

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

Appeal under Article 108 against a decision to grant planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mrs S Kenny (third party appellant)

Site address: *Douceville Cottage*, Fern Valley, St. Helier

Application reference number: P/2024/1131

Proposal: *'Change of Use of 1 No. Residential Unit into 1 No. One Bedroom Unit of Short-Term Self-Catering Holiday Accommodation with Parking. Various Internal & External Repairs & Alterations to include roofing, re-pointing, new windows, doors and rooflights. New Hard & Soft Landscaping.'*

Decision Notice date: 22 January 2025

Procedure: Hearing held on 1 April 2025

Inspector's site visit: 1 April 2025

Inspector's report date: 30 April 2025

Introduction

1. This report contains my assessment of the appeal made by Mrs S Kelly against the planning authority's decision to grant planning permission for a development proposal to convert a building to self-catering short term let holiday accommodation, and some related works.

Background

The application site

2. The blue-lined area on the submitted site location plan¹ defines the applicant's ownership of a residential site in a Green Zone location in Fern Valley. The site contains a Grade 3 Listed² substantial stone built 5 bay rural house, and a single storey detached 'cottage' outbuilding, positioned a short distance from the south-east corner of the house. Both buildings fall within the Listing and are therefore Listed.
3. The Listing Schedule describes the main house as: *'18th century rural house. This building has fine exterior stonework, its interior retains many rarely surviving features including panelling and the roof timbers.'* The cottage outbuilding is recorded in the Schedule which states: *'To S of*

¹ Drawing No 806-1-01 REV A

² Reference HE0215

building is a lawn with a (derelict) cottage of different owner aligned with the E corner.'

4. The house was originally known as *Douceville Cottage*, but the applicants have recently renamed it *Douceville House*, and named the outbuilding *Douceville Cottage*. Whilst I am mindful that the residential status of the outbuilding is challenged by the appellant, the term 'cottage' is employed in the Listing Schedule, so I will use the names currently employed by the applicants; i.e., *Douceville House* for the main house, and *Douceville Cottage* for the building that is the focus of this appeal.
5. *Douceville Cottage* is a simple and attractive single storey traditional rural building. It is constructed with granite rubble walls, with window openings on its east and west sides. It has a pitched roof, curiously covered with slate on its western roof plane, but with clay pantiles on its eastern side. Internally, the main space is divided by simple plank walls, and I noted the presence of a fireplace, but no kitchen or WC/bathroom facilities. At the northern end, there is an attached store structure and traditional pigsty, with a fallen roof. Although clearly in need of repair, the building appears solid and capable of refurbishment and re-use.

The P/2024/1131 proposal

6. The appeal proposal would repair and repurpose the building to create a small holiday let unit. It would include a bedroom (8.54 sq metres), living room (15.12 sq metres) and shower room in the main part of the building, with a kitchen in the attached store, accessed via a new internal door opening. The pigsty would be converted to provide storage and cycle parking. A new door opening is proposed on the east (valley) side, which would give access to a small amenity space, which is shown on the drawing with 2 outdoor chairs and a small table. On the west side of the building further amenity space is proposed, along with a single parking space. The submitted drawings include some limited external works to adjust and landscape levels in the areas to the east and west of *Douceville Cottage*.

The appellant's property

7. To the south of the appeal property there are 2 dwellings, which I understand are both within the appellant's ownership. Closest to the appeal site, and immediately adjacent to *Douceville Cottage*, is *Rose Farm Cottage*; this is a 2-storey granite stone faced dwelling, with pitched roofs containing a dormer addition. At the eastern end of the house there is a large, recently constructed, single storey extension of a modern design. This addition is unauthorised, an application³ seeking its retention having been refused in 2024, and a subsequent appeal being dismissed by the Minister in March 2025⁴. The refusal reasons related to its incongruent design and its failure to protect the setting of the Listed Building to the north. I understand that discussions between the appellant's representatives and officers are taking place with regard to remedial works and revisions.

³ P/2024/0425

⁴ MD-ENV-2025-173

8. Further to the south is a large bungalow, which is known as *Rose Farm House*, along with its parking, garaging and garden areas.
P/2024/1131 consideration and determination by the planning authority
9. At the application stage, the appellant submitted objections to the holiday let conversion proposal. These were based on alleged harm to the landscape character and peaceful qualities of Fern Valley, and concerns about unreasonable harm to her amenities. There were no objections from consultees, subject to detailed requirements, and the scheme was supported by the Historic Environment Team (HET).
10. The application was determined under officer delegated powers, with permission being granted on 22 January 2025. In addition to the standard time limit and plans compliance conditions, the Decision Notice (DN) includes 4 further conditions, which: limit the use to short term let visitor accommodation; require soft landscaping details; require a window in the west elevation to be obscure glazed; and require the implementation of ecological mitigation, compensation and enhancement measures. Mrs Kenny's appeal is made against this decision.

Summary of the appellant's grounds of appeal

11. The appellant's case is set out in the appeal form with appended documents, which include a list of 4 grounds of appeal and a letter of representation submitted at the application stage, along with a detailed Statement of Case (28 pages) with 8 appendices. The 4 grounds of appeal, appended to the appeal form, and contained in the Statement of Case are:

Ground 1: The development proposed is located in the Green Zone of the Proposals Map of the Bridging Island Plan, 2022 and affects the setting of a Listed Building. The Appellant considers that the decision made by the Regulation Department does not adequately take into account and has not properly assessed the scheme under the relevant policies and supplementary planning guidance.

Ground 2: With reference to Article 5 of the Planning and Building (Jersey) Law, 2002 the assessment and decision fails to consider the implications of the development proposed under paragraph (1)(b). The information submitted with the application is confusing and fails to clearly explain that the decision results in the change of use of upper valley slopes. The Appellant notes the creep of suburbanisation on the slopes already and is very concerned about the changes proposed.

Ground 3: The Appellant considers that the development proposed results in unreasonable harm to their amenities contrary to Policy GD1 Bridging Island Plan, 2022.

Ground 4: The Appellant considers that notwithstanding the information that has been submitted with the Planning Application, the development proposed does not result in protection and improvement of the island's

biodiversity, nor the island's natural environment or landscape character in accordance with Bridging Island Plan, 2022 policies.

12. The Statement of Case includes the following summary:

An appeal has been lodged by the Appellant against the decision to approve the Planning Application proposed at the Application Site for Change of Use of 1 No. Residential Unit into 1 No. One Bedroom Unit of Short-Term Self-Catering Holiday Accommodation with Parking. Various Internal & External Repairs & Alterations to include roofing, re-pointing, new windows, doors and rooflights. New Hard & Soft Landscaping.

The development approved appears to include the change of use of land adjacent to the building and includes a terrace area and land that is referred to as garden. The effects of the change of use of this land and the introduction of a terrace immediately adjacent to the residential curtilage of Rose Farm has significant and harmful effects upon the Appellant's amenities, to the extent that the development is not supportable under the considerations of the policies of the Bridging Island Plan, 2022.

The background to this Planning Application has been confusing and distressing for the Appellant. Being previously represented by an agent who openly declared a business relationship with the Agent managing the Planning Application the subject of this Appeal.

Other confusing aspects are the recent and wholesale clearance of the upper woodland slopes immediately adjacent to the building the subject of the Planning Application and the change in the name of the building the subject of the Appeal to Douceville Cottage. The Appellant notes the uncertain planning position around the buildings located on the woodland slopes below Douceville and their established use. They have experienced unreasonably harmful effects from noise and disturbance including at unsociable hours in the past. It is noted that the clearance of the upper slopes has significantly altered the character and setting of the Application and surrounding area and made apparent structures located on the slopes.

The Appellant has usually enjoyed a peaceful and rural outlook from their property. They are concerned that the development proposed increases the suburbanisation of the Application Site and surrounding area. The changes significantly change the outlook from the Appellant's property.

Also confusing and uncertain is a current review of the Listing Schedule for Douceville House and Cottage (HE0215 – dated 4th March 2025). The Appellant has some questions arising from the proposed amended Listing Schedule, which was requested by the Appellant because land included within the Listing included land belonging to Rose Farm. The Appellant has advised the Head of Spatial Planning that they do have comment in response to the proposed revised Listing.

It is suggested that a full assessment of the Planning Application scheme under Policy HE1 cannot be undertaken until the final version of the Listed

Building Schedule for 'Douceville' has been confirmed, informed by an understanding of land use under Article 5(1) of the Planning and Building (Jersey), Law 2002 (as amended) informed (as necessary) by any interpretation of abandonment under the Planning and Building (Jersey), Law 2002 (as amended).

The Appellant requests that on the basis of all the evidence presented with this Appeal that it is agreed that there is sufficient justification for the Minister to overturn the approval of planning permission and uphold this appeal.

13. At the Hearing, the appellant's case was presented by her agent, Mrs Steedman (planning consultant), with contributions from Mrs Kenny and Ms McNee (architect).

Summary of the planning authority's case

14. The planning authority's case is set out in a Response document, with 3 appendices, comprising the officer report, the Decision Notice (DN), and a copy of the Listed Building Schedule for *Douceville Cottage*. The Response explains that the proposal was considered against the relevant Bridging Island Plan (adopted March 2022) (BIP) policies, and assessed by officers to be acceptable.
15. The officer report assesses that the re-use of this traditional farm building for a unit of self-catering accommodation in this Green Zone location, accords with the principles of policies ERE3 and EV1; that it would provide a viable use for a Listed Building; and that it would not result in conflict with policy H3, as there would be no loss of housing to the open market.
16. It further assesses the alterations to the Listed Building to be demonstrably necessary, with harm mitigated and reduced as far as reasonably practical. It further assesses that there would be no unreasonable impact on the amenities of neighbouring properties, and that landscaping proposals are acceptable. Overall, it reaches the conclusion that the proposal will protect the special interest of the building and its wider setting, will not cause harm to landscape character, and will protect the distinctive character, quality and sensitivity of the area in accordance with policies SP4, SP5, HE1, HE2, NE1 and NE3.
17. At the Hearing, the planning authority's case was presented by Mr Gladwin (appeals officer) and Ms Sellors (case officer).

Summary of the applicants' case

18. The applicants, Mr and Mrs Hodges, along with their architect Mr Gibb, attended and took part in the Hearing. Whilst they did not submit a Statement of Case, I have considered their written submissions at the application stage, including Mr Gibb's letter of 7 January 2025 which addresses noise concerns and domestic curtilage matters; and Mr and Mrs Hodges' letter of 24 March 2025 which details a boundary wall matter, and states that the appeal proposal is a 'conservation led project with every effort made to protect and enhance the setting of the listed building'.

Inspector's assessment

19. Before I explore each of the detailed grounds of appeal, there are some matters that require comment and assessment, as they may have some policy implications. These relate to the appellant's challenges to, and queries concerning, the planning status of both the cottage and the land to the east of it.

Planning status – Douceville Cottage

20. With regard to the cottage, I have noted that the development description used in the application form and DN refers to the *Change of Use of 1 No. Residential Unit*. The evidence before me does suggest that the building has been used for residential purposes in the past. Mr Gibb's letter states that the last resident, Mr Menard, lived in the building through the Occupation and until his death in the 1970s. It also refers to the terminology ['a house or cottage and wash house'] used in legal Deed documents from 1952 and 2023. Additionally, I note that the Listing Schedule refers to a '(derelict) cottage' and I observed features such as a fireplace, chimney, domestic type windows and an old bath tub (now outside the building), which all suggest past residential use. However, that residential use as some form of dwelling has not been active for a long period of time, perhaps half a century.
21. The appellant has raised the question of 'abandonment' of any dwelling use at *Douceville Cottage*. This is quite a complex area of planning law, which requires an objective assessment of a number of factors. Whilst a long period of non-use can suggest abandonment, it is not in itself determinative. Other factors such as the physical condition of the building, intervening other uses, and intentions of owners, must also be considered. On these matters, the building appears solid and convertible, there is no evidence of any other intervening use, and I have nothing before me to suggest any owner's intentions one way or the other.
22. Based on the above, I cannot therefore conclude that there is a compelling case of abandonment of the dwelling use. On balance, I am of the view that the residential use still persists from a planning law perspective, albeit that, in its current form, the building would not meet modern dwelling standards due to the lack of facilities. In any event, the most relevant policies in this case, which relate to the repair and re-use of a Listed Building for holiday let purposes, are not contingent on there being an active and lawful dwelling house planning use; I will return to this under ground 1.

Planning status – land east of Douceville Cottage

23. Concerning the land to the east of *Douceville Cottage*, similar matters arise. The Deeds evidence again signals a history of 'garden'. Domestic garden use is also suggested by the physical evidence, with steps and terracing still evident on the higher parts of the slope, closest to *Douceville Cottage*. As with the dwelling use of the cottage, there is little doubt that the land has not been in active garden use for a long time and has been unmanaged, but there is nothing to suggest that any other use, such as agricultural cultivation or grazing, has occurred in that time period.

24. The applicants' recent clearance of scrub and vegetation on the slopes to the east of the application site was unwelcome to the appellant. She described this area as a 'woodland' which was attractive, and part of the surroundings and outlook that she enjoyed from her property for many years. However, the clearance of trees and vegetation is within a landowner's gift, subject to there being no Protected trees, or other environmental legislative restrictions, and there is nothing to suggest that is the case here.
25. Rounding up the above, I reach the view that on the balance of the evidence, and despite a very long period of non-use, the upper parts of the slopes, including the small segment within the application red-lined area, have a history linked to residential use, and not any other use, and that this should be regarded as its lawful planning land use.

Ground 1 – Green Zone location and Listed building

26. The appellant's first ground is wide ranging and alleges that the planning authority has not properly considered the relevant BIP policies and supplementary planning guidance (SPG). However, the appellant fails to identify which BIP policies and SPG she considers have not been properly considered. At the Hearing the appellant's agent suggested that they did not accept that BIP policies SP4 (protecting and promoting island identity), GD9 (skyline, views and vistas) and HE1 (protecting Listed Buildings and places, and their settings) were satisfied. For the planning authority, Mr Gladwin drew attention to the officer report, which includes detailed assessments covering the 'principle of development' and 'heritage', and includes a range of cited policies.
27. Given the nature of the proposal, being for visitor accommodation and re-use of a Listed building within the Green Zone, there a number of policies that are most relevant.
28. In terms of location, the BIP spatial strategy set out in policy SP2 allows for the conversion of existing buildings outside the built-up area (BUA), which will include Green Zone locations. More specifically, policy EV1 encourages proposals that contribute to the quality and range of Jersey's visitor accommodation. In locations outside of the BUA, the policy provides clear support for self-catering visitor accommodation, '*where it involves the re-use and conversion of traditional farm buildings or where it can provide a viable use for listed buildings.*' This policy position is repeated and expanded upon in the adopted relevant Holiday Lets SPG⁵.
29. In terms of Listed Building considerations, I have noted and given weight to the HET consultation response and its support for the proposal. It clearly regards the proposal as positive, beneficial and sensitive to the Listed Building. I agree with that assessment as the scheme appears to be well conceived. It will fully repair and provide a viable re-use of this heritage asset, with minimal intervention to the historic fabric. I am satisfied that the proposal would protect the special interest and significance of the Listed

⁵ Holiday Lets SPG (July 2024) – section 5 refers

Building and its setting. Accordingly, policy HE1, and the relevant parts of policies SP4, are satisfied in my view.

30. I have noted the appellant's references to policy GD9 regarding skyline views and vistas, but there is no change proposed to the height or size of the building and I do not consider that there will be any discernible effect on these policy matters. I find no conflict with policy GD9.

Ground 2 – application confusion and suburbanisation effect of valley slopes

31. The appellant contends that the land to the east is not curtilage or residential, as claimed by the applicants and the proposal would lead to a 'creep of suburbanisation' in this countryside location, contrary to the Landscape and Seascape Character Guidance (2023) (LSCG SPG), which is based on the Integrated Landscape and Seascape Character Assessment (2020).
32. I have addressed the land and building status issues above and that leaves me unconvinced that the alleged suburbanising change would take place. Indeed, the rural character is enhanced by the repair, refurbishment and viable re-use of this Listed building. From my inspection of the site, it also seems a desirable component of achieving quality visitor accommodation for guests to have the facility to enjoy the Fern Valley views through a small external space.
33. One observation I must make, albeit that the appellant may disagree, is that when I walked down the valley slope and then looked back up towards *Douceville Cottage*, the one notable feature that could be considered to have suburbanising effect in this rural landscape, was the white rendered wall and extensive glazing in the east elevation of the unauthorised extension to *Rose Farm Cottage*.
34. I do not consider that the proposal would amount to suburbanisation of the valley slope and I find no conflict with the LSCG SPG or with related BIP policies that seek to protect local and landscape character, including policies SP3, SP4, SP5, PL5, NE3, and GD6

Ground 3 – effect on residential amenity

35. The appellant alleges that the proposal will unreasonably harm her amenities through noise and loss of privacy effects. The relevant BIP policy is GD1, which covers 'managing the health and wellbeing impact of new development'. The policy requires all development proposals to be considered in relation to their potential health, wellbeing, and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including with regard to noise and privacy effects. There is Jersey caselaw⁶ which helps inform how amenity assessments should be made in planning determinations.

⁶ Boyle and Kehoe -v- Minister for Planning [2012] JRC036; Winchester -v- Minister for Planning and Environment [2014] JRC118.

36. With regard to noise effects, it is a matter of fact that the existing baseline is one of relative rural tranquillity, and I did not observe any notable background noise during my visit. In such locations the sensitivity to change is therefore greater than, say, a more developed BUA context. However, the proposed holiday let accommodation unit is compact, with occupancy limited to a maximum of 2 people. The building is also of a very solid construction, meaning that any internal noise will likely be contained.
37. There may be some noise and general activity at changeovers and through guests' movements during their stays, but this should be contained within the *Douceville* site, and will not be unduly intrusive to occupants of *Rose Farm Cottage* to the south, or *Rose Farm House* further to the south. There is no convincing evidence to suggest that the use of the proposed small amenity space on the east side of *Douceville Cottage* will create any noise issues. Indeed, its small size rather limits its use to sitting and viewing, rather than any larger, social and noisy activities. I share Mr Gibb's view that it seems more likely that guests staying at the unit would value the peace and quiet of the location.
38. I am satisfied that the proposal would not result in unreasonable amenity effects as a result of noise and that policy GD1 is satisfied in this regard.
39. Concerning privacy matters, I have no concerns about window-to-window relationships. The appellant's particular sensitivity appears to be about guests using the proposed amenity space on the east side of the building and the effect of this on the occupants of *Rose Farm Cottage*.
40. A complexity of the assessment here is that the building relationship I observed on site relates to an unauthorised extension at *Rose Farm Cottage*, which contains large glazed sliding doors in its east elevation, which open onto a terrace type area. This is at a higher level and above the proposed *Douceville Cottage* amenity area.
41. There is a separating wall, but it is not particularly high to serve as an effective screen, and I understand that the appellant reduced the height to better open up the views (from the extension). I understand that a civil agreement has been reached between the appellant and applicants to re-instate part of this wall, although the appellant advised me that it was relatively small in size.
42. Although the existing relationship is likely to change in the light of the *Rose Farm Cottage* appeal outcome, I do not regard it as creating any unduly unreasonable privacy issues. Indeed, any possible privacy issues are more likely to be from the potential for residents at *Rose Farm Cottage* to look down into the *Douceville Cottage's* proposed amenity space, rather than guests looking upwards in the other direction.
43. I am satisfied that the appeal proposal will not result in any unreasonable loss of amenity to neighbouring properties by virtue of noise or privacy effects. I find no conflict with policy GD1.

Ground 4 – effect on biodiversity, natural environment and landscape character

44. Ground 4 overlaps with ground 2 concerning landscape character, and I do not need to repeat my findings again here. With regard to biodiversity and the natural environment, the proposal was supported by an appropriate ecological assessment report⁷. The report, including its mitigation, compensation and enhancement measures, was assessed by Land Resource Management and found to be acceptable. A planning condition has been imposed to require those measures to be implemented. These matters, in the absence of any expert evidence to the contrary, attract significant weight in my assessment.
45. On ground 4, I find no convincing evidence to demonstrate any conflict with the wide range of policies cited by the appellant, namely SP3, SP5, PL5, NE1, NE2, NE3 and GD6.

Other matters

Updating the Listing Schedule

46. I understand that there is a process underway to update the Listing Schedule. This is likely to include the name changes (*Douceville House* and *Douceville Cottage*) and clarify the geographical extent of the Listing, the inclusion of part of the *Rose Farm Cottage* curtilage on the published plan being a matter that was raised during the recent extension planning appeal. Whilst noting this process, it is yet to conclude, and has no significant bearing on my assessment.

Planning conditions

47. At the Hearing, I held a without prejudice session to explore planning conditions, with a particular focus on whether the 4 conditions that appear within the DN needed any revision, or whether further conditions should be imposed.
48. The appellant's agent suggested conditions covering a noise management plan, finished levels, and the removal of permitted development rights. However, I do not regard a noise condition as necessary given my findings under ground 3; the levels adjustments are minor in nature and are already shown on the drawings; and permitted development rights are not applicable to Listed buildings.
49. I am satisfied that the imposed 4 conditions are reasonable and necessary and do not require any revision. I am also satisfied that no further conditions are required in this instance.

Conclusion and recommendation

50. For the reasons stated above, I conclude that the proposal submitted under application Ref P/2024/1131 is acceptable with regard to the relevant BIP policies, and there are no material considerations that suggest that the

⁷ Ecological Impact Assessment by Sangam Island Conservation (6/8/2024)

decision ought be made other than in accordance with the BIP. I therefore recommend that the Minister DISMISSES this appeal and confirms the grant of planning permission for the development proposed under planning application reference P/2024/1131.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI