

PLANNING AND BUILDING (JERSEY) LAW 2002

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

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
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

Introduction

1. The application was refused by the Planning Committee for the three reasons set out below. Reasons 1 and 2 were recommended by the Infrastructure and Environment Department. Reason 3 was added by the Committee.

"1. The applicant has failed to demonstrate that there is no market demand for the continued use of the premises for its existing daytime and evening economy use. Indeed, the evidence provided would suggest that there is a demand for the premises to remain in this use. Furthermore, taking into account the planning history, the design and condition of the existing building, and the zoning and current site context, a discontinuation of the current use, leading to the establishment of a new use which would be less widely available to the general public, is not considered to be in the wider community interest. For these reasons, the application fails to satisfy the requirements of Policy ER4 of the 2022 Bridging Island Plan.

2. The conversion of the existing (non-traditional) building, which is located within the Protected Coastal Zone, is not supported by the Bridging Island Plan. This position is supported by the supplementary planning guidance on Holiday lets (adopted July 2024), where it is stated that the conversion of such buildings to new tourism accommodation will only be supported, by exception, where the redundancy of the employment use is proven, and, where its re-use and adaptation delivers demonstrable environmental benefits through reduced intensity of use and visual improvement to the building and its setting. The application does not address these requirements. For these reasons, the application fails to satisfy the requirements of Policies SP2, SP6, PL5, and EV1 of the 2022 Bridging Island Plan.

3. The formation of the new car parking space and associated realignment of the access ramp, will encroach into an area of the protected dune environment, causing landscape harm. For this reason, the application fails to comply with the requirements of Policies NE3 and GD6 of the 2022 Bridging Island Plan."

2. None of the policies referred to in these reasons imposes requirements that must be satisfied or complied with or the application will be refused. What they contain are criteria on which the decision-maker should arrive at a carefully-balanced assessment of the proposed development on its planning merits and reach a reasoned conclusion having regard to the Plan as a whole. I have dealt with the appeal on this basis.

The premises, their surroundings and the proposed development

3. The premises are the former Nude Food Dunes restaurant which is situated between a public parking area and the beach at La Pulente, within the Protected Coastal Area and the Coastal National Park. The restaurant opened following the grant of planning permission P/2015/1600 (with later revisions) which authorised the change of use of the "very mundane and utilitarian" public toilets here to a café and the carrying out of associated building works, including the provision of new public toilets. These proposals were approved on the basis that the building works were well-designed and supported the purposes of the Coastal National Park, which allow for tourism development. There is an earlier permission granted in 2007 (P/2006/0819) that authorised the extension and conversion of the toilets to form a café with decked seating areas, which expired without being implemented. A popular beach kiosk café with outdoor seating that used to be here has been removed.
4. No ongoing planning conditions, such as restrictions on the hours of use or measures to deal with noise, were imposed on Permission P/2015/1600 apart

from Condition 4, which is understood also to be an ongoing requirement of the original deed of sale of the premises by the Government. Condition 4 is as follows: -

"4. The new toilet facilities approved as part of this 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 the café."

5. After delays attributed to development costs and viability issues and the Covid-19 pandemic, the development was eventually completed and was opened to the public in June 2023, but as a higher-end restaurant providing healthy and sustainable dining options rather than as a conventional café. The undertaking was weighed down by the high cost of the development and the substantial ongoing operating expenditure, and traded at a loss. The operators were declared bankrupt in November 2023, with suppliers unpaid and arrears of tax and wages. The premises have been vacant since then. The new public toilets are closed at present. Condition 4 cannot be enforced when the café does not have an operator.
6. The appeal proposals would convert the indoor restaurant, with the exception of the kitchen, into self-catering holiday accommodation with access to the existing outdoor terrace to the south. The kitchen would be retained to support a café with outdoor seating on the existing viewing terraces to the north and next to the car park. The public toilets would be re-opened. An additional parking space would be constructed for the sole use of the holiday accommodation. Other alterations would include the removal of the unsightly tower extraction flue, improvements to the access ramp leading to the toilets and the holiday accommodation, and the installation of privacy features between the toilets and the holiday accommodation.

Assessments

The first reason for refusal - daytime and evening economy use and Policy ER4

7. Policy ER4 deals with daytime and evening economy uses. Page 161 of the Plan gives as examples non-retail activities such as arts and cultural venues, restaurants, cafés, food and drink takeaways, public houses, bars and nightclubs.
8. The relevant part of Policy ER4 in this appeal is criterion 5, which is as follows:
 - "5. Change of use away from daytime and evening economy uses will only be supported where:
 - a. it can be demonstrated that there is no market demand for the continued use of the premises for daytime and evening economy uses;
 - b. in the case of tourist destination areas, there is no unacceptable adverse effect on the intrinsic character of identified tourist destination areas;
 - c. outside of the built-up area, proposals deliver an environmental improvement; or
 - d. the overall benefit to the community of the proposal demonstrably outweighs the adverse effects of loss of daytime and evening economy uses."

9. The four criteria 5a, 5b, 5c or 5d are alternative examples of where changes of use may be supported. The Department's interpretation of the policy - that criterion 5a always has to be demonstrated - is incorrect. Criterion 5b is not relevant in this instance because the premises are not in a tourist destination area, but each of the alternative criteria 5a, 5c or 5d should be considered.
10. The first reason for refusal focusses on criterion 5a and maintains that the appellants have failed to demonstrate that there is no market demand for the continued use of the premises for its existing use. There is no definition of "market demand" in the Plan; I take it to refer to the willingness and ability of buyers to purchase the premises as they stand at a fair price in an arm's length transaction. The supporting text to Policy ER4 indicates on page 161 that it should be demonstrated by marketing the premises for an appropriate period of time for their continued use on terms that reflect their lawful use and condition.
11. The premises have been actively marketed since March 2023, firstly on a sale and leaseback basis and then as an outright freehold sale with vacant possession. During this period, several professional commercial property agents have been engaged, extensive advertising has taken place, potential buyers have been contacted directly and the asking price has been reduced by more than a third. There have been many expressions of interest but very few offers. The offers have not progressed because they were either not for the premises as they stood (being conditional, for example, on further works being carried out or a change of use being permitted), or the buyer withdrew for their own reasons or the price offered was well below what professionals advised was a fair price. There has been no indication that the premises would be suitable for any of the other daytime and evening economy uses referred to in paragraph 7 above, all of which would in any case require a new planning permission and would not therefore be a continued use of the premises as they stand.
12. The Department and others have conjectured without producing substantiating evidence that there could be a willing buyer if the asking price were further reduced. The appellants have demonstrated by producing professional advice and identifying comparable transactions that the already reduced asking price was a fair price. The criterion 5a test that I described in paragraph 10 above has been satisfied.
13. The proposals are in any event only for a partial change of use of the premises away from a daytime and evening economy use, since part of the premises would continue as a café. The café would trade in the manner of a beach café, with extensive outdoor seating and a food and drink takeaway facility. It would be available to everyone enjoying the recreational amenities of the Coastal Area and the Coastal National Park. It has not been shown that this would overall, in the words of the first reason for refusal, lead "to the establishment of a new use which would be less widely available to the general public" than the previous use of the premises as a restaurant focusing on an indoor at table niche dining offer.
14. In addition, the "wider community interest" referred to in the first reason for refusal should include the clear-cut advantages of supporting proposals for a future economy use of these empty premises which is compatible with planning policies and has the business potential to be viable and capable of shouldering the cost of managing the re-opened public toilets. The alternative

risks leaving the premises including the toilets unused, prone to vandalism and unauthorised entry, in a deteriorating state of repair and likely to become an eyesore. These are all weighty considerations supporting the view that the proposals would comply with criteria 5c and 5d as well as criterion 5a.

The second reason for refusal - part change of use to holiday accommodation, Policies SP2, SP6, PL5 and EV1 and the supplementary planning guidance (SPG) "Holiday lets"

15. The Plan recognises tourism as an economic opportunity that should be supported. The 'Economy' chapter records on page 151 that "the Minister has sought to ensure the continued investment in visitor accommodation, so that it can continue to adapt to the changing tourism market involving new investment in an improved tourism offer and in the provision of high quality bed stock". The 'Visitor accommodation' section of the 'Economy' chapter records on page 166 that tourism and business travel represents one of the key economic sectors, that it is a significant provider of employment and support for other businesses, along with some of the island's heritage and cultural facilities, and that it caters for both leisure and business travel. It continues: "It is important that this Island Plan helps to maintain and enhance the intrinsic value of Jersey's tourism offer; and also supports the provision of new visitor accommodation that meets the needs of the changing tourism market."
16. Policy EV1 (Visitor accommodation) commences with the words: "Proposals which contribute to the quality and range of Jersey's visitor accommodation offer will be encouraged."
17. Policy SP2 (Spatial strategy) indicates that around the coast, provided the landscape and seascape character of the Protected Coastal Area is protected, the conversion, extension and/or subdivision of existing buildings will be supported as will the appropriate development of under-utilised land and buildings; in particular development that makes the most efficient use of land, and which optimises the density of development, is to be encouraged.
18. Policy SP6 (Sustainable island economy) indicates that a high priority will be given to the creation and maintenance of a sustainable, productive and diverse economy, with support for new and existing businesses. In particular, the policy states there will be support for the protection and maintenance of existing employment land and floorspace for employment-related uses and the redevelopment of vacant and under-used existing employment land and floorspace for employment uses.
19. Policy PL5 (Countryside, coast and marine environment) indicates that development proposals around the coast should protect or improve its character and distinctiveness and that they should also protect or improve the special landscape and seascape character of the Protected Coastal Area. It states that in the Coastal National Park, they should similarly protect or improve its special landscape and seascape character and special qualities of the Coastal National Park and its setting, and be compatible with the purposes of the park. It adds: "Where a coast or countryside location is justified, and where any impact will be limited, the provision or enhancement of sports, leisure and cultural facilities that supports the health, wellbeing and enjoyment of islanders and visitors will be supported" and that "Economic development that supports the maintenance and diversification [of] the rural

and island economy will be enabled here, where the location of development is justified and appropriate; or where it involves the reuse or redevelopment of already developed land and buildings, where it is appropriate to do so.”

20. The Coastal National Park is a subset of the Protected Coastal Area. It enjoys the same highest level of protection for landscape and seascape character as the Protected Coastal Area, but development within the Coastal National Park is also required to be compatible with the purposes of the park, and not to undermine its special qualities, which include its outstanding character along with its special heritage and biodiversity value. The purposes of the National Park include the conservation and enhancement of its natural beauty, wildlife and cultural heritage and the public understanding and enjoyment of its special qualities (Plan, pages 76 and 122).
21. Notwithstanding the support for tourism set out in paragraph 15 above and the encouragement in the opening words of Policy EV1 for proposals which contribute to the quality and range of the visitor accommodation offer, Policy EV1 is being interpreted restrictively by the Department, who are limiting its application outside the built-up area only to proposals which fall within paragraph 4 of the policy. Paragraph 4 reads: “Outside of the built-up area, proposals for the development of new self-catering visitor accommodation will be supported where it involves the re-use and conversion of traditional farm buildings or where it can provide a viable use for listed buildings.” Crucially, Policy EV1 does not state that these are the only types of proposals that will be supported outside the built-up area or that other types of proposals will not be supported there.
22. Reliance is then placed by the Department on paragraph 5.5 (Conversion of non-traditional buildings) of the SPG *Holiday lets*, which is effective from July 2024. The SPG was issued in response to the global rise in the popularity of internet-based holiday letting platforms and an amendment to the General Development Order, which now exempts certain forms of short-term holiday lets from the requirement to obtain planning permission, and may therefore impact upon the supply of homes at a time when there is an acknowledged shortage of homes.
23. Paragraph 5.5 is part of the ‘Policy interpretation’ section of the SPG. It states: “Conversion of other buildings [i.e. other than the traditional buildings dealt with by paragraph 5.4] in the countryside, such as hotels, evening economy uses, shops, offices and (non-listed) religious structures to holiday let use will only be supported, by exception, where the redundancy of other employment use is proven; and, where its re-use and adaptation delivers demonstrable environmental benefits through reduced intensity of use and visual improvement to the building and its setting.”
24. Paragraph 5.5 puts forward a more restrictive interpretation of Policy EV1 and other planning policies than can be supported by the words of the policies themselves. Supplementary planning guidance is designed to operate under the Plan and to be complementary but subordinate to it. It is a material consideration to be taken into account when planning decisions are made but the guidance should not be at variance with policies in the Plan.
25. Pulling all the considerations in paragraphs 15 to 24 above together, my assessment of the proposed change of use of part of these premises to holiday accommodation is as follows: -

- This is an economic opportunity that should be supported because it will add to the quality and range of the visitor accommodation on offer (Paragraphs 15 & 16, Policy EV1 & pages 151 & 166).
- It should be supported because it is the sub-division of an existing unused building that makes efficient use of the building without harming the landscape or seascape character of the area (Paragraph 17 & Policy SP2).
- It should be supported as a new business that will occupy vacant existing employment floorspace for an employment use (Paragraph 18 & Policy SP6).
- It would not be incompatible with Policy PL5, because it would re-use already developed property for the enjoyment of visitors without harming the character and distinctiveness of the area (Paragraph 19).
- It would be compatible with the Protected Coastal Area and the Coastal National Park, would not undermine their special character and would facilitate the enjoyment by visitors of their special qualities (Paragraph 20 & pages 76 & 122).
- Paragraph 4 of Policy EV1 is not an exclusive criterion. Paragraph 5.5 of the SPG departs from the principles applying to supplementary planning guidance in general, but its advice would be complied with in any event because (a) it has transpired that the existing employment use of the whole of the premises is redundant, (b) there would be a reduction in the intensity of the use of the premises when compared with their approved use, based on the theoretical existence of a fully functioning restaurant, and (c) the removal of the unsightly tower extraction flue would be a visual improvement (Paragraphs 21 to 24).
- Planning conditions can be imposed (a) requiring the re-opened toilets to be kept available for public use and (b) ensuring that the accommodation will be kept only as holiday accommodation and not occupied as a conventional residence.

The third reason for refusal - dune encroachment and Policies NE3 and GD6

26. This reason relates to a small triangle of land that would be used to provide a part of the carparking space for the accommodation and a part of the re-aligned timber-framed access ramp. This is previously-developed land. Photographic evidence exists that shows it was excavated and backfilled with earth when the development authorised by P/2015/1600 was carried out. The earth now has a thin covering of windblown sand. It is inaccurate to describe this land as part of the dune environment or that the development proposed on it would cause landscape harm contrary to Policies NE3 and GD6.

Public comments

27. The Department received 121 public comments - 114 objections and seven in support. They are summarised on pages 2 to 4 of the Department's Assessment Report, together with the applicants' response. Six public comments were received at the appeal stage, all confirming support for the Planning Committee's decision.

28. I have read the objections in detail. Many of them are critical of the original decision to sell the site and grant planning permission for the café; others reflect on the restaurant owners' business decisions; and some have become conflated with campaigns about the future of the dunes environment in general. These are not matters for this appeal to resolve. In the previous paragraphs of this report I have responded to all the issues raised in the objections that relate to the material planning considerations now arising.

Conclusion and planning conditions

29. I have concluded for the reasons explained above that the proposals are in accordance with planning policies and that planning permission should therefore be granted since there are no material planning considerations indicating otherwise. In addition to the standard planning conditions, planning conditions should be imposed to deal with the matters stated in the final bullet point in paragraph 25 above and with outstanding further details and noise.

Recommendation

30. I recommend that the appeal is allowed and that planning permission is granted for development at the former Nude Food Dunes restaurant, La Route de la Pulente, St. Brelade JE3 8HG, consisting of the partial change of use of the premises from a café/restaurant to a two-bedroom unit of self-catering holiday accommodation, with various external alterations including the removal of the extraction vent, the provision of a revised access ramp, a new parking space and hard and soft landscaping alterations, in accordance with the application Ref. P/2024/0861 dated 18 August 2024 and the plans and documents submitted therewith, subject to the following 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 listed below.

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

Additional conditions

1. 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 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.

2. 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.

3. The two-bedroom unit shall be occupied 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 accommodation shall at all times maintain an up-to-date register of the advertising, lettings and occupation of the accommodation and shall make the register available for inspection by the Chief Officer on request.

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

4. 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.

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

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/SK03 B – Proposed Floor Plan & Site Plan

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 4 March 2025

D.A.Hainsworth

Inspector