

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

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

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

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**Appellant:**

Gordon Hervé

**Application reference number and date:**

P/2020/0826 dated 31 July 2020

**Decision Notice date:**

12 November 2020

**Site address:**

Field No. MY10, Le Mont de St. Marie, St Mary

**Development proposed:**

“Reconstruct fire damaged shed to North-East corner of Field No. MY10.”

**Inspector’s site visit date:**

12 April 2021

**Hearing date:**

22 April 2021

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**Introduction**

1. This is an appeal against the Planning Committee’s decision to refuse planning permission for the development described above. The application was recommended for approval.
2. The decision notice records that permission was refused for the following reasons:

1. The site forms part of the Coastal National Park which will be given the highest level of protection from development. Within this zone, there will be the strongest presumption against all forms of new development, and in the case of the redevelopment of an employment building for the same use, a new building should be no larger in terms of its gross floorspace, building footprint, or visual impact than the building being replaced. With reference to the original building on the site (as well as the 2014 permission for its reconstruction), the application proposes to increase the overall size of the building. In addition, the relocation of the building footprint within the site will result in the creation of an additional area of external yard, whilst the retention of part of the original structure would lead to an increase in the overall landscape impact of the development. For these reasons, the application fails to comply with Policy NE 6 of the adopted 2011 Island Plan (revised 2014).
2. By virtue of its overall design (in particular, the fenestration pattern), the proposed development would be overtly residential or domestic in character. This is considered to be inappropriate, and it would result in a development which causes harm to the natural and agricultural character of the area. For this reason, the application fails to comply with Policies GD 1, GD 7, and NE 6 of the adopted 2011 Island Plan (revised 2014).

### **Island Plan Policies**

3. Relevant extracts from the policies referred to in the decision notice are set out below.

#### Policy NE6

“The primary purposes of the Coastal National Park are:

- the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the National Park;
- to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

In support of these purposes, the Coastal National Park, as designated on the Proposals Map, will be given the highest level of protection from development and this will normally be given priority over all other planning considerations.

In this area there will be the strongest presumption against all forms of development ...

Only the following exceptions may be permissible, and only where they do not cause harm to landscape character ...

2. the redevelopment of an existing ... structure, involving demolition and replacement, but only where the proposal would:

- a. not be larger in terms of any gross floorspace, building footprint or visual impact than the building being replaced;
- b. not facilitate a significant increase in occupancy; and

- c. give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character. ...
4. the redevelopment of an employment building(s), involving demolition and replacement for the same use, but only where:
- a. it would be no larger in terms of any gross floorspace, building footprint or visual impact than that being replaced;
  - b. an intensification does not create undue noise, disturbance or a significant increase in travel and trip generation; and
  - c. it gives rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character ...
9. Development small in scale and incidental to the primary use of land and buildings, but only where:
- a. it is well sited and designed, having regard to the relationship with existing buildings, landscape context, size, material, colour and form; and ...
  - c. it does not cause harm to landscape character."

#### Policy GD1

"Development proposals will not be permitted unless the following criteria are met such that the proposed development ...

- 2. does not seriously harm the Island's natural and historic environment, in accord with Policy SP 4 'Protecting the natural and historic environment', and in particular;
  - a. will not have an unreasonable impact on the character of the coast and countryside (Policy NE 6 'Coastal National Park' ...
  - c. will not unreasonably affect the character and amenity of the area, having specific regard to the character of the coast and countryside (Coastal National Park ...
- 6. is of a high quality of design, in accord with Policy SP 7 'Better by design' and Policy GD 7 'Design quality', such that it maintains and enhances the character and appearance of the Island ..."

#### Policy GD7

"A high quality of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape ... will be sought in all developments, in accord with the principles of good urban design, as set out in policy SP7 'Better by design.'

Where the design of proposed development does not adequately address and appropriately respond to the following criteria, it will not be permitted ...

- 2. the relationship to ... topography, landscape features and the wider landscape setting ..."

## **Description of the site and its surroundings**

4. The site is to the west of Crabbé, in the north-eastern corner of Field MY10, which is a còtil in open countryside in the Coastal National Park. On the site are a partially-built structure and the remains of an isolated granite-walled agricultural storage shed, which was badly damaged by fire in 2005. The age of this shed is unknown, but it is believed to date from the time before planning controls came into force. An access track leads to the site from Le Chemin du Câtel; this track is understood to have been in existence for a long period of time. Planting has taken place on each side of it in recent years.

## **Planning history and proposed development**

5. Planning application P/2013/0422 was submitted in 2013 to "Reconstruct existing shed for use as occasional artist's workshop". The application was refused because the proposed development was considered to be harmful to the character and amenities of the area, contrary to Policies GD1 and NE6 of the 2011 Island Plan, and because of the loss of agricultural land required for the access.
6. Planning application P/2014/0110 was submitted in 2014 to "Reconstruct existing fire damaged shed". The application was approved on 29 May 2014 subject to Condition A which requires the development to commence by 29 May 2019 and to three further conditions, including Condition 1 which requires the development to be carried out entirely in accordance with the approved plans and documents and the shed to be used for agricultural purposes only, and not for habitable or recreational purposes. Evidence was provided with the application that demonstrated that the fire-damaged shed had not been 'abandoned', for planning purposes; its reconstruction was therefore considered to be reasonable.
7. There is a disagreement between the parties as to whether Condition A has been complied with and therefore as to whether the development approved by P/2014/0110 can now be lawfully carried out. Condition 1 has not been complied with since the partially-built structure on the site differs substantially from the approved plans.
8. The proposed development is also to "Reconstruct existing fire damaged shed". The application plans differ from those approved in P/2014/0110. In particular, the shed would be moved westwards to allow for the creation of a yard on its south-east side. The walls would no longer be erected on the same footprint and the floor slab would not be reused. Remnants of the granite walls of the previous shed would be left outside the new shed's envelope and used as site retaining walls and boundary walls. The ground-floor area would be larger and an attic would be formed in the roof space. The south-east elevation would have three openings where none existed in the approved shed. An additional opening would be formed in the apex of the north-west elevation and two roof lights would be inserted in the roof of the south-west elevation. More of the field would be taken into the shed's curtilage.
9. The application plans also differ from the partially-built structure that is on the site. The shell already there indicates that when completed the structure would have more floorspace than the proposed development and would have openings characteristic of a residential building.

## **The case for the appellant**

10. The appellant's case is as follows:

The application is for the re-instatement of the fire-damaged building. It can be considered favourably under Policy NE6.2. The development would retain some walls that were not fire damaged and would be similar in size, scale and impact to the shed that existed before the fire. The overall design is similar to the shed that existed before the fire and also to that previously approved, with a similar arrangement of windows and doors. There would be no openings in the north-east elevation, which is the side the public can view from the road. The appellant no longer farms, but the shed would be used for agricultural purposes in association with land that he owns and maintains. A landscaping scheme has been proposed which would remove the non-native planting in place along the boundaries of the access track.

Notwithstanding the small increase in footprint and floor area, the visual impact of the shed would be reduced compared with the original because the height would be lower and the planting scheme would introduce natural landscape features. There would be no harm to the character of the Coastal National Park or to landscape character. The development would conform to Policies GD1, GD7 and NE6.

## **The case for the Infrastructure, Housing and Environment Department**

11. The Department rely on the reasons for refusal given in the decision notice.

As to the first reason, the Department state specifically that (i) Policy NE6.4.a would not be complied with because the size of the shed would be increased overall and (ii) Policy NE6.4.c would not be complied with because the shed's footprint would be relocated, a yard would be added and there would be an increase in the overall landscape impact without any environmental gain.

As to the second reason, the Department state that there would be a conflict with Policies NE6, GD1 and GD7 because the design of the shed would be out of character with the area and cause harm to its natural and agricultural character. They point out that the shed would be at a lower level than the previous approval as a result of unauthorised excavation and that the field was farmed right up to the outside of the original shed, whereas the proposed development would take part of the field into its curtilage.

## **Representations made by others**

12. Five persons commented at the application stage, but their representations appear to relate to the structure in the course of construction rather than to the shed proposed in the application.

## **Inspector's assessments and conclusions**

13. Planning permission P/2014/0110 to "Reconstruct existing fire damaged shed" was granted on the basis that the reconstruction was justified in the circumstances on what was considered to be a like-for-like basis.
14. In the circumstances I have described in paragraph 8 above, I consider the description of the development now proposed as "Reconstruct existing fire

damaged shed” to be inaccurate. The proposed development is as a matter of fact the construction of a larger, entirely new, shed. Moreover, there is scant evidence that the shed is required for an agricultural purpose, and its size, design, layout and curtilage are suggestive of a building that could be readily converted to residential use, rather than one that would be of practical use to any agricultural enterprise.

15. The shed would therefore not conform to planning policies, since none of the exceptions to the presumption against development in the Coastal National Park is applicable and the character of the area and its landscape would be impaired. No circumstances arise in this appeal to indicate that planning permission should nevertheless be granted and I have therefore concluded that the appeal should not succeed.

**Inspector's recommendation**

16. I recommend that the appeal is dismissed.

Dated 31 May 2021

*D.A.Hainsworth*  
Inspector