

**STATES OF JERSEY**

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

**PLANNING AND BUILDING (PUBLIC INQUIRIES) (JERSEY) ORDER  
2008 (as amended 2015).**

**PUBLIC INQUIRY - Application P/2015/1860: *'Demolish glasshouses to Field No. 1438, 1441, 1446 and 1447. Construct 11 No. dwellings to Field No. 1438 with associated landscaping and vehicular access onto La Rue Grantez through Field No. 1441. Change of use of Field No. 1446 and 1447 from agriculture to natural green space.'***

**REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**

**by Mr Philip Staddon BSc, Dip, MBA, MRTPI**

**an Inspector appointed under Article 3**

## **PREAMBLE**

1. My name is Philip Staddon. I am an independent Planning Inspector appointed by the Minister to conduct a Public Inquiry to assess this Planning application which has been submitted by Jersey Choice Ltd. The application relates to a proposed development of 11 houses on the site of existing horticultural glasshouses at La Rue de Grantez, St Ouen.
2. The Minister for the Environment, Deputy Steve Luce, called for this Public Inquiry because he considered that the application involves a substantial departure from the States' approved Revised 2011 Island Plan.
3. The Island Plan's Spatial Strategy (Policy SP1) asserts that new development will be concentrated within the Island's Built up Area, in particular the town of St. Helier, and not in the countryside 'Green Zone', where housing development would not normally be allowed.
4. The purpose of the Inquiry is to bring the application to public attention, to provide a transparent process for people to give their views and to establish a robust evidence based platform for the Ministerial decision making.
5. I held the Inquiry over two days on 10<sup>th</sup> and 11<sup>th</sup> of May 2016 at St Paul's Centre, Dumaresq Street, St Helier. I undertook a detailed inspection of the site and the surrounding area on 11<sup>th</sup> May.
6. At the Inquiry I heard evidence from the Applicant's team (which includes a States' employee), the Planning Department's officers, from members of the public and from the elected Deputy of St Ouen. A full list of appearances is included in the final Inquiry programme.
7. I would like to record my thanks to all participants for their contributions at the Inquiry. These have assisted greatly my understanding of the complex and controversial issues in this case.
8. My assessment has been based on the evidence submitted through written representations, heard through the Inquiry process itself and gained through site inspections.
9. In terms of the structure of this report, I begin by describing the site, its planning history and the application proposal. I then examine the legislative and planning policy framework relevant to this application. I follow this by summarising the cases put forward by the Applicant, supporters, the Department's officers and objectors. I then undertake a 'discussion and assessment' of the main issues, drawing conclusions on each, before reaching an overarching assessment and my recommendation to the Minister.

## THE APPLICATION SITE AND ITS SETTING

10. The application site is situated in the rural north-west of the Island and lies within the parish of St Ouen. The village of St Ouen is about 1 kilometre to the east and the coast (Les Laveurs) is about 1.28 kilometres to the west. The site extends to some 13.5 verges (or 2.6 hectares) and most of this is covered by three large horticultural glasshouses, with associated buildings including agricultural workers' accommodation, stores, a boiler house, fuel tanks and hardstanding areas.
11. For clarity, I will refer to the three main elements of the site (including their attendant ancillary structures) as Glasshouse A, B and C, working from north to south:

### Glasshouse A (Field 1438)

The northernmost glasshouse is about 60 metres wide and 90 metres long and sits just south of La Ruelle de Grantez. To the north of the glasshouse structure is an associated building, which includes staff accommodation, along with a hard surfaced yard. The glasshouse is modern and in good condition. It was in full and active use when I visited and the packing area was a hive of activity as the 'plug' plants grown in the glasshouse were being processed, packaged and boxed ready for despatch.

Glasshouse A is owned by Jersey Choice Ltd.

### Glasshouse B (Field 1441)

The middle glasshouse on the site is situated just to the south of Glasshouse A and at a slightly higher level. It is about 40 metres wide and has a length of about 150 metres, which faces Le Chemin des Monts. To the south of the main structure are an attached boiler room and freestanding tanks and stores. There is a triangular shaped hard surfaced yard between the eastern end of the glasshouse and La Rue de Grantez to the west.

Glasshouse B is owned by Jersey Choice Ltd.

### Glasshouse C (Field 1446 /1447)

The most southerly glasshouse is situated just to the south of Glasshouse B and on the other side of Le Chemin des Monts. It is set at a slightly lower level than Glasshouse B (and the road). It has a length of about 93.5 metres and a width of about 64.5 metres. The application area includes a hard surfaced access strip just to the east of the glasshouse and an open storage area, which includes some tanks to the south.

Whilst older than Glasshouses A and B, it is in a good condition. It is also apparent that one part of the glasshouse is newer than the remainder (see Planning history section).

Glasshouse C is owned by Mr M. Pirouet and leased to Jersey Choice Ltd for growing purposes.

12. The glasshouses lie in a distinctly rural setting on the St Ouen headland, although there are other buildings in the vicinity. To the north of Glasshouse A is a cluster of four relatively modern<sup>1</sup> houses, although these are heavily screened from La Ruelle de Grantez by a high hedge (they are accessed from La Rue de Mahaut). To the north-east are three older properties, which are sited immediately adjacent to La Ruelle de Grantez. To the east of Glasshouse A is Grantez Lodge and an associated small field (Field 1441A).
13. Further to the east, and beyond La Rue de Grantez, are open agricultural fields. To the east of Glasshouse C is the Grantez Farm building complex, which includes the farmhouse and some apartments.
14. To the west of all three glasshouses, the landscape is characterised by open agricultural fields, although these are interspersed with a small number of rural dwellings.

### **PLANNING HISTORY OF THE GLASSHOUSES**

15. The Planning history of the glasshouses on this site is important and features prominently in the evidence of the principal parties. The key issue here is the presence and implications arising from 'disuse or disrepair' Planning conditions.
16. I understand that older glasshouses in Jersey were typically constructed either before the advent of modern Planning controls or under planning permissions without any lifecycle obligations to repair or remove the structures once they were life expired. However, in the 1980's it became mainstream Planning practice to apply conditions that require that, in the event of the glasshouses falling into 'disuse or disrepair', the structures are removed from the site and the land restored to agricultural use. The rationale is that glasshouses are considered to be temporary structures required for horticultural production, but should they become redundant or fall into disrepair, they should be removed and the underlying agricultural use should be reinstated.
17. The planning history of the application site reflects this pattern. I set out a summary below:

#### Glasshouse A (Field 1438)

Planning permission for Glasshouse A was granted on 4 October 1991 (Ref: D/1991/0973). The proposal involved the replacement of an existing glasshouse with a new one. It included the following condition:

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<sup>1</sup> Planning permission 4/10/12645 for the 4 house development was granted in September 1986

*Condition 4: Should the glasshouses fall into disuse or disrepair they shall be removed from the site and the land restored to agricultural use.*

#### Glasshouse B (Field 1441)

Planning permission for Glasshouse B was granted on 7 June 1993 (Ref: 13771/C). It included the following condition:

*Condition 5: Should the glasshouses fall into disuse or disrepair they shall be removed from the site and the land restored to agricultural use.*

#### Glasshouse C (Fields 1446 and 1447)

Mr Pirouet's Glasshouse C has a more complex history. Although it appears as one large structure today, it is made up of a number of elements built (and rebuilt) at different times.

On 24 April 1972, Planning permission was granted for five commercial greenhouses in Field 1446 (Ref: 4/10/7992). No disuse or disrepair condition was imposed. However, part of this unit was storm damaged in the 1980's and had to be demolished. On 7 January 1988, Planning permission was granted for the '*construction of new glasshouse to replace existing unit demolished in storm in Field 1446*' (Ref: 4/10/7992 B). It included the following condition:

*Condition 5: Should the greenhouse fall into agricultural disuse or disrepair then it shall be removed from the site and the land restored to a condition fit for conventional agricultural use to the satisfaction of the Island Development Committee.*

The current glasshouses structures on Field 1447 are later additions, although they replaced earlier timber glasshouses on the same site. Permission was granted on 15 July 1997 (Ref: PB/1997/0671) for the new glasshouses, which were proposed to connect to the glasshouses on Field 1446. This permission included the following condition:

*Condition 2: Should the glasshouses fall into disuse or disrepair they shall be removed from the site and the land restored to agricultural use.*

18. In summary, the Jersey Choice glasshouses (A and B) are relatively modern structures and were built under planning permissions with 'disuse or disrepair' conditions. Mr Pirouet's glasshouse has some older elements, which are not covered by 'disuse or disrepair' conditions, and some later elements which are covered by such conditions.

19. Taking all three glasshouses together, they cover 190,969 sq ft. Of this total, 155,517 sq ft is covered by 'disuse or disrepair' conditions and the remaining 35,452 sq ft is not. In percentage terms, the split is 81.44% covered by the conditions and 18.56% not covered. In addition to the glasshouses, the Applicant states that the other ancillary buildings amount to some 11,590 sq ft.

### **THE APPLICATION PROPOSAL**

20. The application proposal is founded on a Policy ERE 3 'enabling development' case (although other 'exception' grounds are also promoted). The ERE 3 policy is explained and examined more fully later in this report but, in simple terms, it relates to proposed development that would generate a capital receipt that would be used to fund investment to modernise and enhance a rural business. I describe the development proposal first and the 'enabling' proposal second.
21. One point of clarification is appropriate here. Some of the Applicant's submissions to the Inquiry<sup>2</sup> refer to Jersey Choice Ltd as 'one of' the Applicants and cite Mr Pirouet as the other. However, Jersey Choice Ltd is the Applicant stated on the application form. For the avoidance of any doubt, Mr Pirouet, whilst owning land within the application area, is not an 'Applicant' based on the substantive application before me.

#### *The development proposal*

22. The application proposes the demolition of all three glasshouses and associated structures on the site. It is proposed to erect eleven new houses on the northern part of the site (Field 1438). Access to the residential development would be gained by a proposed new access drive from La Rue de Grantez, running east-west along the top part of Field 1441 and then turning northwards to serve the dwellings. There would be a pedestrian (and emergency vehicular) access through the scheme to La Rue de Grantez to the north.
23. Of the area proposed for housing, roughly the southern half would be occupied by three large detached houses (plots 1, 2 and 3) and the northern part would contain a cluster of 8 more modestly sized properties. The submitted drawings give an indicative 'built element' of 21,262 sq ft (internal) for the 11 houses combined.
24. Aside from the area proposed for the access drive, the remainder of Field 1441 is proposed to be reinstated as an agricultural field ('Category A Farming').

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<sup>2</sup> For example, Advocate Lambert's opening address – Document JCL/9

25. As originally submitted<sup>3</sup>, Fields 1446 and 1447 (the site of Mr Pirouet's Glasshouse C) were proposed to be laid out and managed as 'natural greenspace'. However, during the consultation stages, the Applicant has responded to a suggestion that these fields may be better returned to agriculture for the most part, with a smaller area of natural greenspace in the southernmost part. This is set out on an alternative drawing<sup>4</sup>. The Applicant has made clear that it would be content to deliver either option and would leave the matter to the decision maker. I advise on this later in this report.

*The enabling proposal*

26. The enabling proposal is that the housing development would generate a capital receipt, which would then be invested in the Jersey Choice Ltd business to secure its future. The Applicant's submissions proposed that a projected net capital receipt of £3,092,000 would be used to fund the following:

St Martin's and Hougue Bie nursery modernisations	£742,000
Payment to Mr. Pirouet (Glasshouse C and covenant release)	£500,000
Repay part of institutional mortgage	£1,250,000
Repayment of non-institutional loan	£600,000
<b>TOTAL</b>	<b>£3,092,000</b>

27. Included with the application, but not forming a substantive part of it, is a drawing indicating proposed works at Jersey Choice Ltd's Meadow Springs nursery site in St Martin's. These works would include upgrading the heating and boiler systems, creating a new germination room, upgrading plant, equipment and gantries and replacing an existing polyhouse with new 'Venlo' (glasshouse) construction. A planning application has not been made for these works. There is no drawing indicating the works at the Hougue Bie nursery.
28. Overall, the Applicant contends that these investments will secure the future of the business. Its case is set out more fully later.
29. The Applicant proposes that a Planning Obligation Agreement (POA) would be entered into. This would include obligations in respect of the use of capital receipts from the development (as set out above); land management (of the re-instated farmland and natural green area); contributions to a new bus shelter; a public electric car charging point in St Ouen village and the

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<sup>3</sup> Drawing no. SK 105 Rev B

<sup>4</sup> Drawing no. SK 105 Rev C

provision of private electric car charging points at each of the eleven new dwellings.

## **THE LEGISLATIVE AND PLANNING POLICY FRAMEWORK**

### **The Law**

30. The Planning and Building (Jersey) Law 2002 (as amended) provides the legal framework for the operation of the Planning system in Jersey. In essence, it adopts a 'plan-led' system where a development plan, 'The Island Plan', produced through an open and participative process and thereafter adopted, takes primacy in decision making.
31. There is a general legal presumption that development in accordance with the Island Plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'<sup>5</sup> for overriding its provisions. That is to say, there is some discretion for decision makers but any inconsistencies (with the Plan) have to be fully justified in Planning terms.
32. The law also prescribes<sup>6</sup> that, where the Minister is satisfied that a development proposal involves a departure from The Island Plan (other than an insubstantial one), the application shall not be determined until a Public Inquiry has been held. This is the case with this application.

### **The Island Plan 2011 (Revised 2014)**

#### *General*

33. The States adopted the Island Plan in June 2011. A review was subsequently undertaken which resulted in a revised plan being approved and adopted in July 2014. That revised plan is Jersey's development plan.
34. The Island Plan is a detailed and comprehensive policy document, which combines a strategic policy framework with a detailed set of policies and comprehensive proposals maps.
35. It is important to state that the Island Plan is a weighty and complex document and interpreting what is / is not in accordance with the Plan does sometimes require a series of interlinked judgements, as quite a number of policies cross reference with others and some reference other policy documents which sit outside the plan itself. Another feature of the Plan is that it sets out a number of 'exceptions' to the Island Plan's normal policy presumptions and some of those exception provisions are pivotal in the assessment of this application.

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<sup>5</sup> Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

<sup>6</sup> Article 12



36. There is a wide raft of policies contained in the Island Plan that are cited in the various submissions to this Inquiry. I have summarised below the policies that I consider most relevant to the consideration of this application. Where the policy references are emboldened, these indicate policies that I consider to have heightened pertinence.

*Strategic Policies*

37. In terms of the Plan's strategic planning policy framework, Policy **SP 1** sets out the spatial strategy which seeks to concentrate new development in the Island's defined built up area and, in particular, within St Helier. That strategic approach is supported by Policy **SP 2**, which seeks to ensure that development makes the best and most efficient use of resources (including land).
38. Policy **SP 3** sets out a 'sequential approach' to new development, directing it to the most sustainable locations. This policy makes specific reference to re-use and / or redevelopment of land and buildings in employment use outside the built up area. It establishes a sequential hierarchy, with the most favoured being for use in the economic sector for which permission was originally granted, followed by use in support of the rural economy and a presumption against use / redevelopment for other uses.
39. To complement the urban concentration approach to new development, Policy **SP 4** affords a 'high priority' to protect the Island's natural and historic environment. Policy **SP 5** supports economic growth and gives a high priority to supporting existing and new businesses. Policy **SP 6** seeks to reduce dependence on the use of the car and the final strategic policy, **SP 7**, requires high quality design.

*General Development (GD) Policies*

40. Policy **GD 1** sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact (including the character of the countryside / Green Zone), impact on neighbouring uses and occupiers, economic impact, transport and design quality.
41. Policy **GD 3** requires developments to achieve 'the highest reasonable density'. Policy **GD 4** sets out when Planning Obligation Agreements (POA) will be required, such as where the development necessitates additional infrastructure, amenities or financial contributions to mitigate its effects.
42. Other GD policies that have some relevance cover views and vistas (GD 5), contaminated land (GD 6), design quality (GD 7) and a 'percentage for art' (GD 8).

*Natural environment policies*

43. Policy NE 1 establishes a presumption in favour of conserving and enhancing biological diversity and Policy NE 2 seeks to protect plant and animal species from development, which would cause harm. Policy NE 3 seeks to protect wildlife corridors from harm and also supports developments which continue and enhance such corridors. Policy NE 4 protects and supports trees, woodland and traditional boundary features.
44. Policy **NE 7** sets out a high level of protection from development in the Green Zone. It states that there will be a general policy presumption 'against all forms of development'. It specifies a number of development types that will not be permitted and these include the development of new dwellings (subject to some exceptions) and also includes the redevelopment of glasshouse(s) for another use, or their conversion to non-employment use. The new dwelling exception relevant to this application (it is argued by the Applicant) is exception **NE 7 (10)** which states:
- 10. the redevelopment of an employment building(s), involving demolition and replacement for another use, but only where:*
- a. the redundancy of employment use is proven in accord with Policy E1: Protection of employment land or where the development involves office or tourism accommodation;*
- b. and it gives rise to: demonstrable environmental gains, contributing to the repair and restoration of landscape character; reduced intensity of occupation and use; and improved design and appearance of the land and building(s).*
45. Policy NE 8 promotes access and awareness of the coast and countryside and supports off road walking and cycling facilities.

*Economy policies*

46. The Plan's economy chapter sets out policies which seek to protect and promote the Jersey economy and 'agriculture and fishing' is identified as one of the main sectors of the Island economy.
47. Policy **E 1** presumes against the loss of employment land (as supported by SP 5). It sets four criteria for exceptions from this presumption, any one of which could justify an exception. These include where it is demonstrated that sites are 'unsuitable and financially unviable' for employment use (Criteria 1); where community benefits outweigh any employment loss (Criteria 3) and where 'environmental problems' are resolved (Criteria 4).
48. Policy **ERE 1** safeguards farmland by presuming against the permanent loss of good agricultural land for development or other purposes. It also sets out the matters that will be considered where exceptions are proposed. These

include the impact on the viability of the agricultural holding, the nature of the use, visual impact and the recommendations contained in the Countryside Character Appraisal<sup>7</sup>.

49. Policy **ERE 3** allows for an 'enabling or linked' development case to be made to generate capital funds to enhance a rural business's business performance or modernisation. This policy sits centre stage in the consideration of this application and, for this reason, I have reproduced it in full below:

***Policy ERE 3 - Enabling or linked development***

*Applications that put forward enabling or linked development proposals will be required to clearly demonstrate to the satisfaction of the Minister for Planning and Environment that:*

- 1. the enabling development will not significantly harm the archaeological, historic, biodiversity or landscape interest of the countryside asset or its constituent features, including the setting of important buildings;*
- 2. the proposal avoids detrimental fragmentation of management of the countryside asset;*
- 3. the enabling development will secure the long-term future of the countryside asset, and where applicable, its continued use for a sympathetic purpose;*
- 4. adequate financial assistance is not available from any other source;*
- 5. it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the countryside asset, and that its form minimises disbenefits;*
- 6. the value or benefit of the survival or enhancement of the countryside asset outweighs the long-term cost to the community (i.e. the disbenefits) of providing the enabling development.*

*Applications for enabling development which do not meet all of the above criteria will not be permitted.*

50. Policy **ERE 5** sets out a general presumption against changes of use and/or conversion of modern farm buildings to other uses unless redundancy of the buildings (to the farm unit and the wider agricultural sector) is proven. Where redundancy is proven, alternative uses may be considered provided they are appropriate to the Island's economic needs, with examples given of light industry, warehousing or distribution uses.
51. Policy **ERE 6** sets a 'strong presumption' against new agricultural buildings, extensions and horticultural structures unless it is demonstrated that such

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<sup>7</sup> The Countryside Character Appraisal was produced in 1999 as part of the evidence base associated with the review of the former Jersey Island Plan.

developments are essential to the proper function of the farm business, that they will contribute to the viability of the agricultural economy and that the need cannot be met from existing agricultural buildings or horticultural structures available to lease or purchase.

52. Policy **ERE 7** deals specifically with 'derelict and redundant glasshouses' and sets a presumption against the redevelopment for other uses, unless the alternative use is directly related to agriculture or diversification of agricultural activity. It goes on to state that glasshouses which have become surplus to the requirements of the existing user, but which are considered to be of value to the horticultural industry, should be retained in the industry and advertised for sale or rent.
53. The policy further states that where glasshouses are no longer viable to the horticultural industry and a 'disuse or disrepair' condition is attached to the planning permission, the landowner will be required to comply with that condition.
54. It also sets out that, in exceptional circumstances, the development of redundant and derelict glasshouse sites may be considered for non-agricultural purposes, provided that the amount of development permitted will be the minimum required to ensure a demonstrable environmental improvement and that it accords with Policy GD 1 'general development considerations.' The final part of the policy states that, where disused or derelict glasshouse are in a sensitive and isolated location and are not covered by a 'disuse or disrepair' condition, the Minister may consider the entire landholding in order to determine the most appropriate area for development.
55. The policy concludes by stating that proposals which do not satisfy these criteria will not be permitted.

#### *Housing policies*

56. Policy H 4 requires new residential developments to contribute towards the needs for specific types and sizes of homes based on the latest published evidence.
57. Policy H 6 reinforces the spatial strategy by setting a positive presumption for new dwellings within the Built-up Area where most new housing is planned to be delivered.

#### *Travel and Transport Policies*

58. Policy TT 2 promotes footpath provision and enhancement through new developments.

59. Policy TT 5 requires developments to make traffic and pedestrian safety improvements and requires new development layout to re-inforce low speeds and safety.
60. Policy TT 8 deals with access to public transport. It states that developments of 10 residential units or more should be within 400 metres of a bus service. Where services are not available developers will be expected to support the provision of new or improved services and site layouts should support public transport infrastructure including, where appropriate, providing bus shelters and appropriate infrastructure.

### **Other relevant policies, documents and guidance**

61. There are a range of other Island Plan policies that have some relevance. These include Provision and Enhancement of Open Space (SCO 5); relocation of bad neighbour uses (EIW 3); liquid waste minimisation, foul and surface water drainage (LWM 1, LWM 2 and LWM 3) and waste and recycling (WM 1 and WM 5).
62. Of some relevance are Supplementary Planning Guidance (SPG) documents covering parking (PPN3 1998); specifications for new housing (PPN 6 1994) and Protection of Employment Land (June 2012) and the Countryside Character Appraisal (referenced earlier at paragraph 48).
63. The Rural Economy Strategy<sup>8</sup> is also a material consideration. Although the strategy covered the period 2011-15, it is still considered relevant. It contains a significant number of policies, some of which align closely with the Island Plan's rural economic policies, such as its policies seeking to protect agricultural land. It also contains a specific policy (Policy E17 covering 'modern glasshouses' which states that these should be (in order of priority):
- Kept as production units
  - Be given planning permission for other agricultural use
  - Be returned to a green field site

Its Policy E 18 covers 'derelict or non-viable' glasshouses, where the stated priority sequence is:

- Be given planning permission for other agricultural use
- Considered for partial development to fund the cost of returning to a green field site
- Be returned to a green field site

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<sup>8</sup> Rural Economy Strategy 2011 – 2015: Sustaining and Growing the Rural Economy

## **THE APPLICANT'S CASE**

64. I have set out below my summary understanding of the Applicant's case based on its written submissions and the evidence provided by its witnesses at the Inquiry.

### *Jersey Choice Ltd*

65. Jersey Choice Ltd was established in 2005 by Mr Dunningham to grow, supply and sell bedding plants by mail order. The business operates from multiple horticultural growing sites in Jersey and through a call centre based in St Helier.
66. Today, the business has four horticultural growing sites. The first is the application site, which comprises two freehold glasshouses (A and B) and a leasehold glasshouse (C). The second is a similar sized glasshouse site, owned freehold, at Meadow Springs, in the parish of St Martin. The third is a freehold polytunnel site used for growing shrubs at Hogue Bie in Grouville. The fourth is a three year lease of a polytunnel site at Aigremont Farm in Grouville used for growing Jersey Royal potatoes and experimental crops. There was a fifth site (The Retreat Farm in St Lawrence) but lease extension negotiations broke down in 2015. The company's offices and call centre are based at Nelson House, David Place, St Helier.
67. The business is said to employ 61 full time equivalent employees and up to 75 seasonal workers. It states that it is the sole remaining non-food produce exporter on the Island and a vital part of the rural economy which, in addition to its direct employment, financially supports the ferry freight and postal businesses with significant spend on northbound freight.

### *Financial losses and Options*

68. After an initial investment of £4 million in glasshouses, equipment and infrastructure, the business moved into profit in 2010. However, it then entered a challenging period. The Applicant explains that the reason for the application proposal is directly linked to a number of factors that have, individually and collectively, resulted in the company incurring significant financial losses in the 2012 / 2013 period.
69. The most significant factor was the abolition of Low Value Consignment Relief (LVCR) on the import of goods to the UK. LVCR exempted low value exports, such as plants, from incurring UK domestic Value Added Tax (VAT). Once abolished in April 2012, Jersey Choice Ltd had to impose 20% VAT on its exports, with consequent effects on its cost competitiveness.
70. Other factors leading to losses were poor weather conditions, alleged illegal competitor activity and a general ongoing decline in the traditional plant

produce market. Losses in the two year period over 2012 / 2013 were said to be £2.5 million.

71. All of these factors led to the business obtaining costly short term private funding to supplement its significant bank lending.
72. Despite its setbacks, the company sought to define a future for its operations in Jersey. In July 2012, it purchased the Gardening Direct mail order brand that had previously been created by Mr Dunningham when he operated another company (Flying Flowers). This helped maintain a level of turnover but, by June 2013, it had become clear that the company's financial position was unsustainable. A number of staff and a director left and discretionary spending was stopped.
73. The company has reviewed its business plan and future direction. It recognises that the traditional market for bedding plants is declining. However, it sees growth and potential in internet channels and partnerships with UK retailers with a new emphasis on new product lines, including pre-planted baskets and containers and planted gifts, in addition to the traditional bedding plant lines. It states that it has developed successful relationships with a number of well-known UK retail channels and networks.
74. Whilst the Applicant is confident that the operational business is now on a stable footing and has good prospects looking forward, its legacy of accrued debt is unsustainable. The Applicant advised that no further bank funding can be obtained and that the private lending facility is only being extended in the short term.
75. The company considers there to be two stark options. The first option would be to sell the mail order brands, which would clear the debt and leave the freehold nursesey sites unencumbered. However, the Applicant considers that this option is likely to result in the operations being relocated to the UK, where running and employment costs are lower. The Applicant considers the main value of the business (to a buyer) lies more in its brand and established customer database, than the Jersey production operations *per se*. The second option is the ERE 3 'enabling or linked development' option, which is the company's preferred option and has led to the current application.

*The ERE 3 'enabling or linked' development case*

76. The Applicant makes clear that its case is principally founded on an ERE 3 case. The Applicant argues that it needs a significant injection of funds or it could close in Jersey. The Applicant considers that, operationally, consolidating their business to the east of the Island and investing in their freehold site in St Martin, makes good business sense. They will be closer to

the ports and on a better network of roads for business traffic, including the delivery vehicles required to export their goods.

77. The Applicant contends that the proposal accords with Policy ERE 3 because, in response to the policies set criteria:

- It will secure the long term growth and sustainable future of an important rural business
- It has the full support of the Economic Development Department
- There are no other financial solutions available
- It results in significant environmental gains
- All monies received will be re-invested in the business

78. In terms of securing the future of the business, the Applicant contends that the proposal will avoid the (predicted) loss of 61 jobs, the substantial loss of income tax / social security revenue and the loss of significant ferry freight trade. It would also provide an opportunity for a company that generated £2.71 million of Gross Value Added in 2014 to potentially expand further.

79. The Applicant draws on the support expressed by Mr King<sup>9</sup>, the Chief Executive Officer of the Economic Development Department (EDD).

80. In terms of environmental gains, the Applicant recognises that the site lies in an area of great natural beauty and contends that the proposal will result in significant environmental gains. The proposal will remove over 190,000 sq ft of what it considers to be unattractive glasshouses and over 11,500 sq ft of poor quality commercial buildings and replace it with 11 residential units having a total of 21,262 sq ft. Overall, it would remove 89.51% of built floorspace from the site. The remainder of the site will revert to open land and either be used for agriculture or as a grassland habitat for wildlife, including protected species. The Applicant states that the scheme would decontaminate the site, create two footpaths and include green buffer zones.

*Other 'exception' cases*

81. Although the Applicant's case is centred on ERE 3, it has also sought to argue a case on two other policy platforms.

82. The first of these is 'exception 10' under the Green Zone policy NE 7, where it contends that the redundancy of the employment use has been proven through its marketing evidence and that the proposal will result in significant environmental gains.

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<sup>9</sup> Mr King's letters dated 16 January 2015 and 27 July 2015



83. The second is under Policy ERE 7, which addresses derelict and redundant glasshouses, where the Applicant argues that the glasshouses are no longer economically viable and the proposal would meet the exceptional circumstances test (for non-agricultural purposes), as it is considered to be the minimum required to deliver the demonstrable environmental improvement proposed.

### **THE SUPPORTERS' CASES**

84. At the application stage, there were no public representations in support of the proposal. Following the publication of the notice of the Inquiry, four Statements of Case from members of the public<sup>10</sup> were received which expressed support for the proposals. One of these representors, Mr Van Neste, addressed the Inquiry.
85. The supporters considered that the removal of the glasshouses and replacement with a much smaller footprint of residential development would be a net Planning gain. They expressed the view that they understood that the glasshouses were not economically viable and feared that, without the development, they would fall into disrepair and become a greater eyesore. The reduction in large commercial vehicle movements was cited as a benefit arising from the scheme. There was also praise for the public consultation exercise that the Applicant had undertaken.

#### *Mr Van Neste's evidence*

86. Mr Van Neste explained that he moved to Chemin des Monts two years ago and passes the greenhouses on a daily basis. He submits that the appearance of the site is more industrial than agricultural and that the development would be a positive planning gain and would open up views across the site. He works in the social housing sector and considers that more housing is needed. He does accept that there was some 'downside' in terms of traffic and more people walking up and down, but considers this a small price to pay for the benefits that would result.

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<sup>10</sup> Letters from Mr and Mrs Gaiger (SOC2); Mr S Van Neste (SOC3); Mr and Mrs d'Orleans (SOC4) and Mr and Mrs Pirozzolo (SOC5)

## **THE PLANNING DEPARTMENT'S OFFICER CASE**

87. The Department's case is succinctly set out under four distinct policy issue headings identified by officers. Mr Gladwin presented the evidence at the Inquiry.

### *Issue 1: Compliance with Policy NE 7 – Green Zone*

88. The Department contends that the development of dwellings and the redevelopment of glasshouses are specifically listed as types of development that are not permitted as an exception to the presumption against development by Policy NE 7.
89. It states that this is further reinforced by the preamble to Policy NE 7 at paragraph 2.158 which states that: *'The redevelopment of modern agricultural buildings by demolition and replacement for another use will not be supported, since these would have been permitted to meet agricultural need. If no longer so required they should be removed or re-used for agriculture or employment-related uses. Similarly, the redevelopment of glasshouses will not be permitted.'* Reference is also made to paragraphs 2.130-2.132 which set out the presumption against the creation of new households, explaining that this type of development should be resisted as it is counter to the strategic objectives of the Plan.
90. Officers also have concerns about the scheme itself in terms of the NE 7 requirement that any new development must not cause serious harm to landscape character, a requirement echoed in Policies SP 4 and GD 1. Particular concerns were expressed about the size, scale and siting of the proposed southernmost three dwellings (Plots 1, 2 and 3) and their impact on the landscape character of the Green Zone, particularly when viewed from the south and west. These concerns were expressed at the pre-application stage and discussed at the Jersey Architecture Commission (JAC) meeting of 17 September 2015.
91. The Department considers the proposal to be a substantial departure from NE 7 and, hence, the Island Plan itself. It points out that departures are very unusual and does not consider that the Application provides a sufficient justification to depart from the Plan.

### *Issue 2: Compliance with spatial strategy and traffic issues*

92. The Department draws attention to the overarching spatial strategy and related transport issues as set out in Policy SP 1. This policy focuses development in the defined built up area and directs it away from the countryside / Green zone.
93. Officers consider that the proposed development of eleven new dwellings would be contrary to the strategic policies SP 1 and SP 3 due to its location

outside the Built-up Area in a rural and unsustainable location, with poor access to public transport and not within walking distance of shops, schools and services.

94. Accordingly, the Department considers the planning application to represent a substantial departure from the provisions of the 2011 Island Plan (Revised 2014). The Planning Department refers to and endorses the consultation comments received from its Transport Policy colleagues regarding the traffic and wider sustainability concerns arising from the proposed development, which run counter to the objectives of seeking to establish more sustainable patterns of travel in Jersey.

*Issue 3: Compliance with Policy ERE 7 – ‘derelict and redundant glasshouses’*

95. The Department’s starting position is that Policy ERE 7 does not apply in this case, as the policy is contingent on the glasshouses being ‘derelict and redundant’. It does not accept that this is the case as they are still in active use and are not derelict. In any event, the policy then sets two tests that any proposal is required to meet.
96. First, it argues that the policy makes plain that landowners will be required to comply with ‘disuse or disrepair’ conditions where these are in place, as is the case for most of the glasshouses on the application site. Officers draw attention to the preamble to Policy ERE 7 at paragraph 5.159 that states: *‘...changes in the horticultural industry have led to many glasshouses becoming redundant and falling into disuse and dereliction. Many owners and growers have an expectation that development for other purposes will be permitted on the site. However, glasshouses are regarded as temporary structures related to the agricultural/ horticultural use of the land and are subject to the normal policies for the countryside.’*
97. Second, it contends that, in exceptional circumstances, the development of redundant and derelict glasshouse sites may be considered for non-agricultural purposes, provided that the amount of development permitted is the minimum required to ensure a demonstrable environmental improvement. The Department does not accept that the proposal does represent the minimum, as most of the receipt would be used to repay debt or to buy out Mr Pirouet’s interest.
98. The Planning Department does not consider that the proposed development meets the tests set out in Policy ERE 7 and contends that it is contrary to this policy.

*Issue 4: Compliance with Policy ERE 3 – Enabling or linked development*

99. The Department points out that ERE 3 proposals are required to meet all the listed 6 criteria within the policy. Officers draw attention to the preamble to

the policy at paragraph 5.146 which states: *'It should be equally self-evident that it would not be in the long term interests of the community to allow all and any such development to take place'* and to paragraph 5.147 which states that *'...it is nevertheless possible for some business modernisation, with new facilities, to have a positive impact on the countryside, particularly when it is conditioned on the removal of unsightly, disused buildings, or on general amenity improvements.'*

100. The Department does not consider that the proposed development is in accord with relevant policies in the Island Plan and does not accept that the proposed development would have a positive impact on the countryside.
101. With regard to the financial gain that the Applicant would receive from the proposed development, the Department expressed concerns regarding the ability of a Planning Obligation Agreement to ensure that this financial gain does indeed get used to support the existing business appropriately and in a meaningful way to safeguard the business long term. It notes that whilst debts of the business would be reduced, it would not guarantee the survival of the business in a recognised declining market in Jersey.
102. The Department states that an underlying principle of the enabling policy is that the financial gain to the landowner from the development permitted should be the minimum necessary for the new facilities to be constructed, whereas, in this case, most of the receipt would go on debts and land acquisition costs.

*Overall*

103. The Planning Department considers that the proposal is contrary to the Island Plan with particular reference to Policies SP 1, SP 3, SP 4, GD 1, NE 7, ERE 3 and ERE 7 of the Island Plan 2011 (Revised 2014).

**THE OBJECTORS' CASES**

104. At the initial application stage, there were fifteen public objection representations to the proposal. A further nine letters / Statements of Case were submitted following the publication of the notice of the Inquiry.
105. The grounds of opposition included a wide range of traffic generation and highway safety concerns; that the development conflicted with the Island Plan, notably in terms of the Green Zone location; that it would harm the area's beauty, character and appearance; that the proposal did not meet the ERE 3 enabling criteria and did not present a robust business case or guarantee that the business would survive; that the site was remote from services and public transport; that the glasshouses were in good condition

and not redundant and should be retained for growing and that the glasshouses had been advertised at unrealistic sale and rental values.

106. I have set out below a summary of the evidence of the objectors who spoke at the Inquiry, although I have not included contributions 'from the gallery' (but have considered these nonetheless).

*Deputy Renouf*

107. At the Inquiry, Deputy Renouf expanded on his Statement of Case, with a particular focus on concerns about traffic and the business case for the proposal.

108. On traffic matters, he accepted that there is existing commercial traffic generation from the site but he noted that the Applicant concedes that there will be more traffic at certain times. He considers that whilst commercial traffic was generally predictable, residential generated traffic was not and would include night times and weekends. He also expressed concerns about demolition and construction traffic that could prevail for up to two years.

109. Deputy Renouf does not accept that Jersey Choice Ltd is seen as a 'bad neighbour' by local residents and considered that most people would not even be aware of the brand of Jersey Choice.

110. He expressed significant concerns about the business case for the proposal and was 'dumbfounded' by the submissions of Mr King (Chief Executive of the Economic Development Department). He considered that the required 'independent and robust' ERE 3 assessment of the business case had not been undertaken and there had been no review of possible job losses, the business plan, the level of debt accrued and the reasons for it and whether the company had reserves to accommodate bad trading years etc. He noted that only a small proportion of the 'enabling' receipt was proposed to be invested in new facilities, whereas most would be used to pay off debt. He concluded that the proposal does not have a robust case to support it.

*The Council for the Protection of Jersey's Heritage (CPHJ) (Mr J. Mesch)*

111. Mr Mesch explained that the CPJH's objections were based on heritage considerations and that the priority to protect and conserve the Island's beauty was enshrined in law. He explained that CPJH opposes building on greenfield land and that this proposal contravenes numerous Island Plan policies. He stated that the ERE 3 case had not been proven.

*Mr W. Lakeman*

112. Mr Lakeman expressed particular concern about the impact of the development on traffic and infrastructure. He stated that, given the nature of the area, even a small increase in traffic generation would create problems. He explained that this is witnessed when the National Trust holds

events, as the lanes are narrow and traffic problems arise. He considers that the development will only make a not very good situation worse.

*Mr de Ste Croix*

113. Mr de Ste Croix explained that this area was the gateway to the National Trust land and that it had a relaxed atmosphere, enjoyed by walkers, cyclists and horse riders. He stated that only those who live in the area could fully appreciate the dangers of the narrow lanes. He noted that the scheme will not include any affordable homes but these would just be luxury houses and the real cost will be to the public, as this development will negatively impact on the area.

*Ms D Crichard*

114. Ms Crichard explained that her family had lived in the area for twenty years and it was one of the few truly rural parts of Jersey, always popular with horse riders and walkers, attracted by its quiet lanes and beauty. She made the point that the glasshouses are temporary structures and that, in an emergency, if the field was needed, it could be cleared quickly.

115. On traffic matters she does not believe that you can compare the occasional large vehicle movement with the twenty five cars that will all be seeking short cuts coming to and from the site. The location and absence of buses means that every loaf of bread and pint of milk will necessitate car travel and she, personally, undertakes 11 trips per day.

116. She explained that she did not consider that there was a robust business case supported by a suitable financial analysis. She stated that an appraisal should look at five years trading history and five years future plans; what dividends had been paid; what had been paid for the land / glasshouses; the source of the loan funds; the reasons banks will not finance the business etc. None of these matters were addressed and, in her view, the Directors appear to have allowed the company to become overgeared. She felt that many rural business could similarly 'make a case' and it would set a dangerous precedent, particularly when most of the receipt is intended to pay off debt, rather than undertake investment.

*Mr Tremellan Frost*

117. Mr Tremellan Frost raised particular concerns about traffic speed and safety. He noted that whilst the Parish may be happy to see large vehicle movement reduced, such vehicles moved slowly. He was concerned that the existing 15 mph Green Lane speed limit is not observed and there is currently, in his view, a 'medium' risk of an incident and this will escalate to a 'high' risk with any additional traffic.

*Mrs Lane*

118. Mrs Lane considers Grantez to be unique. It is the gateway to the National Trust land and had a quiet relaxed character and people come to enjoy that tranquillity. The former Pontins site shows how important these areas are. The lanes cannot accommodate situations where two vehicles moving in one direction meet two vehicles coming in the other direction and such occurrences will become common with the extra traffic. The scheme is a luxury for some at the expense of the local residents and the cost is to the future of the area.

### **DISCUSSION AND ASSESSMENT**

119. This is a controversial application proposal. The key assessment issues arise from some of the inherent complexities in the Island Plan itself, notably in terms of its 'exception' provisions. There can be no disputing that the proposal departs from the main strategic and policy thrust of the Island Plan. As such, it can only succeed in Planning terms, if one of the 'exception' provisions were fully complied with, or there was some other 'sufficient justification' (under Article 19) for departing from the Plan.

120. Accordingly, my assessment begins by exploring the extent of the departure from the strategic and policy thrust of the Island Plan. This involves temporarily putting aside the 'exception' provisions, to reach a view on the extent and magnitude of the departure. This is important because it is this 'amount' of departure (or tension with the Plan) that must be convincingly outweighed by benefits arising (from allowing any exception). I then move on to look at the three main potential exceptions. I explore the cases made under NE 7 and ERE 7 first and then explore the Applicant's principal case made under ERE 3. I then turn to some thematic issues that justify some focused commentary.

#### **The extent and magnitude of the 'departure'**

121. Defining the extent of a 'departure' is best referenced against the strategic policy level (the SP policies) as these define the key objectives and principles that run through the whole Plan and its more detailed policies.

122. The proposal unquestionably conflicts with the spatial strategy as set out in SP 1, which seeks to concentrate new development in the built-up area. In fact, the proposal could reasonably be labelled as the antithesis of SP 1, as it proposes the exact opposite i.e. eleven new houses in a remote part of the countryside rather than concentrating new housing in the defined built-up area.

123. The proposal scores poorly against SP 2 which seeks to make the most efficient use of resources and deliver a more sustainable pattern of development. Other than some proposed electric car charging facilities (which could be provided on any site), the development will not contribute to, and will conflict with, this strategic policy objective.
124. The proposal conflicts with the sequential approach to development, set out in SP 4, which presumes against such redevelopments on sustainable development principles.
125. It also conflicts with SP 5 that seeks to protect the countryside and natural environment, which is based on a guiding principle that development (other than that essential in countryside locations) should be resisted.
126. Overall, the proposal must be judged to fly in the face of the thrust and intent of the Island Plan's strategic policies. Some promoters and supporters of the scheme may read that as a somewhat harsh assessment, but I do not consider it so. The proposal involves a very substantial departure indeed from the strategic policies. This does not mean that the proposal is fatally flawed from the outset in Planning terms, but it does mean that any 'exception' case needs to be robust and convincing.

**The exception case under Policy NE 7 (10)**

127. NE 7 exception 10 relates to the redevelopment of an employment building site in the Green Zone.
128. I share the Department's starting point that the redevelopment of glasshouses for housing is a type of development that is specifically excluded by the first part of Policy NE 7 (the fifth bullet point). The important point here is in the precise manner of the policy drafting. There are five specified development type exclusions. The first two ('development of a new dwelling' and 'facilitating a separate household') are qualified by specified exception provisions. However, the other three, which includes glasshouse redevelopment, are not. Accordingly, the policy cannot be interpreted as allowing the general 'presumption against' development to be overridden by any of the exception provisions.
129. Notwithstanding the above, even if the Policy were to be judged applicable, it must pass two qualifying criteria. First, the redundancy of the buildings must be proved in accordance with Policy E 1 (protection of employment land) and, if it passes that test, the proposal must result in demonstrable environmental gains.
130. In terms of demonstrating redundancy, comprehensive evidence was submitted on the marketing of the site<sup>11</sup>. The Jersey Choice Ltd glasshouses

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<sup>11</sup> Notably the evidence of Mr Mallinson for the Applicant



A and B and, more latterly Mr Pirouet's Glasshouse C, have been marketed widely over a reasonable period of time. Eight enquiries were made but none of these resulted in offers acceptable to the owners.

131. Whilst I found the Applicant's evidence on marketing to be thorough in terms of its process and its adherence to the SPG methodology, there are a number of issues arising from it.
132. First, the glasshouses were marketed at a sale and rental value that was sourced from a September 2009 valuation. Such a valuation clearly predates the abolition of LVCR and must have implicitly assumed a certain value generating potential from their productive horticultural use. Similarly, the limited transactional evidence on other glasshouses also pre-dated LVCR abolition.
133. Given the Applicant's own evidence on the profound impact of LVCR abolition on the economics of the exporting horticultural business, this approach seems flawed. The market had clearly changed, but the owners' expectation of capital value and rental return had not. Although there were later reductions in the asking price, it remained relatively high in my view and the inevitably quite restricted local market had already received a signal that this was expensive glasshouse space. Indeed, the marketing feedback evidence included a number of parties stating that they could not make the site work economically at the sale / rental values sought.
134. Second, there were actually expressions of interest, albeit that they were substantially below the owners' financial expectations. For example, there was interest in the use of the glasshouses for growing Jersey Royal potatoes. Although the point was made that covered potato cultivation does not require the 'high spec' of the glasshouses, it nonetheless represents an active use that the glasshouses could be put to.
135. Third, evidence provided by the States' Land Controls service demonstrated that the vast majority of glasshouses in Jersey remain in active production. It carries out an annual survey and the latest figures, for 2014, indicate that, of a total glasshouse area of 277,875 square metres, 91.3% was in active production. The 8.7% void level does not seem high to me by any property industry standard or an indication that the Jersey's glasshouse growing sector was moribund.
136. Fourth, following on from the third point, the Land Controls evidence also suggests that the growing industry is dynamic, with trends of notable decline in some sub-sectors (e.g. tomatoes) and notable increases in others (e.g. peppers). Future changes in the wider economic trading environment will undoubtedly create downward pressures in some sub-sectors and new opportunities in others, as has always been the case.

137. Overall, I do not consider that the marketing and related evidence robustly demonstrates the redundancy of the glasshouses.
138. Given my findings on the applicability of the Policy itself and the first (redundancy) test, I do not consider it necessary to explore the second ('demonstrable environmental gains') test here, although I do explore similar issues under Policy ERE 3 later.
139. My conclusion here is that Policy NE 7 exception 10 does not provide a basis for supporting the proposal.

**The case under Policy ERE 7**

140. Similar issues (to NE 7) arise under ERE 7. This policy is actually titled 'derelict and redundant glasshouses' (my underlining) suggesting that both characteristics are a precursor to the policy's application, although the Policy wording itself is a little ambiguous on this point<sup>12</sup>. However, the supporting narrative suggests the primary policy issue arises from changes in the horticultural sector creating glasshouse 'dereliction' that 'blights the landscape' and results in 'eyesores'<sup>13</sup>.
141. The application site glasshouses are in good condition and are not derelict. Whilst some may prefer them to disappear, I do not consider that the glasshouses are an 'eyesore' or that they 'blight the landscape' as set out in Policy ERE 7 and its narrative.
142. For reasons explained above in my assessment of the NE 7 case, I do not consider that these glasshouses can be regarded as redundant. Indeed, it seems to me that the Applicant's definition of 'economic redundancy' is an inability to achieve the capital and rental values that prevailed in an earlier economic era. That does not equate to redundancy of the glasshouses in Planning terms.
143. I conclude here that the Applicant's ERE 7 case fails.

**The exception case under ERE 3 'enabling or linked development'**

144. The Applicant's principal case is made under ERE 3.
145. The concept of 'enabling development' is well established in Planning practice. However, it inevitably brings with it a degree of controversy and necessitates a degree of caution in its application. This is because it implicitly relates to allowing development that would normally be unacceptable, save for the fact that it delivers tangible public (Planning) benefits that are judged to outweigh its disbenefits.

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<sup>12</sup> The penultimate paragraph of ERE 7 refers to 'disused or derelict' glasshouse sites

<sup>13</sup> Revised 2011 Island Plan – paragraph 5.160

146. In England, the practice is perhaps most mature in the field of securing the repair and restoration of heritage assets, where some value generating new development is used to cross-subsidise the repair on an historic building, which would not otherwise be economically viable (the funding gap is often termed 'the conservation deficit'). Indeed, the principles set out in the (then) English Heritage<sup>14</sup> publication '*Enabling Development and the Conservation of Significant Places*' (first published in June 1999) are quite apparent in Policy ERE 3, which applies the same principles (and very similar wording) to the Island's rural businesses.
147. In some ways the pre-amble to Policy ERE 3 is almost as important as the policy wording itself, as it explains the rationale behind the provision and also includes some pre-requisites to the policy, such as the need for 'an independent and robust assessment of the business case for the proposals' (paragraph 5.149). There is a need to read and interpret both the narrative and the substantive policy together.
148. There are six tests under ERE 3 and all must be passed; if they are not, the policy makes clear that the development will not be permitted. I assess the proposal under each criteria / test in turn.
- Criteria 1 - 'the enabling development will not significantly harm the archaeological, historic, biodiversity or landscape interest of the countryside asset or its constituent features, including the setting of important buildings'*
149. There are no substantive harmful effects on archaeological or tangible historic interests arising from the proposal. There is also no harm to the settings of important buildings.
150. In terms of biodiversity, the site has some interest in the area to the south of Greenhouse C. The expert ecologists for the Applicant and the Department shared much common ground. Both felt that the protected species in this area could be safeguarded and that the proposed natural grassland in this part of the site would provide a good and enhanced habitat. Both ecologists expressed a preference for the creation of natural grassland (rather than Category A farming) on the remainder of the Glasshouse C site, but agreed that this was not critical to protected species mitigation. Subject to suitable protection, mitigation and ongoing management arrangements, the proposal will not harm biodiversity interests.
151. The landscape impact is more complex and the debate here centres around the argued benefit of substantially reducing the 'built' coverage on the application site and the restoration of two of the fields to open use. Much here depends on judgments about landscape 'harm' caused by the existing

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<sup>14</sup> The English Heritage organisation has since been renamed 'Historic England'

glasshouses; the landscape 'benefit' of removing them and the counterbalance of new landscape 'harm' arising from the new houses, roads and associated structures. A further dimension here is the fact the majority of the glasshouses are under end of life Planning condition obligations to be removed in any event, whereas some areas, not currently owned by the Applicant, are not (parts of Glasshouse C).

152. There is little doubt that from a visual landscape perspective, the countryside would be more attractive if the glasshouses disappeared and a traditional field environment was to replace it. However, Jersey's countryside is more complex than simply a picture postcard bucolic vision. It is a working landscape and glasshouses have long been part of that working rural environment. The glasshouses at the application site are all in good condition and, whilst not structures of any beauty, they are not alien or out of place in their context. Indeed, most Islanders and visitors expect to see glasshouses on their travels around Jersey.
153. Whilst the proposal would result in a substantial reduction in 'built coverage' on the site, over 80% of the glasshouse buildings are under obligations to be removed in any event, albeit only in the fullness of time. The residual amount of glasshouse not covered by 'disuse or disrepair' obligations is 35,452 sq ft, which is more than the combined floorspace of the 11 homes at 21,262 sq ft (and the difference is even greater if the other ancillary buildings floorspace is added in).
154. Whilst this is a useful starting point in considering landscape impact, it is not the whole story. Indeed, it would be quite dangerous to treat glasshouse floorspace as directly 'tradeable' for residential floorspace in Planning terms. The two types of development are very different in terms of their landscape impact.
155. Glasshouses are considered to be temporary structures and, whilst they can be quite long lived temporary structures (particularly if well maintained), they are unquestionably transient and removable (whether they have 'disuse and disrepair' conditions or not). As I have noted above, they are also part of Jersey's rural landscape and they have, for the most part, been consented through the Planning system in relatively recent times. Furthermore, the current Planning policy regime does not preclude the development of new glasshouses in the Green Zone.
156. By contrast, the proposed houses are permanent and the notion of eleven new houses, some of them very large, introduced into this rural setting would be inherently harmful in landscape terms. They will be visible and discernible in the landscape from many public vantage points and, along with other existing dwellings in the area, would create a quite substantial residential enclave which would be alien to the landscape character.

157. Indeed, the Countryside Character Appraisal document accurately identifies the character of built settlement in the north-west (St Ouen) headland as 'sparse' and 'remote' and identifies "new residential 'suburban' groups of houses" as a threat to local character. Whilst views will differ on what 'suburban' means, and whether the scheme falls into that category, there can be no disputing that the scheme would involve nearly a dozen new houses appearing in this remote rural landscape setting. I do recognise that parts of the layout design (plots 4 -11) do seek to reference a rural hamlet cluster, but other elements (plots 1 - 3) are less convincing and will appear as large new houses. Overall, however well executed the design may be, or could be, there will be no mistaking the development for anything other than what it is – eleven new houses and an unavoidably urbanising and negative impact on the remote rural headland landscape.

158. Furthermore, landscape impact arises not only from the houses' footprints, building masses and heights, but also from the people living within them. There are unavoidable local impacts in terms of traffic generation, pedestrian movements, deliveries and artificial lighting after dark. The proposal would involve a quite noticeable and alien domestication of this part of the countryside landscape, which the Island Plan seeks to avoid (notably through Policy NE 7).

159. Taken in the round, my assessment is that whilst there would be some shorter term landscape benefits arising from the removal of the glasshouses, the new houses would create a greater and permanent level of landscape harm. I consider that the landscape harm would be significant and lasting.

160. The proposal fails the first test.

*Criteria 2 – 'the proposal avoids detrimental fragmentation of management of the countryside asset'*

161. Although the countryside asset (the Jersey Choice Ltd business) would be reduced in scale and scope, from four growing sites to three, there is no suggestion that this would lead to its 'detrimental fragmentation.' Indeed, it is part of the Applicant's case that consolidating in the east of the Island, closer to the port, made good business sense.

162. The proposal satisfies the second test.

*Criteria 3 – 'the enabling development will secure the long-term future of the countryside asset, and where applicable, its continued use for a sympathetic purpose'*

163. The third test centres on an assessment of the business case i.e. will the investment secure the long term future of Jersey Choice Ltd. The policy narrative requires consultation with the Economic Development Department

(EDD) *'..at an early stage to secure an independent and robust assessment of the business case...'*.

164. The Applicant's case here rests heavily on the written letters of support issued by Mr King in January and July 2015. Those letters confirm the difficulties the company had experienced through the loss of LVCR and highlight the risk to the business should the 'status quo' prevail. The second letter states that *"in summary, the loss of Jersey Choice Ltd risks States income being impaired, unemployment increasing and reduced revenue for Jersey Post and Condor Ferries that would, in all probability, lead to increased costs. To prevent such detrimental impacts EDD remains supportive [of the planning application]."*
165. Whilst these predictions about consequential impacts should Jersey Choice Ltd cease trading may be correct, the point was made by a number of Inquiry participants that Mr King's views were not the 'independent and robust assessment of the business case' required under the policy.
166. It is clear to me that Mr King has been privy to some of the company's figures and has had discussions about its business plan. However, his submissions do not extend to include any detailed assessment of the business case itself. Indeed, Mr King's support for the business case seems to emanate from his fears of the consequences of the company failing, rather than any testing and demonstration that the business plan will actually succeed.
167. Mr King's submissions provide no detailed scrutiny of past trading figures, financing, governance or business stewardship. There is no assessment of future restructuring / business survival options or any demonstration that the 'enabling development' route is the only, or indeed the best, option. There is no analysis or testing of projected sales figures, profits and the predicted general business performance in the wider, and inevitably dynamic, competitive environment. This is particularly important to demonstrate, given the loss of the competitive advantage from LVCR abolition, the recognised higher Jersey wage costs and the delivery logistics of being Island based remote from the business's principal markets. Without such a robust justification, there is no guarantee that the future of the business will be secured. Put bluntly, without evidence to the contrary, the £3 million injection may simply defer an unavoidable business failure and / or result in a further ERE 3 case in future years, if the company still finds itself struggling.
168. Mr King stressed at the Inquiry that he had not adopted a partisan position, and was simply expressing his professional opinion from an economic development (rather than Planning) perspective. The Department's Planning officers did not consult EDD on the application because they did not feel it

would secure the 'independent and robust assessment' needed (as the letters had pre-determined the EDD position).

169. This is an unfortunate situation and, I am sure, not one that the original authors of ERE 3 would have envisaged. However, the fact is that there is no independent and robust assessment of the business case before me. Indeed, I think it is fair to say that the Applicant's advocate recognised this weakness but, in closing submissions, criticised the Planning officers for failing to consult EDD and questioned whether the Applicant should be penalised for this failure. Whilst I do understand this viewpoint, I can only assess the evidence before me.

170. Whilst all of the ERE 3 tests are important (and all must be satisfied) this third test is fundamental. The test can only be fulfilled by hard and independently verified evidence. That evidence is lacking and accordingly it is not possible to conclude that the proposal 'will secure' the future of the countryside asset (the Jersey Choice Ltd business).

171. The proposal fails the third test.

*Criteria 4 – 'adequate financial assistance is not available from any other source'*

172. Paragraph 5.148 sets out the key principle that enabling development "*..should not be the automatic 'first resort' of rural businesses seeking to fund the modernisation of their core operations.*" The Applicant's case is that it cannot secure investment from mainstream sources due to its high level of indebtedness. It further states that it does not seek States grant aid, which, in any event, is limited and could not assist the scale of investment needed.

173. There are cross linkages here with the criteria 3 / business case issues. It is important to recognise that this is a Planning Inquiry and not an inquiry into the governance, finances, business planning and commercial prowess of Jersey Choice Ltd. However, the Planning and business issues are linked, insofar as the Applicant claims a need for the scale of development proposed to secure the investment needed. Without the 'independent and robust assessment of the business case' required to support ERE 3 proposals, it is not possible to conclude that other financial options are not available.

174. Whilst the heavy debt burden of the company is noted, it has not been convincingly demonstrated that other financing options are not available. The proposal fails the fourth test.

*Criteria 5 – 'it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the countryside asset, and that its form minimises disbenefits'*

175. The fifth test raises the issue of how much capital is required to secure the future of the countryside asset. The 'countryside asset' in this case is Jersey Choice Ltd and its associated employment (permanent and casual) and value to the Jersey economy. It is that business (countryside asset) that the Applicant seeks to 'secure' through this proposal.
176. There was much debate at the Inquiry about what expenditure would or should be allowed under the policy in terms of measures to 'secure' the countryside asset. Specifically, this concerns whether the 'enabling' receipt can reasonably be used to i) service debts (£1,850,000) and ii) pay for land acquisition and covenant release (£500,000).
177. The Department's officers argue that such expenditure is not allowed under the policy. The Applicant disagrees and considers that the policy does not prohibit this and that it has been permitted on at least two other occasions.
178. Those other cases relate to the Trident Nurseries site in St Saviour (Ref: PP/2010/0411) and a site at L'Harmonie Nursery in Grouville (Ref: P/2011/1215). Both schemes involved the demolition of glasshouses and the erection of single dwellings. The Planning Obligation Agreements for each do appear to allow for proceeds to be used to reduce liabilities to lenders, although amounts are not specified. In the Agreement attached to the L'Harmonie scheme, there is a cascade where a schedule of specified business modernisation / upgrade works have priority over debt servicing. I have not examined these proposals or the circumstances surrounding them in any detail. The Applicant's key point here is that debt servicing has been previously agreed under ERE 3 and, therefore, should be allowed for its scheme.
179. This is a difficult matter but I must state my view plainly. I consider the use of 'enabling' development receipts to service private company (or individual) debt to be wholly inappropriate in Planning terms. The Department's officers appeared to hold similar views at the Inquiry, offering no defence or explanation for the earlier decisions and stating their professional views that such arrangements were wrong. I agree.
180. Policy ERE 3, when read with the narrative, does not provide for enabling development receipts to be used to service historic accrued debt (whether held by a company or an individual). Indeed, the narrative could not be clearer in its multiple references to the 'the construction of facilities' (paragraph 5.145) and the underlying principle that the financial gain 'should not exceed the investment necessary for new facilities to be constructed' (paragraph 5.148). ERE 3 is limited to tangible or 'hard'



construction / development projects to modernise and secure a countryside asset.

181. This is entirely in line with the policy's parentage in respect of (English) heritage related enabling development, where the Planning justification is based on yielding sufficient funds to address the cost of physical repairs to a heritage asset (the 'conservation deficit'). It is not intended to 'repair' a company's finances, which will be a consequence of a whole host of business, fiscal and economic factors, wholly unconnected to the current Planning considerations.

182. Similarly, I do not see that Policy ERE 3 allows for receipts to be used for land acquisition and covenant releases. The principle underlying ERE 3 is that a rural business can, in some circumstances, use some of its land to generate investment funds. The policy wording and narrative do not suggest that this can extend to making payments to others for covenant releases or for the purchase of land to assemble a housing development scheme.

183. If there were a case to be made under ERE 3 it would, in my view, need to be confined to the St Martin's and Hougue Bie nursery projects (which the Applicant states will cost £742,000) and, even so, it would require a fuller and more compelling justification than I have seen to date.

184. The proposal fails the fifth test.

*Criteria 6 – 'the value or benefit of the survival or enhancement of the countryside asset outweighs the long-term cost to the community (i.e. the disbenefits) of providing the enabling development.'*

185. The sixth test is, in effect, the overall assessment 'in the round' of the balance between the benefits and disbenefits. I do not for a moment dispute that securing a sustainable and lasting future of Jersey Choice Ltd would be beneficial and that the benefit could be substantial, assuming it did succeed and job losses were avoided and the value of the business to the economy was maintained.

186. To quantify its case, the Applicant sought to establish the 'value' of the business in ERE 3 terms and to convert this to a square footage of arguably justified development. It has used two methods.

187. The first method modelled the direct tax loss from the business closure over five years, compounded by 4% p.a., which gave a figure of £1,622,747 which it then divided by an overall site development cost (£126.60 sq ft) to give an ERE 3 'justified' floorspace figure of 12,872 sq ft (rounded).

188. The second method involved modelling the wider annual value of the business to the rural economy by looking at Gross Value Added (GVA) plus the total payroll. This gave a figure of £2.71 million p.a. which, when

divided by the site development cost (£126.60), gave a 'justified' floorspace figure of 21,406 sq ft, marginally above the housing floorspace actually proposed (which is 21,262 sq ft).

189. Although I do understand the desire to apply some objectivity, I actually found both methods to be a little contrived and artificial. It was accepted by those at the Inquiry that there is no agreed and accepted method of measuring ERE 3 'benefit'. The first method assumes that the business disappears in its entirety and that every employee remains out of economic activity for five years (which seems unlikely given the Island's low unemployment rate). However, it also does not measure the wider benefits of the business to the rural economy and to the freight sector. The second method, whilst arguably more comprehensive, again assumes that the business evaporates in its entirety and that nothing remains or replaces it. With either method, there is no comparable quantification of the negative value (the disbenefits).

190. In practice, this ERE test is not one where a mathematic equation can provide an answer. It rests on a complex set of judgments about benefits and disbenefits, some of which are quantifiable and others are not.

191. Given my assessments that the proposal fails earlier criteria and that it has failed to demonstrate that it would actually secure the future of the business, I assess that the proposal must inevitably fail this sixth test.

#### *Overall ERE 3 Conclusions*

192. The application proposal fails to meet five of the six requirements of Policy ERE 3, all of which must be met for the development to succeed. I also assess that the failing is not a marginal one but a substantial one. The intent of the policy is, in exceptional circumstances, to allow business modernisation through the construction of facilities. The policy does not allow for financial 'bail out' packages for businesses that, for whatever reasons, have become heavily burdened with debt. It also does not intend or allow for premium payments to be made to a landowner.

193. Notwithstanding those concerns, I have seen no compelling evidence that the smaller part of the receipt, that is actually intended for investment in the construction of facilities, would actually secure the future of the business. I found the evidence of EDD to be superficial and unconvincing and a long way short of the 'independent and robust'<sup>15</sup> assessment necessary, to justify such a major departure from the strategic and policy thrust of the Island Plan.

194. The proposal does not accord with Policy ERE 3.

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<sup>15</sup> The terms used in Paragraph 5.149 of the Revised 2011 Island Plan

## **OTHER MATTERS**

### *Traffic and transport matters*

195. Traffic and transport matters feature prominently in the submissions of those opposed to the scheme, with particular concerns about increased traffic generation and associated safety considerations on the narrow lanes in the locality.
196. The Applicant's case centred on the benefits arising from the removal of large commercial vehicle movements from the narrow lanes, a benefit supported by the Parish of St Ouen. However, it was accepted that the traffic generation volumes would be greater at certain times of the day but the Applicant considered this to be manageable and noted that there was no local history of accidents on the surrounding roads and junctions.
197. The Department's case on transport matters was centred on the unsustainability of the location. It considers that the remoteness from bus stops / services and day to day facilities will lead to an inevitably high (private car) trip generation rate. It considers that this conflicts with the strategic policy objective of reducing private car dependence as set out in SP 6 (and GD 1).
198. At the localised level, I do agree that reducing commercial vehicle movements in the lanes could have some benefits. However, it must be recognised that large vehicles using narrow lanes to service agricultural and horticultural industries is an essential and intrinsic part of the working rural economy. The point was also made that such lorry movements are usually predictable, slow and tend not to occur at night and on weekends.
199. By contrast, residential traffic is different. The vehicles may be smaller but there will be more movements, with morning and afternoon peaks, and over longer periods of the day and the week.
200. These effects are compounded by the location, remote from shops, services, schools and other facilities, which suggests that many day-to-day needs will involve car journeys. I do agree with those residents that argued that the nature of the locality is such that even a small increase in traffic generation could result in undesirable conflicts on the narrow single track lanes in the area. These may not be 'life and limb' issues but they are not desirable either in Planning terms.
201. Overall, my assessment is any 'technical' highways objection on highway safety and junction capacity grounds is unproven. There is no empirical evidence to suggest that accident risk would notably increase or that junctions could not cope with some increase in traffic in the peak periods. However, I do consider that the additional traffic generation and its nature (residential) is likely to be negative and undesirable at a localised level and

in conflict with sustainability objectives of the Island Plan which seeks to reduce car dependency (notably SP 6). These findings simply underline the tension with the Island Plan's spatial strategy i.e. this is not a location where new residential development and its associated traffic generation should normally be directed. I do not consider that any of the measures proposed (bus shelter contributions and electric car charging points) will have any tangible mitigating effects on the unsustainability of the location and the travel patterns that are likely to emanate from the proposed houses.

*The land management options for Fields 1446 and 1447*

202. Earlier in this report (paragraph 25), I explained the Applicant's two alternative proposals for the use and management of the greater parts of Fields 1446 and 1447. The original option was to manage this area as 'natural greenspace'. An alternative option is to return most of it to agriculture with natural grassland confined to the southern part (where the protected species exist).
203. Were the Minister minded to grant permission, I consider the predominantly agricultural use option to be preferable in Planning policy terms. This is because there is no requirement for any additional ecological mitigation (on top of that proposed in the southern section of the site) and re-instatement for farming use is consistent with Policy ERE 1 and the broader principle of returning glasshouse land to farming (as embodied in 'disuse or disrepair' conditions).

*Planning conditions and POA*

204. Should the Minister be minded to grant planning permission, there is a set of planning conditions agreed (on a without prejudice basis) between the Department and the Applicant. I have reviewed these conditions and consider them reasonable and appropriate. It would also be necessary to require the Applicant to enter a POA to secure the matters set out earlier in this report (see Paragraph 29).

**OVERALL CONCLUSIONS AND RECOMMENDATION**

205. My overall conclusions will be clear from the preceding assessment. This proposal involves a very substantial departure from the Island Plan. Indeed, its proposal to erect eleven new homes in a remote part of the St Ouen headland flies in the face of the strategic policy objectives of the Plan.
206. I have listened to and carefully explored the various exception provisions under the Plan but have concluded that the proposal does not find support within any of these. It does not accord with 'exception 10' of Policy NE 7, as that policy specifically excludes this type of development and, in any event,

the glasshouses are not redundant. It does not fall within the policy ERE 7 provisions, as the glasshouses are neither derelict nor redundant. The Applicant's principal case, founded on enabling or linked development under ERE 3, fails five out of the six required tests, when the policy requires all six to be satisfied. Furthermore, I do not consider that there is any other 'sufficient justification' that would allow for a departure from the Plan of the magnitude proposed.

207. I do appreciate the sensitivities and concerns around the objective to secure the future of this business. However, the Planning case has not been made for this proposal. I think the business needs to look again at other options. In my view, it is beyond the scope of the Planning system to resolve the company's accrued substantial financial indebtedness. I do not regard this case as finely balanced and consider that the development would be wholly unjustified and that allowing it would cause serious harm.

**RECOMMENDATION:** That the Minister **REFUSES** to grant planning permission for the following reasons:

Reason 1: The proposed erection of eleven dwellings on this remote headland site in the Green Zone would be wholly contrary to the strategic policies of the Revised 2011 Island Plan. In particular, it would conflict with policies SP 1, SP 2, SP 3, SP 4 and SP6, which seek to concentrate development in the defined built-up area, use land resources efficiently and sustainably, protect the countryside, reduce dependence on the use of the car and establish more sustainable patterns of transport.

Reason 2: The proposed erection of housing in this location would conflict with policy NE 7 of the Revised 2011 Island Plan that establishes a high level of protection from development within the defined Green Zone and specifically excludes the redevelopment of glasshouses. Furthermore, the proposal does not fall under any of the exception classes stated in Policy NE 7 or under Policy ERE 7 and the scale, nature and permanence of the housing would cause serious harm to the remote rural headland landscape's character and appearance.

Reason 3: The Applicant's 'enabling or linked development' case under Policy ERE 3 is not accepted, as the proposal is considered to fail five of the six essential criteria. Notably, the development will cause serious harm to the rural headland landscape and it has not been demonstrated that the future of the Applicant company would be secured or that alternative financial options are not available or that the development is the minimum necessary or that the (unproven) benefits of the proposal would outweigh the disbenefits, which are substantial and significant.