

## **PLANNING AND BUILDING (JERSEY) LAW 2002**

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

#### **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

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#### **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

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## 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. The issues referred to give rise to the following questions: -
  - i) Has a sufficiently robust assessment of market demand for the current site been demonstrated?
  - ii) Could granting planning permission lead to other forms of development, such as the use of the site for permanent residential occupation, which would not otherwise be granted planning permission in this location?
  - iii) Can it be ensured that the proposed development of part of the site as a café will be implemented and capable of beneficial use?
  - iv) When would the extraction vent be removed?
  - v) How would the public benefits of the proposed development, relating to the public toilets and the café, be best realised?
3. I have considered each of these matters in turn and on pages 4 and 5 of this supplementary report, I have put forward a set of potential planning conditions for consideration, which incorporates the ones previously recommended in my report (Numbers 5 to 8) and adds others as a means of addressing the Minister's concerns (Numbers 1 to 4).

*Has a sufficiently robust assessment of market demand for the current site been demonstrated?*
4. I concluded in paragraphs 10 to 14 of my report that this had been demonstrated, but the following additional information should be helpful.
5. It is important to keep in mind the statement in the Plan that the assessment 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. The appellants' evidence shows as a matter of fact that this was done.
6. The Department did not produce any further material during the appeal process to support the first reason for refusal. They maintain that "the fact that there are interested parties is evidence that the premises are not redundant". Interest does not equate to market demand unless it leads to offers that should be accepted. The appellants have submitted

comprehensive written information demonstrating why this did not happen and further information was given at the hearing in response to my questioning. The Department have not submitted any marketing suggestions or any valuations and I have no reason to doubt the robustness of the information provided by the appellants.

*Could granting planning permission lead to other forms of development, such as the use of the site for permanent residential occupation, which would not otherwise be granted planning permission in this location?*

7. Proposals for other forms of development requiring planning permission would be assessed in accordance with the planning policies and site circumstances applying at the time of the applications. Permanent residential use would at present be contrary to the Plan, as well as being contrary to Condition 3 proposed in my report, but see in addition Condition 1 on page 4 of this supplementary report.

*Can it be ensured that the proposed development of part of the site as a café will be implemented and capable of beneficial use?*

8. See Condition 2 on page 4 of this supplementary report as to implementation. I have no reason to doubt that the café would not be capable of beneficial use, taking into account the size and capacity of the retained kitchen facilities, the extent of the proposed outside seating within the site and the café's proximity to the beach and other outdoor amenities and to parking facilities.

*When would the extraction vent be removed?*

9. The removal of the extraction vent would be part of the development shown on the application plans and therefore subject to Standard Condition B, which would require the development to be carried out in accordance with those plans, but see in addition Condition 4 on page 4 of this supplementary report.

*How would the public benefits of the proposed development, relating to the public toilets and the café, be best realised?*

10. Planning conditions would be preferable to planning obligations in this instance, since they can readily be imposed and enforced when compared to planning obligations, which have to be negotiated and agreed and may in practice have more limitations on their enforceability. If the Minister is minded to impose the potential planning conditions, I recommend that the parties are notified and given the opportunity to respond, in order to reduce the possibility of the appeal decision being challenged on procedural grounds.

## 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 listed below.

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

### *Additional conditions*

1. The property shall be used only for the combined mixed use as the café and two-bedroom unit of self-contained holiday accommodation shown on the approved plans 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.

2. 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.

3. No part of the development shall be brought into use until the public toilet facilities referred to in Condition 8 below 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

Dated 24 March 2025

*D.A.Hainsworth*

Inspector