

STATES OF JERSEY



**REJECTION OF PLANNING
APPLICATION RELATING TO
RETREAT FARM, LA RUE DE LA
FRONTIÈRE, ST. MARY AND RUE DES
VARVOTS, ST. LAWRENCE:
RESCINDMENT OF MINISTERIAL
DECISION (P.100/2018)
AND AMENDMENT (P.100/2018 Amd.) –
COMMENTS**

**Presented to the States on 8th January 2019
by the Minister for the Environment**

STATES GREFFE

COMMENTS

Background

Ministerial Decision MD-PE-2018-0060 (**Appendix 1**) was made by the Minister for the Environment (“the Minister”) on 25th July 2018. The Minister, Deputy J.H. Young of St. Brelade, refused the 2 planning applications submitted for the Tamba Park site. The proposals (P/2017/1023 and P/2017/0805) were for a new 27-unit holiday village and a 4-bedroom house at Retreat Farm (Tamba Park) on land partly in St. Lawrence and partly in St. Mary.

The previous Minister, Deputy S.G. Luce of St. Martin, called a Public Inquiry into these applications, in accordance with Article 12 of the [Planning and Building \(Jersey\) Law 2002](#) because he said that, if approved, they would represent a significant departure from the Island Plan. A planning inspector was appointed and a public inquiry was held in February and March 2018.

The inspector issued 2 reports to the Minister. The first report identified several procedural difficulties with the application for the 27-unit holiday village, and said the application was not clear. Deputy Luce asked the applicant to clarify the proposals, which were then re-advertised, and further comments were invited.

The inspector was asked to produce a second report, with a recommendation on the merits and demerits of the proposals. In this report, the inspector recommended that the applications should be approved. He cited several pros and cons and considered that, on balance, the public interest planning gains were enough to overcome the concerns, including the fact that Tamba Park is in the Green Zone, where there is a general presumption against development.

The Minister did not agree with the inspector’s conclusion on the balance of the issues. The Minister concluded that the merits cited do not outweigh the very significant environmental effects of this application, and do not justify a significant departure from the Green Zone policy adopted by the States Assembly as part of the Island Plan. He decided that to approve the applications would set an undesirable precedent for the future.

Planning application, Public Inquiry process and key material considerations

The [proposition, as amended](#), is to request the Minister to rescind his decision to refuse planning permission. While the proposition refers to a planning application in the singular, there were actually 2 planning applications determined by Ministerial Decision MD-PE-2018-0060, as referred to in the **Background** section above.

This Ministerial Decision was made under Article 12 (Public Inquiries) of the [Planning and Building \(Jersey\) Law 2002](#) (“the Law”). Article 12(2)(a) of the Law requires the Minister, and only the Minister, to determine the application following a Public Inquiry. Once the Minister has made a determination under Article 12, he has performed the function and discharged the duty allocated to him (*functus officio*) and has no further status in the matter. The Law contains no power for the Minister to review or revoke his decision. Any such power would be contrary to the fundamental objective of providing certainty and finality for those affected by placing decisions made under the Law. Those

affected will not just be the applicant, but will be all the persons with rights who have participated in the public inquiry process.

The only way that his decision can be revisited is by the appropriate process under the Law. In respect of an Article 12 determination, that due process is an appeal brought by a person aggrieved under Article 12(6) of the Law, and the power of the Royal Court to quash or remit (wholly or in part) the determination of the Minister (Article 12(8)(a) and (b)).

An appeal to the Royal Court against the Minister's decision was brought by the applicant on 20th August 2018. The applicant withdrew the appeal by agreement with the Minister on 29th October 2018. The Minister agreed the withdrawal of the appeal with no costs order between the parties.

Planning precedent

The Deputy focuses on the issue of precedent in his report, in an attempt to highlight that the Ministerial decision was somehow flawed.

The Inspector himself raises the issue of precedent within his report (paragraph 54), and invites the Minister to consider the Jersey-wide implications of this decision. In making the decision, the Minister has done simply this, and has taken these wider implications into account.

The Minister in doing this has not erred in law or process, and has not gone beyond his remit.

Indeed, concern of creating a precedent from a decision, and the pressure that may follow, can be a planning material consideration.

Examples where this has been upheld in the English Courts include –

- *Collis Radio Ltd. v Secretary of State for the Environment* (1975) 29 P. & C.R. 390
- *Poundstretcher v Secretary of State for the Environment* [1989] J.P.L. 90
- *Rumsey v Secretary of State for the Environment, Transport and the Regions* (2001) 81 P. & C.R. 32.

The key issue of precedence is centred on consistency of decision-making – a matter highlighted by the planning inspector in his report (see **Appendix 2**). Whilst all planning applications do need to be taken on their individual merits, consistent decision-making or interpretation of policy in a certain way is important.

Conclusion

The Minister would urge the Assembly to take a straightforward position on this proposition.

- Firstly, it cannot be legally delivered by the Minister.
The Law contains no power for the Minister to review or revoke his decision and he therefore cannot undo his decision, as requested by the proposition.
- Secondly, it is based on a misapprehension that planning precedent cannot exist in decision-making. This again is not the case.
- Thirdly, there have been no errors in making this decision, and the correct way to quash planning decisions is to follow the appeal provision laid out in law via the Royal Court.

States Members are asked to reject the proposition.

Ministerial Decision MD-PE-2018-0060

Decision Reference: MD-PE-2018-0060		Application Numbers: P/2017/1023 and P/2017/0805	
Decision Summary Title:	Retreat Farm, La Rue de la Frontiere, St Mary and Rue des Varvots, St Lawrence	Date of Decision Summary:	25 July 2018
Decision Summary Author:	Senior Planner	Decision Summary: Public or Exempt?	Public
Type of Report: Oral or Written?	Oral	Person Giving Oral Report:	Director, Development Control
Written Report Title (File Name):	N/A	Date of Written Report:	N/A
Written Report Author:	N/A	Written Report : Public or Exempt?	N/A
<p>Subject: Retreat Farm, La Rue de la Frontiere, St Mary and Rue des Varvots, St Lawrence,</p> <p>P/2017/1023 Demolish glasshouse and ancillary structures in Field 770. Construct 13 No. two bed and 14 No. three bed self-catering accommodation units and ancillary structures with associated hard and soft landscaping. Change of use of resulting agricultural field to car park, including hardstanding and associated works. Widen La Rue de la Frontiere and alter vehicular access. Construct bus shelter and form footpath to South-West of site. Construct terraced seating area to North of existing café. 3D model available. AMENDED DESCRIPTION: Additional plans and documents received in support of submission and in response to representations received. AMENDED PLANS RECEIVED. Environmental Impact Statement (EIS) submitted. FURTHER AMENDED DESCRIPTION: Additional plans received in response to previous Department for Infrastructure highway comments. FURTHER AMENDED PLANS RECEIVED. FURTHER AMENDED DESCRIPTION: Secondary Tree Inspection Results Report received. FURTHER AMENDED DESCRIPTION FOLLOWING PUBLIC INQUIRY DEFERRAL: Demolish existing glasshouse and associated structures and hardstandings in field M770. Restoration of land to a condition suitable for agriculture. Creation of permeable surfaces and landscaping. Changes to existing means of access to La Rue de la Frontiere including road widening, creation of link footpath, 2 No. bus platforms and 1 No. shelter. Install pumping station and associated surface and foul water drainage. Erect 27 No. units for Class F (d) self-catering accommodation with 2 No. associated ancillary units for laundry and gym and 2 No. associated ancillary units for reception/ticket office and shop (and canopy) ancillary to Tamba Park leisure facility with associated bases. Use of land for mixed use for a) car parking associated with Tamba Park; b) reception/ticket office and shop facilities with office for leisure and</p>			

tourism and c) Class F (d) self-catering use with associated car parking. SUBMITTED PLANS CLARIFIED FOLLOWING PUBLIC INQUIRY.

P/2017/0805

Demolish glasshouses to field No. L78. Alter vehicular access onto La Rue de la Frontiere. Construct 1 No. four bedroom single storey house, detached three car garage and swimming pool to car park south of Field No. L78 with associated landscaping and parking. 3D MODEL AVAILABLE. AMENDED DESCRIPTION: Additional plans and documents received in support of submission and in response to representations received. AMENDED PLANS RECEIVED. FURTHER AMENDED DESCRIPTION: Refined red line application site. FURTHER AMENDED PLANS RECEIVED.

Decision:

A Public Inquiry was held into these two linked applications with arguments made in writing and at the hearing, in favour and against. The planning inspector's initial report raised several procedural difficulties with the application P/2017/1023. To enable him to assess the planning merits, both positive and negative, and to decide the 2 applications, the previous Minister asked the applicant to address these matters, after which the application P/2017/1023 was re-advertised to allow for further public comments. The inspector was asked to then complete his assessment of the two applications.

The Inspector considered, on balance, that permission should be granted. He cited both benefits and disbenefits of the proposals and considered that the public interest planning gains were sufficient to overcome the concerns, and the normal presumption against development in the Green Zone.

The Minister does not agree with this view. The presumption against development in the Green Zone, in line with the Island Plan's Spatial Strategy, is a fundamental cornerstone of the Island Plan, and only in exceptional circumstances should departures from this policy be allowed. Whilst policy EVE 1 allows for new tourism accommodation in the designated Built Up Area, and policy NE 7 allows in principle for the redevelopment of existing tourist accommodation, neither of these policies encourage the development of new tourist accommodation in the Green Zone. The Spatial Strategy seeks to direct development into the designated Built Up Area, not to the countryside, and policies ERE 7 and NE7 set a presumption against the redevelopment of agricultural glasshouses.

Whilst some environmental gains, and other benefits, would be achieved, the negative impacts of the scheme including what is described as its "essentially urban character", would be substantial. The result is significant harm to the landscape character.

The Minister has weighed up the benefits and disbenefits of the schemes, and concluded that the scheme does not justify what would be a significant departure from Island Plan Policy, which would also set a precedent for the redevelopment of other glasshouse sites and an expectation that these can be replaced with major new development in the countryside.

The Minister also concludes that a convincing case has not been made to prove that the existing buildings cannot be reused either for another agricultural purpose or for another employment use, rather than redeveloped.

The dwelling proposed in application P/2017/0805, would replace the existing car park and an existing glasshouse. The original permission for the glasshouse does however require it to be removed should it fall into disuse or disrepair. In addition, the application is linked to application P/2017/1023, as it relies upon the creation of a new car park to compensate for the loss of that existing. In the absence of that, if application P/2017/0805 was approved and implemented, it would leave a shortfall of customer parking.

Reasons for Decision:

P/2017/1023

1. The proposed new development would be located within the Green Zone where there is a general presumption against all forms of development for whatever purpose including the redevelopment of glasshouses. Given the scale and nature of development proposed including the extent of proposed car parking required, it is considered that the development will result in serious harm to the character of the area. Neither the environmental enhancements proposed nor the tourism benefits submitted are considered adequate to overcome this serious harm to landscape character and it is not considered that there is sufficient justification to make an exception to the presumption against development in the Green Zone. The proposal therefore fails to satisfy Policies SP 1; SP 3; SP 4; SP 6; GD 1; GD 7; EVE 1; ERE 7 and NE 7 of the Adopted Island Plan 2011 (Revised 2014) and its approval would set a precedent for other developments of glasshouses which fail to satisfy these policies.
2. The provision of additional tourism accommodation development in this location which is situated outside the Built-up Area as defined on the Adopted 2011 Island Plan Zoning Map (Revised 2014), would be contrary to the aims of Policy SP 1 of the Plan which seeks to provide appropriate development in sustainable locations.
3. Inconclusive justification has been provided to demonstrate that the site is not suitable for re-use rather than re-development, either through the retention of the site in its current use, or for alternative employment uses. It is therefore considered that the scheme fails to satisfy the requirements of Policies GD 1(a) and ERE 7 of the Adopted Island Plan 2011 (Revised 2014).
4. Sufficient justification to warrant a substantial and significant departure from the Island Plan has not been demonstrated.

P/2017/0805

1. The proposed development would be located within the Green Zone where there is a general presumption against all forms of development for whatever purpose including the construction of new dwellings and the redevelopment of glasshouses. Given the scale and nature of development proposed, it is considered that the development will result in serious harm to the character of the area. It is not considered that the environmental enhancements proposed overcome this serious harm to landscape character and it is not considered that there is sufficient justification to make an exception to the presumption against development in the Green Zone. The proposal therefore fails to satisfy Policies SP 1; SP 3; SP 4; SP 6; GD 1; ERE 7 and NE 7 of the Adopted Island Plan 2011 (Revised 2014) and its

approval would set a precedent for other developments of glasshouses which fail to satisfy these policies.

2. The development of a new dwelling on the existing Tamba Park car parking area off La Rue des Varvots, is an essential component of the proposed holiday village development under P/2017/1023, which seeks to create a new larger car parking area off La Rue de la Frontiere to serve the whole Tamba Park site. As a consequence of the refusal of planning permission for the holiday village, the erection of a new dwelling in isolation cannot be supported as this would result an unacceptable shortfall in car parking requirements, contrary to the requirements of Policy GD 1 of the Adopted Island Plan 2011 (Revised 2014).

Resource Implications: None

Action required: Notify Agent, Applicant and all other interested parties

Signature:
Deputy John Young

Position:
Minister for the Environment

Date Signed:
25 July 2018

Date of Decision *(If different from Date Signed):*

Paragraphs 52–54 from the Inspector’s Report dated 26th May 2018

“ **Precedent and Other Glasshouse Sites**

52. Several local residents have mentioned the issue of precedent in their objections. I share their concern.
53. Planning decisions are often quoted as a precedent, and even though the detail of each case is rarely identical, there is a need for reasonable consistency in decisions. As you will know, there are large areas of disused glasshouses in Jersey, some of which are dilapidated. In a situation where the governing authority has apparently been unwilling to use its available powers to require the removal of redundant and derelict glasshouses, there is a danger that permitting these proposals in the Green Zone could increase pressure for other urban-type development in the countryside, based on the argument that there is no other way of getting redundant eyesore structures removed. The contentions about benefits to the tourism industry and other “planning gains” are the sort of arguments likely to be repeated.
54. The evidence presented for these applications suggests that the lack of action by the States against derelict glasshouses influences land valuations upwards, and in turn makes any voluntary removal of derelict glasshouses less likely. The combination of circumstances behind these proposals is unusual, and I think just sufficient to avoid setting any undesirable precedent. However, you may wish to consider the Jersey-wide implications.”

Note: A full copy of the Inspector’s Report is available to view and download from the Planning Register on www.gov.je, Application Reference [P/2017/1023](https://www.gov.je/Planning/2017/1023).