

Appeal Decision Notice

Planning Tribunal Hearing held on 12th December 2012 at Les Cotils Christian Centre, St Peter Port, followed by a visit to the Appeal site

Members: Mr. Stuart Fell (Presiding), Mrs. Sheelagh Evans, Mr. David Harry

Appeal Site:	Newlands Building, Lowlands Industrial Estate, Route du Braye, Vale
Property Reference:	C00742B000-P32
Planning Application Reference:	FULL/2012/1307
Planning Application Valid Date:	30th April 2012
Appeal Case Reference:	PAP/031/2012

- The Appeal is made under the provisions of Part VI Section 68 of The Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is by Walter Property Limited against the decision of the Environment Department made on 18th July 2012 under Section 16 of the Law to refuse planning permission on an application for the change of use of part of the ground floor to Retail Use Class 14 and ancillary storage, the installation of signs (south and west elevations) and replacement doors, ramps and railings (west elevation) at the Newlands Building, Lowlands Industrial Estate, Route du Braye, Vale.
- The appellant company was represented by Advocate P. Ferbrache. He called two witnesses, Ms. C. Walter on behalf of the appellant company, and Mr. A. Ozanne, the architect acting on the company's behalf in this matter.
- The Environment Department was represented by Mrs. C. Miles, Senior Planning Officer, and Mr. J. Rowles, Director of Planning Control Services. They called two witnesses, Mr. I. Shepherd, Policy Analyst at the Commerce & Employment Department, and Ms. S Horsley, Forward Planning Officer at the Environment Department.

Decision

1. The Appeal is allowed.

Preliminary Matters

2. The Tribunal notes that the Department's objection to this scheme relates to the proposed change of use, and no objection is raised in respect of the proposed signs, doors, ramps and railings.
3. Shortly before the Hearing, on 3rd December 2012, Mr. Ferbrache made further written submissions on behalf of the appellant company in which a number of proposals were made. The first was that a letter of 12th September 2012 by Jones Watts, Chartered Surveyors and Property Consultants, should be admitted in evidence by the Tribunal. The Department had objected to this on the basis that the letter was written after their decision in this case was made on 18th July. The Tribunal ruled that the letter is inadmissible, in the light of the provisions of Section 69 of the Land Planning and Development (Guernsey) Law, 2005, which gives the Tribunal little discretion in such matters.
4. Second, it is suggested that in considering this appeal the Tribunal might take account of the objectives of the Strategic Land Use Plan (SLUP), adopted in November 2011. The Tribunal declined to do so as the provisions of Section 6 of the Law make it plain that the primary purpose of the SLUP is to inform the preparation of development plans, rather than provide a basis for the control over development.
5. Third, the appellant company postulates on a without prejudice basis whether the Department might consider the subject proposal as a minor departure from the Urban Area Plan subject to a covenant that the appellant company would subdivide the remaining floor-space into small storage and distribution units (subject to planning permission). Whilst the Department declined to entertain this suggestion, the Tribunal notes that this request has been formally made.
6. Fourth, a 1980 conveyance is submitted which purports to show a right of access for pedestrians from the Newlands Building to Vale Avenue. As this information was not known to the Department when it made its decision on the planning application, the Tribunal regards this evidence as inadmissible.

Background

7. The appeal building lies next to the southern edge of the Lowlands Industrial Estate, which appears to have been built in the 1970s or 1980s. The estate comprises a group of eight principal buildings which are accessed from Braye Road, situated to the north. The principal thoroughfare within the estate is a service road which runs north to south, and there is a short spur to the east which provides access to the two properties owned by the appellant company. These are Lowlands House to the north, and the Newlands Building to the south. These properties lie in a different orientation from the buildings in the remainder of the estate and are tucked almost out of sight. They are accordingly somewhat separated in visual terms from the main body of the estate.
8. To the south of the estate is an area of largely undeveloped land, and beyond that is the historic retail and commercial centre located around the thoroughfare called The Bridge. The estate is currently separated from those other areas by an irregular and imperforate boundary running broadly east to west, part of which runs alongside the appeal building.

9. The Newlands Building is two storeys high and is a metal clad structure, similar in appearance to many industrial and warehouse buildings of its period. According to a letter from the Department to Mr. Ozanne dated March 2008, permission for its construction was granted in 1986. The building, together with Lowlands House, was bought by the appellant company early in 2008. The ground floor accommodation and part of the first floor have been partly vacant for four years or so, notwithstanding marketing of the property since 2008.
10. Having been unable to let the building for light industrial purposes or for storage/distribution or other authorised uses, the appellant company made a planning application for retail use, following an expression of interest by Iceland, a well known food retailer with two established outlets elsewhere in the Island. The proposed retail use would occupy 544 m², of which 396 m² would be sales area. Twenty seven parking spaces would be provided on land around the perimeter of the site.
11. As well as falling under the relevant planning policies of the Urban Area Plan, 2002, the site lies within the Leale's Yard Mixed Use Redevelopment Area (MURA). Development is accordingly subject to the specific policy controls for such areas, as well as the requirements of the Leale's Yard Outline Planning Brief which governs development in that area.
12. The application was subsequently refused, resulting in this appeal. The Department's reasons for refusal of the application are as follows:
 - 1 *The building is of an industrial design and nature and located within an area where the overall character is that of an industrial estate; it has not been clearly demonstrated that the site is no longer suited in land use terms to continued industrial development and the proposal is therefore contrary to Policy EMP9 of the adopted Urban Area Plan.*
 - 2 *The site comprises industrial premises within the Leale's Yard Mixed Use Redevelopment Area and the form of retail proposed, with a car borne customer base, together with the layout of the site and the lack of pedestrian connections to current and proposed retail activity on The Bridge will, it is considered, be to the detriment of the viability and vitality of the existing centre and be contrary to Policies CEN1 and CEN2 of the adopted Urban Area Plan and to the aims of the Outline Planning Brief for the area which seeks to protect the industrial stock within the Mixed Use Area and to locate new retail uses near the existing retail uses of The Bridge.*

Main Issues

13. From its assessment of the papers submitted by the appellant and the Department, and from what was seen and noted during the site visit, the Tribunal considers that there are two main issues in this case. The first is whether the proposal would result in the unacceptable loss of industrial floor-space, given the provisions of Policy EMP9 of the adopted Urban Area Plan, supported by similar provisions in the Outline Planning Brief, bearing in mind the level of the demand for such floor-space and the suitability of the building for continued use for these purposes.
14. The second issue is whether, by virtue of its nature, position and layout, this proposed retail use would be detrimental to the viability and vitality of the retail centre at The Bridge, given the aims of the Outline Planning Brief for this area and Policies CEN1, CEN2 and CEN3 of the adopted Urban Area Plan.

First Issue Loss of Industrial Floor-Space - Policy Considerations

15. Development on the appeal site is controlled by policies in the adopted Urban Area Plan, 2005, as amended, and by policies within the Outline Planning Brief for the Leale's Yard Mixed Use Redevelopment Area, which was adopted in 2004.
16. The Tribunal notes that the Island's principal reserves of industrial land are designated as Key Industrial Areas which are reserved for the development of business and industrial uses that require purpose built industrial premises which cannot reasonably be accommodated elsewhere. Within these areas, development for other business and industrial uses will only be permitted in exceptional circumstances. The Lowlands Industrial Estate is not a designated Key Industrial Area.
17. In respect of the protection of industrial sites outside Key Industrial Areas, Policy EMP9 of the Urban Area Plan states;

"The change of use of existing industrial land and accommodation will only be permitted where it can be clearly demonstrated that the site or premises is no longer suited in land use terms to continued industrial use, having regard to:

 - a) the standard of accommodation and the level of demand for such premises*
 - b) the suitability of the existing access to the site for industrial purposes and the likelihood of improving the situation*
 - c) the potential for remedying land use conflicts with neighbouring users, particularly where amenity would be improved by the removal of noise, smells or traffic conflicts".*
18. The preamble to this Policy explains that suitable industrial land sites represent a scarce economic resource, and in order to ensure that sites continue to be available for existing firms and emerging companies, sites that are well suited to industrial use will be protected.
19. In respect of criteria (b) and (c) above, the agreed position between the parties was that the existing access arrangements serving the site are satisfactory, and this is not a material issue in this case. Similarly, potential land-use conflicts with neighbouring land users have no significant bearing. The Tribunal has reached the same conclusion on these matters.
20. The Outline Planning Brief imposes similar restraints on industrial land and floor-space as Policy EMP9, stating, in Section 6:

"Sites that are well suited to industrial or commercial use should be retained for such uses unless it can be demonstrated that the site or premises is no longer suitable, having regard to the standard of accommodation or level of demand".
21. In approaching the question of whether it remains appropriate to protect the industrial accommodation within the Newlands Building and its site, the Tribunal judged there to be four relevant considerations. These are: the character of the estate and the building; the nature of the approved uses within the building; the level of demand for such premises, and the suitability of the building for light industrial use and storage and distribution purposes.

The character of the Lowlands Industrial Estate, and the appeal building

22. The Department, in its first reason for refusal of the application, states that the building is of an industrial design and nature and located within an area where the overall character is that of an industrial estate. Having carefully assessed the appeal building and its surroundings, the Tribunal does not wholly agree with the Department's assessment. The Tribunal saw that the main section of the estate is generously laid out along a wide access road, and that some of the buildings have retail features, such as the two Homemaker stores and the Intersport premises. In addition to these retail premises, other permissions have been granted for non-industrial uses, for example the gymnasium within the appeal building.
23. Though assessments vary in relation to the proportion of floor-space within the estate that has been taken out of Use Classes 30 and 37, this appears to be somewhere in the range between 25% and 33%. The Lowlands Industrial Estate is not the only example of such estates gradually absorbing retail or other activities, as can be seen at the Braye Road Industrial Estate, which is designated as a Key Industrial Area.
24. The Tribunal notes that an improvement in the appearance of the appeal building is planned, evidenced by the planning permission granted in 2009 to re-clad the building in association with change of use of the ground floor to Data Storage (Use Class 35), and of the first floor to Business Continuity facilities. This permission not only illustrates the Department's preparedness to allow the entire building to be given over to non-industrial uses, but also demonstrates that a substantial improvement in the external appearance of the building is imminent. Ms. Walter confirmed that this re-cladding work has already been commissioned.
25. The Tribunal saw during its site visit that the prominent surfaced areas around the approach to the building are presently dominated by construction plant and equipment, arising from the tenancy of part of the building by a plant and tool hire business. Ms. Walter advised that the use of these external areas for this purpose was not approved under the terms of the lease, and that these items would shortly be removed.
26. With all these factors in mind, the Tribunal concludes that the appearance of the estate is constantly evolving as it absorbs an ever-widening range of activities, and its character can no longer be properly described as that of an industrial estate.

The nature of the authorised and approved uses of the building

27. The Department's appeal statement indicates that the use of the building falls under Use Classes 30 and 37 of the Use Classes Ordinance 2007. Use Class 30 is one of seven classes under the general description *Storage/Distribution*, and is described as a use, not falling within Use Classes 31 to 36, for the commercial storage of any goods. Use Class 37 is one of seven classes under the description *Industrial Use*, and is described as a use for any light industrial purpose. The phrase '*light industrial purpose*' is not defined or explained in the Urban Area Plan or in supplementary guidance. However, the Tribunal notes that planning practice in the UK is to treat this term as meaning an activity that can be carried on in any residential area without detriment to its amenity.
28. The Department's declaration of the Use Classes that apply to the appeal building provides an incomplete picture, as other uses outside these specified Use Classes have been authorised by recent planning permissions, as indicated below.

29. In 1988, shortly after the building was constructed, permission was granted for “*part retail and wholesale warehouse, and part workshop, store and office in connection with the design, supply and fitting of kitchen and bedroom fittings and furniture.*” In granting this permission, the former Island Development Committee noted that refusal of the application would be difficult to justify given that the proposed use was of a similar nature to other established businesses on the estate. It appears that even at this early date, the industrial character of the estate was being moderated by the presence of retail activities.
30. In May 2009, permission was granted for the change of use of the ground floor of the building to data storage (Use Class 35), and of the first floor to Business Continuity facilities (FULL/2009/0431), a use that is arguably equivalent to an office use. The Use Classes Order describes Class 35 as use for data and archive storage in any form relating to a business carried out elsewhere. Mr. Ozanne explained that this application arose from an interest in the use of the building that had been expressed by a telecommunications company which unfortunately failed to reach fruition. In December 2009, permission was also granted for the change of use of the first floor to data storage, being Use Class 35 (FULL/2009/3507).
31. In March 2012, permission was granted to use approximately one third of the first floor of the building as a gymnasium, falling within Public Amenity Use Class 29 (FULL/2012/0327).
32. In April 2012, permission was granted for the change of use of part of the ground floor for use as a plant and tool hire business (FULL/2012/0631). Mrs. Miles explained that this use is not listed in the Use Classes Order and is regarded as *sui generis*.
33. In undertaking its inspection of parts of the interior of the building, the Tribunal saw that much of the vacant floor space at first floor level was in the form of relatively small units that were indistinguishable in appearance from the sort of office accommodation that might be encountered in a building of this age, though the Department explained that some of the office accommodation had been used in association with manufacturing activity.
34. What came into focus for the Tribunal in considering this evidence was that there has been a gradual blurring of the distinction between light industrial and office activities in recent years, to the point that these have become virtually indistinguishable. This trend is illustrated by the fact that in the current Use Classes Order in the United Kingdom, office and light industrial uses are placed in the same use class ‘B1 – Business’, a fact that was alluded to by Ms. Miles towards the end of the Hearing when the prospect of alternative uses for the building were being considered.
35. Similarly, the distinction that could once be made between a normal retail outlet and a wholesale company supplying products and components only to bona fide operatives in a specific trade, such as in the sphere of building construction and fitting, has been largely eroded by changes in retailing practice. Restrictions have been removed to the extent that the general public now has almost equivalent access to trade counters as specialist operatives. These trends have changed the character of what would once have been regarded as pure warehouse and distribution premises, in Use Class 30, to premises that offer specialist retail services.
36. In conclusion on this matter, the Tribunal’s view is that the origins of the Lowlands Estate as an industrial zone do not seem to have imposed a significant impediment to its adaptation for alternative new uses, reflecting an evolution in the nature of industrial and commercial activity in the Island. It appears to the Tribunal that these wider commercial pressures and influences are reflected in the variety of new uses that have been approved within the

appeal building in recent years, and in some similar buildings elsewhere, indicating a degree of flexibility in the way the relevant planning policies have recently been applied.

Policy EMP9 The suitability of the building for continuing warehouse/distribution or light industrial use

37. In the context of the assessment of a proposal to change of use of an industrial building, Policy EMP9 raises the question as to whether the site or premises remain suitable for continued industrial use, whilst criterion (a) refers to the *standard of accommodation* as a relevant factor.
38. In this regard, Mr. Ozanne, for the appellant company, explained that because of the present surplus of industrial floor-space in the Island there is intense competition with regard to the letting of vacant buildings. In his experience, the buildings with the greatest appeal to prospective tenants are those that are flexible in layout and can accommodate heavy loadings. He pointed out that the ceiling heights within the Newlands building are limited, at around 3m, and the loading capacity of the first floor structure is restricted. Whilst there is continuing demand for buildings suitable for paper archive storage, he said that the most efficient buildings are those that allow stacking up to 5m high, utilising fork-lift trucks. The Newlands Building is unsuitable for such purposes because of its structural and height limitations. In response to a question raised by Mrs. Miles, he explained that whilst the Newlands Building could be adapted to make it more suitable for these storage methods, this would require a substantial re-structuring of the building such as to make it financially untenable.
39. The Tribunal notes that the Department's witnesses raised no contrary arguments to the expert opinion offered by Mr. Ozanne on these matters, and concluded that the form, layout and structure of the building, coupled with the rather cramped arrangement of the external land, could indeed be seen as negative aspects of the Newlands Building in the minds of potential occupiers.

The demand for industrial floor space

40. Criterion (a) of Policy EMP9 raises the issue of the level of demand for industrial buildings as a factor when considering proposed changes of use. In this regard the Tribunal first sought evidence from the parties on general trends and indications relating to the demand for such buildings, before addressing the marketing of the appeal building that had been carried out and the response that this had generated.
41. In terms of an explanation of the overall trends, the Department called Ms. Horsley, Forward Planning Officer within the Environment Department, who explained that she undertook regular monitoring of planning application decisions with a view to establishing the amount of new industrial floor space being created, as well as existing floor-space being lost through change of use or demolition. The number of premises being marketed was also monitored. No figure was available for the total amount of industrial floor-space within the Island, however, and the analysis did not include details of the age, size or quality of the premises in question.
42. The monitoring revealed that 28 individual premises were being marketed at the last audit undertaken in 2011, 12 of which had been on offer since 2008, 10 since 2009, and 6 since 2010. Ms. Horsley spoke of this trend as an increase in headroom, which the Tribunal took to mean an increase in the proportion of the total stock that is now unused. Without detailed knowledge of the individual areas of accommodation, broken down by location, size and

quality, the Tribunal was unclear how the monitoring being undertaken could assist in decision-making on individual applications seeking change of use.

43. In addition to this, it was acknowledged that the collapse of the fulfillment industry in April 2012 had led to a sudden increase in the amount of vacant warehouse/storage floor-space, though Mr. Rowles advised that much of this accommodation had been brought into being as a result of changes in the use of existing buildings.
44. Mr. Ozanne said that in his experience there is now a substantial surplus of industrial floor-space on the market, creating strong competition to let space, resulting in falling rental levels. Ms. Horsley considered that lower rent levels were not necessarily a bad thing. Ms. Walter stated that is the company's practice to be very flexible when negotiating rental terms, but this flexibility had failed to deliver tenants for the Newlands Building.
45. The Tribunal drew from the above evidence that there is an undeniable increase in the level of vacant industrial premises, brought about by the general decline in this sector, and exacerbated locally by the collapse of the fulfillment industry. It seems to the Tribunal that the statistical information yielded by monitoring procedures within the Environment Department and the Commerce & Employment Department are not sufficiently sophisticated to indicate whether the current surplus of accommodation is indicative of a long-term structural problem, or will be short lived, or whether these trends reflect specific inadequacies in the building stock. The increase in the number of vacant premises and in the length of vacancy are clearly a cause for concern.

Marketing of the building

46. The Tribunal is satisfied that a useful indicator of the demand for floor-space is the response generated as a result of marketing. Mr. Ozanne indicated during the Hearing that the building had been marketed since 2008. Since September 2009, marketing of the premises had been managed by a local firm of commercial property surveyors, Jones Watts. Being unable to attend the Hearing to give evidence, the Managing Director of the company, Joanna Watts, submitted a written statement to the Tribunal indicating the scope and nature of the marketing that had been carried out, and details of the expressions of interest that had been followed up. After the Hearing, the appellant company circulated copies of the various brochures that had been issued, setting out the characteristics and potential uses of the building. A schedule was also provided indicating expressions of interest from potential tenants and the nature of the businesses involved.
47. Although the Department expressed reservations as to whether the marketing brochures would have given a correct impression of the full range of uses that would be acceptable in planning terms, the Tribunal, having studied the brochures, concluded that these represented a determined effort on the Company's part to seek out any appropriate tenants for this building, and that little more could realistically have been done to further that end. Although marketing was focused at certain times on specific uses, such as a Data Centre, the Tribunal does not consider that this would have been a disincentive to potential tenants, particularly local companies who would be aware of the Lowlands Industrial Estate and the building in question. This is demonstrated in the schedule of interests referred to above, which includes businesses active in the warehousing and industrial sectors.

48. It was also apparent to the Tribunal that considerable effort had been made on behalf of the appellant company to keep abreast of developments in the field of Information and Communications Technology, with a view to adapting their marketing strategies and offering the building in the best light in association with such activities.
49. The Tribunal's view was further reinforced by Walter Property's apparent willingness to take a flexible and pragmatic approach in respect of rental levels and letting terms, as explained by Ms. Walter, as her key objective was to keep all the buildings in the company portfolio in use so as to generate income and ensure continued occupancy and maintenance.
50. With the above matters in mind, the Tribunal's conclusion is that the failure of marketing efforts since 2008 to secure a beneficial letting for the building is a clear indicator of the lack of demand for, and the unsuitability of, the Newlands Building for continuing industrial use.
51. The offer made during the Hearing by Mrs. Miles on behalf of the Department that in a case such as this, where appropriate marketing had clearly not yielded new tenants in the preferred use classes, then the use of the premises for offices would not be ruled out. She pointed to established practice in the UK where light industrial uses and offices (other than financial services) were within the same Use Class (B1-Business) and were regarded as interchangeable. Such an approach was welcomed by the appellant company, and the Tribunal regarded this flexibility in approach as a positive gesture on the Department's part, given the indications of increasing vacancy in the Island's stock of light industrial and warehouse/distribution premises.
52. Taking all these factors into account, the Tribunal's conclusion on the first issue is that the loss of a proportion of the floor-space within the appeal building resulting from the proposed development would not cause material harm to the Island's stock of industrial accommodation such as to undermine the underlying objectives of Policy EMP9 of the Urban Area Plan, or the equivalent provisions in the Outline Planning Brief.
53. A grant of planning permission in these circumstances, subject to other policy requirements being satisfied, could in the Tribunal's view be granted as a minor exception to Policy EMP9 in accordance with Section 12(2) of the Land Planning (General Provisions) Ordinance, 2007, on the basis that the standard of accommodation and level of demand raise very serious doubts about the suitability of the entire building for continued industrial use.

Second Issue Potential Harm to the Vitality and Viability and Attractiveness of the Retail and Commercial Centre of the Bridge

Policy considerations

54. The appeal building lies within the defined Central Area at The Bridge, where Urban Area Plan Policies CEN1 and CEN2 are relevant. It is also within a Mixed Use Redevelopment Area, where Policy CEN3 applies.
55. Policy CEN1 deals specifically with new shopping facilities in the Central Areas of Town and The Bridge, the boundaries of which are defined on the published map that is an integral part of the Urban Area Plan. The Central Area of the Bridge is extensive, stretching from Lowlands Road to the west, Route du Braye to the north, Nocq Road, Roland Road, Brock Road and Church Road to the south, and the Vale Avenue properties to the east. It also includes the commercial/industrial properties on the north side of St Sampsons Harbour. The Area contains a diverse mixture of land uses, including commercial, industrial, retail and

residential properties, and includes the large area centred on Leale's Yard which is awaiting redevelopment. The retail centre of The Bridge is not specifically defined in the relevant policy documents.

56. Policy CEN1 states:

On land within or immediately adjoining the Central Areas of Town and the Bridge, new retail development will only be permitted where the proposals:

- a) are satisfactorily located in relation to the character of the area and neighbouring properties;*
- b) make appropriate provision for access, car parking and servicing, and*
- c) are in conformity with other policies and proposals of the Plan.*

57. The explanatory text states that:

"The Bridge has a strong, individual identity influenced by the absence of "high street" stores and the range of small specialist traders. The centre has the potential to benefit from additional trade from the new marina. Redevelopment of Leale's Yard will be a major opportunity to create new retail facilities and increase the number of residents in the area". It goes on to say: "In order to ensure that Town and The Bridge continue to provide attractive and convenient shopping facilities for all the community, the policies for new retail development have the broad thrust of improving shopping facilities whilst at the same time concentrating development in and around the existing centres. New retail development needs to be carefully integrated within centres to help maintain and enhance their role".

58. As the appeal building lies within the defined boundary of the Central Area at The Bridge, it is the Tribunal's view that in principle, the use of the building for retail purposes is not ruled out by Policy CEN1, provided that it is satisfactorily located and carefully integrated, and conforms with other Plan policies.

59. Although Policy CEN2 deals with new retail development outside the Central Areas, it provides useful context in this case. The introductory text states:

"Retailing is dynamic and evolving, its requirements may change over time. The public can often benefit from a widening choice of shopping facilities and increased competition. Certain retail developments, however, may not be easily accommodated in or adjoining the established centres e.g. supermarkets, DIY and garden stores".

60. The text continues,

"To meet these needs, provision will be made for major new retail developments as part of the mixed-use Redevelopment proposals for Le Bouet (Admiral Park) and Leale's Yard. However, pending the completion of an Island Retail Strategy, there is lack of evidence to demonstrate that any further general provision for out of town retail developments could be accommodated without seriously undermining the future vitality and viability of the centres".

61. Policy CEN2 itself states:

"Within the Mixed Use Redevelopment Areas at Le Bouet (Admiral Park) and Leale's Yard provision will be made, in accordance with an Outline Planning Brief, for new retail development of a type, form and location that is likely to complement the viability and

attractiveness of the existing centres. The provision generally of further new retail redevelopments on sites away from the Central Areas of Town and The Bridge will be resisted”.

62. Having carefully assessed Policy CEN2 and its associated text, the Tribunal can find nothing that would preclude the principle of retail development within the appeal building, given its location within the Central Area of The Bridge. The detailed requirements of Policy CEN1 would need to be satisfied however, as well as the relevant requirements of the Outline Planning Brief.

The Mixed Use Redevelopment Area

63. The Mixed Use Redevelopment Area, or MURA, at Leale’s Yard, follows the boundary of the defined Central Area, except for the northern and southern extensions around the harbour edges, which are excluded. The appeal building therefore lies in the heart of this area. Policy CEN3 states:

“The Environment Department will support proposals to introduce a mix of appropriate uses including shopping, leisure, recreation, entertainment, service, employment, educational, institutional, medical healthcare, housing community and other activities, which contribute to the vitality and viability of the Central areas in ways that are compatible with the amenity of surrounding areas”.

64. The explanatory text to Policy CEN3 advises that proposals for development of more than 2000m² will require the preparation of a Development Brief; the Leale’s Yard Mixed Use Redevelopment Area Outline Planning Brief (OPB) fulfilled this requirement. Following public consultation, the OPB was adopted by the States in November 2004 and will remain in force until November 2014. The OPB has equivalent status to the Urban Area Plan.

The Outline Planning Brief

65. Located within the OPB boundary and set behind properties that front the thoroughfare known as The Bridge lies an area described as the Main Development Site. This coincides with a tract of land in the ownership of the Channel Islands Co-operative Society Limited. This land is partly vacant and run down. This site extends westwards from the rear of properties situated on The Bridge to Lowlands Road. The stated key objectives of the OPB, outlined on page 1, are to:

- Create a linked and integrated extension to the commercial centre of The Bridge comprising retail, commercial, housing and other uses
- Generally provide for a substantial amount of new homes of mixed tenure
- Increase the permeability of the area
- Create an attractive place with a strong identity and a critical mass.

66. One of the difficulties that the Tribunal has encountered in this case is the ambiguity in the interpretation of the term “The Bridge” as this clearly means different things to different people. “The Bridge” can mean the thoroughfare along the western edge of the harbour, or the wider collection of retail and commercial premises concentrated around the harbour, or the entire urban centre, which is given a similar status as St Peter Port in planning policy terms. This phrase is not properly defined in the OPB, making precise interpretation difficult. The Tribunal has considered carefully whether the key objectives of the OPB can be interpreted to mean that new retail development **must** be located in close proximity to the

existing, traditional retail premises that are concentrated around the road frontages of The Bridge, North Quay and South Quay. The Tribunal can find no such intention expressed in the text, and assumes that if this had been an explicit aim of the OPB then it would have been specified.

67. The Tribunal acknowledges that an unstated premise of the OPB might be that the Lowlands Industrial Estate could not be a suitable location for retail activity, given the stated presumption against change of use in Policy EMP9. However, the diversification of land use within the Lowlands Estate was already apparent when the OPB was being formulated, and it is reasonable to expect that if retail uses in this area were considered untenable for strategic, locational or other reasons, then these concerns would have been clearly expressed in the Brief.

68. The Brief emphasises the approach that will be adopted, stating:

“The OPB takes a pragmatic approach and focuses particularly on the part of the MURA with the greatest development potential, referred to within this brief as the Main Development Site. Notwithstanding this, however, the development principles set out within this OPB will apply to all development proposals within the OPB boundary”.

69. The Tribunal considers the first part of this statement to be significant, as it indicates that the main focus of the guidance within the OPB is the Main Development Site, and it is clear to the Tribunal that issues arising from potential development elsewhere in the MURA have been given relatively little consideration.

70. In respect of the second part of the statement, Mr. Ferbrache, for the appellant company, argued that the Department had given insufficient weight to the permissive nature of the OPB guidelines in relation to proposals outside the Main Development Site.

71. In relation to such sites outside the Main Development Site, further advice is given in Part Two of the Brief, the subject of which is Development Guidelines. Here it is stated, under Section 6:

“Minor development on existing sites within the MURA can be progressed independently provided that the proposals comply with the overall intentions of this OPB. Applications for individual projects will only be permitted where, in the opinion of the Environment Department, they can be carried out in a satisfactory manner and where development in isolation is unlikely to inhibit the implementation of the OPB or prejudice a comprehensive scheme for the area”.

72. Development Principles are set out at the foot of page 8 of the OPB, and these are listed as follows:

- All development proposals should reinforce the area as the mixed-use second town within Guernsey. The Bridge and the harbour are the two important local strengths.
- Development is initially likely to focus on the large site to the south of the MURA (Leale’s Yard) stretching between The Bridge and Lowlands Road.
- All development proposals should demonstrate their commitment to high quality urban design and architectural quality.

- Further development within the MURA should reinforce and extend the overall objectives of the framework and seek to introduce a high quality of townscape and urban design into the proposals. Vertical mixing of uses will allow the area to be intensified.
 - The MURA contains a wide range of uses, from light industrial, to employment, to retail, to housing. This is one of the strengths of the area and the principle of a wide range of uses should be continued in any new development that takes place, particularly to introduce housing uses and retain employment where appropriate.
73. The Tribunal notes that in several of the sketch plans within the OPB emphasis is given to the potential for future pedestrian connection and limited vehicular connection between the northern edge of the Main Development Site and the appeal site, which share a common boundary. The importance of these connections is emphasised by the Environment Department in its evidence in this appeal. Two such connections are indicated, one linking the Main Development Site to the main vehicular thoroughfare within the Lowlands Estate, the other being a primarily pedestrian access through and within the curtilage of the Newlands Building, on its western side.
74. In the Tribunal's view a significant factor in this case is that whilst the OPB envisaged the early development of the Leale's Yard, followed by development elsewhere, these expectations have not been borne out. The Brief takes no account of the possibility of development on peripheral sites occurring ahead of the development of Leale's Yard, and before the infrastructure of pedestrian routes had been put in place.

Planning permission for the Leale's Yard development

75. Planning permission in principle was granted for development of the Leale's Yard site in February 2011. Application for the approval of reserved matters was to be made by February 2013. The scheme envisages retail development on two levels in the heart of the Main Development Site disposed in four blocks around a central open space, set over a basement car park. There would be residential development at third floor level and on some of the block edges. One service route would be provided along the northern edge of the site accessed from The Bridge, with a second service route from Nocq Road to the south. Pedestrian connections are shown along existing routes to The Bridge, to Commercial Road, Nocq Road and Lowlands Road. The impermeable boundary to the north, separating the site from the Lowlands Road Industrial Estate, remains unchanged.
76. It is clear to the Tribunal on examination of the approved plans that notwithstanding the stated objectives within the OPB regarding the importance of improved permeability within the wider area and integration with the commercial centre, which the Tribunal takes to include the Lowlands Estate, no explicit provision is made in the proposed development for improved permeability or integration between the Main Development Site and the established commercial activities to the north. A new petrol filling station is located immediately to the south-west of the appeal building, turning its back on the Lowlands Estate and reinforcing the barrier that separates the Estate from Leale's Yard.
77. The north-south spine road serving the Lowlands Estate, which was seen in the OPB as a potential means of vehicular access into the Leale's Yard development, remains closed off, with no prospect of a future vehicular or pedestrian connection being made. The view southwards through the Lowlands Estate is terminated by the back of the Co-op store and a covered unloading area.

78. The only potential point where a pedestrian linkage might be created, as indicated in the OPB, would involve crossing the new primary vehicular circulation route on the northern edge of the development. This route would serve the main car park, the filling station, and the northern retail service zones. It is evident to the Tribunal that whilst a pedestrian connection remains possible between the Leale's Yard scheme and the Lowlands Estate should the approved scheme be built, the urban design quality of this linkage would be compromised by its intended physical context, which is designed to accommodate intensive servicing and vehicular activities.
79. The more general conclusion drawn by the Tribunal is that in granting permission for the Leale's Yard development in the form proposed, the Department has signaled that the aims of physical integration and permeability with sites to the north that are key objectives of the OPB have been downgraded and have simply not been fulfilled. It is the Tribunal's view that in the interests of consistency, the assessment of the appeal proposal should be made with the same interpretation of these OPB objectives in mind.

The challenges in securing pedestrian connectivity

80. The Tribunal perceives that the two key challenges in delivering better integration and permeability within the MURA are, first, that different land ownerships are involved, and, second, development at Leale's Yard and other sites elsewhere are unlikely to occur simultaneously. It is self-evident that development on the site of the Newlands Building cannot make beneficial pedestrian connections with established retail activities to the south while the Leale's Yard site remains undeveloped – there is neither the means nor the motivation for Walter Property Limited to provide such pedestrian linkages. It is unrealistic to expect such objectives to be delivered until the Leale's Yard development is built, and the Department clearly has a key role in ensuring that these strategic objectives are at the forefront of planning negotiations on individual sites, such that development proposals conform to the wider aims of the OPB.
81. The Tribunal heard uncontested evidence from Mr. Ozanne during the Hearing that the Leale's Yard development is unlikely to be constructed in the form that has recently been approved, and it could be some years before a revised proposal has been prepared, agreed and constructed. In these circumstances it seems unreasonable to the Tribunal that the appeal proposal should be resisted on the basis that there is a lack of pedestrian connection to other current and proposed retail activity at the Bridge. The best that the appellant company can realistically achieve in these circumstances is to anticipate and plan for such pedestrian connection being made in the future, and to do nothing that might inhibit the eventual delivery of these facilities.
82. The Tribunal raised the practicability of pedestrian links with the appellant company during the Hearing, asking why no provision had been made for this on the submitted drawings. Mr. Ozanne conceded that whilst no specific provision had been shown it would not be difficult to provide for a connection through the southern boundary to the Bridge into the site of the Leale's Yard Development. He advised that discussion on this matter was under way with the advisors for the Leale's Yard scheme.
83. In the light of the above considerations, the Tribunal concluded that the Department's objection to the appeal proposal on the grounds of lack of pedestrian connection does not provide a sound basis for refusal, given that the potential remains to secure such pedestrian connection in due time, when the Leale's Yard scheme is implemented. This is a matter that could be controlled by the imposition of a planning condition.

Potential detriment to the existing centre

84. The Department's other objection to the development, in combination with concerns about a lack of pedestrian connection, is that,

"... the form of retail proposed, with a car borne customer base, will be to the detriment of the of the viability and vitality of the existing centre."

85. In formulating the above objection, the Department gave considerable weight to the written representation that had been made by the Commerce and Employment Department in its letter dated 15th June 2012. This letter made six points, as follows:

86. First, after quoting one of the key objectives of the OPB, it is stated that,

"The Newlands Building is not part of the Main Development Site and is effectively isolated from The Bridge with no direct access either by vehicle or on foot."

87. It is the Tribunal's view that the fact that the Newlands Building is not within the Main Development Site does not in itself give rise to any presumption against development. The Newlands Building is in a relatively central location within the MURA boundary where minor development on existing sites might be progressed independently. In stating that the Newlands Building is effectively isolated from The Bridge, it appears that the Commerce and Employment Department is interpreting "The Bridge" as being synonymous with the block of retail properties which lie on the thoroughfare of that name next to the harbour, whereas the OPB is clearly written with the entire MURA in mind, the extent of which is defined on page 4 of the Brief. The lack of pedestrian connection to the retail frontage on The Bridge thoroughfare is largely due to the fact that the Leale's Yard development is not yet implemented, and the potential remains to make the necessary pedestrian linkage. During the Hearing, the appellant company confirmed its commitment to achieving this connection.

88. The Commerce and Employment Department's second key point is that,

"... the application indicates an expectation for weekly or twice weekly shopping using a vehicle. There would be very little if any incentive for customers to integrate this activity with shopping at The Bridge itself..."

89. Whilst the Department provides no evidence to support this assertion, it is clear to the Tribunal that until a direct pedestrian connection from the appeal building into Leale's Yard and the premises beyond is in place, shoppers at the proposed Iceland store would have little encouragement to walk to the retail and other commercial premises around the harbour because of the distances involved. If and when this pedestrian connection is made, any such discouragement would disappear. Notwithstanding these considerations, the Tribunal considers that there would be nothing to prevent customers from combining their shopping trip to Iceland with visits to other premises within the wider area around the Bridge, doing so by car rather than on foot.

90. The Department's third point is that,

"... although there are retail facilities in other parts of the Estate, these are for comparison and not convenience shopping. The installation of a convenience store in this location would be likely to create significant increases in traffic volumes which would be to the detriment of other businesses on the estate, and place additional pressure on the main access point."

91. In respect of the nature of the other three retail premises within the Estate, the Environment Department confirmed during the Hearing that any distinction that is made between convenience and comparison retail is not reflected in the Land Planning and Development (Use Classes) Ordinance, 2007. Any or all of the existing retail outlets at the Homemaker or Intersport premises could therefore be operated as food retail outlets without the need to obtain planning permission for a change of use.
92. In relation to the fourth point, involving fears about increased traffic flows, the Tribunal notes that the Environment Department has no concerns on this matter, a conclusion with which it concurs.
93. The Commerce and Employment Department's fifth point is,
- "As a minimal conversion of a building of a clear industrial character, the proposal would do nothing to create an attractive retail area within the MURA and thereby assist in the revitalisation of the Bridge as a Commercial Centre."*
94. The Tribunal does not agree with this assertion of the Commerce and Employment Department because it fails to reflect the full range of objectives and aspirations that are expressed in the OPB in relation to The Bridge as a whole. In terms of the OPB, the MURA encompasses the Lowlands Industrial Estate, and given the difficulty that has been experienced in letting the Newlands Building for industrial use, the Tribunal considers that the use of part of the building for retail purposes would help regenerate the building, would stimulate activity within the Estate, and lead to an improvement in the appearance of the building and its external environment. These are all benefits which the Tribunal considers would contribute to the revitalisation of the MURA as a whole.
95. Finally, the Commerce and Employment Department states,
- "The Roger Tym report did not identify any need for additional convenience retail space in the Island and as there are already two Iceland stores in the Island, the new store would not increase the range of goods that are currently available."*
96. The Report in question, entitled the Guernsey Retail Study, was commissioned by the Commerce and Employment Department and completed in April 2010. It makes a further point that the requirement for additional convenience retail up to 2020 will be met by the Leale's Yard development. The Tribunal notes that this report has not been adopted by the Environment Department as supplementary planning guidance and has accordingly given limited weight to its conclusions in reaching a decision in this case. A relevant consideration here is that there is general agreement between the parties to this appeal and their advisors that the Leale's Yard development is unlikely to be completed for some years, by which time the future requirements for retail space will have been reassessed as part of the current review of the Development Plan.
97. The fact that there are two other Iceland stores in the Island is not a significant factor in the Tribunal's assessment. If permission were to be given in this case it will be for retail use, and will not be restricted to a specific operator.
98. The Tribunal is aware that Iceland, the named retailer in this case, is one of a number of retail food outlets that encourage bulk shopping and accordingly rely on the majority of their customers arriving by car. The adequacy of the car parking provision within the appeal site is not in dispute.

99. It seems to the Tribunal that the retail premises within the Leale's Yard scheme are likely to be different in character from the proposed retail use in the Newlands Building, given the different nature of the surroundings. For this reason the potential presence of an Iceland store on the neighbouring site seems unlikely to the Tribunal to in any way prejudice the viability or attractiveness of the Leale's Yard retail premises. The Tribunal notes that the developer of the Leale's Yard scheme has raised no objection to the appeal proposal.
100. It seems to the Tribunal that once the Leale's Yard development is in place and pedestrian links are made connecting the appeal site to the Bridge via Leale's Yard, then there is the potential for visitors to Leale's Yard to migrate to the other facilities within the Lowlands Estate, and, conversely, for visitors to the Lowlands Estate to walk south to Leale's Yard and to other retail premises around the harbour. In this regard the Tribunal considers that the appeal proposal has the potential to assist in the realisation of the OPB objectives, rather than obstruct them.
101. Having carefully considered the objections to the proposal expressed by the C&E Department and the Environment Department, the Tribunal does not find these so compelling as to raise conflict with Policies CEN1 or CEN3 of the Urban Area Plan. In the language of Section 6 of the OPB, the Tribunal can find no reason to believe that the appeal proposal,

"... could not be carried out in a satisfactory manner or would be likely to inhibit the implementation of the OPB or prejudice a comprehensive scheme for the area".

Conclusion

102. For the above reasons, the Tribunal upholds the appeal and grants permission as a minor departure to Policy EMP9 of the adopted Urban Area Plan. The Tribunal has considered all other matters raised in the written submissions, during the Hearing and at its site visit, including the proximity of a small Conservation Area to the east of the appeal building, but these do not affect its conclusion under the provisions of Part V1 Section 69 of The Land Planning and Development (Guernsey) Law, 2005, that this appeal is upheld. Planning permission is accordingly granted on the following terms:

PROPOSAL: Change of use of part of the ground floor to Retail Use Class 14 and ancillary storage, the installation of signs (south and west elevations) and replacement doors, ramps and railings (west elevation).

LOCATION: The Newlands Building, Lowlands Industrial Estate, Route du Braye, Vale.

APPLICANT: Walter Property Limited

This permission is granted under the terms of Sections 68 and 69 of the Land Planning and Development (Guernsey) Law, 2005.

This permission refers solely to the proposals referred to above and as described in the planning application validated by the Department on 30th April 2012, Ref FULL/2012/1307.

This permission is subject to the following conditions:

1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Environment Department under the Law.

Reason To ensure that it is clear that permission is only granted for the development to which the application relates.
2. The development hereby permitted shall be begun within 3 years from the date of grant of this permission.

Reason This condition reflects Section 18(1) of the Land Planning and Development (Guernsey) Law, 2005 which states that planning permission ceases to have effect unless development is commenced within 3 years of the date of grant (or such shorter period as may be specified in the permission).
3. The development hereby permitted and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of the Building Regulations, 1992, (as amended) as are applicable to them, and no operation to which such a requirement applies may be commenced or continued unless (i) plans relating to that operation have been approved by the Environment Department and (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Environment Department when approving those plans, for the purpose of securing that the Building Regulations are complied with.

Reason Any planning permission granted under the Law is subject to this condition as stated in Section 17(2) of the Land Planning and Development (Guernsey) Law, 2005.
4. The signs hereby approved shall not be illuminated by internal or external means at any time.

Reason In the interests of visual amenity.
5. No development shall take place until there has been submitted to and approved by the Department a scheme for the landscaping of the site.

Reason In the interests of delivering the design principle relating to high quality urban design that is stated within the Outline Planning Brief for the Leale's Yard Mixed Use Redevelopment Area.
6. No works shall be undertaken within the external areas of the site to the south of the building which would preclude at some future date the creation of a pedestrian connection with the development site to the south.

Reason In the interests of fulfilling the objectives relating to integration and permeability that are stated within the Outline Planning Brief for the Leale's Yard Mixed Use Redevelopment Area.

Stuart Fell DipArch RIBA IHBC
Presiding Member
Date: 31st January 2013