

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Mr Bob Godel

Planning Permission Reference Number: P/2023/0366

Date of decision notice: 7 September 2023

Location: Les Frontieres Farm, La Route du Francfief, St. Brelade, JE3 8BG

Description of Development: Convert existing attached ancillary building to create 1 no. bedroom residential unit. Convert ancillary building to create habitable space to existing residential unit. Demolish existing glasshouse and construct Equestrian Store and Bat House.

Appeal Procedure and Date: site inspection and hearing to discuss reason 2 of refusal only.

Site Visit procedure and Date: accompanied, 4th December 2023

Date of Report: 31st January 2024

Introduction and relevant planning history

1. This appeal concerns a refusal to grant permission for conversion of an existing building to a residential unit and construction of a compensatory bat loft and store.
2. Previous application (P/2022/0499) had also sought permission for the conversion of the existing building to a residential unit. This was refused in November 2022 because:

“The proposed barn conversion fails to provide adequate mitigation and compensation measures to avoid harm to the identified protected species and is therefore in contrary to Policies SP5 and NE1 of the Bridging Island Plan 2022.”
3. The current application was submitted to address this reason for refusal.
4. The Infrastructure and Environment Department (the ‘Department’) refused the current application on 21 July 2023. This decision was reviewed by the

Planning Committee, who confirmed refusal of the application on 7 September 2023 because:

1. The design, height and siting of the proposed equine store with first floor bat loft would be dominant and visually intrusive in the rural landscape, resulting in harm to the landscape character of the area, and is therefore contrary to Policies SP3, SP5, PL5, GD6 and NE3 of the Bridging Island Plan 2022.

2. Insufficient information has been submitted to demonstrate the permanent loss of commercial floor space within the existing barn would not cause harm by way of meeting the Island's future employment needs and is therefore contrary to Policy SP6 of the Bridging Island Plan 2022.

The appeal site and proposed development

5. The appeal site is in St Brelade and comprises a small collection of former farm buildings including a Grade 3 Listed building. The site is bordered to the north by La Route du Francfief, from which vehicle access is taken. Rue de Coin lies to the east and Rue des Fosses a Mortier to the west. To the south of the site are equestrian barns and fields.
6. The proposal seeks permission to convert an existing stone building, which is attached to the west elevation of the main house into a one-bedroom dwelling. There would be a garden to the west, bike store and 1 no. car parking space. The works would also require external alterations including replacement doors and windows and installation of rooflights on the southern elevation.
7. Surveys have identified that the building is used as a bat roost by grey long-eared and common pipistrelle bats. To mitigate the loss of the roost, the proposal also includes for construction of a purpose-designed bat loft. This would be located to the south of the site, where there is currently a semi-derelict greenhouse. The bat loft has been designed to meet the specification of Natural Environment. It would have a smaller footprint than the existing greenhouse but would be taller at approximately 5.8 metres high. It would be finished with a dark grey timber cladding.
8. As the bat loft requires to be at first floor level, the proposal seeks permission to use the ground floor space as an equestrian store.

Case for the appellant

9. The appellant has stated two grounds of appeal:
 - The proposed bat loft would not be dominant or visually intrusive.
 - The redundant store is not commercial space.

Case for the Department

10. The Department's position can be summarised:
 - The removal of the existing single storey greenhouse is acceptable, however, the proposed equine store with first floor bat loft would be dominant and visually intrusive in the rural landscape, at a height of 5.8 m to the ridge line and would be higher than the existing adjacent single storey stables to the south and set away from the existing farm group.
 - The harm to the landscape character of the area outweighs the justification to provide new bat housing of this nature.
 - The conversion of the existing outbuilding into a residential dwelling would be a viable use for a traditional farm building that is Listed. However, the loss of the storage area within the existing building is not considered justifiable, appropriate, necessary and redundant as the application also includes a replacement building for the same purpose.

Consultations

11. Responses from **Jersey Water** (26 May 2023) and **Land Controls** (22 June 2023) state no objections to the proposals.
12. The **Rural Economy** team's response (6 June 2023) expresses support for this application from a registered smallholder.
13. **I&H Transport** objected to the proposals (7 June 2023) on highway safety grounds. It considers that the proposal would intensify the use of an existing poor access near a busy road junction used by buses. No details regarding visibility have been provided.
14. The **Natural Environment** team did not object (16 June 2023) but requested addition of a condition to ensure implementation of the species mitigation set out in the Species Protection Plan.
15. **DFI Operational Services - Drainage** (19 June 2023) did not object but noted that details for disposal of surface water had not been provided.
16. Two responses were received from **Historic Environment**. The first (22 June 2023) objected to the proposal. It stated that the principle of the conversion of the barn from a heritage perspective is acceptable but that the height of the structure, even with mitigating circumstances, is at odds with the surrounding low slung structures and would be prominent in the setting of the Listed building, causing a degree of negative impact. Following submission of additional information, this objection was removed (13 July 2023).

Representations

17. No representations were received prior to consideration by the Department. Two comments, supporting the application were received prior to the Planning Committee meeting.

Inspector's assessment

18. Article 19 of the Planning and Building (Jersey) Law 2002 as amended states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Planning permission may also be granted for proposals that are inconsistent with the Island Plan if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.
19. The current Island Plan is the Bridging Island Plan, March 2022 ('the Island Plan'). Having regard to the policies within that plan and the grounds for appeal, I conclude that the determining issues in this appeal are:
 - Principle of conversion of building.
 - The effect of the proposals on the rural landscape.
 - The effect of the proposals on the Listed building.
 - The effect of the proposals on employment land.

Principle of conversion of building

20. Policy SP1 - Responding to climate change directs growth to areas of previously developed land or locations which minimise the need to travel by private vehicle. This is supported by Policy SP2 - Spatial strategy, which establishes that development will be concentrated within the island's built-up area. In terms of developments in the countryside, the policy notes that development will only be supported where a countryside location is justified, appropriate and necessary in its location; or where it involves the conversion, extension and/or subdivision of existing buildings.
21. Similar provisions are also included as part of Policy PL5 - Countryside, coast and marine environment. This policy requires that development proposals in the countryside (amongst other areas) should protect or improve its character and distinctiveness. To protect the countryside 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.
22. The appeal site lies within the Green Zone, which comprises much of the countryside outside of the Protected Coastal Area. Development is only permitted in such areas under certain circumstances, including conversion of an existing building. Thus, subject to my comments about effects of the proposal on the character and distinctiveness of the countryside, I conclude that it gains support from policies SP1, SP2, and PL5 of the Island Plan.

Effect of the proposals on rural landscape

23. The design and appearance of proposals is addressed by several policies of the Island Plan. Policy SP3 - Placemaking requires all development to reflect and enhance the unique character and function of the place where it is located. Development will be supported where it is responsive to its context to ensure the maintenance and enhancement of identity, character and sense of place. Policy SP5 - Protecting and improving the natural environment states that the protection and improvement of the island's natural environment, its landscapes, coastline, seascapes, biodiversity, and geodiversity, is a high priority. These considerations will be material in the determination of planning applications. Development proposals will also need to demonstrate how they will protect or improve the quality, character, diversity and distinctiveness of the island's landscapes, coastlines, and seascapes, in a manner commensurate with its identified quality. Policy PL5 also seeks to ensure that development protects or improves the countryside.
24. Policy NE3 - Landscape and seascape character includes similar protective provisions. Development must protect or improve landscape and seascape character. Proposals must demonstrate they will neither directly nor indirectly, singularly or cumulatively, cause harm to Jersey's landscape and seascape character and will protect or improve the distinctive character, quality, and sensitivity of the landscape and seascape character area or coastal unit as identified in the Integrated Landscape and Seascape Assessment (ILSCA).
25. Policy NE2 also defines criteria for acceptability of proposals that could affect the island's landscape and seascape character, but which do not protect or improve it. Such developments will not be supported unless, and with regard to the special qualities of the landscape and seascape character area or coastal unit, and the impact of the proposed development on those qualities:
 - a. the changes are demonstrably necessary either to meet an overriding public policy objective or need; and
 - b. there is no reasonably practicable alternative means of delivering those proposals without harm to landscape and seascape character; and
 - c. that harm has been avoided, mitigated and reduced as far as reasonably practicable; and
 - d. it has been demonstrated that the predicted public benefit outweighs the harm to the landscape and seascape character and where the nature of that benefit to the public is clear, direct, and evidenced.
26. Policy GD6 - Design quality seeks a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting in accord with the principles of good design. Development will be supported where it can be demonstrated that the design successfully addresses two key principles:

1. the relationship of the development to existing buildings, settlement form and distinctive characteristics of a place having regard to the layout, form and scale (height, massing, density) of the development;
2. the use of materials, details, colours, finishes, signs and illumination relative to the character and identity of the area; and its townscape or landscape setting.

27. The appeal site lies within the ‘Southern plateau and ridges farmland’ character area defined in the Integrated Landscape Assessment (ILSCA). This is described as having a well wooded and strong rural landscape with a sense of enclosure and intimate scale. The ILSCA recommends that further development in this area should be resisted to protect the strongly rural character and historic fabric, including farmsteads and their settings.
28. The appeal site fits reasonably well with this description of the landscape character. The building proposed for conversion forms part of a small grouping of former farm buildings. Land to the immediate south of the building forms a courtyard and access to single-storey stables. There are fields to the south, west and east of the stables. Thus, it appears strongly rural in character. Whilst there are no coherent blocks of woodland in the immediate vicinity of the proposal, there are rows of trees along the roads leading to the site and which would provide a backdrop for the proposed bat loft.
29. The proposal would involve conversion of an existing building, attached to a dwelling. Whilst some changes are required to external fittings and new windows would be introduced to the southern elevation, there is no dispute that the proposed design of these is acceptable and compatible with the building’s surroundings. The acceptability of these changes to the Listed buildings is considered below.
30. The Department has referred to the proposed bat loft as being “isolated; and “distant” from the existing group of buildings. However, it would replace the existing greenhouse, which sits between the existing dwellings and stables and would be close to the stables. This greenhouse is in a poor state of repair and information has been provided to suggest that it would be difficult to restore. I find that the proposed bat loft would not introduce built-features into new areas and would be viewed in association with the existing stables. Nor would it result in alteration to the existing field pattern or a change to the rural character of the area.
31. The proposed bat loft would be taller than the existing stables but from my observations, there would be few locations beyond the confines of the site from which it would be visible. Owing to differences in ground levels and presence of mature trees, it is unlikely that it could be seen from either Route de Francfief or Rue des Fosses a Mortier. It would be visible from a gateway on Rue du Coin to the east, but any views from the road would be fleeting. It would be viewed against a backdrop of mature vegetation and trees and in the context of the existing grouping of stables and buildings. This, combined with the proposed design and finish of the bat loft lead me to conclude that it would not appear incongruous within its proposed setting.

32. For the reasons set out above, I find that the proposal would reflect and respond to its context. It would protect the distinctive landscape character described in the ILSCA. Removal of the greenhouse, which is a poor state of repair, would also improve the landscape. I therefore find that the proposal would satisfy the requirements of Policies SP3, SP5, PL5, NE3 and GD6 of the Bridging Island Plan.

Effect of the proposals on the Listed building

33. Listed buildings are protected through the provisions of Policies SP4 and HE1 of the Bridging Island Plan. Policy HE1 - Protecting listed buildings and places, and their settings, requires that proposals that could affect a listed building or its setting must protect its special interest. The special interest of Les Frontières Farm is described on the Listing schedule as 'Architectural Historical' and the Statement of Significance describes it as "A late C18 farm house retaining some original features and character."
34. As noted above, some modifications to the external structure are required. This includes the replacement of some features, and a Heritage Impact Statement has been submitted to illustrate why these features could not be repaired. The Heritage Environment Team has confirmed that it considers the principle of conversion of the building is acceptable.
35. As noted above, the initial objection from the Heritage Environment Team relating to the effect of the proposed bat loft on the setting of the listed building was removed, following receipt of further information. My assessment above, has concluded that the bat loft would be viewed in context with the Listed farm building. However, I do not consider that it would detract from its special interest, or its significance as defined on the Listing schedule. I therefore conclude that the proposals would be consistent with policies SP4 and HE1 of the Bridging Island Plan.

Effect of the proposals on employment land

36. The Department maintains that the proposal would result in the loss of employment land and would be contrary to the provisions of Policy SP6 - Sustainable Island economy of the Bridging Island Plan. This policy provides support (amongst other things) for the protection and maintenance of existing employment land and floorspace for employment-related uses.
37. In support of its position, the Department has referred to adopted Supplementary Planning Guidance (SPG) on the Protection of Employment Land dated June 2012. Section 4.1 includes an indicative list of employment-related activities, which includes agriculture, horticulture and fishing. It notes that the building is described as a 'barn' on drawing E01 Existing House Plans, suggesting agricultural use. As the proposed bat barn also includes for an 'equestrian store' to be used in connection with an agricultural business, it concludes that the existing building's use as a store is not redundant.

38. The Department has provided an image extracted from google maps, which appears to show items being sold from the building. The previous owners of the property have confirmed that they did, on occasion, operate an honesty box system from the building. However, the appellant maintains that despite the date-stamp of 2021, this image pre-dates the current ownership and that they have never used the building for retail purposes.
39. I accept that items may have been sold from the building historically. However, I have not been provided with any evidence that such a use was consented. Nor have I been provided with evidence of more recent commercial use of the building. At the time of my site inspection, it appeared to be providing general personal storage space. Whilst the appellant has described the building as a 'barn' in the application, I accept that this term could be used in a generic sense to describe a former farm-building and does not necessarily imply that it is being used as part of farming operations.
40. Furthermore, I am not convinced that the proposed bat loft and equestrian store is being sought to replace commercial storage space. I understand the previous application for conversion of the building (P/2022/0499), was refused for a single reason, related to loss of the bat roost. There was no suggestion by the Department that it would lead to loss of commercial space. The current appealed application is the same in all respects, with the addition of the compensation measures required to address the loss of the bat roost. Whilst each application needs to be considered on its own merits, an applicant might reasonably expect that approval for a proposal would be granted, if the reasons for refusal have been adequately addressed.
41. The principle of efficient use of land is consistent with the aims of the Bridging Island Plan. However, reference to an equine store in the description of the proposal does introduce some potential tensions with Policies related to employment and commercial use. However, the Department has indicated that the existing equine activities are consented for personal use only and I am satisfied that a similar condition could be added to restrict use of the ground floor of the bat loft for personal use only.
42. In summary, I am unconvinced that the proposal represents a loss of employment land. Any potential tensions could be addressed through the addition of a condition limiting use of the bat loft for personal use.

Other matters

43. Policy H9 - Housing outside the built-up area, specifies the circumstances where such housing will be supported. These include where the development would represent the optimal viable use of a traditional farm building, where no alternative employment use is appropriate. As identified above, the proposal would enable re-use and restoration of a traditional farm building in line with the requirements of this policy.
44. Policy ERE7 - Equine development requires all proposals for equine-related development to be assessed to ensure that they will not individually or

cumulatively harm the quality and character of the landscape and the amenity of the area and any adjacent uses and will not otherwise compromise the quality and availability of land for agricultural purposes. It also requires that proposals for smaller-scale private equine-related development will only be supported where it is minor in scale and acceptable in terms of siting, scale, design and impact upon the character or appearance of the land; and impact upon the quality of the land for agricultural use. The conversion of existing buildings to equine-related uses, rather than new-build is also required.

45. I have concluded above that the proposed structure would not have an adverse effect on the quality and character of the landscape or amenity of the area. Nor would it impact on adjacent uses or the quality of land for agricultural use. It has been designed to provide a compensatory bat roost. I am satisfied that the equine use of the ground floor area would be subsidiary to this purpose. I am therefore content that the proposals would be consistent with the requirements of Policy ERE7.
46. I note the objection from I&H Transport, which is related to intensification of use of the existing access. I saw that it would not be possible to improve sightlines without work to the listed building. The proposal is for a one-bedroom unit and so I consider the proposed intensification would be acceptable. The proposals include provision for off-road parking, bike storage and an electric charging unit in line with relevant policies of the Bridging Island Plan.
47. The previous application was refused owing to effects on protected species. The current application provides a dedicated space to compensate for loss of the bat roost. The design of this space has been agreed in consultation with the Natural Heritage Team. I therefore consider that it satisfies the requirements of Policy NE1 of the Bridging Island Plan.
48. The Rural Economy Team supports the application, although I note this support is couched in terms of supporting a registered smallholder.

Conditions

49. As the Department recommended refusal of the proposal, no conditions were appended to the decision notice. I therefore had a 'without prejudice' discussion about conditions at the hearing. Five conditions were proposed.
50. As discussed above, a condition to restrict the use of the ground floor of the bat loft for personal use only would alleviate any concerns that the building would be used for commercial purposes.
51. Conditions requiring implementation of the landscaping plans and installation of the bike storage and charging unit are proposed, to ensure that these are completed in a timely manner.

52. The proposed fourth and fifth conditions would relate to measures to safeguard the bat populations. These would require the measures set out in the Species Mitigation Plan to be fully implemented and that the bat loft is constructed prior to the conversion of the existing building.
53. I agree that these conditions are necessary and appropriate. Suggested wording for these is included in Appendix A.

Conclusions

54. The preamble to the Island Plan notes that in determining whether a development is in accordance with the plan, it is important to have regard to the plan as a whole and not to treat any policy in isolation. Where policy conflicts exist, a reasoned judgement must be made as to whether the wider benefits of a proposal outweigh any policy considerations in the plan.
55. The proposal is within the Green zone and relates to conversion and re-use of part of a Listed building, which is a former farm building. The conversion could be achieved whilst protecting the special interest of the building and its setting. As the building contains a bat roost, compensatory habitat is required, in line with the requirements of Policy NE1. This is proposed in the form of a replacement 'bat loft'. These compensatory measures are considered acceptable by the Natural Environment Team.
56. The Department and Planning Committee concluded that the proposals failed to satisfy policies relating to effects on landscape character. However, for the reasons set out above, I have reached a different conclusion. My assessment has taken account of the quality, character and distinctiveness of the landscape in which the proposal is located within the context of guidance provided by the ILSCA.
57. As set out above, I am not persuaded that the proposals would result in loss of commercial space. However, even if that is the case, I consider that the benefits of re-using the Listed building would outweigh that loss. Whilst I am not convinced that the proposal would represent a loss of commercial space, appending a condition that the storage within the bat loft can only be used for personal use would remove any tension between policies.
58. I conclude that the proposals would be consistent with the Bridging Island Plan as a whole.

Recommendations

59. I recommend that the appeal should be allowed and that planning permission should be granted subject to the conditions set out below.

Sue Bell

Inspector 31 January 2024

Conditions

1. The development hereby approved shall be used only as a bat loft and for private, personal use only and not in connection with any commercial enterprise.
2. No part of the development hereby approved shall be occupied until all hard and soft landscape works as indicated on the approved plan have been carried out in full. Any plants which fail within 24 months of completion of the works shall be replaced. Following completion, the landscaping areas shall be thereafter maintained as such.
3. Prior to the first occupation of the new development, the charging points for electric vehicles and cycle storage shall be installed.
4. The measures outlined in the approved Species Protection and Enhancement Plan (ref. NE/ES/LFF.03, 26th April 2023, Nuture Ecology) shall be implemented prior to commencement of the development, continued throughout (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Land Resource Management Team prior to works being undertaken.
5. Prior to commencement of development, the compensatory bat loft must be constructed.

Reasons:

1. To ensure that the compensatory bat loft and ground floor storage is not used for commercial operations.
2. To ensure that the benefits of the approved landscaping scheme are carried out and completed, making a positive contribution to the amenities of the site in accordance with Policies SP3, SP4, GD8, NE1, NE2 and NE3 of the Bridging Island Plan.
3. To ensure that the residential unit has easy access to a charging point under the provisions of Policy TT4 of the Bridging Island Plan
4. & 5. To ensure the protection and improvement of biodiversity in accordance with the natural environment policies of the Bridging Island Plan 2022-2025.

Plans

Plan E03 Proposed House and Barn Plans
Plan E04 Proposed House Elevations, Section and Site Plan
Plan E06 Proposed Window Details
Plan E07 Proposed Door Details DBG1
Plan E08 Typical Roof and Wall Upgrade Details
Plan E10 Proposed Equestrian Store_Bat House
Species Protection Plan dated 26th April 2023