

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005
AND THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS)
ORDINANCE, 2007

STATEMENT OF REASONS FOR DECISION TO APPROVE THE
APPLICATION AS A MINOR DEPARTURE FROM THE RURAL AREA PLAN

Application Ref: FULL/2014/2592
Property Ref: J003350000

PROPOSALS: Change of use from hotel to dementia care home.
LOCATION: Green Acres Hotel, Les Hubits, St. Martin.
APPLICANT: Greenacres Property Ltd

Minor departure

The agent for the application had requested consideration of the proposal as a minor departure from the Rural Area Plan, under section 12(2) of the Land Planning and Development (General Provisions) Ordinance, 2007.

In the circumstances of this case, taking the Rural Area Plan, its policies and intentions as a whole, and having regard to the particular circumstances of the proposal for a dementia care home, the Board departed from the officer recommendation to refuse the application set out in the planning application report and accepted that the change of use of this hotel can be treated as a minor departure from the Rural Area Plan under section 12(2) of the Land Planning and Development (General Provisions) Ordinance, 2007 for the reasons set out below.

Main issues

The main issues in this case were:

- (a) Having regard to Policy RE12 -
 - A. Whether the proposed development would prejudice the retention of an adequate stock of visitor accommodation across the Island;
 - B. Whether the premises provide a satisfactory standard of accommodation and facilities;
 - C. Whether the premises are incapable of being upgraded or otherwise adapted to a satisfactory standard or changed to an alternative visitor accommodation use at reasonable expense;

- D. Whether the premises are viable as an hotel, or could readily be made so;
- E. whether the premises are 'former visitor accommodation'; and

(b) Having regard to Policy RS1(b) whether there is a need for a home of this type.

Policy RE12

The change of use or redevelopment of visitor accommodation to other uses will only be permitted where it would not prejudice the retention of an adequate stock of visitor accommodation across the Island and where:

a) the existing premises provide an unsatisfactory standard of accommodation and facilities and are incapable of being upgraded or otherwise adapted to a satisfactory standard or, changed to an alternative visitor accommodation use at reasonable expense, having regard to the location, immediate surroundings and size of the establishment; or

b) the premises are currently of an inappropriate size for a modern, viable operation and are not readily capable of being suitably adapted or re-sized.

Where a residential use is proposed, a satisfactory living environment and standard of accommodation must be provided including satisfactory levels of amenity, servicing and parking provision appropriate to the type of accommodation being created and its location.

Proposals for the re-use or redevelopment of former visitor accommodation for housing purposes comprising sheltered accommodation, residential or nursing homes or staff hostels will generally be supported.

Prejudice to the retention of an adequate stock of visitor accommodation across the Island;

The Board concluded on the basis of the evidence available to it, including in particular that offered by the Commerce and Employment Department, that a compelling case had not been made that the change of use of this hotel would prejudice the retention of an adequate stock of visitor accommodation across the Island. In this respect, the Board noted and gave weight to the fact that the average annual room occupancy level for the serviced accommodation sector, based on year round occupancy, was around 57% which is significantly lower than the 65% minimum occupancy rate objective set out in the supporting text to Policy RE12 as that which the Commerce and Employment Department considers is necessary to sustain a viable sector.

The existing premises provide an unsatisfactory standard of accommodation and facilities and are incapable of being upgraded or otherwise adapted to a satisfactory standard or, changed to an alternative visitor accommodation use at reasonable expense, having regard to the location, immediate surroundings and size of the establishment;

The Board was satisfied on the basis of the evidence available to it including submissions received from the applicant and from the Commerce and Employment Department and having regard to its own visit to the site, that the existing premises provide an unsatisfactory standard of accommodation as it required refurbishment for return to use as an hotel. The key question in determination of this application was thus whether the premises are incapable of being upgraded or otherwise adapted to a satisfactory standard or, changed to an alternative visitor accommodation use at reasonable expense, having regard to the location, immediate surroundings and size of the establishment.

In considering the issue of reasonable expense, the Board noted the figures quoted by the applicant for refurbishment of the premises to upgrade it to a satisfactory standard, amounting to some £3.3 million. This figure was not disputed by the Commerce and Employment Department. On the basis of these figures, and discounting any purchase costs/valuation of the property for the purposes of sale, the applicant had showed that operation of the hotel once refurbished would have generated a profit. However, the operational profit generated would have been small and it was not possible to say with any certainty, on the basis of the information available, that the resulting use would have been viable as a going concern.

The Board also noted that whilst the applicant had not considered in any detail other alternative options within the visitor accommodation sector such as self-catering use, such alternative uses would have been likely to require similar or greater investment than the £3.3 million for refurbishment as an hotel.

The Board also considered the case of St Martins Hotel which had been raised by the applicant as comparable to Greenacres. The sites are less than 200 metres apart and could therefore reasonably be considered as being within a similar location. Planning permission for change of use of St Martins Hotel was granted in June 2007. Whilst noting that each application must be considered on its own merits having regard to the particular facts of the case, the Board noted that in that case, having consulted with the Commerce and Employment Department, the Environment Department had accepted that the condition and quality of the buildings, requiring £7m for refurbishment or £12m for redevelopment, and the attractive but unexceptional quality of the immediate surroundings meant that change of use could be granted under Policy RE12. The Board considered that in the case of Greenacres, the quality of the immediate surroundings could be similarly described as attractive but unexceptional.

The premises are currently of an inappropriate size for a modern, viable operation and are not readily capable of being suitably adapted or re-sized.

The size of the establishment was also considered in relation to this criterion (subsection (b) of Policy RE12) which sets out an alternative test to those considered above under subsection (a) of Policy RE12. The Board concluded on the basis of the evidence available including submissions received from the applicant and from the Commerce and Employment Department and having regard to its own visit to the site that the premises, all other things being equal, are of an appropriate size for a modern, viable operation, being at the upper end of medium size hotels on the Island. With regard to potential for adaptation or re-sizing, however, the Board accepted that potential for future development beyond the existing site would in practice be likely to be constrained by the landscape character and agricultural use of the land adjoining the site.

Conclusion on RE12

The Board concluded, taking the above factors into account, that although the proposal did not entirely satisfy Policy RE12 with particular regard to proving non-viability, the proposal complied with all of the other criteria of Policy RE12 with which it had to comply and would therefore involve only a minor departure from the Rural Area Plan (Review No 1) in accordance with section 12(2) of the Land Planning and Development (General Provisions) Ordinance, 2007.

Precedent effect

The Board also considered the issue of the precedent effect of any decision to grant change of use in this case, as it is entitled to do having regard to the Royal Court's judgment in Grand Havre Holdings v Minister of the Environment Department, Royal Court Judgment 65/2005 (Civil action file 919) - 11th November, 2005. This decision confirmed that the Department is entitled to take account of the consequences of its decision, namely it can consider whether a decision to approve change of use of visitor accommodation would set a precedent that would affect future applications for change of use of visitor accommodation. However, having particular regard to the specific circumstances of this proposal and that, aside from the precedent effect, each application must be considered on its own merits having regard to the relevant facts of the case, the Board did not consider that the possible precedent effect would be so great as to outweigh its conclusion under Policy RE12 as set out above.

Policy RS1

Policy RS1 b) provides,

- b) Proposals for new community facilities will only be permitted where:*
- i) they meet an acknowledged demand and cannot practicably be located within the urban area owing to particular operational or locational requirements;*

- ii) it can be clearly demonstrated that they would help sustain a Rural Centre or would make a significant contribution to the social well-being or economy of the Island community; and,*
- iii) the site is not within an Area of High Landscape Quality unless the provisions of Policy RCE14 can be fully satisfied.*

They meet an acknowledged demand and cannot practicably be located within the urban area owing to particular operational or locational requirements;

The Board accepted on the basis of the evidence available to it, including that offered by the Health and Social Services Department both in writing and orally at the open planning meeting, that the proposal for a dementia care home would meet an acknowledged demand on the Island. Although it regarded it as arguable as to whether or not such provision could not practicably be located in the urban area owing to particular operational or locational requirements, the Board nevertheless concluded that the rural location proposed would bring benefits for the residents of such a home and also noted that the Planning Panel had previously granted planning permission at appeal for a residential care home at the former Manor Hotel site within the terms of Policy RS1. The current proposal was considered to be consistent in this regard with that previous decision of the Planning Panel and the Board considered, taking into account all these matters, that this criterion of Policy RS1(b) was either satisfied or that the proposal would only be a minor departure from RS1(b).

It can be clearly demonstrated that they would help sustain a Rural Centre or would make a significant contribution to the social well-being or economy of the Island community;

Whilst not accepting on the evidence provided to it that the proposed development would help sustain the Rural Centre of St. Martins, the Board accepted on the basis of the evidence available including that offered by the Health and Social Services Department both in writing and orally at the open planning meeting that the proposal for a dementia care home would make a significant contribution to the social well-being of the Island, in accordance with this criterion of Policy RS1(b).

Therefore, the proposed EMI dementia care use was important to the Board's conclusions on acknowledged demand and significant contribution in RS1(b).

The site is not within an Area of High Landscape Quality unless the provisions of Policy RCE14 can be fully satisfied.

The site is within an Area of High Landscape Quality; within such sites proposals must also satisfy the provisions of Policy RCE14 on conversions. The proposal satisfies the criteria of Policy RCE14 insofar as the building is considered to be of sound and substantial construction and is capable of conversion without extensive alteration, rebuilding or extension, the building can be said to make some positive contribution to the character of the rural environment, the proposed conversion can

be implemented without adversely affecting the character or appearance of the building, and the provision of curtilage, road access, driveways and parking, ancillary buildings and boundaries would not be anticipated to adversely affect the character of the building or its setting.

In respect of criterion (a) of Policy RCE14, which requires that it has been clearly demonstrated to the satisfaction of the Environment Department that the building is no longer useful, or capable of being used for its current or last known viable purpose or that more appropriate buildings are available to accommodate such use, the Board concluded that the issues raised by this criterion were similar to those engaged by Policy RE12 and that the Board's conclusion in respect of Policy RE12 applied equally to this criterion of Policy RCE14.

Overall conclusion

The Board was satisfied on the basis of the information provided to it, and taking the Rural Area Plan, its policies and intentions as a whole, that the specific use as a dementia care home as proposed would meet an acknowledged demand and make a significant contribution to the social well-being of the Island consistent with Policy RS1. Whilst not entirely satisfying Policy RE12 with particular regard to the failure of the application to prove non-viability and it being arguable, in relation to Policy RS1(b)(i) as to whether or not the proposal could be located in the urban area, the Board concluded that the proposal would, however, involve only a minor departure from the Rural Area Plan (Review No. 1) in accordance with section 12(2) of the Land Planning and Development (General Provisions) Ordinance, 2007 for the reasons given above.

Other material considerations

The Environment Board subsequently considered all other material considerations in accordance with s12(3) of the General Provisions Ordinance. The proposed development was considered to be acceptable having regard to the relevant matters to be considered under Section 13 of the Land Planning and Development (General Provisions) Ordinance, 2007. The Board noted that appropriate conditions could be attached to any grant of planning permission to ensure that a satisfactory form of development is achieved. The proposal would have no impact on protected buildings, trees or on SSS's.

Final decision to grant planning permission

Having taken into account the Rural Area Plan and all other material considerations under the Law, the Environment Department for the reasons contained within this statement resolved to grant planning permission, subject to conditions as set out in the Department's notification of decision on the application.