broadfields where an old and obviously derelict glasshouse - originally a timber-framed structure but now in a tumbledown state - can be clearly seen from the road.
20. The main feature in the west site is another large glasshouse, also with a roof formed by a series of ridges. Most of the floor is concreted. On the eastern side

---

<sup>3</sup> In undisputed evidence to the inquiry La Rue des Varvots was described as a designated "Green Lane". During my inspection I noticed a sign at the east end of this lane indicating the start of a Green Lane *eastwards from the east end* of La Rue des Varvots, so I doubted the Green Lane designation of this road. Later evidence in response to my query confirmed that this road is not a Green Lane.

of the glasshouse there is a concrete block structure housing a disused industrial-scale boiler. Metal pipes which were apparently part of a heating system run through much of the glasshouse. The northern part of this glasshouse is currently used as offices (confirmed during the inquiry as offices occupied by employees of JAJ Properties Ltd or associated companies).

21. There is a concrete-surfaced vehicular entrance to the west site off La Rue de la Frontière. This leads into a vehicle parking area surfaced with gravel chippings. At the times of my inspections about ten shipping containers were stacked within the site near the entrance. Part of the site nearby appears to be used for car parking related to the offices mentioned above, and for car parking in association with Tamba Park.
22. Although the land within both sites is mostly level, there are some significant changes of land level in the vicinity. To the north of the west site, there is a partly wooded valley where a brook flows. The land drops down sharply towards this watercourse, then rises further north where residential properties along La Rue de la Prairie stand at a higher level above the valley.
23. La Rue de la Frontière is part of the B39 road which branches north-westwards off the A19 at Carrefour Selous and meets La Rue Des Buttes near St Mary's village. The site of application 1023 lies east of La Rue de la Frontière. In the vicinity of the site this road has a carriageway width of about 6-6.5 metres. It is set mostly below the level of the adjacent land with partly wooded embankments on each side of the road and no footpaths along the sides of the carriageway.
24. To the north of the application sites, though not immediately adjacent because some of the land there is within the Tamba Park tourist site, is La Rue de la Prairie. This is a lane which follows a bendy, roughly east-west route linking La Rue de la Frontière and Rue du Douet.
25. A detached house known as La Sergenté Farm and several outbuildings stand in substantial grounds on the west side of La Rue de la Frontière opposite the northern part of the western application site. A gated driveway leads towards the main house from a point off La Rue de la Frontière about 300 metres to the south. The house itself has a windowless north-east gable end facing towards the road. There is a high wall along the edge of the property next to the road. The mainly lawned garden area next to the house slopes down towards the road, beyond which the ground rises in a steep embankment along the boundary of the west site, which is here well above the level of the road and of the grounds of La Sergenté Farm as well as the roadside wall.
26. A little further north, a driveway off the east side of La Rue de la Frontière leads to a residential property known as La Chenoterie. The rear of the house, where there is a raised terrace, faces south-east towards part of the Tamba Park tourist site, beyond which is the north-western part of the west application site. The grounds of La Chenoterie slope down towards the valley of the brook mentioned above. Several other dwellings stand in plots next to La Rue de la Prairie, mostly set back on the north side of this road.
27. At the time of my inspection when in the rear garden of La Chenoterie and while walking along La Rue de la Prairie I could hear fairly clearly some of the sounds of the animatronic dinosaurs within Tamba Park and of children playing in one of the play areas there. Weather conditions at the time were dry and cold, with a light mainly easterly wind. At the time of my inspection (when deciduous

vegetation was not in leaf) the existing glasshouses were also visible from the rear of this property.

28. From adjacent public roads, views into both sites can be obtained but are mostly screened by vegetation. More distant views can be obtained from the east and north-east (along Rue du Douet and Rue de Bel Air further north), although these are mostly glimpses through field gateways of the upper parts of the glasshouses.
29. Tamba Park is a tourist attraction which occupies buildings and open land. Among its facilities are a gift shop, play zone, café and restaurant (these features being housed in the building where there is a pedestrian entrance as mentioned in paragraph 15 above), a sculpture display, a pet nursery, crazy golf area, trampolines, a lake with boats, picnic area, models of dinosaurs with animatronic movement and sound effects, and children's outside play areas.
30. The vehicular access from La Rue de la Frontière to the west site is on the outside of a slight bend in the road. Visibility from the access along the road is fairly good in both directions. (I did not measure it precisely since junction alterations would be made if the proposed development were to be carried out.) Visibility northwards along La Rue de la Frontière from a point on the road about 30-40 metres south of the west site access is obstructed by the bend in the road and roadside embankment.<sup>4</sup>

## **PART 2: LEGAL AND RELATED ISSUES**

### **Procedure at the Inquiry**

31. At the inquiry, after opening submissions but before hearing any evidence in chief, I asked a number of questions about the applications. I also raised some legal issues, explained some points of planning law and invited responses from those representing both main parties. (I had previously notified them that I intended to have what I called an "inspector's question and information session".) As I explained to the inquiry, I considered it appropriate to do this at an early stage rather than leaving it until later, so as to give full opportunity for responses.
32. Most of the evidence had been heard when the inquiry was adjourned on 22 February, and when the proceedings resumed on 13 March I was expecting the remaining sessions to cover possible conditions, planning obligation agreements, and closing submissions by both main parties. In the event a number of other new documents and plans were submitted for the applicant, including Revision 10 of Drawing 121 and Revision 8 of Drawings 124 and 125. Submissions on the legal matters I raised were made for the applicant in two stages: as an initial response, and then in more detail later as part of the closing submissions.

### **References to Court Judgments**

33. Various court judgments were mentioned during the inquiry. Two of the judgments to which I drew attention were those known as *Wheatcroft* and *Holborn Studios*.<sup>5</sup> I mentioned the latter case in particular because it is a fairly

---

<sup>4</sup> I checked this point because the proposed new bus stops would be located about 30-40 metres south of the site entrance, although the proposals to make alterations to the road would improve visibility from here.

<sup>5</sup> *Bernard Wheatcroft v Secretary of State for the Environment* [1982] 43 P&CR 233; and *R(oao) Holborn Studios v London Borough of Hackney* [2017] EWHC 2823 Admin. These cases concern the extent to which planning applications can be changed without what is proposed becoming substantially different from what was applied for, and whether changes to proposed development might affect the rights of third parties and cause unfairness. Copies of the judgments are in Appendices 14 and 15 of Document IQ 21.

recent judgment (November 2017), which has the effect of modifying to some extent the earlier well-known Wheatcroft judgment, and it appeared that neither of the main parties was aware of it. References are made to other legal judgments in the note on "Development and the Definition of Caravans" which I handed out during the inquiry.

34. I return to court judgments and their relevance to this case in more detail later (particularly paragraphs 51-53, paragraph 148 and footnote 33).

### **The Applications - Omissions, Errors and Other Flaws**

35. The main points I raised are recorded below.
36. Application 0805 is date-stamped by "P&B Services" as having been received on three dates, the first of which was 2 June 2017. As this application was dated 5 June 2017 I queried how the application apparently came to be first received three days before it was submitted. It seems that this was probably caused by the use of an incorrect setting on the Department's date-stamp.
37. The applications were either incomplete or incorrect, or both of these in various ways. In application 0805 relating to the east site, it would appear that Question 14 ("Does your proposal involve a gain, loss or change of use of non-residential floor space?") should have been answered "Yes" instead of "No", with floor area figures entered accordingly, since part of the applicant's case is that the existing glasshouse is "quasi-industrial" floor-space which would be removed and replaced by the much smaller area of the proposed dwelling and garage if the development took place.
38. In application 1023, Question 14 (which is left blank) should have been answered "yes" to reflect the floorspace of the proposed gym, laundry, shop and reception office. In the answer to Question 14, the figure of 2182 square metres stated for proposed non-residential floor-space apparently represents the total floor-space of all the 27 units labelled on Drawing 121 Revision 5 as "residential lodges".<sup>6</sup> The answer to the previous question (number 13) shows that the proposal would involve a gain of 27 residential units. Thus the application refers to these units as both residential and non-residential.
39. I sought clarification of the following other points on application 1023:
- The Department's description of this proposal included a reference to a "terraced seating area" which is not shown or labelled on the application plans and is not mentioned in the application.
  - Neither the application nor the Department's different description mentioned the apparently proposed canopy structure, which *is* shown in the application drawings - it would link the two structures next to the altered entrance to Tamba Park, and would appear to be potentially a more significant feature than a terraced seating area.
  - I could not find anywhere in the application plans or documents indicating which of the proposed "ancillary buildings" would be the intended locations for the gym, laundry, shop and reception office.

---

<sup>6</sup> I confirmed this with the applicant's representatives during the inquiry. According to the Planning Statement (Document AW 4, page 6) the total floorspace of all the units proposed would be 2,352 square metres. Of this, 170 square metres would be the "ancillary buildings", leaving 2,182 square metres relating to the 27 units labelled as "residential lodges" on Drawing 121 Revision 5.

40. After my questions and comments on the above matters, a drawing was later submitted to the inquiry by the applicant's representatives (Document IQ 9, Drawing 121 Revision 7). It shows with lettering A to D the location of the proposed laundry, gym, shop and what is labelled as "entry reception" next to the proposed control point at the proposed new pedestrian entrance to Tamba Park. The applicant's representatives confirmed that the applicant's intention was to seek planning permission as part of application 1023 for the canopy structure which would be above this entrance. Document IQ 9 also shows the location of the proposed terraced seating north of the restaurant.
41. The submission of Document IQ 9 also revealed errors in the way the proposed "ancillary buildings" had been described in application material. For example the Environmental Statement (Document AB 7, page 19) refers to "4 ancillary buildings to provide reception facilities and services to support the self-catering use of the site (small shop and gym for visitor use only)". In fact that would not be so - the proposed function of the two proposed "ancillary buildings" located next to what would be the new pedestrian entrance to Tamba Park would be linked with and to support the Tamba Park attraction.
42. The ownership information supplied with both applications was evidently wrong. This became apparent to me from two sources: one was published information about application reference P/2017/0519 relating to a proposed house on land associated with Tamba Park; the other was a draft copy of a planning obligation agreement ("POA") which was submitted for the applicant shortly before the inquiry and contained details of land ownership different from that supplied for both of the applications. In application 0519, the owner of the site, and of the blue-edged land depicted for that application as within the same ownership (and within the current application sites), was stated to be Mr Jonathan Ruff. The draft POA indicated that four limited liability companies - not Mr Ruff - owned parts or all of the application sites.<sup>7</sup>
43. In response to my comments about ownership, the applicant's advocate stated that Mr Ruff owned 100% of the shares in the limited companies listed in the draft planning obligation agreement.
44. The Department's witness at the inquiry did not know the reason for the Department's change from "lodges" to "accommodation units" in the description of the proposed development for application 1023. It is also difficult to see why the Department's changes to application 1023 introduced a reference to the change of use of "resulting agricultural field" to car park, since there is no suggestion that after the demolition and restoration work proposed by this application and before carrying out the rest of the development, the land would be put to any intervening agricultural use.

### **The Applicant's "Lodges" and the DoE's "Accommodation Units"**

45. In December 2017, about two months before the start of the inquiry, I sent an emailed message through the Programme Officer to the applicant company's agent (copied to the Department) asking for drawings of side and end elevations of the 27 proposed wheeled units showing the design of the proposed chassis, the proposed arrangement and size of the wheels, and the arrangement of "legs" or any other proposed means of support. I did this because the drawings submitted as part of application 1023 showed these units appearing to "float on air" above the ground, with a note indicating that the gap beneath the units would be clad with a "skirt" to conceal the chassis. The drawings also indicated that the units would be sourced from a firm based in Suffolk (Omar Park Homes)

---

<sup>7</sup> These are: JAJ Properties Ltd; Ruff Properties Ltd; Retreat Leisure Holdings Ltd; and Retreat Dwelling Ltd.



which I knew manufactured mobile homes specifically designed to meet the definition of "caravan" for the purposes of planning law. It was also apparent from comparing the application plans with published Omar company literature that the proposed two-bedroom and three-bedroom units would be similar in form to the units known as "Ikon" and "Apex" manufactured by that company.

46. In response, re-revised versions of Drawings 124 and 125 were submitted in December 2017 (Revision 4 of both drawings). These drawings were similar to the previous versions (Revision 3) except for the addition of inset elevations showing the two-bedroom and three-bedroom units with a chassis and wheels, and stabiliser legs at each end standing on small pads. The height of the units above ground level is higher in the new drawings with the wheels and chassis than in the previous versions showing an apparently empty gap.
47. I refer above to the 27 "wheeled units" in order to use a neutral term based on what was shown in the application drawings and described in the supporting documents. These units are labelled "residential lodges" on the application drawing of the proposed masterplan layout (Drawing 121 Revision 5). They are also described as "moveable" and "capable of being moved" several times in supporting documents, for example in the following quotations from the Planning Statement and Design Statement (Documents AW 4 and AW 7):

*"Single storey moveable self-catering lodges...built on a chassis with wheels that allows them to be moved..."* (Planning Statement, page 6).

*"The fact that the self-catering lodges are moveable results in them having a very light touch on the ground as opposed to more permanent buildings that are constructed on concrete foundations"* (Planning Statement, page 18).<sup>8</sup>

*"These new units are actually constructed on a chassis with wheels that allow them to be moved, they are therefore transient structures that can be relocated, this is an important component of the application..."* (Design Statement, unnumbered second page under sub-heading "Proposals").

48. The definition of a caravan in Article 98(a) of the Planning and Building (Jersey) Law 2002 is: "A structure designed or adapted for human habitation which is capable of being moved from place to place (whether by being towed, or by being transported on a motor vehicle or trailer)"<sup>9</sup>. The Omar company states on its website that all Omar Group's park homes and lodges are legally defined as caravans as they are built and transported on a chassis. It can reasonably be assumed that this statement is intended to refer to UK planning law; but this is very similar to Jersey planning law.<sup>10</sup>

---

<sup>8</sup> As I pointed out during the inquiry, the tenses of verbs used in much of the written material submitted for the applicant company could be confusing to some people - for example, both the future tense ("This will happen") and the present tense ("This is happening") should be interpreted as the conditional future ("This would happen"), since whether the proposed development will be carried out depends on whether planning permission is granted and implemented.

<sup>9</sup> I have omitted parts of Article 98 (referring to a motor vehicle and a tent) which are not relevant here.

<sup>10</sup> The definition of a caravan under UK planning law is: Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. The definition includes a structure which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps and other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether being towed, or by being transported on a motor vehicle or trailer). As explained in this report, UK case law has established that capability of movement from place to place within a site or on a hypothetical road meets this test. In any case, the Jersey definition does not refer to movement "by road" - hence the relevance of the descriptions in the application documents "moveable" and "built on a chassis with wheels that allows them to be moved".

49. A number of the written representations commenting on the proposal as described in the application and its supporting material say that the 27 proposed wheeled units would be caravans, or that the proposal appears to be an attempt to create a caravan park. Among these representations is a letter from a solicitor on behalf of a group of local residents, drawing attention to the definition of "caravan" under the 2002 Law and to the provisions of Article 99 under which there are specific controls over importing and using caravans in Jersey.<sup>11</sup> In response to this representation - and to others making a similar point - there is a brief comment on Page 6 of Appendix 20 of the proof of evidence by Mr Stein (Document AB 11-13) which states: "The accommodation proposes self-catering lodges (not caravans)."
50. The term "lodge", along with other terms such as "chalet", has no specific meaning under planning law. Mr Stein's bald statement that the accommodation proposes "lodges not caravans" therefore has no real substance - in this context the "lodges" might just as well be called "things", or (to adopt the Department's equally meaningless expression) "accommodation units".
51. Having studied the evidence mentioned above as part of my preparation for the inquiry, it appeared to me that what was being proposed in relation to the 27 units was the stationing of 27 mobile homes for residential purposes, albeit likely to be subject to controls by conditions aimed at limiting the use to holiday occupation.<sup>12</sup> I was aware of UK court judgments on the definition of mobile homes or caravans but could not find any applicable judgments by the Jersey courts. Both main parties later confirmed during the inquiry that as far as they were aware there were no such Jersey judgments. In these circumstances, given the similarity between UK and Jersey planning law on the definition of "caravan", it is appropriate to refer to UK judgments as a guide to interpreting and applying planning law in Jersey. Although such judgments are not binding on decision-makers in Jersey, I think there would have to be good reason to go against them when interpreting the law.
52. During my question and information session early in the inquiry I handed out a written Note on "Development and the Definition of Caravans". A copy of this Note is attached as Appendix 2 of this report. In summary, it sets out some relevant planning law relating to caravans and explains why, on the information supplied with the application and supporting documents, the proposed 27 units would appear to me to fall within the definition of caravans for the purposes of planning law. Among the points covered in my Note are:
- The use of the word "structure" in Article 98 of the 2002 Law does not mean that caravans or mobile homes are buildings for the purposes of planning law.
  - The need to assemble parts of a mobile home, for example with bolts, does not involve operational development sufficient to make the mobile home a building or take it outside the definition of a caravan. Nor does attaching a mobile home to mains services, or removing wheels or adding attached or abutting features such as steps, decking or skirts.

---

<sup>11</sup> This is in Document IQ 2 - letter dated 15 September 2017 from Ms Claire Smith of Ogier on behalf of the residents listed in Schedule 1 attached to the letter. The specific controls on importing and using "moveable structures" are under the Planning and Building (Moveable Structures) (Jersey) Order 2006. They apply to any proposal to "erect or station" a moveable structure that is to remain on the same land for 28 days or more in any period of 12 consecutive months.

<sup>12</sup> This only refers to the 27 units. The four proposed "ancillary buildings" (gym, laundry, shop and reception office), which would not be designed or adapted for human habitation, would not be within the definition of caravans.

- The fact that a mobile home or caravan could not practically or legally be transported along a road next to the site does not affect the definition of a caravan, provided the unit as a whole could be moved around a site.<sup>13</sup>
  - Stationing or siting a mobile home or caravan normally constitutes a *use of land* for the purposes of planning law (as opposed to *operational development* such as constructing a building). The distinction is important for various legal reasons. Where a mobile home or caravan is used for holiday occupation the use is residential.
53. Details of the main court judgments which I considered relevant in making the above assessment are listed with brief explanations of their relevance in the second page of my Note.
54. The applicant company and its advisers have evidently not yet worked out the precise method of delivery of the units from Suffolk to the application site, as such details would not be known before a definite purchase, but it is apparently likely that the units would be brought to the site in two halves.<sup>14</sup> The applicant's intention is to source the decking areas and access ramp and steps locally in Jersey, and these would butt up against the main unit (that is to say, they would not be structurally fixed to the main unit).
55. A few days before the inquiry<sup>15</sup> I received what was described as a rebuttal proof by Mr Dennis for the applicant, purportedly rebutting the Department's proof of evidence. Section 3 of this document (Document AB 19) headed "Construction Method" is not in fact a rebuttal of the Department's evidence. It is new material - Mr Jones' proof of evidence for the Department did not contain any evidence about construction method. (The nearest it comes to this topic is a brief comment under the heading of "Design" describing the proposed units as "ordinary timber clad chalets".)
56. Paragraph 3.4 of Mr Dennis's "rebuttal proof" refers to the way the units would be pre-fabricated but adds in the final sentence: "The lodges cannot be removed without being destroyed".<sup>16</sup> Paragraph 3.6 refers to "localised support/fixing points at the two ends in addition to the four wheels to each chassis". Paragraph 3.9 of this document also contains the statement: "The lodges, once attached to the ground and the services, become permanent structures which require construction works to complete them on site. Once they are constructed they are not able to be disassembled without a significant amount of destruction of their fabric and materials".
57. Mr Stein's evidence was presented on the second day of the inquiry. As can be seen from his proof (Document AB 11, page 6), he described the proposed 27 units as being "effectively suspended above the ground on a chassis with wheels

---

<sup>13</sup> This is even clearer in Jersey. One of the applicant's witnesses commented that the 27 proposed units could not be moved along Jersey's narrow roads. That is irrelevant, since - unlike the UK - the definition of "caravan" in the 2000 Law does not refer to movement by road - capability of movement from place to place within a site is sufficient to meet the "moveable" test.

<sup>14</sup> This is the normal method of delivery for mobile homes defined as caravans. The Omar manufacturers assemble their mobile homes and move them around in the factory as complete units, then separate the halves for transport during delivery. Drawing 124 Revision 5 (Document IQ 10) shows where the two halves would be re-joined.

<sup>15</sup> An electronic copy of this document was sent to the Programme Officer on 12 February, and a paper copy was received on Thursday 15 February

<sup>16</sup> As noted elsewhere, the use of the present tense in Mr Dennis' proof of evidence could be potentially confusing, but this statement can reasonably be interpreted as meaning: "If the development were to be carried out the units would not be capable...etc". Similar comments apply to other present tense statements in Mr Dennis's written evidence.

and stabilisers". His evidence also stated that the units would "sit on small concrete pad foundations to locate and secure the unit's wheels (for accurate placement) and stabilisers" (page 26).

58. On the third day of the inquiry (the day after I had handed out my Note on Development and the Definition of Caravans), the proposal changed again with the submission of Revision 5 of Drawing 124. Instead of localised pad foundations "only to locate wheels and stabilisers" (as in Revision 4 of this drawing), a new feature was added showing "permanent ground fixing detail" indicating that it was now proposed that the units would have steel support posts welded to each unit's substructure, and that the posts would be cast into concrete foundations, which would be constructed to a volume of around three times the depth and twice the lateral dimensions of the previously proposed "pads" mentioned above. The new drawing also had a note added to an elevation, reading: "Once lodge is in location the wheels are removed and posts permanently welded to subframe". The 1:20 inset drawing in Revision 5 of Drawing 124 taken together with the main elevation drawing indicates that each of the units would have the proposed concreted and welded steel support structures at each corner and in a more central position replacing the wheels.

### **The Planning Unit**

59. Another of the issues I raised early in the inquiry concerned the way the proposed development had been described by both the applicant and the Department without consideration of the planning unit. I explained that when defining the use of land for planning purposes, it is necessary to consider what area should be looked at - the "planning unit". In summary, this is typically the unit of occupation, unless there is a more appropriate (usually smaller) area which is both physically and functionally distinct.<sup>17</sup>
60. To explain this concept with a simple example, the occupier of a house standing in a plot with a detached garage might carry out repairs to his or her car in the garage. Assuming the scale of this activity is at an ancillary or incidental "hobby-type" level, the garage would still be in residential use for planning purposes - the planning unit being the house and its plot; if car repairs were at a larger, perhaps commercial, scale, the use of planning unit would probably change, to become mixed use (residential and car repairs); but if the garage were physically and functionally separated, there would probably be two planning units, one in residential use and one used for car repairs.<sup>18</sup>
61. In the case of the west application site, the planning unit would be the whole site, because if the proposed development took place there would be overlapping uses and activities on areas which would not be physically and functionally distinct - for example, parts of the access and circulation areas would be shared by people going to and from both Tamba Park and the 27 proposed units. According to the plans submitted with the application, part of the existing Tamba Park complex including the pet animal nursery and adjacent area would also be within the west application site, although in yet another

---

<sup>17</sup> The standard leading legal judgment on this point is *Burdle & Williams v SSE and New Forest RDC* [1972] 1 WLR 1207.

<sup>18</sup> Another illustration of the "planning unit" concept would be a car parking area attached to an office building and used by office employees or visitors to the offices. Assuming the car park is not physically separated from the office building and not available to the general public, it would be part of the planning unit in use for offices with an ancillary function, and so its use would be offices. If the parking area were available for public use unrelated to the offices but not physically separated from the office building, the site as a whole would probably be one planning unit in mixed use for offices and car parking. But if in the latter case the car park were also fenced off or otherwise physically separated from the office building, with a separate access, there would probably be two planning units, one in use as offices, one used as a car park.

change to the application, later drawings submitted during the inquiry had an altered site boundary showing this building and area omitted from the application site. Be that as it may, the two proposed "ancillary buildings" and linking canopy in the east of the application site would be in use mainly for Tamba Park tourist attraction purposes. So if the proposed development were to occur, the site subject to application 1023 would be in mixed use.

62. On the second day of the inquiry I read out what appeared to me to be a more correct description of what was proposed by application 1023 than was described in either the application or the Department's modified version. I suggested that from the information submitted with the application, what appeared to be really proposed would be a combination of *operational development* (such as creating hard-surfaced vehicle parking areas, altering the access next to the road, and constructing the four "ancillary buildings") and *making a material change of use of land*,<sup>19</sup> to a mixed use which would include use for tourist attraction or entertainment purposes and for stationing mobile homes.

### **Submissions for Applicant on Legal Issues**

The main initial points made in response to my comments were:

63. On the issue of whether the proposed 27 units were defined as caravans, the key point was the wording of Article 98 referring to "capable of being moved from place to place". The applicant was not proposing to establish a caravan park. The units would be fixed to the land, and it was a matter of happenstance that the chosen supplier was a manufacturer of mobile homes meeting the definition of caravans. The drawings supplied in response to my request before the inquiry, showing wheels and supporting legs on small pads, had been supplied because Mr Dennis had simply provided the manufacturer's drawings. If necessary conditions could mandate that the proposed lodges would be fixed to the land. The use of the lodges would not be residential and the lodges would not be dwelling-houses; their use would be equivalent to a hotel use and would be within Class F of the Use Classes.

The main points made in later closing submissions were:

64. The inquiry provided sufficient opportunity for all to make representations. Under Article 12(2) of the 2002 Law, in determining an application the Minister must take into account representations made at the inquiry. The opportunity to make representations must be fair to all parties, including an applicant. In this instance the applicant had responded to matters arising as they occurred. It would be unfair for other parties to be in a better situation.
65. Some guidance was provided by judgments in England, including *Wheatcroft* and *Holborn Studios*, but UK court judgments were not binding in Jersey. The key test arising from those judgments was whether the process of considering an application had been so unfair as to be unlawful. The process of considering these applications had been fair to all parties. The applications were validated by the DoE. Representations were made. The Department considered that an environmental impact assessment was required; this was provided. The Minister had directed that a public inquiry be held. Proofs of evidence were submitted in early February 2018. Newspaper and site notices had advertised the inquiry and

---

<sup>19</sup> It may be helpful to note here that the definition of "develop" in Article 5(1) the 2002 Law has two parts which are (subject to provisos and exclusions) as follows:

(a) to undertake a building, engineering, mining or other operation in, on, over or under the land;  
(b) to make a material change of use of the land or a building on the land."

Thus in summary there are two types of "development": "operations" and "material change of use".

given notice that the latest plans were available from the applicant. Electronic copies of drawings were supplied to a third party. Third parties had made representations at the inquiry.

66. During the inquiry the inspector had raised the potential for the lodges to be caravans or moveable structures under the Planning Law. The applicant had addressed these matters in detailed refinements to drawings. The applicant had conveyed the refinements to the DoE on 9 March and met with a third party on 12 March to explain them, before the inquiry reconvened on 13-14 March. The process had been fair to all those interested. The Department had never understood the proposed lodges to be moveable structures or caravans. The legal potential for them to be caravans had now been addressed.
67. The freight containers seen during the site inspection on the west site contained parts of a prototype for the erection of the proposed Tamba Park manager's accommodation, which was awaiting planning permission having been recommended for approval by Department officers (application P/2017/0519) and were on the site because they needed to be certified by Building Control.
68. The new application forms provided near the end of the inquiry were to make the applications clearer and to refine the descriptions of the proposed developments.

#### **Other Submissions on Legal Issues**

69. The Department did not make any material submissions on the legal issues I raised during the early part of the inquiry. When the inquiry resumed on 13 March and I invited Mr Jones to comment on the changes made to the proposals during the adjournment period, he said that the Department had not had the chance to consider the changes of description in detail or to advertise them, and there had not been any opportunity to undertake re-consultation.
70. The only other party who made submissions when the inquiry resumed on 13 March was Mr Ashworth. He said that he had seen revised drawings the previous day, but had not seen the new application forms.
71. Earlier in the inquiry when Mr Mistry spoke,<sup>20</sup> he said that residents had made submissions on what they thought were the proposals, and would be prejudiced by the number of changes apparently being made. It was now difficult to see what was being proposed and whether or not the proposals involved caravans.

### **PART 3: THE PLANNING MERITS CASES**

#### **Case for Applicant**

The main points are:

72. The applications were supported by various documents. These include (document numbers are given in brackets):

For both sites:

- Heritage Assessment (AB 3).
- Marketing Strategy Method Statement (AB 4).

---

<sup>20</sup> Mr Mistry was only able to attend the inquiry for a limited time and was not present for most of the proceedings. His representations on planning policy and other non-legal matters are reported separately at paragraphs 124-125 below.

- Geoenvironmental Site Assessment Phase 1 Desk Study, Site Walkover and Risk Assment (AB 5).
- Geotechnical Investigation Phas II Intrusive Investigation and Risk Assessment (AB 6).
- Environmental Statement (AB 7).
- Environmental Impact Statement Non-Technical Summary (AB 8).

For the West Site:

- Construction Environmental Management Plan (AW 2).
- Transport Assessment (AW 3).
- Planning Statement (AW 4).
- Initial Ecological Assessment (AW 5).
- Secondary Tree Inspection Results Report for Bats and Birds (AW 6).
- Design Statement (AW 7).
- Retreat Farm Phase III Costing and Valuation Report (AW 8).
- Waste Management Report (AW 9).
- Crime Impact Statement (AW 10).
- Economic Statement (AW 11).
- Tamba Park Operational Statement (AW 12).
- Public Art Statement (AW 13).

For the East Site:

- Construction Environmental Management Plan (AE 2).
- Transport Statement (AE 3).
- Planning Statement (AE 4).Initial Ecological Assessment (AE 5).
- Design Statement (AE 6).
- Retreat Farm Phase III Costings report for demolition of east greenhouse, restore land to agricultural field and house construction (AE 7).
- Waste Management Report (AE 8).

73. The material below is summarised mainly from the proofs of evidence, with other points added where appropriate from oral evidence.

**Historical Background and Planning Aspects**

74. Most of the glasshouses in Jersey are commercially redundant and the glasshouse industry in the island has ceased to exist insofar as export is concerned. Many glasshouses are derelict and there is no financial assistance from the States to remove them and remediate the land. Most of the glasshouses at Retreat Farm have concrete or compacted gravel floors, making them incapable of yielding a Jersey Royal potato crop. Permissions have been granted for other redundant and derelict glasshouses in Jersey to be redeveloped, mostly for residential development.
75. The glasshouses at Retreat Farm are substantial structures bedded to foundations and cannot be regarded as temporary structures, as is shown by the estimated combined cost of demolition and land remediation for both glasshouses of close to £1 million. Even if the letter "s" was a typing error, it would be unreasonable to enforce such a condition. In any case, neither the eastern block or the western block are subject to such a condition. The Department's statement that the eastern block is so subject is disputed. Condition 4 of the planning permission for the erection of the existing glasshouse on the east site referred to "glasshouses" plural whereas what was being permitted was a glasshouse (singular), so the condition must have

referred to the pre-existing two glasshouses. It is accepted that the condition would only bite when the permission was implemented, but this could be by partial implementation.

76. The proposed redevelopment would result in most of the land being retained in employment use and remediated so that it would be capable of future agricultural use. This would be secured through a planning obligation agreement. The proposal would also give rise to numerous environmental improvements including:
- Significant reduction in built floorspace and volume.
  - Significant reduction in intensity of use.
  - Significant increase in permeable surfaces.
  - Significant increase in open land, including a new agricultural field.
  - Significant reduction of traffic on La Rue des Varvots, a narrow rural lane.
  - Remediation of localised soil contamination.
  - Reinforced field boundaries and extensive landscaping.
  - Reduction in disturbance to neighbours.
  - Connection of the site to the foul sewer.
  - Ecological enhancements.
77. Although there is a presumption against development in the Green Zone, the proposal had to be considered in the round. The presence of the existing glasshouses meant that the sites are brownfield land.

#### **Traffic and Transport**

78. The transport policy team of the States Department of Infrastructure have confirmed that they have no objection to the applications. The proposals accord with key Island Plan policies. La Rue de la Frontière is part of the primary route network. There is no recorded accident trend along this road. Safety for local road users would be improved by ceasing use of the existing car park off La Rue des Varvots and consolidating it with the proposed car park off La Rue de la Frontière. Potential conflicts between competing users of La Rue des Varvots would be removed.
79. La Rue de la Frontière is part of a well-established bus route. The proposed development would include the re-alignment of part of this road to improve junction safety, provide additional bus stops (northbound and southbound) and a new footpath for pedestrians and bus passengers going to or from the bus stops and the proposed development and the Tamba Park site.
80. The proposed development is predicted to generate around 5 two-way vehicle movements in the morning peak hour and 7 two-way vehicle movements in the evening peak hour, indicating that the impact on the local highway network would not be material. The proposed parking space provision has been established from analysis of historic data at the existing Tamba Park facility. The proposed level of car parking would be sufficient to cater for demand throughout the day and the proposed self-catering units.
81. Overall, the transport impact of the proposal would be minimal.
82. In response to questions, Mr Welch did not accept that the proposal, with its large car park, would be contrary to Island Plan policies aimed at achieving "sustainable" transport. Bus use would be encouraged by the provision of the



additional northbound and southbound bus stops and the proposed footpath next to La Rue de la Frontière. Existing residents would not suffer because the existing bus stop at the junction with La Rue des Varvots would remain.

83. Mr Welch agreed that the two-lane exit layout proposed for the west site access was not necessary for traffic capacity purposes - the ratio of flow to capacity (RFC) shown in the results of the PICADY modelling would be very low even in the future projections, and delays would be negligible. A single lane exit layout would have plenty of spare capacity; but the two-lane layout was proposed to meet the requirements of the transport section of the Department of Infrastructure and to overcome their objection. The two-lane layout would also meet "swept path" requirements, though it would mean that large vehicles turning south from the west site would use the lane marked for right-turning vehicles and swing into the left-turn lane (as shown for a "midi-bus" in the diagram in the bottom left corner of the first page of Appendix F of the Transport Assessment (Document AW 3)).

#### **Marketing**

84. The leasehold and freehold interest in the blocks of glasshouses at Retreat Farm have been marketed by CBRE since February 2015. The property was fully advertised with the Jersey Evening Post and the trade magazine Commercial Greenhouse Grower, as well as with "To Let" boards and the CBRE website. The only expressions of interest received by CBRE within this three year period have been from residential developers and Jersey Choice, who were an existing tenant wishing to extend its lease by a few months.
85. The glasshouses have become obsolete and since the abolition of low value consignment relief in Jersey, the demand for glasshouses of the type on these sites has disappeared. The only theoretically possible demand might have come from growers of Jersey Royal potatoes; but the concrete floors within the glasshouse prohibit this use. The proposed development on Field 770 offers the most realistic alternative employment use. The proposal to use the existing Tamba Park car park for a single dwelling for Mr Ruff to occupy is also appropriate given the absence of market demand for the glasshouse on that site.
86. The £3.1 and later £2 million valuation of the application sites had been based on use as glasshouses, not as agricultural land, by looking at previous transactions for other glasshouse sites, although the price for marketing purposes was lowered by about 10%.
87. In response to my suggestion that the market value of any property is the price at which it sells or lets, and that the market value of this property might be, say, £1 (since the evidence indicated that there was no market for the glasshouses and the cost of remediation for agricultural use would be very substantial), Mr Mallinson said that market value should be a fair value based on transactional evidence, not a give-away figure.

#### **Site History**

88. The glasshouses and associated structures at Retreat Farm were built for a specific horticultural use reflecting the requirements of the industry at that time. That period has now long passed and the glasshouses are not today fit for purpose. They could not easily be adapted for another horticultural use.
89. The glasshouses are also very large with considerable areas of concrete hardstanding and compacted hardcore floors. Nobody required the glasshouses for the purpose for which they were constructed. The costs of removing the

glasshouses and reinstating the land to agriculture would make a theoretical alternative horticultural or agricultural use unprofitable.

90. The previous use of the site by horticultural businesses resulted in complaints by neighbours. This was because of commercial vehicles going to and from the site throughout the day and night and because the use generated a lot of light at night. Jersey Choice has no need for the site to maintain its own business.
91. There is no longer any demand for this type of glasshouses. There is a local market, but only for niche crops, not of this scale.

#### **Design**

92. The design of the proposed development on both sites has been based on an architectural solution derived from an analysis of the sites and surroundings, including the landscape character, site access and circulation, infrastructure and services, scale and massing in context, sustainability and design influences. The proposals accord with key Island Plan policies, notably policies SP1, SP2, HE1, GD1 and GD7.
93. The proposals represent a balanced and comprehensive environmental solution with significant planning gains. The redundant glasshouses would be removed and the land would be remediated. A new economically viable diversification supporting the Island economy would be guaranteed by the applicant through a planning obligation. The proposals would incorporate significant planting and other landscape treatment, including reinforcement of boundary hedges.
94. The proposed new dwelling for Mr Ruff on the east site would maximise its connection to place, remaining subservient in mass, scale and materiality to remain respectful and appropriate adjacent to the physical and built context. The dwelling would have an organic, environmentally friendly design to harmonise with its landscape surroundings. It would be largely concealed from public views, would have a high degree of design quality in line with policy GD7, and would use green technologies in accordance with policies SP2 and NR7. It would provide an improved setting to Retreat Farmhouse in place of an existing busy car park, consistent with policy HE1.
95. The proposals on the west site are designed to best harmonise and utilise the site's orientation and aspect, maximising the individual buildings' connection to place and providing an environment for quiet enjoyment. The arrangement of the units on site would allow a series of different spatial experiences changing with the seasons, ensuring a unique quality of experience specific to this environment. The buildings would have a high quality of design in line with policy GD7 and propose significant green technologies in accordance with policy SP2. The low density of development would be acceptable. The pattern of development would accord with policy GD3. The proposals would develop a brownfield site in compliance with policy SP1(2).
96. The proposed development on the west site would be compatible with Green Zone principles because there would be organic units linked to the landscape in a way which would continue the area's landscape character with a good architectural solution. The cars in the car park would not harm the area's countryside character, compared with current views of glasshouses. The appearance of the site would be significantly improved.
97. The logistics of how the 27 units would be brought to the site had not yet been worked out, but they would probably be transported in two halves from the manufacturer, Omar.

**Environmental Aspects and Planning Policy**

98. An important reason for the Minister calling for this inquiry is so that a comprehensive planning and environmental solution for both sites could be considered. An Environmental Impact Assessment has been prepared. This resulted in new information being provided and new plans being issued to address identified concerns. The development would improve local drainage, both foul sewerage and surface water. Fields M770 and L78 would be restored to good agricultural land.
99. The historical permitted use of the sites is commercial horticulture in glasshouses. The land is capped with concrete and the quality of the ground itself is unfit for agriculture.
100. The landscape character is also damaged by the presence of the visually dominant glasshouses, which are not typical of the landscape features identified in the Countryside Character Appraisal (1999). The proposed development would result in a landscape of more open character and appearance. The development of the east site would also enhance the setting of a listed building, Retreat Farm House. A section of roadside bank and trees would be removed to improve the access to the west site, but this has to be balanced against the very significant landscape improvements which would result from the development.
101. The sites have low ecological value at present. The proposals would remove the barriers to movement formed by the glasshouses and would increase opportunities for local biodiversity.
102. Tamba Park is an established tourist facility but is currently ill-served by public transport and has two car parks. The applications would enable car parking for Tamba Park to be consolidated and would remove traffic from a narrow lane. The proposed new car park would be accessed from a primary route. Choices of sustainable transport methods would also be increased by the proposals.
103. The Planning and Building (Jersey) Law 2002 requires an assessment of compliance with the Island Plan. Other guidelines and policies also have to be taken into account. Different policies pull in different directions, but the proposed development would be in accordance with the Island Plan taken as a whole, and with other relevant guidance and policies. The applications comply with the strategic aims of the Island Plan, notably the need to make the best use of land (policies SP1(2), SP2 and SP3; the need to support the Island's economy in accordance with policy SP5; and the development would deliver environmental gains in accordance with policy SP4. Other specific policies of the Plan would be met.
104. The impact of the development proposals on the amenities of neighbours has been considered and no unreasonable harm would be caused, taking account of mitigation measures including the implementation of Construction and Environmental Management Plans and measures to control noise and light.
105. The developments would provide a unique opportunity to realise both strategic and specific policy aims. The majority of the site would be retained in employment use, landscape character would be restored, whilst there would be the minimum amount of development required to replace the eastern glasshouse block and ensure demonstrable environmental improvements.

106. The use of the former Retreat Farm when occupied by Flying Flowers was a mixed use including tourism. It is not possible to assume the use was unauthorised.<sup>21</sup>
107. The proposal on the west site could not be a route to residential development, and the layout would not be "cramped" for tourism purposes. The arrangement is not untypical of other tourist sites such as Les Ormes. There was no experience in Jersey of mobile homes being "park homes" or static caravans. It would not be possible to move one of the proposed lodges along roads near the site, or around the site. The ramps and decking would be fixed to the ground and would abut the lodges.
108. Although the Minister had decided that an inquiry was necessary on the ground that the proposed development would be a departure from the Island Plan, the applicant's case is that this would not be so. The sites are "brownfield land" where there was a need to find alternative uses, with the removal of glasshouses funded by the private sector. There is a need to restore the land and to develop tourism accommodation to increase the number of staying visitors, which had greatly declined since the 1960s. This is a unique opportunity to do so, because of Mr Ruff's ownership.
109. The planning policy tests, in policies including SP1, SP4, SP5, SP6 and SP7 would be met by the proposed development. The tests in policies ERE 7 and GD1 would also be met. The existing glasshouses are not derelict although they could become so. These proposals would not set a precedent for others.

### **Case for Planning Authority**

The main points are:

110. The key issues in considering these proposals are: the impact of both developments in the Green Zone; the economic/tourism case; the number, design and appearance of the holiday units; and the need for a new dwelling.
111. The starting point for considering the applications is the zoning of the sites within the Green Zone where policy NE7 of the Island Plan sets the context. The Plan sets out key strategic principles on: sustainable development; protection of the environment; economic growth and diversification; travel and transport; and quality of design. Under policy STP1 of the Plan, development will be concentrated in the island's built-up area. Policy SP3 establishes a sequential approach to development which restricts development outside the built-up area. Other policies seek to maintain a strong economy and to reduce dependence on travel by private car.
112. Under Policy NE7 there is a general presumption against development in the Green Zone, but not a "moratorium". Exceptions may be permissible but only where specific criteria would be met. Tourism is one possible exception, but only where it would be appropriate relative to existing buildings and landscape context and where it would not seriously harm landscape character. The text of the Plan (paragraph 2.162) states that new tourism buildings are unlikely to be favourably considered other than small-scale structures such as kiosks.
113. The erection of 27 holiday lodges and other structures to house facilities including a gym and reception office would not be small scale or appropriate to

---

<sup>21</sup> This comment was made as a response to a question I had put to a previous witness, bearing in mind the evidence about what appears to have been primarily the operation of an import/export business by Flying Flowers for several years, not primarily an agricultural enterprise.

the existing landscape context. The Countryside Character Appraisal identified the application sites as lying within the central plateau valley heads area where the essential character was a patchwork of fields with long views, with limited capacity to accept any new development.

114. Policy ERE7 sets out a general presumption against the redevelopment of derelict and redundant glasshouses or other uses unless the alternative use is directly related to agriculture. Under this policy, non-agricultural development may be considered provided that the amount of development would be the minimum required to achieve environmental improvement. No evidence has been provided to justify the proposed 27 units. Mr Jones believed that discussions between the applicant and the Department had previously considered a much smaller number of units, not the cramped proposal now applied for, although he later accepted that the number of units proposed had remained consistently around 27 and an originally proposed layout had been made more informal.<sup>22</sup>
115. Policy EVE1 supports tourism development which would help to provide a strong and high quality visitor product, to the benefit of the Island. Proposals for new tourist-related development should recognise the sensitivity of areas covered by countryside policies.
116. The new dwelling proposed by application 0805 on the east site would not fall into one of the potentially permissible categories listed in policy NE7. The glasshouse on the east site is also subject to a condition requiring its removal in the event that it falls into disuse or disrepair. The Department also queries whether the glasshouses at Retreat Farm blight the landscape as opposed to being an accepted part of it.
117. The transport policy section of the Department For Infrastructure has confirmed acceptance of the proposals on technical grounds, but the requirements for access widening, road widening, new bus shelter and footpath provision would harm the landscape character. The provision of a new 168-space car park would also suggest that most journeys to and from the site would be by car, contrary to sustainable objectives.
118. The Land Control section of the Department objects to the proposal to demolish the western glasshouse because of a restriction preventing it being occupied by anyone other than an inhabitant of the island engaged in agriculture.
119. The proposed holiday units would be ordinary timber chalets located in very close proximity to each other. The designs would not satisfy the design quality requirements under policy SP7 for this highly sensitive Green Zone location.
120. Mr Jones accepted in response to questions that in applying policy NE 7, if the exception under paragraph 11 applied, the general presumption was not engaged. In policy ERE 7, "redundant and derelict" is a single criterion. The Broadfields site south of La Rue des Varvots is an example of blight, but the States had not exercise dilapidation powers. No notice alleging dereliction under Article 84 of the 2002 Law has ever been issued affecting anywhere in Jersey. The application proposals would lead to various benefits or improvements for example in ecology, heritage, renewable energy and drainage, and would be an effective use of land in line with policy SP 2. Removing traffic from La Rue des Varvots would also be an improvement. The Land Controls section's objection would fall away if the Minister were to grant planning permission.

---

<sup>22</sup> This point is the subject of a joint Note submitted to the inquiry (Document IQ 17).

## Representations by Other Parties

121. About 43 written representations have been submitted commenting on the east site application (0805) and about 56 on the west site application (1023). These figures are only approximate because some of the representations are duplicated and refer to both sites; also some representations are made jointly. The majority of those who have written appear to be local residents, although a number of people have sent similar letters from addresses some distance away, not in either St Mary or St Lawrence.
122. Most of the letters or other representations object to the proposals, but two express support and some others are ambivalent - for example, Mrs S Kerley on behalf of National Trust Jersey makes various points about application 0805 and then states that the Trust "is unable to support this application" (which expresses neither objection nor support).
123. The most extensive comments on the applications are in a submission by Ms Claire Smith of Ogier as agent for eight people listed in Schedule 1 appended to the submission, some of whom have also sent separate written objections. In summary, the submission makes the following points:<sup>23</sup>
- The reference to "brownfield site" in the Planning Statement is incorrect. The inspector reporting on a site at Grondez referred to glasshouses as legally a temporary use and this applies to the current application.
  - The proposals would not improve the local environment but would urbanise the area, contrary to Island Plan policies NE 7 and ERE 7.
  - The proposed holiday lets would have few environmental gains and would not restore landscape character, in an area where the Countryside Character Appraisal stated should have high levels of protection.
  - The claimed economic and tourism-related benefits of the proposals fail to address the basis of policy ERE 7 under which there is a presumption against redeveloping redundant and derelict glasshouses unless the alternative use is directly related to agriculture or agricultural diversification.
  - The claim (in the Planning Statement) that the proposed development of 27 holiday units on the west site would provide employment for 30 full-time staff and more part time staff is completely misleading, bearing in mind that the Tamba Park operational statement refers to creating only 8 full-time and one part-time jobs.
  - The development would create increased noise and light pollution.
  - There is no evidence of need for further self-catering units in the Island as is illustrated by the fact that alternative use has recently been sought for high quality units at Corbière.
  - The proposed holiday lets would be on wheels and this appears to be an attempt to develop a caravan park. The import and use of caravans in Jersey is strictly controlled by Articles 98 and 99 of the 2002 Planning Law.
  - The development would be "car-dependent". The Department for Infrastructure has objected to the sub-standard visibility which would arise. The proposed bus shelter and footpath would require the removal of mature trees and earth banks.

---

<sup>23</sup> This representation is a 9-page document which is within Document IQ 2 - only a summary is given here.

- Numerous houses have been developed on land at Retreat Farm in recent years and have produced the profit required to remove the glasshouses and restore the land. The applicant is offering no more than is already required by the restoration condition applying to the glasshouse on the east site. The applicant purchased the property knowing that it was zoned for agriculture and horticulture. The past pattern of applications shows that the applicant's real intention is to develop more permanent residential homes.
  - Local residents have been massively inconvenienced by having to comment on a series of piecemeal applications so as to avoid their silence being interpreted as support. The reference to the public exhibition mentioned in the Planning Statement is misleading as many people were waiting to consider the applications as a whole.
124. The main points raised orally at the inquiry by other parties are summarised below.
125. Mr Hiren Mistry: The sites are located in the Green Zone where there is a presumption against development. Glasshouses are subject to policy ERE 7 of the Island Plan which sets out a presumption against the redevelopment of redundant and derelict and redundant glasshouses for other uses. The general theme of the Island Plan is to promote development in built-up areas.
126. The applicant had only produced one letter to support the argument about the cost of returning the sites to agriculture. Agriculture is wider than just growing crops. No alternative has been presented to the inquiry. The glasshouses could be used for other purposes such as growing flowers. The proposals are for commercial gain and the development could be turned into housing.
127. Deputy John Le Fondré: There is no justification for building the proposed house and swimming pool in the Green Zone, contrary to policies NE7 and G2. In the run-up to the Island Plan the Minister said that the area had a high landscape sensitivity. The proposals would have a high impact on long views, as the central part of the Island is visible looking across countryside from the east.
128. Despite past assurances the Tamba Park site causes a great deal of noise. The proposed holiday lets on wheels would equal a caravan park and would be the thin end of the wedge, encouraging greater impacts on the rural area. The objections by DoE officers and by local residents as set out in the letter from Ogier are supported. The development on the east site with 27 holiday lets would not be small scale; it would adversely affect the character of the landscape and the countryside. The proposal is using tourism as an excuse, as a way of getting residential development approved. The applicant is not an agriculturalist and the Environmental Land Control Department have objected. The traffic impact would also be undesirable - the Six Roads junction in the south of the Parish is busy and close to capacity already.
129. Mr Paul Ashworth, Mr John Hamilton and Ms Vicky de la Haye all made written representations. At the inquiry they asked a number of questions on matters such as road safety and visibility along La Rue de la Frontière, the type of heating system which would be used in the proposed buildings, and noise from the proposed development. Mr Ashworth also made other submissions about possible conditions.

#### **PART 4: CONCLUSIONS ON LEGAL AND RELATED ISSUES**

130. Taking into account all the points discussed in paragraphs 36-71 above and the resulting submissions, I make the following assessment.
131. I am uneasy about the false ownership declarations which were evidently made in both applications (and also apparently in application reference P/2017/0519, although that is not a matter before me). Limited liability companies are corporate entities separate from individuals, and the ownership or control of such companies can change at any time without any change in land ownership by the company. No evidence was supplied to pierce the corporate veil by confirming the shareholding details of these companies or to show that all the companies as landowners were properly notified about the applications. No indication was given in the applications that JAJ Properties Ltd was acting as agent for the site owners and the available evidence suggests that the false ownership declaration must have been knowingly made. Those involved in the applications signed declarations that they were aware it was an offence to submit false or misleading information with an application.
132. Nevertheless I do not see any reason to disbelieve what I was told about company shareholdings, even without any actual evidence. On balance - giving the applicant company the benefit of the doubt - I think the applications can be treated as having been made by JAJ Properties Ltd as an agent for the other company landowners. It would also seem reasonable to assume that because of ownership linkages the various owners as corporate entities were aware of the applications, despite the lack of any evidence of formal notification. On the basis of those assumptions I do not find that the incorrect declaration invalidates the applications.
133. Similarly, although on the face of it some of the gaps in the applications mean that the requirements for planning applications set out in the States' Practice Note 11 were not met,<sup>24</sup> I do not think those flaws were so serious in this instance as to invalidate the applications.
134. However, I have three other concerns.
135. **First**, the proposal relating to the west site as described in the application is defective in various ways. Even ignoring the omissions and errors in the application form itself, the way the proposed development is described does not properly take account of the planning unit and what that means for the proposed use of the land, as I have explained in paragraphs 59-62. The Department's amendments did nothing to improve the application in this respect.
136. The only mention of a change of use in the description of the proposal in the application - irrespective of whether one looks at the applicant's version or the Department's version - is the "change of use to car park". The Department's version is even worse than the applicant's original description, which at least mentioned the link with Tamba Park ("construct a new car park for Tamba Park") even though it did not describe this element of the use properly as use for tourist attraction purposes. If what is proposed were to be carried out, the "Tamba Park use" would be a significant component of the mixed use of the planning unit, not only because of the fact that the access, circulation and most

---

<sup>24</sup> Practice Note 11 "Information Required for a Planning Application" states that every application must include the correct application form *fully completed* (my italics), and that where basic information is not included the application will be returned.



of the parking areas would all be associated with and ancillary to Tamba Park, but also because the proposed shop and entry reception buildings in the eastern part of the application site would be part and parcel of the Tamba Park operation. Although they are described as "ancillary buildings" in the application, they would evidently be an integral part of the tourist attraction, not ancillary to the self-catering units as is implied in the application. This aspect of the extension of Tamba Park into the application site is not made apparent in the application as publicised.<sup>25</sup>

137. I observe in passing that the applicant company and its advisers appear to have taken the view that alterations could be made to the application plans more or less at will. An example is the very late change in the site boundary for application 1023. When this site was shown as including the grey-coloured structure housing the Tamba Park pet nursery pens and the adjacent area, this was another reason why the mixed use of the site would include the tourist attraction use. This boundary was unchanged in Revision 7 of Drawing 121 submitted during the inquiry. But then, near the end of the inquiry, the boundary on Revision 10 of Drawing 121 was "kinked" so as to exclude the pet nursery and adjacent area from the application site. None of the applicant's representatives mentioned this change, until I noticed it and drew attention to it. The same applies to the quiet disappearance of the "residential" label after Revision 5 of Drawing 121.
138. As far as the west site is concerned, the submission of fresh application forms near the end of the inquiry (in Document IQ 13), with a different description of what is proposed, different statements of ownership, wholly different floorspace figures, different answers to several questions, no reference under Question 13 to the 27 residential units mentioned in the earlier application 1023, and new dates (signed and dated on 2 and 4 March 2018) is an extraordinary step, which in my view reveals the inadequacies of the original application. At the time of writing this report, the new application documents for both sites do not have any status as fresh applications, and even if they were to have that status after standard advertising procedures, I am not empowered to consider or report on any such fresh applications.
139. **Second**, if the 27 proposed units are now to be regarded as permanent buildings, as claimed for the applicant in contradiction of the references to moveable structures, they would be permanent buildings designed for human habitation, with all the normal facilities for day to day domestic existence. They would also be made to look like bungalows, as do all or most of the "park homes" manufactured by the Omar Group. A permanent building designed for human habitation and used for everyday domestic existence would be to all intents and purposes a dwelling-house, and even when people living in such a property are on holiday, the use for planning purposes is residential. As mentioned below (paragraph 143), the residential nature of the proposed use was also confirmed in the application and supporting material.
140. I make the above finding notwithstanding the fact that the proposed use as tourist accommodation would fall within Class F(d) of the Use Classes in Schedule 2 of the Planning and Building (General Development) (Jersey) Order (the "GDO"). This merely means that unless normal "permitted development"

---

<sup>25</sup> See paragraphs 9-11 above. The proposal as described in both the original version and the Department's altered version refers to the "ancillary buildings" (or "ancillary structures" in the DoE's version) in the same sentence as the self-catering units, phrased as if the ancillary link was to be with those units. In plans submitted later (Drawing 121 Revision 7, Document IQ 9), these buildings are labelled "ancillary shop" and "entry reception"; then in plans submitted even later (Drawing 121 Revision 10, Document IQ 15), the buildings are labelled "Tamba Park shop" and "Tamba Park entrance/reception".

rights under Article 3 of the GDO are taken away, planning permission is granted for a property which is in lawful use for self-catering tourism accommodation to be used for other purposes within Class F, such as a guest house. It does not mean that before any such change, the property is not a dwelling or dwelling-house. After all, a conventional house anywhere in Jersey which is used for self-catering holiday accommodation (either by an owner making holiday visits, or by an owner's family or friends, or by letting to others), remains in form a house and in function a dwelling, that is to say a dwelling-house - just as a flat remains a flat even if used as self-catering holiday accommodation.

141. It is relevant to note here that unlike some other jurisdictions with similar GDO-type planning controls, there is no "dwelling-house" class in the Jersey Use Classes, so this legislation does not separate dwelling-houses from self-catering tourist accommodation. Thus there is no reason under the GDO Use Classes why a building which is of permanent construction, looks like a bungalow, and provides all the normal facilities for domestic living should not be a dwelling-house for the purposes of Jersey planning law, irrespective of whether its occupiers are in residence as tourists or are longer-stay occupiers.
142. I am also aware that Category 3C of the 2017 planning application fee schedule categorises all tourist accommodation, including self-catering, as "non-residential".<sup>26</sup> This appears to be an administrative convenience and does not mean that people who live, cook, eat and sleep in self-catering dwellings while in Jersey on holiday are not using the properties as dwellings for the purposes of planning law.<sup>27</sup>
143. **Third**, the information submitted for the applicant about the proposed 27 units has undergone significant change. One aspect of this is that the application proposed the development of 27 residential units. This is confirmed by the answer to Question 13 in the application form itself (stating that the proposal would include a gain of 27 *residential* units), by the reference to "*residential* units" in the Design Statement<sup>28</sup>, and by the label "*residential*" on the application plan showing the proposed "masterplan layout" (Drawing 121 Revision 5).<sup>29</sup> The application plans, the Planning Statement and the Design Statement all form part of the application and its evidential matrix. But later, during the course of the inquiry, it was argued for the applicant that the development proposed by application 1023 would not involve any residential units.

---

<sup>26</sup> The notes attached to the 2017 fee schedule state that all tourism accommodation, including self-catering, is chargeable under Category 3C.

<sup>27</sup> Whether a permanent building used for holiday accommodation is or is not a "dwelling-house" may be a matter of fact and degree depending on the circumstances of each case. No Jersey court judgments on this point were brought to my attention during the inquiry. Some guidance may be obtained from UK court judgments. The case usually quoted as the leading judgment is *Gravesham BC v SSE* [1984] P&CR 142. Others of possible relevance include: *Moore v SSCLG* [2012] EWCA Civ 1202; and *Blackpool BC v SSE* [1980] 40 P&CR 104. In *Gravesham*, the court held that a building which provided all the normal facilities for day to day living and was used for holiday letting was a dwelling-house, and that to be a dwelling-house, the building does not have to be occupied as a permanent home. In *Moore*, the court confirmed an inspector's finding that the particular character of use of an 8-bedroom house which accommodated holiday parties of 20 guests was not use as a dwelling-house. That unusual circumstance would not apply to the two or three bedroom units proposed by application 1023. In *Blackpool*, the court held that a house used by the owner and his family as a second home for holidays and by others who paid rent was a dwelling-house.

<sup>28</sup> This is in the text under the heading "Context" on the second unnumbered page.

<sup>29</sup> Without any mention of it at the time by the applicant's representatives, when Revision 7 of Drawing 121 was submitted during the inquiry (Document IQ 9), this label had been changed to replace "residential" with "self-catering". This may not have been deliberately surreptitious, but gave that impression.

144. Another, perhaps more significant, sequence of change is that what were described in the Planning and Design Statements as "moveable" and "constructed on a chassis with wheels that allow them to be moved" and "transient structures that can be relocated" became described later as "cannot be removed without being destroyed" (though "removed" implies "taken away from a site" as opposed to moved around a site); then the description, in Mr Stein's evidence fairly early in the inquiry, was back to "suspended above the ground on a chassis with wheels and stabilisers"; then later still, and only on the third day of the inquiry, the proposals with the welded steel posts concreted into the ground were put forward.
145. One of the applicant's legal arguments was that in response to my request in December for elevation drawings, Mr Dennis had merely supplied the manufacturer's drawings, and by "happenstance" the company which would supply the 27 units was a manufacturer of mobile homes defined as caravans for planning purposes. That argument does not hold water. What I asked for in December were drawings to show *what was proposed*.<sup>30</sup> Revision 4 of Drawings 124 and 125, showing a chassis and wheels with the unit supported on stabiliser "legs" resting on small pads at each end, was the response. What was later depicted during the inquiry by Revision 5 of Drawing 124 (Document IQ 10) would involve, in total, substantial concrete foundations for each unit - far more than just "stabilisers". The volume of concrete shown in the 1:20 scale inset drawing in Document IQ 10 would be about 15 times the volume of the "pads" in earlier drawings, and the drawings suggest that under the latest proposals, there would be around 190-220 of these large concrete blocks in the ground.<sup>31</sup> Even at the lower end of this range, the effect would be nothing like the "very light touch on the ground" described in earlier evidence.
146. I felt at times during the inquiry that verifying exactly what was proposed by application 1023 was like trying to grasp a shifting mirage. This applies particularly to the contrasting, inconsistent way in which different pieces of evidence (such as the application and application plans, the Planning Statement, the Design Statement and some of the later evidence) described the 27 moveable/immoveable, transient/permanent, wheeled/not wheeled, residential/not residential units. The disparity between what Mr Dennis stated in his Design Statement and in his so-called rebuttal proof (as quoted in paragraphs 47 and 56 above) is remarkable. The same applies to the contrast between the Planning Statement's reference to the 27 proposed units being "moveable...*as opposed to more permanent buildings that are constructed on concrete foundations*"<sup>32</sup> and what became proposed part-way through the inquiry - that is to say, buildings *on concrete foundations*. (The difference

---

<sup>30</sup> The email asked: "Would you please supply drawings of side and end elevations (omitting the proposed cladding as in the drawings already submitted) showing the design of the proposed chassis, the proposed arrangement and size of the wheels, and the arrangement of 'legs' or any other proposed means of support (which presumably may depend on the number and positioning of the wheels). The scale of the drawings should be sufficient to show what is proposed regarding those details."

<sup>31</sup> The standard convention when interpreting plans or drawings where there is any conflict between them is that the larger scale drawing takes precedence over any smaller scale one. There are also notes on Drawing 124 Revision 5 reading: "Refer enlarged permanent fixing detail". So the drawings indicate that the small "pads" shown in the 1:100 scale elevations would be replaced by the much larger concrete blocks shown in the 1:20 scale detail. The side and end elevation drawings also indicate that there would be concrete and steel support structures at each corner, plus others at each side in a more central position replacing the wheels and two in the centre of the unit, totalling eight per unit (216 for 27 units). Even assuming, conservatively, that the eight wheels of each twin unit would be replaced by only one support structure in the middle of each side and one in the centre of the whole unit, each unit would have seven (four at each corner, one at each side, one in the middle), making 189 for the 27 units. Hence the range quoted above of around 190-220.

<sup>32</sup> Planning Statement (Document AW 4), page 18.

between the units being fixed by welding to such foundations and "constructed on" concrete foundations is immaterial for the purposes of differentiating between a caravan and a fixed, permanent building for the purposes of planning law.)

147. People such as local residents with an interest in the case would have faced greater difficulty in trying to verify what was proposed, and the changes to the proposals have created a situation whereby many who made comments on the application would be unaware of what was later proposed. This was a detailed application, so local residents and other interested parties should be able to expect all necessary details to be included in the application (plus supporting documents such as the Design Statement), rather than the application being used as a kind of "sighting shot" for later revision. The latter is what pre-application discussions should be for.
148. In my judgment the revisions to application 1023 which were put forward during the inquiry meant that by the end of the inquiry, what was being proposed was materially different from that which was applied for, to a degree triggering the test in *Wheatcroft*. Even taking a more liberal view, at the very least the changes to the application trigger the test relating to the need for fairness in consulting local people in *Holborn Studios*. It is of course for you as Minister to decide whether the guidance from those judgments should apply in Jersey. I do not see good reason not to do so.<sup>33</sup>
149. In theory, residents and others could have sat through the inquiry until the changes became known and then sought to participate in the proceedings, but I think that is an impractical expectation for most people, especially since everyone who wanted to take an active part in the inquiry was asked to make this known well beforehand. I applied this requirement flexibly and allowed the few people who asked to raise points or put questions during the inquiry to do so, even without them having given prior notice; but many local residents would have decided whether to attend the inquiry, and whether to engage professional representation, based on the information contained in the application and its supporting documents.<sup>34</sup>
150. A small number (about three) local residents did attend the later parts of the inquiry, and Mr Ashworth of La Sergenté Farm in particular asked questions or commented at various times. During the adjournment period, he asked the Programme Officer by email about some documents and he was told about new material being unexpectedly submitted shortly before the resumption. I understand he then met with one of the applicant's consultants on the day before the resumption and saw some of the new material. He might have been able to pass on some information to some neighbours in the very limited time

---

<sup>33</sup> A full report on the judgment in *Holborn Studios* is at Appendix 15 of Document IQ 20. The Deputy Judge held that the test for whether re-consultation is required if a planning application is amended is not whether it involves a fundamental change or makes a substantial difference to the proposed development (ie the more confined test in *Wheatcroft*), but whether fairness requires that a person who may want to make representations should have the opportunity to do so, and whether a failure to re-consult would be so unfair as to be unlawful. The judge did not accept the argument that interested parties had sufficient opportunity to make representations, partly because of the short notice of a planning authority committee meeting. In my view there are parallels here with the fact that changes to application 1023 were only made during the inquiry, well after many people would have decided whether or not to attend and so would have been deprived of the opportunity of making representations on the changes or engaging professional advice on them.

<sup>34</sup> Ms Smith of Ogier, for example, would have based her written representations for a group of residents on the information contained in the then existing application documents. Subsequently the group did not engage her to represent them at the inquiry.

before the inquiry resumed, but he did not have any role as an agent for all the more than 50 people who had made representations on the application.

151. Part of the applicant's case is that the Department never understood application 1023 as proposing moveable units or mobile homes defined as caravans. That is a weak argument. For several months after the application until the inquiry, the Department had application documents describing these 27 units as residential....moveable....on a chassis with wheels....transient. In my view as I have previously explained, those descriptions clearly describe a type of development which would be subject to the Moveable Structures Order, not the erection of 27 permanent buildings. However, the drawings of what was proposed did not show the chassis and wheels until after my query in December 2017. The use of the ambiguous term "lodge" and the inconsistencies of description between the application itself and the supporting documents probably caused people to make assumptions; so I can see how the Department's understanding occurred.
152. I cannot know exactly what was said during pre-application meetings, but the papers submitted in evidence (Document IQ 17) indicate that although there was discussion about various topics, the issue of whether the then proposed lodges would be wheeled or moveable was not brought up. It seems that the questions I asked in December about the apparent air space between the proposed units and the ground were never asked, perhaps because the discussions never got as far as looking at elevation drawings. Nor apparently was there any discussion about the function of the eastern "ancillary buildings"; and this westwards expansion of Tamba Park into the application site does not seem to have been noticed later at validation stage when the Department altered the description of the proposed development.
153. Several times during the inquiry, and in some of the documents submitted during the proceedings, the applicant's representatives referred to the application proposals being "clarified" and "refined". This is stretching words beyond their proper meaning. As I commented to one of the applicant's witnesses, a more accurate term would be "changed".
154. I understand that because of some partial amendments, the applications were re-advertised during 2017, and I have considered whether that process could or should be repeated for application 1023. However, the changes to the proposal since the application was made are more than the sort of minor amendments envisaged in the States' Practice Note 16<sup>35</sup> (which mentions, for example, window design, repositioning a building, or changes to room layout). Since I find that the latest proposals relating to the west site are not what was applied for, in my view it would not be appropriate merely to re-advertise application 1023 using the application form in Document IQ 13 as an amended version of the original. The appearance or visual impact of the units is not the issue here - the difference between a unit defined as a caravan and a unit defined as a permanent building is more to do with other practical and legal implications.<sup>36</sup>

---

<sup>35</sup> This Practice Note has a section headed "Changing or Amending Your Application".

<sup>36</sup> Whether development constitutes a *use of land* or *operational development* affects numerous aspects of development control. What was proposed in the application and supporting documents, and in the further details supplied in December responding to my query, would be 27 twin-unit mobile homes which would be moveable structures meeting the definition of "caravan" under Jersey legislation and subject to the requirements of the Planning and Building (Moveable Structures) Order. What emerged as the proposal by the end of the inquiry would be 27 permanent buildings. These are significantly different types of development subject to different regimes of planning control and other legislation. This is not the sort of minor amendment which might be satisfactorily catered for by re-advertising an application.

155. Moreover, as far as I know from the available evidence, there is no other instance where the kind of twin-unit mobile homes which are stationed as caravans on hundreds of "park home" sites elsewhere have been imported into Jersey and, in effect, converted into permanent buildings so that they would fall outside the definition of caravans. So this proposal, as put forward by the end of the inquiry, is something of a test case. That weighs against treating the changes to the application as so minor that they can be dealt with by re-advertising as amendments.
156. Conditions can be used to clarify and define the scope of a planning permission; but conditions cannot validly be used to make what would be permitted materially different from what was proposed in an application, with its plans and supporting documents. Therefore conditions aimed at "converting" 27 moveable, wheeled, transient units into permanent buildings would not be valid.
157. In reaching my findings I have had regard to Article 19 of the Planning and Building (Jersey) Law 2002 under which all material considerations must be taken into account in the determination of an application for planning permission. I have also had regard to Article 12 of the Law under which you as Minister shall take into account representations made at the public inquiry.
158. I comment finally on the issue of fairness. Counsel for the applicant was of course right to say that there is a need to be fair to all parties including the applicant. That is one reason why I raised early in the inquiry issues which had not been raised by the Department. There was also a marked imbalance of representation at the inquiry. The Department's evidence was presented by one witness and the Department was represented at the inquiry by two planning officers. Closing submissions<sup>37</sup> for the Department took about ten minutes, with a written note of less than three pages. The applicant company's case was presented by six witnesses and counsel; closing submissions took about two hours, with a 55-page written note plus a volume of 17 appendices, which the Department's representatives did not see beforehand.<sup>38</sup> I do not imply any criticism here, since any party at a planning inquiry is entitled to engage professional representation to present their case, and there was a lot of material to cover in submissions; but given the circumstances just described I do not think the applicant can justifiably claim unfairness.
159. I conclude that application 1023 relating to the west site is legally unsatisfactory. Moreover I reach that conclusion even if, contrary to the judgment I have expressed above, self-catering tourist accommodation were not to be regarded as "residential" and the proposed units, if permanent buildings, were not regarded as dwellings or dwelling-houses. If the application were to be decided in the normal way, the decision - whether it be to grant or refuse planning permission - would be open to legal challenge on the grounds that the development subject to the decision was not the same as the development described in the application with its related plans and supporting documents.
160. In this situation I consider it necessary and appropriate that you as Minister should make a decision on the legal issues which I have identified, without

---

<sup>37</sup> Closing submissions are the opportunity for each of the main parties to sum up their case and make submissions on the other side's case.

<sup>38</sup> In an email to the Programme Officer on 8 March 2018, the applicant's agent wrote that she anticipated sending a copy of the closing statement for the applicant "tomorrow" (ie on 9 March, the Friday before the Tuesday resumption). In the event this did not happen. The Department's representatives had a short adjournment (about 25 minutes) to consider their response to the applicant's closing submissions, and did not ask for a longer adjournment.

considering the planning merits or demerits of the proposal or knowing what my judgment on those aspects may be. I also refrain from presenting here any assessment of, or recommendation on, the planning merits cases for the applicant, the Department and other parties. This is because if you agree with my conclusion and recommendation, any such comments by me, which would of course be published, would be likely to prejudice a revised new application.

161. Although the legal and procedural problems primarily concern the west site, I suggest that because of the interrelationship between the two applications, the application relating to the east site should be treated similarly. The proposals for the east site have involved repeated revisions, including significant boundary changes, and there are also other errors such as the ownership declaration, but this application is not affected by the same degree of legal problems as the application for the west site. Nevertheless the proposed developments of the two sites would be so closely linked that it would not be sensible to decide them separately.
162. I can see two main options. One would be to return the applications (and the application fees), so that fresh applications can be made with all the revisions relating to the west site properly described and publicised in line with normal procedure. Another option would be to refuse planning permission for application 1023 on the grounds that the proposal relating to the west site was so conflictingly described in the application and other documents as to be incapable of proper determination, and to defer a decision on application 0805 until it can be decided alongside a revised application for the west site (assuming one were to be made). Of these alternatives I think the first would be fairer to the applicant, as it can reasonably be argued that the Department should have returned application 1023 earlier. The fact that an application has been validated should not prevent it being returned to an applicant when new information becomes known.<sup>39</sup>
163. If, however, you decide that the west site application was and is legally satisfactory in the heavily revised and amended form reached by the end of the inquiry, I would then propose to submit a supplementary report, with an assessment of the planning merits and demerits of the latest proposals and recommendations on whether or not planning permissions should be granted.<sup>40</sup> So whether my recommendation is final or interim will depend on your decision on the legal and related issues.
164. I realise that the "planning system" is often criticised for causing delay. When dealing with changes to applications, a liberal approach may enable decisions to be made without the need for further new applications, saving time and cost for all involved. On the other hand it is reasonable to expect that applications for detailed planning permission, on which public consultation is an important standard practice, should not be subject to such late and significant change (or in this case further change) as to make it impractical for local residents to follow.

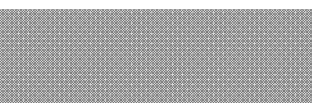
---

<sup>39</sup> I have also considered suggesting you could give notice that you are minded to refuse planning permission on the grounds just explained, so as to provide the applicant company with an opportunity to withdraw application 1023; but I think returning the applications would be more straightforward and fairer. Although you have discretion to waive application fees, an automatic fee-free application for the west site would probably not be available to the applicant under the Planning and Environment Fees Order, because the proposed development on this site, if along the lines of Appendix 2 of Document IQ 13, would not be "of the same description" (category 4K) as the previous application, especially if the descriptions in the Design Statement and Planning Statement for application 1023 are taken into account.

<sup>40</sup> For the same reason as explained in my conclusions, it would only be appropriate to go into matters relating to planning obligation agreements and conditions if I were to submit a supplementary report covering planning merits.

## **RECOMMENDATION**

165. I recommend that the applications be returned to the applicant for the reasons that:
- a) The proposals under application P/2017/1023 have been subject to such inconsistency and change since the application and supporting documents were submitted, combined with defects in the way the proposed development was originally defined, that the application as it currently stands is not capable of proper and fair determination.
  - b) The proposals under application P/2017/0805 would be closely linked with the proposals on the adjacent site to the west, and so this application would be most appropriately determined at the same time as a fresh application for development on that site.



Inspector  
26 March 2018





## **APPENDIX 1: LIST OF DOCUMENTS**

### Documents Submitted by Applicant Relating to Both Applications

AB 1	Statement of Case by Applicant.
AB 2	External Lighting Scheme.
AB 3	Heritage Assessment September 2017.
AB 4	Marketing Strategy Method Statement + Appendices.
AB 5	Geoenvironmental Site Assessment Phase 1.
AB 6	Geotechnical Site Investigation Phase 2.
AB 7	Environmental Statement
AB 8	Environmental Impact Statement Non-Technical Summary October 2017.
AB 9	Proof of Evidence by Mr Tim Dunningham - Historic Operations.
AB 10	Proof of Evidence by Mr Julian Mallinson - Marketing.
AB 11-13	Proof of Evidence by Mr Michael Stein: Planning Assessment A (with appendices).
(AB 12	Appendix 1 to Proof of Evidence by Mr Michael Stein.)
(AB 13	Appendix 2 to Proof of Evidence by Mr Michael Stein.)
AB 14	Proof of Evidence by Mr Mark Dennis (Origin Architects).
AB 15	Proof of Evidence by Mr Alex Welch - Highways & Transportation.
AB 16	Proof of Evidence by Ms Stephanie Steedman: Planning Assessment B.
AB 17	Proof of Evidence by Ms Stephanie Steedman - Summary plus Diagrams 1 & 2.
AB 18	Rebuttal Proof KEPlanning with Appendices 1-4.
AB 19	Rebuttal Proof Origin Architecture Studio 13/02/18

### Documents Submitted by Applicant Relating to East Site

AE 00	Location Plans submitted with letter from Mr Stein 14 December 2017.
AE 1	Application Form P/2017/0805.
AE 2	Construction Environmental Management Plan dated September 2017.
AE 3	Transport Statement dated September 2017.
AE 4	Planning Statement dated December 2017.
AE 5	Initial Ecological Assessment.
AE 6	Design Statement.
AE 7	Phase 3 - Costings Report.
AE 8	Waste Management Report.

### Documents Submitted by Applicant Relating to West Site

AW 00	Location Plans submitted in December 2017.
AW 1	Application Form P/2017/1023.
AW 2	Construction Environmental Management Plan September 2017.
AW 3	Transport Assessment.
AW 4	Planning Statement October 2017 + Appendices.
AW 5	Initial Ecological Assessment.
AW 6	Secondary Tree Inspection Results : Report for Bats & Birds.
AW 7	Design Statement September 2017.

AW 8	Costing and Valuation Report.
AW 9	Waste Management Report.
AW 10	Crime Impact Statement October 2017.
AW 11	Economic Statement October 2017.
AW 12	Tamba Park Operational Statement.
AW 13	Public Art Statement July 2017.

Documents Submitted By Department of Environment

DOE 1	Statement of Case by States of Jersey.
DOE 2	Proof of Evidence (with Appendices A-G) by Mr Jones.

Inquiry Documents (includes any documents, plans etc submitted during inquiry)

IQ 1	Attendance Lists.
IQ 2	Bundle of written representations on P2017/0805 & P2017/1023.
IQ 3	Bundle of Consultation Responses P/2017/0805 & P/2017/1023.
IQ 4	Note of opening submissions for applicant.
IQ 5	Email from Alice Tostevin about application fee (with fee schedule).
IQ 6	Copy of Royal Court judgment in JK Ltd v Minister for Planning and Environment.
IQ 7	Copy of application ref P/2017/0519.
IQ 8	Bundle of maps showing location of properties near application sites.
IQ 9	Drawing 121 Rev 7.
IQ 10	Drawing 124 Rev 05.
IQ 11	Summary of proof of evidence by Mr Jones for DoE.
IQ 12	Copy of Noise Impact Assessment.
IQ 13	"Update Note" dated 9 March 2018 submitted for applicant to adjourned inquiry, with folder of documents as appendices, including: Appendix 1 - P/2017/0805 application form. Appendix 2 - P/2017/1023 application form. <sup>41</sup> Appendix 3 - Alternative access arrangements - Technical Note. Appendix 4 - Building Bye-Law consent B/2017/0333. Appendix 5 - Noise Assessment. Appendix 6 - Environmental Health comments dated 9 March 2018. Appendix 7 - Draft POA 1. Appendix 8 - Draft POA 2. Appendix 9 - Draft Conditions (9 March 2018).
IQ 14	Note on conditions submitted by Mr Ashworth.
IQ 15	Bundle of plans submitted to inquiry for applicant. Includes: 121 Rev 10 124 Rev 08 125 Rev 08 126 Rev 03 129 Rev 09 139 Rev 08

---

<sup>41</sup> This is the title used in the submitted document, but these are not the actual application forms, they are the different forms dated March 2018 mentioned in my report.

	141 Rev 06
	145 Rev 02
	146 Rev 02
	147 Rev 02
	148 Rev 02
	149 Rev 02
	150 Rev 02
	151 Rev 02
	152 Rev 02
	153 Rev 01
	154 Rev 02
	155 Rev 02
	156 Rev 01
	157 Rev 01
IQ 16	Bundle of documents relating to planning history of Tamba Park.
IQ 17	Note on Pre-Application Meetings (with attached emails etc).
IQ 18	Planning Obligation Agreements, with related plans.
IQ 19	Note of closing submissions for Department of the Environment.
IQ 20	Note of closing submissions for applicant.
IQ 21	Folder of appendices to closing submissions for applicant.

#### Application Plans/Drawings

107 Rev 02	Existing Site Layout.
108 Rev 03	Proposed Site Layout.
109 Rev 03	Proposed Site Layout / Landscaping.
110 Rev 02	Proposed Building Layout.
111 Rev 02	Proposed General Arrangement Layout.
112 Rev 02	Existing Elevations and Proposed Demolitions.
113 Rev 02	Proposed Elevations.
114 Rev 02	Proposed Sketch Views.
118 Rev 02	Existing Overall Site Plan Layout in Context.
119 Rev 03	Proposed Overall Site Masterplan Layout in Context.
120 Rev 02	Existing Site Layout.
121 Rev 05	Proposed Overall Site Masterplan.
122 Rev 03	Proposed Site Layout.
123 Rev 02	Existing Elevations / Proposed Demolitions.
124 Rev 04	Three Bed Unit Floor Plan, Elevations and Sections.
125 Rev 04	Two Bed Unit Floor Plan, Elevations and Sections.
126 Rev 03	Proposed Plan/Sections/Elevations Ancillary Model.
127 Rev 03	Proposed Sectional Elevations.
128 Rev 03	Proposed Sectional Elevations.
129 Rev 05	Parking Area - Site Entrance Improvements.
130 Rev 03	Overall Site Masterplan Layout Area A.
131 Rev 03	Overall Site Masterplan Layout Area B.
132 Rev 04	Overall Site Masterplan Layout Area C.

- 133 Rev 04 Overall Site Masterplan Layout Area D.
- 134 Rev 02 Proposed Sketch Views.
- 135 Rev 02 Proposed Sketch Views.
- 136 Rev 02 Proposed Sketch Views.
- 137 Rev 02 Overall Site Masterplan View Lighting.
- 138 Rev 02 Overall Site Masterplan View Greenhouse Overlay.
- 139 Rev 04 Proposed Access Improvements.
- 140 Rev 03 Overall Site Masterplan Layout Site Lighting.
- 141 Rev 05 Proposed Overall Site Masterplan Drainage.
- 142 Rev 01 Proposed Bus Shelter.
- 143 Rev 01 Proposed Site Entrance Landscape Character Assessment.
- 144 Rev 01 Proposed Field Entrance Landscape Character Assessment.
- 145 Rev 01 Proposed Overall Site Masterplan Drainage Coordinated Services 1.
- 146 Rev 01 Proposed Overall Site Masterplan Drainage Coordinated Services 2.
- 147 Rev 01 Proposed Overall Site Masterplan Drainage Coordinated Services 3.

Other submitted plans (partly duplicating those listed above)

- 121 Rev 10 Proposed Overall Site Masterplan Layout.
- 124 Rev 08 Proposed Plan/sections/elevations/detail - three bedroom lodge.
- 125 Rev 08 Proposed Plan/sections/elevations/detail - two bedroom lodge.
- 126 Rev 06 Proposed Plan/sections/elevations/detail - ancillary building ref: A/B/H/I.
- 129 Rev 09 Proposed Parking Area - Site Entrance Improvements.
- 139 Rev 08 Proposed Access Improvements.
- 141 Rev 06 As Proposed Overall Site Masterplan Drainage.
- 145 Rev 02 Proposed Overall Site Masterplan Drainage Coordinated Services 1.
- 146 Rev 02 Proposed Overall Site Masterplan Drainage Coordinated Services 2.
- 147 Rev 02 Proposed Overall Site Masterplan Drainage Coordinated Services 3.
- 148 Rev 03 Site Location Plan.
- 156 Rev 01 Proposed Parking Area - Site Entrance Improvements.
- 157 Rev 01 Proposed Access Improvements.

## **APPENDIX 2: INSPECTOR'S NOTE TO INQUIRY.**

**(Copies of this Note were handed out to inquiry parties on the morning of 20 February 2018).**

### **Development and the Definition of "Caravans"**

For the purposes of planning law in Jersey, there are two main types of "development", and for various legal reasons it is important to distinguish between them. Leaving aside exceptions, "develop" (as defined in Article 5(1) of the Planning and Building (Jersey) Law 2002) means:

- (a) to undertake a building, engineering, mining or other operation in, on, over or under the land;
- (b) to make a material change in the use of the land or a building on the land.

The terms "building" and "building operation" and "caravan" are defined in Article 1 of the 2002 Law, but the definition of "caravan" in Article 1 refers to Article 98, which in summary defines a caravan as "a structure designed or adapted for human habitation which is capable of being moved from place to place (whether by being towed or by being transported on a motor vehicle or trailer)".

The stationing on land of caravans, whether or not for human habitation, normally constitutes a use of land and so would involve a material change in the use of the land if the previous use is materially different. The mere "stationing" or "siting" of a caravan is not a proper description of the development since it does not indicate a use of the land - that is determined by the purpose for which the caravan is stationed on the land (which could, for example, be for residential purposes, for agriculture, or for storage if the caravans are merely being stored on the land).

The use of the word "structure" in Article 98 of the 2002 Law does not mean that caravans or mobile homes are buildings for the purposes of planning law. For a structure which is *prima facie* a caravan to become a building - and thus operational development rather than a change of use - there must be a very substantial degree of affixation to the land on which it stands before such development would constitute building operations. Attaching a mobile home to mains services including water, electricity and sewerage does not make it a building. Similarly, the mobility of the main unit is not normally affected by the addition of items such as a porch, conservatory, steps to doorways or an area of decking, which may be freestanding or could be simply bolted to the main unit. Alternatively, such additions may create mixed development, where the mobile home/caravan comprises a use of land and porches or other features comprise operational development.

Plinths or skirts are often found around or under mobile homes, typically to provide insulation or as decorative features. The existence of a hardstanding or hard "pads" on which a mobile home may be placed or supported does not affect the status of the mobile home as a caravan, although the construction of hardstandings may itself constitute operational development.

The fact that a mobile home could not legally or physically be transported along public roads near the site does not affect the definition of a caravan, provided the unit as a whole could be moved from place to place around a site or along a hypothetical road.

The assessment and comments above have regard to various judgments, notably the following.

*Wealden DC v SSE & Day* [1988] JPL 268: In deciding what type of development arises from the stationing of a caravan, it is necessary to consider the purpose of the stationing and what is being done on the land. In this case stationing a caravan for agricultural use did not involve development. Also *Restormel BC v SSE* [1982] JPL 785: stationing a caravan for a purpose comprising the lawful primary use, or use ancillary thereto, does not involve a MCU.

*Measor v SSETR & Tunbridge Wells BC* [1998] 4 PLR 93 & [1999] JPL 182: Caravans were not "buildings" merely because they were referred to as "structures" in legislation (including in this case the 1960 & 1968 Caravan Sites Acts). It would offend against common sense to find that because all caravans are "structures" they are buildings. Also *Tewkesbury BC v Keeley* [2004] EWHC 2594: Sheds which were mobile as they had wheels attached so they could be moved around a site did not constitute buildings; nor did this constitute an "other operation" - the wheeled sheds fell outside the definition of any type of operational development.

*Carter v SSE* [1991] JPL 131: stationing a mobile home without wheels which in other respects satisfied the definition of a caravan did not amount to a building operation.

*Carter v SSE & Carrick DC* [1995] JPL 311 CA: Capability of movement relates to a single unit, not component parts; but a mobile home or "caravan" does not have to be mobile on its own wheels, provided it can be picked up intact by a crane or hoist.

*Pugsley v SSE and N Devon DC* [1996]: The narrowness of tracks and lanes at a particular site was no impediment to the mobility test being satisfied. Also

*Brightlingsea Haven Ltd v Morris & Others* [2008] EWHC 1928: It is irrelevant to the mobility test whether the mobile home may have difficulty reaching a road.

Cases of more limited or indirect relevance include *Hall Hunter Partnership* (polytunnels); *Skerritts of Nottingham* (large marquee); and *Woolley Chickens* (chicken shelters on skids).

Graham Self  
February 2018.