

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

by **N McGurk** BSc (Hons) MCD MBA MRTPI,
an Inspector appointed by the Judicial Greffe

Site visit made on 4th July 2022. Hearing held on 4th July 2022.

Reference: P/2021/1321

La Rive Garage, 100 Acre Wood, La Vallee de Rozel, St Martin, JE3 6AJ

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by Mr Matthew Feltham against the decision of the States of Jersey.
 - The application Ref P/2021/1321 by Mr Matthew Feltham, dated 26 July 2021, was refused by notice dated 10 March 2022.
 - The proposed development is demolish existing garage and lean-to buildings. Construct 1 No. one bed dwelling with associated parking, landscaping and woodland enhancement.
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Recommendation

1. I recommend that the appeal be dismissed.

Procedural Matters

2. The Bridging Island Plan, referred to in this Report as "*the Island Plan*" was adopted on the 25th March 2022. This post-dates the submission of the application and its subsequent determination by the Department in early March 2022. The planning application was therefore refused further to consideration against the previous version of the Island Plan.
 3. This appeal must be considered against current land use planning policies, as set out in the Island Plan adopted on the 25th March 2022. In this regard, I note that the Island Plan was adopted around three months prior to the date of the appeal Hearing and that appeal submissions have taken this into account.
 4. An interested party, representing nearby neighbours, raised a number of procedural matters. The first of these related to the publication of the planning application decision notice and the Department's failure at the time to notify the party in writing. The Department issued an apology in this regard. I note that the interested party's representation was duly submitted and that I have taken it into account in reaching my recommendation.
 5. The Department's apology in this regard recognised culpability. The interested party were able to make a submission and this has been taken into account in the consideration of this appeal. In this regard, I am satisfied that the interested party has not been unduly prejudiced and that it is appropriate for the appeal to progress to a recommendation.
 6. One of the Department's reasons for refusal related to drainage and there have been various submissions relating to this point since the determination of the planning application. The Department agreed during the Hearing that there
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were no outstanding matters specific to drainage that warranted dismissal of the appeal.

7. Representations have been made in respect of the appeal site's current use and lawfulness. Whilst this Report focuses on the main issue set out below, I note that I have considered all of the submitted information.
8. In general terms, I note that the current use of the site not the subject of any enforcement action and that in any case, the information before me suggests a likelihood of immunity from enforcement action.
9. However, I also note that the use of the site for employment is not a lawful use benefiting from planning permission.

The Case for the Appellant

10. The Island Plan adopted earlier this year identifies the urgent need to provide more housing, quickly, to ease the housing crisis. The Island Plan also accepts that the conversion of existing outbuildings within the countryside can increase windfall site opportunities to meet housing needs. Within this revised planning context, the proposed development is of sufficient merit to be reviewed.
11. The proposal delivers a much-needed home on a brownfield site without harm to landscape character and it provides biodiversity benefits.
12. The proposal would support the sustainability of Rozel. It would provide for a live/work unit that would blend into the landscape and encourage wildlife.
13. The site is within walking distance of a bus stop with a regular bus service.
14. The site is already developed and generates activity and vehicle trips. The proposal would reduce trips and would result in visual enhancement.
15. Article 19(3) of the Law allows for the granting of planning permission where the proposed development is inconsistent with the Island Plan, if the Planning Committee is satisfied that there is sufficient justification for doing so. The circumstances relating to the site are very specific circumstances providing such justification.
16. It is acknowledged that the proposal does not meet the test of all specific policies, but the proposal is on a brownfield site, delivers landscape character and biodiversity improvements, does not result in harm to local character and supports the sustainability of Rozel. It can deliver a much-needed new home quickly. These amount to circumstances justifying the proposal.
17. The Island Plan does not give enough emphasis to small communities like Rozel.
18. Further, amongst other things, the proposal can support the use of electric vehicles, the applicant has personal ties to the area and is a positive community figure, other developments have a larger impact than the development proposed and the proposal would free up a rented property elsewhere.

The Case for the Department

19. The site is in the Coastal National Park (CNP). It comprises a residential garage and parking, a use incidental, or formerly incidental to, La Rive House, opposite the site.
20. The proposal would introduce a new dwelling into a relatively remote area in the CNP where residential development would not be appropriate or necessary. The addition of a dwelling in this area, with associated gardens and paraphernalia, would detract from local character.
21. The proposal does not meet the Island Plan's limited exceptions or tests for development in the CNP.
22. The Island Plan seeks to meet demand for housing in an orderly manner and directs development to the built-up area and away from the countryside.
23. Island Plan Policy H9 allows for new residential development outside the built-up area but none of the relevant policy provisions apply to the appeal site.
24. The Island Plan recognises the demands for development across the Island. It provides for the appropriate re-use of commercial sites, but the development proposed does not fit with the objectives and policies of the Island Plan. Allowing development of the nature proposed and others like it would have a cumulative, significant impact on the Island, its identity, its patterns of usage and its character.
25. The biodiversity gains proposed are welcomed but they do not justify a development that would be unacceptable in other regards.

Other Comments - Interested Party (MS Planning representing nearby neighbours and residents).

26. The lawful baseline is that the appeal property is a domestic garage, not associated with any property. The consented use is as a residential garage and parking, as also identified by the appellant.
27. Whilst the appellant refers to Island Plan Policy H9 in support of the proposal, the proposed development is not a conversion and the proposal does not align with the relevant tests in Policy H9.
28. Even if it is accepted (and it is not), that the appeal site is in employment use, the tests set out in Policy H9 would not be met, as redundancy has not been proven.
29. We cannot see that the case presented by the appellant represents any justification, never mind sufficient justification, to merit overriding the clear policy position.
30. The appeal site was presented at the consultation stages of the Island Plan as a potential residential development opportunity. It scored 9 out of 21 on the relevant assessment matrix and only 4 out of 330 sites assessed scored lower than this. The site was considered during Examination in Public and the Inspectors noted the site to be "*very small and remote.*" They did not recommend it as a site for housing.

Main Issue

31. The main issue in this case is whether the proposal comprises sustainable development, having regard to the Policies of the Island Plan.

Reasons

32. The appeal site comprises a roughly rectangular area of generally flat land fronting a steeply-rising area of woodland. The appeal site is accessed directly from La Vallee de Rozel, in the Rozel valley, a few hundred metres to the south west of Rozel.
33. To the northern part of the front area is a garage structure which has been added to by lean-to elements. The front area also provides for parking and is used for various things, including storage and growing plants. The steeply-rising woodland to the rear is extensive.
34. The appeal site is located in the Coastal National Park, which enjoys the highest level of protection in Jersey.
35. The proposal would involve the demolition of the garage structure and additional elements and its replacement with a one-bedroomed dwelling. The dwelling would be timber clad with a sedum roof and would be of similar dimensions to the structure proposed to be demolished.
36. Under Jersey's plan-led system, the Island Plan is the primary consideration in any planning-related decision-making. The Island Plan recognises the urgent need to provide significant new housing on the Island and to achieve this, it sets out a land use planning policy framework focused upon directing the delivery of new housing to Jersey's built-up areas.
37. Outside of the built-up area, new housing is restricted. Island Plan Policy H9 ("*Housing outside the built-up area*") prevents residential development in the countryside other than in circumstances relating to extensions, to the use of traditional farm buildings, to conversion and to the redevelopment of existing dwellings and buildings in employment use.
38. The proposed development is for the demolition of a garage building and its replacement with a dwelling. It does not meet any of the circumstances identified in Island Plan Policy H9 and as such, the proposed development is contrary to the Island Plan.
39. In support of the proposal, the appellant notes that it would involve the development of brownfield land, that it would deliver landscape character and biodiversity improvements, that it would not result in harm to local character and that it would support the sustainability of Rozel. However, none of these amount to factors that would result in the proposal meeting the relevant tests set out in Island Plan Policy H9.
40. The proposal would result in the development of a new house in the most protected part of the Island, contrary to the relevant housing Policy of the Island Plan.
41. In the above regard, I am also mindful that the appeal site was considered during the recent plan-making process which supported the Island Plan. The

appeal site scored lowly against assessment criteria. It was considered “*small and remote*” and was not considered appropriate for residential development.

42. Whilst I note that the creation of a carefully-designed small house at the appeal site has some potential to improve local character, this is not a factor that overcomes the significant policy constraints identified.
43. Similarly, whilst I have no doubt that the site presents opportunities for biodiversity gains, this is not a relevant policy test.
44. Also, whilst the proposal would result in an additional dwelling, thus making a small contribution to meeting the Island’s housing needs, it would do so in a manner that would conflict with the Island Plan’s clear spatial strategy, identified in Island Plan Policy SP2 (“*Spatial strategy*”), of concentrating development within the Island’s built-up area and only supporting development elsewhere that is appropriate, justified and necessary.
45. As proposed development would be contrary to Island Plan Policy H9, it would not be appropriate to the Coastal National Park and it would therefore fail to meet the requirements of Island Plan Policy SP2.
46. Further to the above, Island Plan Policy PL5 (“*Countryside, coast and marine environment*”) states that:

“To protect the countryside and coast and to ensure development is concentrated in the most sustainable locations, the development of new homes will be supported in limited circumstances including the conversion, extension and/or sub-division of existing buildings.”
47. The proposed residential development does not fit with any of these limited circumstances.
48. Whilst the appellant considers that the Island Plan fails to give sufficient emphasis to small communities like Rozel, it is clear that the Island Plan seeks to limit new development in the Coastal National Park and the appeal site itself lies some distance outside the main part of Rozel, in a relatively remote location. Notwithstanding this, the Island Plan is a very recent and up-to-date document and it provides the primary consideration for decision-makers when determining applications for development.
49. Taking this and all of the above into account, I find that the proposed development would fail to comprise sustainable development, having regard to the Policies of the Island Plan. The proposed development would be contrary to the Island Plan and in particular to Island Plan Policies SP2, PL5 and H9, which together amongst other things, seek to respond to climate change by providing for sustainable development on the Island.

Other Matters

50. Notwithstanding the above, the appellant considers that the circumstances relating to the proposal provide sufficient justification for a departure from the Island Plan.
51. However, there is no substantive evidence before me to demonstrate that the circumstances associated with the proposal and/or any potential benefits arising

from the proposal amount to matters so significant as to warrant a departure from the Island Plan.

52. A significant element of the case put forward by the appellant focuses on the scope to improve a brownfield site, with enhancements to local character and biodiversity and the contribution towards Jersey's housing needs of an additional house. Further, the appellant considers that the proposal would not result in any harm.
53. Whilst I am mindful that the appellant considers that, when taken together, the circumstances associated with the proposal are compelling, the fact remains that there is very limited scope in the Island Plan for the provision of new housing in Jersey's Coastal National Park.
54. This is a purposeful approach by the recently adopted Island Plan – the barrier to new residential development in the Coastal National Park is set at a very high level in order to prevent all but limited new housing that can meet the relevant tests.
55. For the reasons set out in the Report, the proposal does not meet the relevant tests and hence the recommendation below.

Conclusion

56. For the reasons given above, I recommend to the Minister that the appeal be dismissed.

Nigel McGurk BSC(HONS) MCD MBA MRTPI
PLANNING INSPECTOR