



Planning Panel
Sir Charles Frossard House
La Charroterie
S. Peter Port
Guernsey GY1 1FH

Appeal Decision Notice

Planning Tribunal Hearing held on 16th March 2017 at the Founders' Room, St. James
Concert and Assembly Hall, St. Peter Port

Members: Mr. Stuart Fell (Presiding), Mr. David Harry, Mr. John Weir

Appeal Site:	Former Esso Site, Bulwer Avenue, St. Sampson
Property Reference:	B001710000
Planning Application Reference:	FULL/2015/2215
Planning Application Valid Date:	27 th August 2015
Date of decision:	13 th April 2016
Appeal Case Reference:	PAP/017/2016

- The Appeal is made under the provisions of Part VI and section 68 of The Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is by Spur Point Limited against the decision of the Development & Planning Authority (formerly the Environment Department) to refuse planning permission on an application for the re-development of part of the site for the construction of a two-storey building for maintenance, preparation, display and sale of motor vehicles at the Former Esso Site, Bulwer Avenue, St. Sampson.
- The Appellant Company was represented by Mr. A. Ozanne, architect and director at Lovell Ozanne & Partners, Ltd, and by Mr. A. Male, also an architect and director at the same practice. Mr. A. Norman appeared on behalf of Spur Point Limited and gave evidence, as did Mr. H. Mawson, Director at Mawson Collins, who are agents, valuers and property managers.

- The Development & Planning Authority was represented by Mr. J. Rowles, Director of Planning, Ms. E. Hare, Head of Development Control, Ms. S. Stuart, Planner and case officer, and Mr. A. White, Principal Conservation & Design Officer.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Because of the complexities of this case, and the substantial volume of written submissions produced by the parties, Mr. Ozanne requested the Tribunal consider holding a Directions Hearing after having lodged the appeal in order to clarify those areas on which the Tribunal would be likely to focus attention. The Tribunal agreed to this request, noting that the Development & Planning Authority (“the D&PA”) also supported the approach, as it gave the Tribunal the opportunity to set out the key areas where it would expect the evidence to be tested and amplified, and those areas which seemed unlikely to require further detailed exploration. Prior to the Directions Hearing, the Tribunal prepared a schedule identifying over fifty separate matters that were considered to be likely to require close examination at the Hearing, and this was circulated to the parties prior to the Direction Hearing for their consideration.
3. A Directions Hearing was held on 17th January 2017. There was productive discussion on all the issues that had been identified and written directions were subsequently issued by the Tribunal requiring the parties to make further written submissions on a range of issues, and to be prepared for detailed examination on specified matters at the Appeal Hearing. On the day before the Directions Hearing the Tribunal was able to make an unaccompanied visit to the site, and an inspection of the surrounding area was also undertaken. In light of this, the Tribunal saw no need to revisit the site during the Appeal Hearing on 16th March 2017.
4. Where reference is made in this decision to the orientation of the building, the convention adopted on the architects’ drawings has been followed for the sake of simplicity.

Background to the Appeal

5. The pre-application background is relevant given the range of issues in contention. Pre-application negotiations appear to have commenced with a letter from Mr. Ozanne to the D&PA in May 2014. At this stage the Bulwer Avenue site had already been identified as the appellant company’s preferred choice. A meeting between the parties was held in June 2014 when the D&PA identified potential policy difficulties and referred to the recently approved Development Brief for the

site, but it did not rule out the possibility of a grant of permission for the development.

6. In August 2014, the architects wrote to the D&PA advising of a meeting that had been held with representatives from the Committee *for* Economic Development ("the CED" – prior to 1st May 2016, the Commerce and Employment Department) with a view to explaining the proposal. The letter also advised that the intended operator had been discreetly searching for a suitable site for some time. A follow-up letter dated September 2014 set out the claimed benefits of the scheme in economic and energy saving terms, and provided details of anticipated staff numbers.
7. The D&PA responded in October 2014, having awaited comments from the CED on the outline proposal. These comments indicated that the CED would be open to considering a full planning application, notwithstanding that it had some reservations about the proposed use of the land. The DPA re-stated to the architects its reliance on the advice provided within the Development Brief for the site.
8. A full planning application was subsequently made and was registered at the end of August 2015; this included a number of supplementary documents. The D&PA advised that it was unable to determine the application without further information, particularly relating to the floor areas allocated to display/sales and workshop activities; this was requested on 9th September 2015 and subsequently provided by the architects. The CED made its formal comments on the application on 22nd October 2015.
9. On 10th November 2015 the D&PA wrote to the architects raising a number of issues, including:
 - Concerns about whether the proposal would satisfy the requirements of Urban Area Plan (i.e. the adopted Development Plan at that time) ("the UAP") policies and the Development Brief;
 - The D&PA's interpretation of the word *business*, in the context of Policy EMP5;
 - The view that in relation to the operator's search for alternative sites, the conclusion that none was deemed suitable was unsupported, and further justification was needed;
 - A range of concerns regarding the design of the development, and the visual dominance of hard surfaced areas containing vehicles;
 - A suggestion that the building might beneficially be re-sited so as to give it presence in the street scene, and that more attention should be given to landscaping and to the dominance of parking and display areas;
 - A suggestion that the applicants might make a written request that the application be approved on the basis that it would involve only a minor departure from the UAP.

10. The application drawings were subsequently revised, the major change being the repositioning of the building towards the western corner of the site. An amended submission was made on 9th February 2016 dealing with the points raised by the D&PA. It included a revised Design Statement and a review by Mawson Collins of the alternative sites that had been considered by the operator.
11. The revised application was refused on 13th April 2016, resulting in this appeal.

The Site

12. The appeal site, which has the shape of a slightly skewed rectangle, lies on the southern side of Bulwer Avenue, St. Sampson and is bounded on the west by Longue Hougue Lane, which provides access to the Longue Hougue reclamation site. Bulwer Avenue forms part of the strategically important inter-harbour route. The site rises slightly away from Bulwer Avenue, and contains an obsolescent building which formed part of the former fuel depot. There are residential properties nearby to the south-west, and industrial/commercial premises on the northern side of Bulwer Avenue. The site lies about 500m to the south of the Bridge, which is the nearest retail centre.
13. The site lies within and on the south-western edge of the Bulwer Avenue/Longue Hougue Key Industrial Area ("the KIA"), one of three such areas located around St. Sampsons Harbour. The site area is stated to be 4253 square metres. The underlying purpose of the KIAs is to reserve land for the development of business and industrial uses that require purpose built industrial premises which cannot be reasonably accommodated elsewhere.
14. The fuel depot originally occupied a larger area of land within the KIA, extending further to the north-east. The fuel depot use did not fall within any of the use classes set out in the Land Planning and Development (Use Classes) Ordinance, 2007 ("the Use Classes Ordinance") and its use was regarded as sui generis, relating to the storage and distribution of petroleum. Planning permission was granted in June 2013 on the eastern part of the former fuel depot land, representing approximately one third of the total area, for the change of use to storage/distribution Use Class 32, as well as the erection of two buildings, and the refurbishment of the existing plumbing counter building. This development represented the expansion of the established Norman Piette site nearby, and will be considered in more detail later in this decision.

The Proposal and its Land Use Implications

15. The application leading to this appeal followed an extended period of pre-application correspondence and discussion, as outlined above. Spur Point Limited are the appellants in this case and they and their architects prepared the proposal in conjunction with a potential tenant/operator whose identity has been withheld

for commercial reasons. The operator was not represented at the Hearing. An important element of the proposal was said to be the intention to sell and service a range of commercial vehicles, including the largest such vehicles able to operate within the Island, as well as private cars. The larger vehicles would not be displayed on site, but selected and sold from catalogues.

16. During the Hearing Mr. Ozanne submitted a standard briefing document which had been prepared by the operator to guide the form and appearance of its developments. However, this document was disregarded by the Tribunal as it was not part of the evidence, facts or material before the D&PA when it reached its decision on the application.
17. In physical terms, the proposal involves the erection of a two-storey portal frame building positioned towards the western corner of the site, with its hidden ridge running on a north-west to south-east axis. This is the revised position following pre-application advice from the D&PA, as indicated earlier. The north-western part of the building facing Bulwer Avenue would accommodate the vehicle display and sales area, while the southern part would contain the service workshop, stores and vehicle valeting/preparation bays. Between the two sections would be offices and support facilities, including a mezzanine floor covering a limited area. Externally there would be display areas fronting Bulwer Avenue and Longue Hougue Lane, with visitor parking along part of the north-eastern boundary and parking for the service area and staff located within the rear, or southern, part of the site.
18. The agreed position of the parties was that the service workshop and related activities, if considered in isolation, would fall within Industrial Use Class 38: Use for any general industrial purpose.
19. The vehicle display and sale activities fall outside the use classes specified in the Use Classes Ordinance, as indicated in section 4(3)(g) of the Use Classes Ordinance and, so the use is regarded as sui generis. When these two functions are combined, as is proposed in this case, the resulting development would be regarded as a mixed use, and would also be sui generis, as explained in section 4(2) of the Use Classes Ordinance.
20. After due consideration, including the request for further information, the application was refused for four reasons, focusing on three main issues. The first reason relates to the unsuitability of the proposed use, given its location within a KIA; the second relates to the potential harmful impact of the proposal on the Central Areas, particularly The Bridge, in view of its partly retail character, and the third and fourth reasons flow from concerns about design issues.

The Policy Context – Policy EMP5

21. As the site is location within a Key Industrial Area, Policy EMP5 of the Urban Area Plan, Review No. 1, 2002, appears to the Tribunal to have primacy in this case, as it provides a potential gateway through which permission might be granted. This states *“The Key Industrial Areas are reserved for the development of business and industrial uses that require purpose built industrial premises which cannot be reasonably accommodated elsewhere”*. It goes on to say *“Development for other business and industrial uses will only be permitted in exceptional circumstances and in accordance with other policies and proposals of the Plan”*.
22. Before turning to the requirements of Policy EMP5, the definition of terms is clearly important. The meaning of the word “industrial” is accepted to be that set out in the interpretation section of the Use Classes Ordinance. For the sake of clarity, this is set out in full:
- “industrial purpose means the carrying on of any process, including data processing, for, or incidental to, any of the following processes namely-*
a) the making of any article or of part of any article (including a ship or vessel, or a film, video, Compact Disc, Digital Versatile Disk or sound recording;
b) the altering, repairing, maintaining, decorating, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or destruction of any article”;
c) the dressing of stone, being a process carried on in the course of a trade or business other than agriculture.”
23. For the avoidance of doubt, it is the Tribunal’s view that the phrase “*industrial purpose*” contained in the Use Classes Ordinance and the phrase “*industrial use*” contained in Policy EMP5 have the same meaning in practical terms.
24. While the meaning of “*industrial use*” is clear, the use of the phrase “*purpose built industrial premises*” as a controlling criteria within Policy EMP5 is not as helpful as might be wished in the particular circumstances of this case. The term *purpose built industrial premises* implies a type of building that is designed specifically to accommodate industrial activities, but, like many building types, such premises can also satisfactorily accommodate a wide range of other types of activity. Equally, given the acknowledged rapid pace of change within the industrial sector, some sorts of industrial activity can function satisfactorily in accommodation other than purpose built industrial premises.
25. It is clear to the Tribunal that unless one of the two limbs of Policy EMP5 can be satisfied, no mechanism exists for the granting of permission for the appeal development, unless approval is granted under s. 12(2) of the Land Planning and Development (General Provisions) Ordinance, 2007 as a minor departure from the UAP. The main issue in this case is therefore whether the appeal proposal can be regarded as a form of development that satisfies the first limb of Policy EMP5, and, if this is not the case, whether exceptional circumstances can be

demonstrated such as to outweigh the need for full compliance with the underlying objectives of the Policy.

26. Before making this key assessment the Tribunal sought to clarify whether it was possible to regard one of the two activities that make up the proposal, i.e. workshop-related activities and sales-related activities, to be the principal use, with the other activity being ancillary to it. The Tribunal suggested at the Hearing that in visual terms the sales function of the development would clearly be the most prominent, as this would be adjacent to the principal road frontage. The parties did not disagree with this assessment.
27. In relation to floor space, the internal and external areas occupied by the various activities had been measured and scheduled by the architects and these were carefully examined during the Hearing. The proportion of site area used for sales-related use as opposed to workshop-related use proved to be difficult to determine with certainty, as some issues are open to interpretation. Nevertheless, the Tribunal were satisfied that the workshop-related activities would occupy slightly more than half of the site area, including external areas, as Mr. Ozanne had indicated. However, the Tribunal's overall conclusion was that in terms of floor space and usage, neither of the two component uses could be said to be the principal or dominant use.
28. The interpretation of the key phrases in the first limb of the policy were thoroughly examined during the Hearing, giving rise to a key question - *do the activities which make up the appeal proposal require to be accommodated in purpose built industrial premises?* There was agreement between the parties that in terms of the workshop activities the answer would be in the affirmative, but in respect of the vehicle display and sales areas the answer would be negative. Mr. Ozanne acknowledged that while vehicles *could* be displayed and sold from a purpose built industrial building, the activities involved would not require it. On this basis the Tribunal concluded that the appeal proposal was unable to satisfy the first limb of Policy EMP5, placing the onus on the appellant company to demonstrate that exceptional circumstances apply in this case, thereby opening a gateway offering the potential for permission to be granted.
29. The wording of the second limb of Policy EMP5 states, "*Development for other business and industrial uses will only be permitted in exceptional circumstances ...*" In this context the Tribunal understands the use of the word other to signify that this part of the Policy applies to business and industrial uses that do not require purpose built industrial premises [and] which cannot be reasonably accommodated elsewhere. Mr. Rowles made the argument, bearing in mind that Policy EMP5 deals with industrial areas, that the business uses referred in the policy wording would need to be industrial in character. Mr Ozanne did not share this view, contending that the use of the word **and** in the phrase *business and industrial uses* was deliberate, and was meant to indicate that these are to be regarded as two different categories of activity. He argued that the term *business*

uses should be considered in its broadest sense. Having carefully read the construction of the policy, the Tribunal considers that Mr. Ozanne's interpretation is correct, and that the consideration of a non-industrial business use is not ruled out by the policy wording provided that the proposal satisfies the further requirement considered below.

30. The other key aspect of Policy EMP5 is the statement that sites within the KIAs are reserved for the prescribed categories of use and building **which cannot be reasonably accommodated elsewhere**. Whilst the highlighted phrase is not repeated in the second limb of the Policy, it is the Tribunal's view that this is probably due to the desire for succinct policy wording, rather than because this qualifying phrase was not considered relevant or important. The appellant company did not contest this interpretation in its written and oral evidence.
31. The answer to this requirement embedded in Policy EMP5 raises the issue as to whether the combined form of development that is proposed, with display, sales and workshop activities combined and integrated on a single site, is the only practicable way of realising the commercial objectives underlying this proposal. The D&PA had raised this question in its appeal statement. This matter was reviewed at the Directions Hearing and further submissions were sought from the appellant company on the pros and cons of a combined operation, compared with an operation split over two sites.

Is a combined operation a reasonable approach to the search for a suitable site?

32. The appellant company's further written submissions set out the claimed relative benefits of a combined operation. These included greater efficiency and integration of sales and service activities, lower running costs and premises costs, staff savings, the avoidance of duplication of staff resources and back up facilities, the elimination of traffic movement between two sites, and the exposure of service customers to vehicles for sale. Some of the specific claims for the combined operation, such as a saving of six staff compared with the needs for a split operation, could not be examined in detail during the Hearing due to the absence of any representative on behalf of the operator.
33. The Tribunal considered these submissions carefully, in the knowledge that split operations are not unknown outside the Island and that such enterprises appear to function adequately. A relevant matter in this context was that the parties, at the direction of the Tribunal, had jointly prepared a report setting out brief descriptions of all the car dealership sites operating within the Island. The report included data such as the floor areas dedicated to showroom, workshop and external display space, as well as providing a brief outline of the planning history for each site.
34. The Tribunal drew two conclusions from this useful work. It is clear that most of the car dealerships were established decades ago and some are in locations that may not now be considered ideal. More significantly, it appears that in virtually

every case the car sales and display functions are integrated with workshop facilities on the same site.

35. The Tribunal posed a question to the appellant company as to whether the purchase of two smaller sites with easy road communication between them might not bring the benefit of reduced site acquisition costs, given that the workshop would not require a prominent road frontage. The response from Mr. Mawson was that coordination of two such acquisitions would be almost impossible, and the increased operational costs would be likely to mitigate against any perceived financial benefit. Mr. Ozanne added that as it was the intention of the appeal proposal to sell and service commercial vehicles as well as cars, a good road infrastructure suitable for such vehicles would be essential.
36. Notwithstanding the lack of detailed supporting evidence for some of the asserted benefits of a combined operation, the Tribunal formed the view that in common-sense terms, such an approach would clearly be more efficient and cost effective, and would represent a better use of the limited land resources within the Island. The Tribunal concluded that the combined operation was a reasonable basis on which the appellant company and its potential tenant might undertake a search for suitable sites within the Island.

Was the search for a site diligently carried out?

37. The key requirement of a successful location from the operator's perspective was said to be a prominent site of an appropriate size on a busy road frontage, with good vehicular access to the ports. The appellant company claimed in their written appeal submissions that they had searched for suitable sites but none were deemed suitable because they did not fulfill the operator's brief - only the appeal site was considered suitable. The operator's brief was not provided to the D&PA with the application documents, and a copy of this document provided to the Tribunal as part of the appeal submissions was therefore ruled inadmissible.
38. The D&PA had raised concerns in its pre-determination letter of 10th November 2015 that the operator's decision to reject a range of alternative sites was not supported by evidence. It stated that sites such as Quayside and the former Warry's Bakery site in Le Grand Bouet appeared not to have been considered, nor was the possibility of suitable sites being found within the MURAs. These concerns resulted in a further report prepared by Mawson Collins dated February 2016 which reviewed seventeen possible sites, including the ones to which the D&PA had drawn attention.
39. Virtually all of these were rejected on the basis that they were too small. The Warry's Bakery site was discounted because a residential development was thought to be proceeding. The Quayside site was considered unsuitable because Mawson Collins advised that its site value was based on retail usage, rendering it non-viable for the appeal development. In relation to sites within the MURAs at

Leale's Yard and Admiral Park, Mr. Ozanne argued at the Hearing that these areas were already the subject of intense planning negotiation at the relevant time, and were not pursued for that reason. He also doubted whether a vehicle showroom and service workshop would have been considered appropriate uses within these environments, although Mr. Rowles said that proposed use would not necessarily be considered incompatible with the MURAs' objectives.

40. In this regard, the Tribunal notes that in the Outline Planning Brief for Admiral Park (Le Bouet, 1998) under the heading **Land Use Principles**, one of the objectives is *"to provide for new retail facilities to meet essential needs, especially food and bulky household goods"* (Para 9.1). In the section headed **Retail** is the statement *"The development of major retail outlets on this site would be compatible with the objectives for the MURA and would be consistent with the planned improvements to access and parking"* (Para. 9.4.2).
41. In respect of Leale's Yard, one of the key objectives of the Outline Planning Brief, 2004, is to *"Create a linked and integrated extension to the commercial centre of The Bridge comprising retail, commercial, housing and other uses"* (Part 1, Section 2). In Part 2 of the Brief dealing with Development Guidelines, one of the land use objectives is to *"provide a level of new retail facilities to revitalise The Bridge shopping area without creating an over-provision to the detriment of Town."* (Para 7.1.ii)
42. It is an open question whether the appeal development would have been seen to satisfy these objectives, even if a suitable site had been found, and the Tribunal appreciates why the appellant company might have been hesitant in following up sites in the MURAs.
43. The Tribunal's overall view on the matter of alternative sites is that notwithstanding the D&PA's view that some suitable sites may have been missed, the appellant company had sought professional advice and undertaken a broad based review, and had reached the understandable conclusion that satisfactory alternative sites to Bulwer Avenue were unlikely to be found. On this basis, and returning now to the requirement of Policy EMP5, the Tribunal concludes that the appellant company had made an acceptable case that the proposed use was one that could not be reasonably accommodated elsewhere, and they are therefore entitled to make a case for exceptional circumstances in accordance with the provisions of the second limb of the Policy.

Exceptional Circumstances

44. Neither Policy EMP5 nor its introductory preamble give any guidance as to what might constitute exceptional circumstances. It is the view of the Tribunal that there are potentially several such circumstances. The first of these, clearly, is that the proposed use cannot be reasonably accommodated elsewhere, and the Tribunal has already reached a conclusion on this matter as detailed above.

The Evolving Character of the Bulwer Avenue/Longue Hougue Lane Key Industrial Area

45. It is one of the threads of the appellant company's submissions that since the adoption of the UAP there has been a gradual decline in the amount of industrial space within the KIA, partly due to the flexible approach taken by the D&PA in allowing permission for changes of use. Moreover, there has been a continual blurring of the distinction between light industrial and other commercial uses, an example being that it has become virtually impossible to distinguish between retail activity to the general public and the trade sectors. Norman Piette, among others, had adjusted its business model in response to this trend.
46. The conclusion reached by the appellant company is that the KIA has adapted to changing needs over time and this is reflected in the wide variety of uses that are now present. Following the Directions Hearing, a detailed plan of the KIA including a schedule of occupiers was submitted in support of these claims. This shows a range uses within the KIA, including storage and distribution, fuel storage, manufacturing and workshops, offices, retail and a veterinary premises. The appellant company argues that the appeal proposal can be seen as a natural extension of these trends.
47. In its written submissions, the D&PA explained that when the KIA was adopted, a number of non-industrial uses were already in place; a situation that Policy EMP5 recognises. It also explained the background to each of the non-industrial/storage-distribution uses in turn, and emphasised that no permissions have been issued for change of use away from storage and distribution/industrial within the KIA under Policy EMP5. The appellant company did challenge the D&PA's further responses on these matters.
48. The impression gained by the Tribunal from the evidence on the KIA is that notwithstanding the term ***Key Industrial Area***, there is a general acceptance by the D&PA that the KIAs not only provide a natural location for storage and distribution premises but also that industrial and storage/distribution uses are, in effect, interchangeable, despite a clear distinction between them in the Use Classes Ordinance.
49. The above interpretation is reflected in the wording of the development guidelines within the Development Brief. It is also confirmed at paragraph 6.21 of the D&PA's written appeal statement in response to a point made by the appellant company that in the UK, office and light industrial uses are placed in the same use class. Para. 6.21 states *"the revised Use Classes Order ... retains separate use classes for industry, with the key change comprising a relaxation for change of use between industry and storage and distribution"* (Tribunal's emphasis). The

relaxation referred to appears to the Tribunal to contradict the aim of Policy EMP9 which is to protect industrial land. If the D&PA's approach were to be taken to its logical conclusion, the reserves of industrial land could eventually disappear. While this position is seemingly taken for granted by the D&PA, this is not to the Tribunal's knowledge reflected in any formal amendment to the adopted policy framework.

50. The Tribunal concludes that the D&PA's willingness to relax adopted policy controls relating to the change of use between industry and storage and distribution uses, adds to the case for exceptional circumstances.

The Support of the Committee for Economic Development – the economic benefits of the proposal

51. A third exceptional circumstance might be found in the qualified support for the proposal offered by the Committee for Economic Development in its written comments dated 22nd October 2015. As the CED is a statutory consultee under s.12 of the General Provisions Ordinance, the Tribunal has attached considerable weight to its submissions and examined these carefully.
52. The comments indicate that the CED remains to be convinced that the application is for light industrial use as a principal use, and state its conviction that the site remains suitable for continued industrial purposes and is capable of providing industrial accommodation properly befitting its KIA status. The comments go on to say that the key issue is whether an exception should be made to the policies, which rightly provide protection for sites of this status, in order to enable the particular economic development opportunities presented by the application.
53. In elaborating its position, the CED recognises that the development would include a substantial element of purpose-built industrial premises. It accepts that the sale and display for sale of motor vehicles, while not an industrial activity, is a business activity which requires purpose built premises, and that the overall development could not easily be located elsewhere. The Tribunal notes, however, that because the qualifying word *industrial* is omitted from the phrase *purpose-built premises*, this line of reasoning fails to address the explicit requirement of Policy EMP5, and accordingly has little force.
54. The particular economic development opportunity arising from the proposal identified by the CED is expressed as follows: *"...the proposals have the potential to provide skilled employment opportunities in the industrial (vehicle maintenance) sector and in the motor sales trade. The intended tenant is stated to be an appointed dealer for a quality marque, which is well-established on Guernsey. The development has the potential to enable the business to expand and should therefore serve to maintain and potentially increase competition in the vehicle sales and maintenance marketplace"*.

55. It is not for the Tribunal to make a judgment as to the value of the economic benefits that the above opportunities might provide. However, the fact that the CED is prepared to support the appeal proposal on this basis cannot be ignored, and it is the Tribunal's view that the asserted economic benefits clearly add to the case for exceptional circumstances.
56. The CED makes two further material points and these were considered during the Hearing. The first is set out as follows: *"The CED wishes to be clear that it would be opposed to the permanent loss of this site from the Island's stock of industrial premises, and understands that the site should continue to be protected against future development inappropriate to its KIA status because any subsequent applications would still need to be assessed against the (current and future) land use policies relating to development within KIAs. This provides some comfort that the proposed development can be considered to be exceptional without leading to the permanent loss of the site as a valuable industrial asset"*.
57. In its written appeal submissions, the D&PA had raised concerns about three possible consequences if the appeal proposal were to be implemented. The first was the fear that if the appeal uses were permitted, then the value of the site might rise, making it economically more difficult for a conventional industrial use to be re-established in the future. The second was because the proposed building is designed and positioned within the site so as to accommodate the car display and sales functions, then it might not be easily capable of future adaptation to industrial use. The third was that if permission were granted in this case, then the protection for KIA sites provided by policy EMP5 would be undermined.
58. On the first matter, Mr. Mawson stated that, in his professional view, there would be no discernable difference in value of the appeal site whether it was used for an industrial purpose or the intended purpose. As the D&PA were unable to offer any evidence to contradict this view, the Tribunal concluded that in terms of land value, the effect of the proposal would be neutral.
59. In relation to Mr. Rowles' second point, Mr. Ozanne explained that the portal frame construction of the building was such that it could easily be adapted, reconfigured and subdivided to suit a range of industrial uses, and that the car showroom and sales area followed exactly the same constructional form as the remainder of the building save for the large areas of glazing, which could be replaced or altered if necessary. In terms of the building's position, this had been placed so as to enable convenient vehicular access on three sides, and to provide large adaptable outdoor areas that were well suited to the needs of industrial operators. Once again, the D&PA did not offer evidence to counter these statements.
60. On Mr. Rowles' third point, the Tribunal's view is that a permission granted on the basis of exceptional circumstances should in no way set a precedent, as it is extremely unlikely that the combination of exceptional circumstances that might

arise in this case would be replicated elsewhere. This is the assessment that was presumably in the minds of the creators of Policy EMP5 when they conceived it, and in the minds of the decision makers who adopted the UAP. If it had been thought at that time that the exceptional circumstances avenue might pose a serious threat to the integrity of Policy EMP5 then the policy would doubtless have been constructed in a different way. The Tribunal's conclusion on this point is that were this appeal to be allowed, the effectiveness of the protection offered to other sites within KIAs should be undiminished. In reality, of course, decisions made under the planning policy framework provided by the Urban Area Plan will arguably have limited relevance for development proposals made under the new Island Development Plan.

61. In overall conclusion on these matters, the Tribunal is satisfied that the D&PA's expressed concerns about the harmful consequences of this development, if implemented, have not been substantiated; if permission were to be granted in this case it would therefore be unlikely to create an impediment to the use of the entire building for general industrial uses at some time in the future.
62. The CED's final point was that it would not wish for a conventional retail use to be established on this site, given the need to protect the vitality and viability of The Bridge and Town as the Island's main retail centres. The D&PA have not addressed this particular point, and it seems unlikely to the Tribunal that the specific use requested in this appeal, if approved, would provide a useful stepping stone towards a conventional retail use of the site.

Lack of interest in the appeal site for industrial use

63. Another matter raised by the appellant company in support of the proposal is the lack of demand for industrial premises. Whilst the general issue of demand will be considered later in this decision, Mr. Norman explained that in the four years since his company had purchased the land, only one expression of interest had been received, and this had been for a storage and distribution use rather than an industrial use. The (undated) statement by Mr. Mawson helpfully explains the difficult economic circumstances that have contributed to this situation (Appendix 5 to the appellant company's appeal statement). This evidence is unchallenged by the D&PA. The Tribunal considers that the evident lack of interest in the site for industrial use provides further support for the claim of exceptional circumstances.

The Norman Piette planning permission dated June 2013

64. Attention has also been drawn in the appellant company's submissions to the grant of planning permission in 2013 in relation to an area land to the north-east of the appeal site. The land had formed part of the former Esso fuel depot for which the Development Brief was written. Permission was granted for the change of use of the land to Storage/Distribution Use Class 32 to enable the extension of the adjoining Norman/Piette premises (Ref: FULL/2013/1500). The permission

included the erection of two buildings and the refurbishment of the existing plumbing counter building, and other related works. The appellant company contends that there are inconsistencies in the D&PA's determination of that application and the application subject to this appeal.

65. The Tribunal has reviewed the permission in question in the light of the requirements of the Development Brief dated December 2010 and the relevant policies of the UAP. In relation to the Development Brief, the following points are relevant:

- Attention is drawn in paragraph 1.5 to the key policy objectives of the States, the first of which is to realise the comprehensive development of the site;
- In section 2, the UAP policy framework is outlined;
- In the explanation of Policy EMP5, it is stated *"The new development should be for business and industrial uses in accordance with Key Industrial Area status that require purpose built industrial premises. It is important that prime industrial land is safeguarded for manufacturing and other appropriate business use"*.
- Policy EMP9, which deals with the protection of industrial sites, is not mentioned at all in the schedule of relevant policies; whether this omission was the result of an oversight or was deliberate is unclear.
- Part two of the Brief offers development guidelines; paragraph 4.2 states: *"In view of the limited number of Key Industrial Areas and constraints on future land supply it is important that land that is particularly suitable for large scale businesses is used for industrial purposes (UAP Policy EMP5)"*.

66. The Planning Application Report prepared by the case officer explains the approach taken to the application. It is stated that the application site forms part of the existing Norman Piette site together with part of the former fuel depot. In the list of relevant UAP policies no mention is made of Policy EMP9.

67. The consultation report from CED supported the application, noting:

- The immediate surroundings are industrial... ..however there is a wide variety of different industrial uses accommodated in the near vicinity, which include for example materials recycling, woodworking and metal workshops, and a removals company.
- The application is to use part of a site that was formerly the Esso fuels depot as an extension to the Norman Piette premises, a large scale construction materials importer and distributor which already occupies a significant proportion of the Bulwer Avenue industrial area.
- More specifically, the application is to improve the facilities, which are currently inadequate, for the distribution of plumbing products. The provision of plumbing products is essential to support the Island's construction industry.

- The size and nature of the site and the surrounding area, as well as the ease of access, make the location ideal for the large scale distribution of products for the Island's construction sector.
68. The Planning Application Report recites the aims of Policy EMP5 and the key policy objectives of the Development Brief. It states that the Development Guidelines in the Brief indicate *"the storage of building materials as one of the uses suitable for this site"*. This conclusion is presumably drawn from paragraph 4.3 of the Brief, which states: *"Potential acceptable uses will therefore comprise of a broad range of industrial uses which reflect KIA status and covers light/general industrial development and storage/distribution development"*.
69. This unambiguous statement in the Development Brief, which has the status of supplementary Planning Guidance, appears to the Tribunal be in conflict with the broad aim of Policy EMP9, which reads:
- "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.....;*
 - c) The potential for remedying land use conflicts with neighbouring uses...*

As Policy EMP9 was not referred to in the assessment of the Norman Piette application, these three tests were not applied.

70. It is clear that the Norman Piette application involved the loss of industrial land. Nevertheless, the D&PA were prepared to treat industrial development and storage/distribution development as equivalent in terms of land use, notwithstanding the fact that they fall within different Use Classes, and by their nature involve different sorts of activities. Policy EMP9 was ignored. These decisions represent an anomaly in the application of adopted planning policy, to say the least. The application of a condition attached to the permit which seeks to restrict the use of the land to the storage of building materials in association with the applicant company's adjoining site does not alter the fact that industrial land had been lost.
71. In contrast, the appeal application, which also involved the change of use of part of the site away from industrial use was refused partly on the grounds of non-compliance with Policy EMP9. In the Tribunal's opinion, the DPA's decision to apply Policy EMP9 in one case but not in the other is inconsistent, and adds weight to the argument for exceptional circumstances in regard to the subject application.

72. The range of issues that has been raised by the appellant company in support of the principle of the appeal development and examined by the Tribunal can be summarised as follows:

- that the proposed use cannot reasonably be accommodated elsewhere;
- the DPA's relaxation of policy controls in respect of change of use between industry and storage and distribution uses;
- the economic benefits arising from the proposal that are identified by CED in their consultation report;
- the lack of interest in the site for industrial purposes;
- the inconsistency between the DPA's handling of a change of use application on the adjoining Norman Piette land and the handling of the subject application,

When considered in combination, the Tribunal is satisfied that these issues are sufficient to fulfil the requirement in the second limb of Policy EMP5 that exceptional circumstances must be demonstrated. A policy gateway enabling the proposal to be permitted is thereby opened, provided that the proposal satisfies other relevant policies of the UAP.

Policy EMP9 – The Protection of Industrial Sites

73. The first policy to be considered is Policy EMP9 which seeks to protect sites that are well suited to industrial use. The full text of the Policy is set out at paragraph 68. The appellant company argued that whilst it did not dispute the suitability of the site for continued industrial use in physical and locational terms, the low level of demand for industrial sites was such as to enable permission for change of use under the provisions of part a) of the Policy.

74. A considerable weight of evidence was submitted by the appellant company demonstrating an Island-wide decline in the demand for industrial sites, due essentially to changing economic circumstances, a rapid pace of evolution in the industrial sector, and the loss of Low Value Consignment Relief, which has resulted in a large amount of floor space becoming available. An illustration of this is to be found in the schedule provided by the appellant company entitled Industrial/Storage Premises Availability, dated August 2014, where a total of 306,191 square feet was shown to be available. These trends are fully recognised by the D&PA and by the CED in their consultation report. The D&PA argued that in this changing environment it was even more important to Protect Key Industrial Sites because of their particular suitability to industrial activity. In support of this position the D&PA cited the continuation of the KIA concept into the new Island Development Plan.

75. The Tribunal finds it difficult to reconcile the D&PA's position in the light of its relatively recent decision in respect of the Norman Piette application where Policy EMP9 was set aside. Also significant is the undisputed evidence of an overall

decline in demand for industrial premises, and more specifically that no interest has been expressed by industrial users in the appeal site over the last four years. In these circumstances, the Tribunal judges that although the land clearly remains eminently suited to industrial use by virtue of its location and physical attributes, the requirement of Policy EMP9 to demonstrate a lack of suitability by reference to demand has been satisfied. Policy EMP9 should not therefore represent a barrier to the approval of the appeal proposal in the event that the requirements of other relevant policies are met.

The Effect of the Proposed Development on the Vitality and Viability of the Mixed Use Redevelopment Areas (MURAs)

76. Policy CEN2 seeks to control new retail developments outside the MURAs. The Policy is expressed as follows:

“Within the Mixed Use Redevelopment Areas at Le Bouet (Admiral Park) and Leale’s Yard provision will be made, in accordance with an adopted 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 developments on sites away from the Central Areas of Town and The Bridge will be resisted”.

77. The commentary in the preamble to the Policy provides useful amplification and is repeated in full.

“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”.

“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 a 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”.

78. The key issue that the Tribunal draws from the policy aims and objectives in this case is whether the appeal development would be likely to harm the vitality and viability of the established centres. A number of questions arise from this issue and these were explored at the Hearing.
79. Mr. Ozanne argued that the proposal was a development involving a mixture of uses and should not be regarded as a retail use in the normal sense; the sale, or

display for hire, of motor vehicles is a use that is specifically excluded from the Schedule of the Use Classes Ordinance. Mr. Rowles' response was that the proposed development would involve the display and sale of goods and was accordingly a form of retail development. Whilst recognising the D&PA's position, the Tribunal takes the view that the exact classification of the use will not be a determining factor in this appeal; what is significant is the likely effect of the development on the vitality and viability of the Bridge, which lies about 500m to the north of the appeal site.

80. The matter of the physical and commercial inter-relationship between the appeal development and The Bridge is clearly important. The key question for the Tribunal is whether the appeal development would be likely to deflect trade from the retail and other businesses at the Bridge. Would someone travelling to the proposed developed to buy a vehicle or have a vehicle serviced be less likely to visit the Bridge as a result? Mr. Rowles did not offer any evidence that this would be so, nor did Mr. Ozanne provide evidence to support his claim that the nature and siting of the appeal development would in some way enhance The Bridge. The Tribunal saw no reason to conclude that the effect of the proposal on the MURA at The Bridge or indeed at Admiral Park would be anything other than neutral.
81. The other side of this argument made by Mr. Rowles was that if the proposed development were to be sited in an appropriate location within one of the MURAs then benefits would flow from this as visitors to the facility would be likely to patronise the neighbouring commercial and retail outlets, thereby contributing to the vitality and viability of the Centre. Mr. Ozanne doubted whether such synergy existed at a meaningful level. While the Tribunal saw some merit in the D&PA's position, the demands of the type of development under appeal, including the significant size of the site, the need for good access and a prominent road frontage, and the likely effect on visual and general amenity, are such that the prospects of successfully accommodating such a development within the MURAs seem far from certain.
82. In conclusion on this issue, evidence that the appeal development would materially undermine the future vitality and viability of the MURAs seemed to the Tribunal to be insubstantial, and did not provide an adequate basis for the refusal of the subject planning application.

Design Issues – The Proposed Development

83. Because of the orientation of the site, the four flanks of the building face towards the north-west, south-west, south-east and north-east. For the sake of consistency, the descriptions that follow will adopt the conventions used on the submitted drawings, which is that the front of the building facing Bulwer Avenue will be regarded as the west elevation, and the other elevations will be described accordingly.

In architectural terms, the proposed building is treated as a simple rectangular box, with the portal frame structure concealed behind parapets which follow a uniform horizontal line. The western end of the building is dedicated to the showroom, sales and service reception, and customer areas, while the eastern end contains the workshop with its service bays, parts store, and so on. Between these principal areas is a zone with a mezzanine floor, where offices, toilets and other ancillary functions are concentrated.

84. The building is set towards the western corner of the site, reflecting the advice of the D&PA. The western façade lies about 8m from the site boundary on Bulwer Avenue, with the southern flank about 17m from the road edge in Longue Hougue Lane. The principal vehicular access is located at the eastern end of the Bulwer Avenue frontage, and there is a secondary access in the south western corner of the site onto Longue Hougue Lane. A vehicular lane through the site will connect these two entrances, and will give access to the workshop area and valeting bays through large doors in the eastern façade.
85. The car display element of the building, which faces Bulwer Avenue, is to be entirely glazed at ground floor level while the wall above is clad in flat, metal cladding panels, large in scale, which are expressed in horizontal bands. The remainder of the building is enclosed in profiled metal cladding, with the profiles expressed vertically. On the northern side of the building there are two vehicle demonstration areas that are covered by open-sided tent-like structures, the details of which are not provided.
86. The external site areas are surfaced almost entirely in block paving, but a landscape strip about 2m deep is indicated on the western site edge, and 1m strips are shown along the northern site edge and part of the southern site edge. External vehicle display areas will occupy most of the exposed frontages to the west and south of the site, while visitor parking will be laid out along the northern boundary. The eastern part of the site will be used predominantly for workshop related parking and staff parking.

Policy Considerations and the Reasons for Refusal on Design Grounds

87. In refusing the application partly on design grounds, the D&PA relied on a number of policies within the Urban Area Plan, as well as the design guidance contained within the Development Brief for the Former Esso Site which was published in 2010. The design guidance in the Development Brief amounts to three key statements identified by the DPA in its written appeal statement, as follows:

“Whilst the site is set within an industrial area, the design of the buildings should respect the road frontage location of the site. The design should provide appropriate consideration of materials, colour, juxtaposition of buildings and roof forms”.

and,

“The scale, massing and form of any buildings on the site would be expected to draw from the surrounding warehouse development along Bulwer Avenue”.

and,

“Any open storage areas should be laid out to complement the built form of the site. The developer should specify these areas, including materials to be stored and height of any stockpiles”.

88. The Tribunal does not consider that the third of these statements has any relevance to the appeal proposal.

89. With regard to the weight to be attached to the Development Brief, Mr. Rowles expressed the view that as the Brief had been subject to consultation with States Departments and the public before being approved by the planning authority of the time, it should be treated as a form of supplementary planning guidance and accorded considerably more weight than pre-application advice. The appellant company did not challenge this view, and the Tribunal sees no reason to do so.

90. The D&PA's third reason for refusal of the application summarises the objections to the proposal on design grounds and it is set out in the following terms:

“Policies GEN5 and DBE1 of the Urban Area Plan seek to promote good design while Policy GEN6 seeks to ensure that the amenity of an area, its pleasantness and local distinctiveness, are maintained. Policy DBE4 of the Plan indicates that, in cases such as this, landscape design should form an integral part of the design and development process.

The form, mass, elevational treatment and external materials of the proposed building pay no regard to those of existing buildings in the area and the submitted Design Statement does not demonstrate how the design of the building and the layout of the site would reflect or make a positive contribution to the character and appearance of the area. The application is not accompanied by detailed landscaping proposals and the limited provision shown would not reduce the impact of the development or help to screen it from neighbouring properties or from views outside the site.

The proposal would not achieve a good standard of architectural design and would form a discordant element in the street scene which would detract from the appearance and character of the area. The proposal would be contrary to the requirements of Policies GEN5, GEN6, DBE1 and DBE4 and conflict with the objectives of these policies to ensure a well-designed environment.”

91. The Tribunal noted that in his written submissions to the Tribunal dated August 2016, Mr. Ozanne described the proposed structure as a gateway building, marking the transition between residential and commercial areas (Para. 4.28). The notion of a high quality gateway building had apparently been introduced by Mr.

Ozanne at the first meeting with officers held in June 2014. An architect's sketch of this time titled Site Analysis and Block Concept Plan (Ref: 9931-S1-02) identifies 'a "primary view to gateway building" along Bulwer Avenue towards the north-east, and the corner of the site next to the road junction is marked "gateway frontage to signature building".

92. It is generally accepted that "gateway" buildings are intended to be landmark structures within the local scene, and are imbued with some symbolic significance. The D&PA acknowledged that this approach represented a legitimate starting point for the development of a design concept. The Tribunal agrees with the parties that a building on the appeal site can be regarded as a gateway building, as it marks the edge of an industrial zone which is approached from the west through a well-planted residential area, and it is also situated on a prominent road junction. The D&PA's concern was that the submitted scheme did not fulfil the expectations for a gateway structure.
93. During the Hearing the Tribunal explored the question of whether the design of the proposed building had evolved from the architects' analysis and understanding of the character of the surrounding area, and whether the building's form and position had been adjusted so as to respond to key viewpoints of the site. Mr. White, for the D&PA, asked a number of questions on these matters. Having studied the Design Statement, which is silent on these points, and heard the architects' responses to a range of questions, there is little evidence to suggest that any kind of formal assessment of the surroundings had been undertaken by them. Such analysis might of course be carried out on an entirely intuitive basis, but in the absence of a written or drawn design rationale to explain the proposal, the D&PA has had to rely on its own assessment of the appeal site's surroundings as a basis for its decision. The Tribunal is obliged to do the same.

The Character of the Surroundings – Important Viewpoints

94. In terms of the important viewpoints of the appeal site, the Tribunal shares the D&PA's assessment that the two key viewpoints for observers are, first, when approaching from the south-west along Bulwer Avenue, and, second, when approaching from the north-west along Longue Hougue Lane. Views from the north-east along Bulwer Avenue are less significant because the buildings here are generally set much closer to the road edge than in the area west of the crossroads, and only oblique views of any building on the appeal site can therefore be obtained from this direction.
95. The proposed building has been positioned with its main façade parallel with Bulwer Avenue. In the Tribunal's assessment, the effect of this orientation and positioning is to present a head-on view of the corner of the building to observers travelling along Bulwer Avenue from the west. Other than the area of display glazing on the western corner of the building and a change in cladding material, the design appears to make no concessions to this important viewpoint. The submitted computer generated image entitled *view from the south* actually

appears to be a view from the west, taken from the land in front of Building No. 6 as shown on the architects' survey plan (Ref: L25-9932-S12-02). This, in the Tribunal's view, is not a representative view of the appeal development.

96. In views along the upper part of Longue Hougue Lane towards the south-east, only the southern flank wall of the building and the external display areas will be visible until the observer is quite close to the road junction. Again, there is no apparent architectural response to the focused views along this thoroughfare. It might be said therefore that by virtue of its positioning, overall form and external treatment, the building avoids making any meaningful response to these important viewpoints. This is not what might reasonably be expected of a gateway building where the usual aim is to signal the approach from one type of environment into a different sort of environment.

The Character of the Area

97. In terms of the character of the commercial and industrial surroundings, the Tribunal noted during its site visit a range of building materials, including granite, brickwork, asbestos cladding and profiled metal cladding. The colour palette tends towards the sombre. The profiled metal cladding used on some of the buildings, being a newer material than the traditional asbestos sheeting, tended to be lighter in tone and display a wider colour range.
98. Due to the industrial nature of the area, building forms tend to be large in scale and simple in treatment, though some exceptions were seen, for example where office uses have intruded into the area. Many of the buildings are positioned close to the road edge and parallel to it, but some sites have relatively open frontages where parking areas have been introduced, or where the land use involves fuel storage. The building line is therefore not continuous. The larger buildings generally have pitched roofs, while some of the smaller ancillary buildings have flat roofs. The Tribunal's overall impression was of a long-established industrial area lacking any sort of coherent and attractive townscape character that one might wish to emulate, the only notable features being the overall simplicity of the building shapes and the predominantly pitched roof forms.
99. The Tribunal has carefully considered the question of what would be a reasonable response to the policy requirement to take account of the character of the surrounding area. It concludes that this requirement would be satisfied by a building that is simple in overall form, echoing the form of the existing industrial sheds, well mannered, and appropriate to its industrial context. Because of its prominent position on the edge of an important industrial and commercial area, it is reasonable to expect that the design of this development should be an exemplar for other future development in the area, and it should have a respectful presence in relation to the adjoining residential neighbourhood.
100. The Tribunal's assessment is that the simple, box-like form of the proposed building is somewhat at odds with the character of other large buildings nearby.

Gateway buildings are often designed to stand apart from their surroundings, precisely because of their symbolic visual role, but the architects presented no explanation at the Hearing as to why this particular building form had been adopted, bearing in mind that alternative design approaches are possible. Coupled with its earlier conclusion that the building does not appear to make positive architectural responses to important viewpoints, the Tribunal concludes that there are significant shortcomings in the proposed design.

101. The development has the character of a standardised response derived principally from the operator's preferences, with little apparent adjustment to suit the circumstances of the appeal site and its surroundings. Indeed, Mr. Ozanne had explained during the Hearing that the design was similar to a development for the same operator that had been constructed in Bristol. Different roof forms, building positions and orientation might have been considered and discounted by the architects before adopting the submitted design, but there is no evidence of this.
102. In relation to the streetscape within Bulwer Avenue that would result from the development, the building's position would create a large opening in the frontage up to the boundary of the Norman Piette property, and there would be unrestricted views to the rear of the site. In essence, this would have the appearance of a large car park, though many of the vehicles would be on display and for sale, an inevitable consequence of the proposed use. Substantial planting along the open frontage might enhance the street scene and screen the interior of the site but this would probably conflict with one of the operator's assumed objectives, which would be to expose vehicles for sale to passing pedestrians and traffic, with a minimum of visual distraction. These conflicting design objectives are possibly irreconcilable, but there is no evidence that these matters have been fully considered in the design process. It is the Tribunal's view that the absence of a refined landscape scheme demonstrates a lack of proper attention to this matter.
103. The Tribunal's conclusion is that the proposed design is not a well-considered response to its surroundings, and fails to satisfactorily address the underlying design advice expressed in the Development Brief, or meet the aims and requirements of Policies GEN5, GEN6, DBE1 and DBE4 of the Urban Area Plan.

Conclusions

104. The Tribunal's overall conclusion in this case is that although the appeal development has satisfied the requirements of Policy EMP5 insofar as the proposed change of use is concerned, and also complies with Policies EMP9 and CEN2, the design of the development falls short of the requirements of Policies GEN5, GEN6, DBE1 and DBE4. For this reason the Tribunal is unable to support the appeal.

105. In reaching this decision the Tribunal has taken account a number of other matters raised in the written representations and during the Hearing, and seen during its visit to the site and its surroundings. These matters include the case law referred to by the appellant company, pre-application correspondence, the planning histories of other sites referred to, reference to UK planning guidance – which was considered to be of no direct value, and the question of whether a minor departure from the UAP is material.. None of these matters has affected the Tribunal's decision in this case which is that the appeal is dismissed.

**Stuart Fell DipArch RIBA IHBC
Presiding Member**

Date of Decision: 6th April 2017