

PLANNING AND BUILDING (JERSEY) LAW 2002

**Appeal under Article 108 against a decision made under Article 19 to
refuse planning permission**

**FURTHER SUPPLEMENTARY REPORT TO THE MINISTER FOR THE
ENVIRONMENT**

made under Article 116(2)(b)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellants:

Nude Food Dunes 2020 Limited

Application reference number and date:

P/2024/0861 dated 18 August 2024

Decision Notice date:

5 December 2024

Site address:

The former Nude Food Dunes restaurant, La Route de la Pulente, St. Brelade JE3
8HG

Development proposed:

"Partial change of Use from Café/Restaurant to 1 No. 2 Bedroom Unit of Self
Catering Holiday Accommodation. Various external alterations to include removal
of extract vent, provision of revised access ramp & new parking. Hard & Soft
Landscaping alterations."

Inspector's site visit date:

10 February 2025

Hearing date:

11 February 2025

Inspector's report date:

4 March 2025

Introduction

1. Following receipt and consideration of my report dated 4 March 2025 in relation to this appeal the Minister decided on 20 March 2025, in exercise of Article 116(2)(b), to secure further consideration and advice in respect of certain issues before he determined the appeal. The appeal was referred back to me in order that further consideration might be given to these issues. I was requested to prepare a supplementary report and make recommendations in response to the issues raised as soon as practicable. The Minister deferred the determination of the appeal until his receipt of the supplementary report.
2. Following receipt and consideration of my supplementary report, the Minister decided on 8 April 2025 to refer the appeal back to me again, to consider various issues set out in an accompanying report, including the viability and the principle of the proposed development and the comprehensiveness of planning conditions put forward, and to provide the Minister with further advice in relation to the matters raised.

Advice

3. The Minister will be familiar with the provisions of Article 19, namely that all material considerations are to be taken into account when an application for planning permission is determined and that in general planning permission is to be granted if the development proposed in the application is in accordance with the Bridging Island Plan. My original report gave advice about the provisions of the Plan, but I have not previously advised generally about planning procedures or about material considerations.
4. If the appeal is allowed and planning permission is granted the appellants will be under no obligation to implement the permission, but if they do they will have to carry out the development in accordance with the planning conditions that have been imposed. These conditions should pass the tests applied to all planning conditions, namely that they are necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. The more onerous the conditions, the less likely the permission will be implemented, but it is entirely reasonable to approach development proposals with a view to securing in the public interest the maximum practicable benefit from development that is allowable within these tests.
5. The appellants should not be required to demonstrate that the proposed development will be viable. That is a test normally applied only in special circumstances, such as that of enabling development to support a heritage asset or ascertaining the amount of affordable housing to be provided in a residential development. It is restricted to these special circumstances in the Bridging Island Plan. Even then, the test is of limited practicality, because development that is shown to be viable at the time of approval can become unviable at any time afterwards because of circumstances beyond the control of the developer.

6. By way of illustration, applicants for retail development would not be required to show that the shops they proposed would trade successfully and housing developers would not be required to show that there was a market for their proposed dwellings. Valid planning applications can be submitted for development that is purely speculative or simply to establish a land value when there is no intention to proceed with any development.
7. It was mentioned by the appellants at the hearing that they might wish to use the southern terrace more flexibly and had therefore submitted a new planning application, P/2024/1476. This terrace is shown as 'self-catering' on the application plans presented at the hearing. No amendments were put forward by the appellants at the hearing and there was no further discussion of the matter. The planning register shows that the new application goes further than flexibility. It revises the layout, but it also contains proposals for additions to the building that will engage planning policy considerations that do not arise in connection with the straight change of use proposed in the appeal.
8. If the Minister considers that the proposals in the new application should be taken into account in his decision, and given weight, the new application should be treated as fresh evidence. It will be necessary to restart the appeal process to give the parties the opportunity to comment and, in view of the public interest in this application, probably to re-open the hearing. I would have the authority to deal with this matter under Article 115(4)(c) and (d).
9. However, I consider that the concerns the Minister has expressed in his accompanying report could be dealt with by an additional planning condition (new Condition 1 below). I can also support the amendments to the conditions previously listed that have been put forward at the two bullet points in the accompanying report. The revised list of potential planning conditions, renumbered to put them in the appropriate order, is now as below. I have also revised the list of approved plans and documents, omitting plan 1706/24/SK03 B – Proposed Floor Plan & Site Plan, and made consequential changes elsewhere.

Revised list of potential planning conditions

Standard conditions

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

Reason: The development will need to be reconsidered in the light of any material change in circumstances.

- B. The development shall be carried out entirely in accordance with the approved plans and documents.

Reason: To ensure that the development is carried out as approved.

Additional conditions

1. Notwithstanding the details shown on plan 1706/24/SK03 B – Proposed Floor Plan & Site Plan, revised details of the proposed layout of the development, specifically identifying the internal and external space to be allocated respectively to the holiday accommodation and to the café facilities, including café seating, shall be submitted to and approved in writing by the Chief Officer before any development takes place and the development shall be carried out and retained as approved.

Reason: To ensure that the development meets community needs pursuant to Policy SP7 of the Bridging Island Plan.

2. Prior to the commencement of the development, a management and maintenance plan shall be submitted to and approved in writing by the Chief Officer to ensure that the public toilet facilities included within the development shall be accessible every day to all members of the public between the hours of 09.00 and 21.00 during British Summer Time, and 09.00 and 17.00 during GMT, in a manner fit for purpose, and maintained in perpetuity as such by the operator of each part of the premises, as set out in the aforementioned plan. In the event of any change to the operator of either part of the premises, the management and maintenance plan should be revised accordingly to assure the perpetual management, maintenance and operation of the public toilet facilities.

Reason: To ensure that the toilets are accessible for members of the public to use, pursuant to Policy SP7 of the Bridging Island Plan.

3. Prior to the commencement of the development, full details of the car parking space and the revised access ramp and the arrangements to be made for the storage of bicycles and the provision of electric vehicle charging points for the holiday accommodation shall be submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved details and the facilities shall be retained thereafter.

Reason: To provide satisfactory parking, pedestrian access and bicycle storage facilities in accordance with the transport policies of the Bridging Island Plan.

4. The property shall be used only for the combined mixed use as the café, public toilets and holiday accommodation shown on the approved plans (as revised in accordance with Condition 1) and shall be retained as such, and shall be used for no other purpose or purposes (including any other purpose in the Planning and Building (General Development) (Jersey) Order 2011 or in any Order revoking and re-enacting that Order with or without modification).

Reason: To preserve the character of the Protected Coastal Area and the Coastal National Park pursuant to Policies SP3, PL5 and NE3 of the Bridging Island Plan.

5. The café and its facilities shall be finished ready for use and be opened to the public before the holiday accommodation is occupied. The commencement of the use of the holiday accommodation shall not precede the commencement of the café use.

Reason: To preserve the character of the Protected Coastal Area and the Coastal National Park and to meet community needs, pursuant to Policies SP3, SP7, PL5 and NE3 of the Bridging Island Plan.

6. No part of the development shall be brought into use until the public toilet facilities referred to in Condition 2 above have been re-opened on a permanent basis for use by the public in accordance with that condition.

Reason: To meet community needs pursuant to Policy SP7 of the Bridging Island Plan.

7. No part of the development shall be brought into use until the extraction vent depicted on the approved plans has been taken down and removed from the property.

Reason: To improve the appearance of the Protected Coastal Area and the Coastal National Park pursuant to Policies SP3, PL5 and NE3 of the Bridging Island Plan.

8. Any plant or machinery associated with the development shall be installed, maintained and operated to such specification that noise generated from these units shall be at least 5dBA below background noise levels when measured, in accordance with BS4142:2014, from within the curtilage of any nearby property.

Reason: To protect the amenities of neighbours pursuant to Policy GD1 of the Bridging Island Plan.

9. The holiday accommodation shall be used as holiday accommodation only and shall not at any time be occupied as the sole or main residence of any person. The operators of the holiday accommodation shall at all times maintain an up-to-date register of the advertising, lettings and occupation of the holiday accommodation and shall make the register available for inspection by the Chief Officer on request.

Reason: The occupation of the holiday accommodation as a conventional dwelling would not be compatible with the purposes of the Protected Coastal Area and the Coastal National Park.

Approved plans and documents

Site Location Plan

1706/24/S01 A – Existing Floor Plan & Site Plan

1706/24/S02 A – Existing Basement Plan, Sections & Elevations

1706/24/SK04 A – Proposed Basement Plan, Section & Elevations

Heritage and Archaeological Impact Statement: July 2024

Marketing & Background Information

Planning Statement: July 2024

Preliminary Ecological Appraisal Report: July 2024

Dated 22 April 2025

D.A.Hainsworth

Inspector