

Ref : P0429-21

Date 15 February 2023

To **The Hon. Walter Roban MP**
Minister of Home Affairs
Government Administration Building
30 Parliament Street
Hamilton HM12

Dear Sir,

I have been asked to advise on the third party appeal against the Development Applications Board's decision to approve application P0429-21 at 79 Middle Road Devonshire.

1. The Appeal

This is an appeal against the Board's decision on 10 August 2022 to approve 3 two-storey maintenance and storage buildings, 5 one-bedroom staff apartments, parking, driveway and landscaping, at 79 Middle Road, Devonshire.

2. The Applicant

The applicant is Island Construction Services and the agent representing them is Entasis Architecture.

3. The Appellant

This is a third party appeal. The Appellants are the Bermuda Environmental Sustainability Task Force, the Bermuda National Trust and the Bermuda Audubon Society and they are represented by Adwick Planning.

4. The Site

The site of 79 Middle Road, Devonshire is an irregular shaped 3 acre site located at the junction of Middle Road and Parsons Road, both of which are public Roads. Two access points service the site (one on Parsons Road and one on Middle Road). These access points are close together and currently provide both access and egress. Circulation within the site is informal, as are existing parking arrangements.

The site lies at the western end of Devonshire Marsh of which it was part until the middle of the last century when it was developed with industrial uses. The site is adjacent to the Winifred Gibbons Nature Reserve and to the Freer Cox Nature Reserve. These areas were established to protect these important peat marshes. This area is an important wetland habitat and also covers the island's largest fresh groundwater lens which stretches through Devonshire and Pembroke.

The entire site is covered by conservation zoning with the site being zoned both an Open Space Reserve and a Water Resource Protection Area with Nature Reserves to the east and west of the site.

There is also a Grade 2 listed building (Christ Church) opposite the site.

The site is occupied by a non-conforming industrial use, Island Construction Services. This business undertakes a wide range of activities such as storage and processing of construction materials, maintenance of construction equipment and storage of machinery, vehicles and shipping containers. This site is also used as a base for trucking services including shipping container haulage. It also provides tyre sale and replacement services.

The site is a conglomeration of activities. There are currently four buildings on site. The largest of these, which is located in the centre of the site, contains a vehicle repair and maintenance facility in which the tyre sales and fitting services operate.

A residential building comprising 3 units is located on the southern part of the site near to the entrance off Middle Road. Two other small, buildings are used as offices.

In addition to these formal structures a number of storage containers are stored along the north western and western boundaries of the site and on part of the south eastern portion of the lot. An area used for the processing of aggregates is located on the south western portion of the land.

5. Planning Background

In assessing this appeal it is important to understand why this non-conforming industrial use exists within this important and highly protected Open Space Reserve and its current status within the Bermuda Plan 2018.

There is evidence (from aerial photographs) that there has been industrial activity on this site from the 1950's. In 1964 Island Construction Services drained and reclaimed the site in order to use it to process large quantities of soil, sand and rubble excavated from building sites and to store heavy equipment. The business expanded during the 70's and 80's and in

1990 machinery was brought in to make the process more efficient. In 1991 an Enforcement Notice was served on the company alleging that there had been a material change in the use of this site and that Planning Permission was required. However, the Magistrate ruled the industrial activity had begun before planning permission was required and had continued uninterrupted until the service of the notice. He also considered that there had been no material change of use in the six year period prior to the service of the notice.

It should be noted, however, that the Zoning of this site has remained Open Space Reserve which would prevent further new Industrial Development and that the site is categorised as a non-conforming industrial use within a Conservation Area Base Zone.

Over the years there have been a number of complaints about activities on the site and planning infringements and action has had to be taken to resolve them. In addition a number of planning applications have been submitted over the years, some of which were refused and others (mainly minor development in connection with the operation of the industrial use) were approved.

In 2010 an application (**P0333/10**) sought in-principle permission for further development on the site involving the erection of 3 two-storey prefabricated warehouse buildings creating an additional 30,000 square feet of site coverage. This would result in a doubling of site coverage to 60,000 square feet. This application was refused by the Board on the basis that it did not meet the criteria required to apply Policy APC.7. In addition, there was deemed to be insufficient information to assess the impact the proposals would have on the site or surrounding areas or demonstrate that adequate protection would be afforded to the Water Resource Protection Area or the adjacent Nature Reserve. This refusal was appealed and in July 2011 the Minister approved the application contrary to the recommendations of the Board and the Inspector. This approval was never implemented and the permission has now lapsed.

In 2015 the Board also refused an in-principle application for a new commercial building (Application **P0112/15**). This was also the subject of an appeal but in this case the Minister accepted the recommendations of the Inspector and refused the application.

However, in his decision letter the Minister indicated that in his opinion there might be some scope to consider a building on this site for the purpose of storage and vehicle repairs (these uses were only suggested at the appeal stage) providing all necessary information is provided for the Board to make an informed decision. This would also need to include the removal of the shipping containers from site, the preparation of a Conservation Management Plan to create a buffer between the industrial use and the Nature Reserve and restoration of the Agricultural Reserve. The Minister confirmed his support for the

continued zoning as Open Space Reserve which is in place to curtail the negative impact of the industrial activities on the adjoining nature reserve and water lens.

In October 2016 a further application was submitted (Application **P0344/16**) for Final Approval. This application was for a maintenance and storage building and including a Conservation Management Plan(CMP). This was refused by the Board in December 2017 for lack of information and the CMP was deemed deficient. Again the decision was appealed and in this case, the decision was upheld by the Minister and the application was refused.

Another critical aspect of relevance to this appeal is the zoning status of this site. The Bermuda Plan 2018 still shows the site as zoned Open Space Reserve.

When the Plan was reviewed in 2008 an objection was submitted to have the appeal site rezoned from Open Space Reserve to Industrial and also to remove the Agricultural Reserve. Both the Tribunal and the Minister disagreed with this submission and the zoning remained.

During the Draft Bermuda Plan 2018 public consultation the applicant submitted another zoning objection. On this occasion the Agricultural Reserve zoning was removed but the Open Space Reserve was retained. These zoning changes took effect on 25 June 2021. When this application was considered the Open Space Reserve zoning applied.

6. Particulars

The proposal is to erect three 2 storey warehouse buildings. Two of these buildings are located on the north western boundary and would provide 9,600 square feet of storage space each together with staff facilities and electrical / mechanical rooms. The third building is located to the west of the site and is proposed to be mixed use with a warehouse (4,800 square feet) on the ground floor and five 1 bedroom apartments above to accommodate staff. Site coverage on the lot is increased from 6,879 square feet to 22,483 square feet.

The warehousing buildings are intended to store equipment, trucks, trailers, and building materials and shipping containers presently located on site. In addition there are two areas of parking on the eastern side of the site that are dedicated to temporary container parking and tractor parking.

The existing residential property and mechanic's garage with tyre fitting facilities and offices above will remain.

An entirely new vehicle circulating system will be implemented. This includes a one way system around the site with vehicles entering via the entrance to the east from Middle Road

and exiting the site at the western access point onto Parson's Road. Circulation around the site will be in an anti-clockwise direction. A total of 44 parking spaces and 20 bike parking spaces are proposed.

The proposal contains a Conservation Management Plan which has three landscape areas- a roadside buffer, a Nature Reserve buffer and "Green Pockets" within the site. Some information is provide on methods of disposing of oil, solid waste, waste water storm water and sewerage.

7. The Decision

On 10 August the Development Applications Board resolved to approve the application subject to conditions.

8. Appellant's Case

An appeal was submitted by Adwick planning on behalf of the Bermuda Environmental Sustainability Taskforce, the Bermuda National Trust and the Bermuda Audubon Trust. The grounds of appeal submitted are as follows:

1. The Board paid insufficient regard to the Open Space Reserve zoning of the appeal site and for the need to protect the adjoining nature reserve.

The appellants express surprise that this application has been handled differently by the Department and the Board than previous applications. Until this point the approach to further industrial development in this location has consistently given priority to protecting Devonshire Marsh. They quote the Minister's decision on Application P0112/15 as follows: "The conservation and protection zoning on this site are purposely in place to curtail the negative impacts of the industrial activities on the adjacent nature reserve and water lens".

The marsh and the freshwater lens are highly vulnerable natural resources and have been threatened in the past by oil leaks and a major fire in 2018.

Although construction details are sketchy it would appear that the three new warehouse buildings are to be constructed at or near grade close to the water table level and the additional weight of these buildings could have an impact on the adjoining marsh.

They acknowledge that the conservation management plan has sought to introduce some separation between the site and the nature reserve, but argue the eastern setback is inadequate and does not meet the minimum setback required.

Concern is expressed about both potable water storage and stormwater drainage given the increase in hard surfacing for roads and parking together with the increase

of site coverage of the new buildings. Particular concern is expressed about the areas designated for container and tractor storage and the area outside of the vehicle maintenance facility where there is a risk of ground water contamination. The lack of details on pollution control measures is problematic and should not be left to be covered by standard conditions.

The point is made that the cleaning up of the site should not be made at the expense of legitimising a range of unauthorised uses or a major expansion of industrial activity at the site.

2. The Board did not take adequately into account the intensification of industrial use on the site and the change of use proposed.

The description of the uses on this site and (in particular the trucking services and container haulage aspect) are materially different from the activities referred to in the court case in 1991 when the uses were the storage and processing of rubble, soil and sand and parking of construction equipment and trucks. The described uses are distinct from the use of as a contractor's storage yard and has significant implications for traffic generation. Indeed they point out that there is no longer any part of the site allocated for the storage and processing of aggregates. The current application is solely for the construction of 3 buildings not for a change of use.

No assessment has been made of the environmental or highways implications of such uses. In particular they contend that the establishment of a storage and distribution hub in this location could create hazardous traffic conditions particularly because of the awkward junctions on Middle Road and Parson's Road. Details of the type and range of vehicles using this site and the traffic volumes involved have not been assessed and the details of access are to be finalised as a condition of the approval.

3. The Board Misapplied APC.7

The appellants argue that the provisions of APC.7 were not intended to be used for major additional development on a site with a conservation based zoning. The purpose of these provisions is to provide some scope to upgrade existing non-conforming sites. The purpose of the warehouses are not required to rehabilitate existing development, but to provide multiple new structures. While they may assist in tidying up of the site, this is incidental to their purpose to facilitate a major expansion of business. It is also argued that these standard industrial structures do not exhibit a high standard of design but will be highly visible and will result in an increase in the scale of operation on the site which is inappropriate in proximity to the Nature Reserve.

4. This is an inappropriate location for residential development

One of the basic objectives of zoning is the separation of incompatible uses and in particular industrial and residential. In this case the operation of contractor's equipment, the use of industrial machinery, the manoeuvring of tractor trailers and the potential storage of toxic substances could be a risk to the health and safety of the residents and the level of residential amenity.

The appellants argue that APC.6 has been misapplied. The proposal does not involve the upgrading the standard of existing residential developments as these are new apartments. The proposed apartments are not of a high design, but part of a warehouse building. It is also irrelevant that the units will be occupied by employees as there are no safeguards to ensure that this remains so in future.

9. The Department of Planning's Case

The Department of Planning's case is outline in the Development Applications Board (DAB) report of 10 August 2022 and a memorandum dated 10 November 2022.

In the DAB report the Department indicates that it considers that the proposed warehouses are light industrial development as they are to be used for storage of industrial equipment, shipping containers and other building items.

The Open Space Reserve zoning, which cover this site, restricts development to those which are associated with open space and does not permit industrial development or residential development.

Notwithstanding these policies, the existing industrial and residential uses are considered to be established non-conforming uses. Some of the uses such as the storage and processing of building materials predate the Planning Act, others such as the storage of shipping containers have been undertaken on the site for some time.

For this reason the Policies APC.6 (non-conforming development : residential) and APC.7 (non-conforming development : industrial) have been applied.

APC.6 requires the residential development to be for the purpose of rehabilitating, upgrading or improving the standard of living of the living accommodation, not be injurious to the amenity or environment of adjacent properties, exhibit high standards of design and landscaping and be justified by the applicant.

The Department of Planning argues that although the number of residential units will be increased, it represents an upgrade to the standard of living accommodation on the site because of the formalisation of the industrial activity on the site and the

provision of a dedicated area of communal open space. The apartments will create no negative effect on the amenity or environment of adjacent properties and that the design and landscaping meet minimum size requirements for the properties and provide private outdoor space and communal space. It is also mentioned as justification that the proposed residential units will be reserved for staff of the Island Construction Company.

APC.7 requires that the proposals should be for the purpose of rehabilitating and improving the standard of the existing development, should exhibit high standards of design and landscaping, should not be injurious to the environment of the surrounding area and should be justified by the applicant.

The Department of Planning argues that the warehouse buildings proposed will aid the better organisation of the site. At present equipment and shipping containers are scattered across the site and the warehouse buildings will help facilitate the orderly and safe storage on the site. They contend that the proposed warehousing buildings are in keeping with other warehouses in the area, are of a high standard of design and landscaping and will not have an injurious effect on the surrounding area. They cite the conservation management plan which provides landscaping buffers throughout the site and creates 20 ft setbacks on the northern boundary and 15 feet on the western boundary with earth mounds. The conservation management plan has been agreed with the Terrestrial Conservation Officer and the Highways Section and the Pollution Control Section also have no objections.

The Department acknowledges that supporting this expansion and intensification of industrial activities is compromising the application site's conservation zoning, but maintains that this is the most practical and realistic option for improving the operation of the site to the benefit of the surrounding area.

On 10 November the Department of Planning submitted the following additional comments on the Appellant's Grounds of appeal.

- The appellant claims that the proposal does not comply with policy APC.18 which states that industrial development should have a setback of 20 feet from a Nature Reserve. The Department acknowledges that there is a portion of the parking area which is within 15 feet of the Nature Reserve. However, they point out that Policy APC.20 affords the Board discretion to reduce the setback requirement. In this case it is felt that the landscape buffer on the eastern boundary which has been agreed by the Terrestrial Conservation Officer would justify the use of this discretion. It is also pointed out that all of the warehouse buildings have a 20 foot setback.
- The appellant suggests that lack of detail on the plan with regards to the

storage of potable water will mean that the appellant will be free to carry out random excavations to construct water tanks. However, the Department argues that this is adequately covered by the condition requiring the written approval of the Department of Health.

10. The Applicant's rebuttal

On 23 October 2022 Entasis Architecture submitted a response to the appeal on behalf of Island Construction Company. The applicant's comments on the appeal are that:

- the appeal was submitted beyond the objection period and is therefore time barred and should not have been accepted by the Ministry. They claim that the appeal was received via email 10 weeks after the approval date of 10 August 2022 and 7 weeks after the deadline of the 31 October 2022. They claim that the appeal was not posted on the planning portal within the 3 weeks from the approval date nor were they notified of the appeal until 19 October 2022.
- The appellant rehashes the same arguments they have used over the years to deny our clients the use of its site which has enjoyed an industrial use since the 1950 and will continue with its industrial use.

11. The Appellant's rebuttal

On 2 December 2022 the agent acting on behalf of the appellants submitted the following rebuttal. It is their opinion that neither the Director nor the applicant's agent have addressed or challenged the substantive concerns raised in the appeal namely

1. The site is zoned Open Space Reserve and this has recently been re-confirmed. This zoning does not permit the erection of three large industrial buildings
2. APC.7 has been misapplied as the provision is intended to provide for modest upgrading not largescale new development. Approval would set a dangerous precedent.
3. The application only relates to the proposed physical development of the site it should also be accompanied by a retroactive application for those uses implemented without the benefit of planning permission.
4. The proposal appears to be an attempt to create a transport hub for storage and distribution. This amounts to a material change of use of the site and raises major planning, environmental and highway issues which have not been addressed.
5. Residential development would not normally be permitted in an industrial development and would result in an unacceptable level of residential amenity.

The appellants also do not believe that the conditions applied to the approval provide insufficient safeguards to protect the Nature Reserve and Ground Water Lens.

As far as the applicant's contention that the appeal is invalid because it was submitted out of time, the Appellants confirm that they agreed a date for submission of evidence with the Ministry and that the appeal case was submitted by that date.

12. My Findings

In assessing this case I have considered the environmental importance of this site, the reasons for its zoning as Public Open Space and previous objections to its zoning. I have also taken into account its previous planning history.

I have looked in particular at the policies contained in the Bermuda Plan 2018 and in particular Chapters 18 Open Space Reserve (OSR) and Chapter 5 Planning Application Considerations (APC).

Appeals Procedure

Before considering the planning policy issues affecting this case it is important to clarify whether this appeal is a valid appeal. I have received confirmation from the Ministry of Home Affairs that a Notice of Appeal was received on 25 August 2022. The appellant requested an extension of time to submit the full grounds of appeal. The Minister considered this request and granted an extension until 15 September 2022. The appeal was submitted within this timescale and the Applicant's agent was advised of the appeal shortly afterwards. On the basis of the information supplied I am satisfied that this is legitimate appeal.

Zoning.

The Appeal Site has been zoned Open Space Reserve in successive Bermuda Plans because of its location within the environmentally sensitive Devonshire Marsh. This is an important peatland habitat, but also the location of the island's largest freshwater lens.

The review of the zoning allocation for the Bermuda Plan 2008 considered an objection from Island Construction Services Limited requesting that the land be rezoned from Open Space Reserve to Industrial. The Tribunal (and the Department of Planning) did not support the proposed amendment of zoning of 79 Middle Road. "In making its decision, the Tribunal was of the opinion that the removal of the Open Space Reserve Conservation would have a negative impact on the adjacent Nature Reserve and would increase the likelihood of contamination of the surrounding critical water lens".

The zoning policy was tested again by the Tribunal hearing objections into the draft Bermuda Plan 2018. The Department in their submission stressed that the purpose of zoning was not to inhibit the industrial activities carried out within the site but to ensure that they are done in an environmentally conscious manner. One concern expressed by the

Department of Works and Engineering (Highways) about the re-zoning of the site to industrial use was the road safety implications. The site sits on a bend on the junction of Parson's Road at its intersection with Middle Road and any intensification of uses on this site could result in increased trips on this difficult junction. Similarly the Department of Environment and Natural Resources expressed concerns about the negative impact of industrial use on the Nature Reserve. The site is prone to flooding and development on the existing industrial site has already resulted in the compression of the peat layers which have caused the adjoining land to sink.

It is important to note that the allocation of this site has been tested repeatedly (as recently as 2019) and its status as an Open Space Reserve has been re-confirmed.

Open Space Reserve Policy(OSR) Chapter 18

Open Space Policies outlined in OSR are very restrictive and state that " Development in Open Space Reserves shall be limited to minor siteworks, minor additions to and conversions of existing building or structures, and forms of development which are associated with the open use of land."

However, this land has an established use as industrial because industrial activities on this site predate the introduction of planning legislation. This use was confirmed by a Magistrate's decision on an enforcement case in 1991.

Non- Conforming Uses

Provision is made in the plan for dealing with non-conforming uses in conservation zones. Because of the non-conforming uses on the site this application has been assessed on the basis of policies APC.6 and APC.7.

Residential – (APC.6 Non-conforming development - residential)

The application subject to this appeal is for the erection of three two storey warehouse buildings with one of the buildings containing 5 one bedroom apartments on the first floor.

In assessing the application I will first look at the residential component. What is being proposed is the introduction of 5 new residential units within this industrial site for staff accommodation. No reason is given as to why it is necessary to have staff residing on site.

I find this part of the proposed development very surprising. In land use terms it is normal practice to segregate housing from industrial uses. In limited circumstances, within residential areas, some forms of light industry may be permitted but subject to very strict criteria. Although the buildings proposed are warehouses, which is a light industrial use, there is no information on the nature of the uses proposed or any activities which might be detrimental to the amenity of the residences such as volume of traffic, noise etc. What also

needs to be considered is that this application is part of a wider industrial complex which has a range of other uses including vehicle maintenance, storage and processing of construction materials, maintenance of construction equipment and storage of machinery vehicles and shipping containers. This site is also used as a base for trucking services including shipping container haulage and provides tyre sale and replacement services. It is unclear from the planning application what uses are proposed for the site in future and which of the existing uses will continue. However, the plans clearly show the vehicle maintenance and tyre shop and parking areas for containers and tractors remaining. I consider that such uses would be incompatible with residential amenity.

The Applicant justifies the residential component of the application on the basis that this would be reserved as staff accommodation. It is important to understand that any planning permission goes with the land and even if this use was deemed acceptable for staff, this could not be guaranteed if the property was sold in the future.

In accessing this application and recommending approval the Planning Department have relied on the provisions of APC.6 (Non-conforming development: residential).

APC.6 states that where an application is made for some form of residential development entailing an increase in the degree to which the increasing state of affairs is non-conforming the Board may grant permission but only if the Board is satisfied that :

- a) The proposal is for the purposes of rehabilitating, upgrading or improving the standard of living accommodation;
- b) The proposal will not be injurious to the amenity or environment of adjacent properties;
- c) The proposal exhibits a high standard of design and landscaping;
- d) The proposal will not create a non-conforming density of development or result in an increase in an existing non-conforming density; and
- e) The grounds in support of the application, as submitted by the applicant, justify the exercise of the Board's discretion.

I consider that this proposal to create 5 new apartments cannot be regarded as meeting criteria APC.6(a.) In no way can this be described as a proposal whose purpose is the rehabilitation, upgrading or improvement of the standard of living accommodation. There are 3 existing residential units on the site, but there are no proposals to upgrade them and the fact that there will be additional landscaping and an area of communal open space at some distance from these dwellings cannot be seen as substantially improving their residential amenity. While the presence of the residential units would have no injurious effects on neighbouring property, the proposals are not of particularly high standard of design and the justification that they will be reserved for staff is not an acceptable reason to

approve residential development in this location. What is more important is that residential use is incompatible with the other industrial uses on the site.

I am of the view that this aspect of the application does not meet the criteria to enable the Board to use its discretion an issue an approval.

Industrial

The site at 79 Middle Road has a long and complex history as an industrial site. It started as a site used for the storage and processing of construction materials and storage/maintenance of equipment. Its industrial used was confirmed in 1991, however over time the nature of activities on the site has changed significantly. Whether or not these activities represented a material change of use or intensification of use is irrelevant now as there is photographic evidence that many of these activities (such as the storage of shipping containers) have been undertaken from as early as 2003 and are now also established uses.

The current application - the subject of this appeal - is for "Three two-storey maintenance and storage buildings and five one-bedroom staff apartments, parking, driveway and landscaping." The plans show two of the three new buildings as container storage and the third as residential and warehouse. Existing uses such as the mechanic's garage and tyre shop within the site are shown on the plan, but they do not appear to form part of the application.

Although this site lies within a very important conservation area it is an established non-conforming use and proposals for development are assessed under APC.7 (non-conforming development : non-residential). Under these provisions the Board may grant permission for development but only if it is satisfied that:

- a) The proposal is for the purposes of rehabilitating, upgrading or improving the standard of the existing development;
- b) The proposal exhibits high standards of design and landscaping
- c) The proposal will not be injurious to the environment of the surrounding area, particularly any residential development, by reason of appearance, noise, traffic generated, odour, smoke, dust, vibration or scale of operation; and
- d) The grounds in support of the application as submitted by the applicant justify the exercise of the Board's discretion.

It is reasonable to conclude that the erection of warehouse buildings on the site and formalising of carparking and vehicular circulation could lead to a more organised site. The current activity includes equipment and shipping containers scattered across the site.

However, it should also be noted that the proposed structures are large shed type buildings which will increase the site coverage on the lot from 6,879 to 22,483 square feet and would represent a significant increase in development on the site .

In a previous Ministerial decision on application P0112/15 the Minister stated that “I am of the opinion there is scope to consider a building on this site that is constructed for the purposes of storage and vehicle repair and...that replaces the storage containers on the site” The proposal now being considered is for three (not one) building which will replace some of the containers on site, but an area for temporary storage of containers still remains.

While the design of the buildings proposed on this site is not of outstanding quality, they are typical industrial buildings and of an appropriate standard. There is also extensive landscaping proposed associated with the Conservation Management Plan which will certainly improve the appearance of the site.

My biggest concern, however, is whether there is sufficient information available from the applicant on the exact nature of the proposed uses and any cumulative effect with remaining uses, to be satisfied that the proposal will not be injurious to the environment of the surrounding area, by reason of appearance, noise, traffic generated, odour, smoke, dust, vibration or scale of operation.

In my opinion, because of the sensitive nature of the site it would be reasonable to require much more information on the nature of the future use of the site including the existing activities that are to remain. While warehousing can sometimes be a benign activity what can often be of more significance is the scale and type of activity undertaken and the level of traffic generated. It is also difficult to consider the use of these new building in isolation from other activities on the site.

The DAB report indicates that the Highways Section, the Pollution Control Section and the Terrestrial Conservation officers have considered the application on the basis of the information provided and have no objection in principle to the proposals although they require conditions to cover detail aspects at a later date. Their comments, however, relate to narrowly drawn definition of the proposal .

I am unclear about the proposed uses of the whole site and what specifically is meant by general terms such as maintenance and storage or indeed container storage (as shown on the plans). The DAB report also indicates that the site is used as a base for trucking services including shipping container haulage. It is unclear which of these activities will take place on site. It is also obvious that some, but possibly not all of the current uses will continue.

I also note that while the minimum level of parking required on the site is 19 cars and 17 bikes, what is proposed is 44 cars and 20 bikes which might suggest a higher level of vehicular movement. Without detailed information of the precise uses proposed and the number of trips these uses would be expected to generate and those generated by the other uses which will remain on the site it is very difficult to be satisfied that the development will not have a negative traffic impact on the surrounding area. This is particular worrying since the Department of Works and Engineering (Highways) in their evidence to the Zoning Tribunal expressed concern about the potential traffic safety issues that increased numbers of trips and in particular more heavy vehicles using this area could create because the geometry of this difficult intersection (between Parson Road and Middle Lane) which is not suitable for large vehicles. At that time they also suggest that planning applications on this site would normally be accompanied by traffic impact assessments. No such information was provided with this application.

I fully appreciate the desire of the Planning Department to bring about improvements to the conditions on this site. The approval of buildings to facilitate change on the site could help achieve these objectives. However, given the history of the site it is also important to ensure that the nature of what is approved is specific and its impacts are fully understood. This cannot be done in isolation from other activities on the site and requires a comprehensive approach to be taken with full information to be provided to allow an informed decision to be made. It is my view that there is insufficient detail on the proposed uses on the site or their environmental impacts.

There is an opportunity to bring about real improvements on this site and to create some level of control going forward. However, to achieve this would require a comprehensive development proposal for the whole site including both new buildings and also existing uses to be retained. Such an application would need to include details of all the uses on site, the areas they would occupy and the anticipated level of traffic generation. As part of any applications full details on elements like noise, dust, vibration, drainage, waste water disposal, the relationship between new structures and the existing water table, potable water storage should be provided. The environmental impacts of the proposed development should be included at application stage and not left until later in the process. It is only by the provision of detailed information at an early stage that the full environmental impact can be assessed and an informed decision made.

13. Conclusions

Having reviewed all of the relevant information I am of the view that the current proposals are unacceptable for a number of reasons.

- The provision of new residential development within an industrial area is inappropriate and does not meet the criteria set out in APC.6 (a).

- There is insufficient detail provided on the nature of the uses proposed to assess the environment impact of the proposals on the area and in particular traffic impacts. Because of the particularly sensitive nature of this site it might be sensible to undertake an Environmental Impact Assessment and/or a Traffic Impact Assessment to inform the decision on any future application.
- The proposals cannot be fully evaluated without considering them as part of a comprehensive plan for the whole site which includes not just the new development but also the future use for the whole site.

Any future approval of development on this site should also include conditions to control future development given the very sensitive location of the site adjacent to the Nature Reserves.

- Any approval on this site should include a Construction Management Plan to ensure that the construction phase of any development does not cause a nuisance to neighbouring properties or environmental damage to the adjoining nature Reserves
- Any approval on this site should include a Conservation Management plan.
- Notwithstanding the provisions of the Development and Planning (General Development Order) 1999 any further developments on this site will require the submission of plans to the Development and Planning Department for approval.

14. Recommendation

Having reviewed this appeal, I would recommend that the Minister upholds the appeal and overturns the decision of the Development Applications Board to approve this application. I would recommend that the Minister refuses this application for the following reasons:

1. The proposed development does not meet the requirements of Policy APC.6(a) of the Bermuda Plan, in that the proposal is not for the purposes of rehabilitating, upgrading or improving the standard of living accommodation.
2. The proposal fails to meet the provisions of APC.7 (c) in that there is insufficient information provided on the environmental and traffic impacts of the proposal to enable it to be established that the proposal will not be injurious to the environment of the surrounding area, particularly any residential area, by reason of appearance, noise, traffic generated, odour, smoke, dust, vibration or other noxious conditions, or scale of operation.
3. The proposal fails to provide sufficient information on the use of the site including existing uses which form part of the proposal.

Yours Sincerely



Sandra F. Penfold MA (Cantab), MA (Sheffield), MRTPI

Planning Inspector

*I uphold the Development
Application's Board Reasons
and the conditions they attach.
As outlined in memo
from the Director
dated 29 Nov 2022*

I agree / disagree with the Planning Inspector's recommendations.


The Hon. Walter Roban MP
Minister of Home Affairs

Date 20 Feb 2023

