

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (a) against a decision to grant planning permission

Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Advocate Guy Coltman

Planning Permission Reference Number: P/2023/0750

Decision notice date: 15 November 2023

Location: Field No. P983, Le Vieux Beaumont, St. Peter.

Description of Development: RETROSPECTIVE: Create access bank into Field P.983 AMENDED.

Appeal Procedure and Date: hearing, 28 February 2024.

Site Visit procedure and Date: accompanied 28 February 2024.

Date of Report: 11 March 2024

Introduction

1. This is a third-party appeal by Advocate Guy Coltman against a decision to grant planning permission to construct a bank to enable vehicle access between the external amenity area of 'Bramble Bank' and the adjacent Field P.983 (the 'field').
2. The application was determined on 15 November 2023, by the Infrastructure and Environment Department (the 'Department') using delegated powers.
3. A summary of the cases presented by each party during the application and the appeal are presented below. Further details are available through the Planning Applications Register website.

The appeal site, planning history and proposed development

4. There is some ambiguity about the extent of the appeal site (the 'red line' boundary), which I consider further below.
5. 'Bramble Bank' is a substantial dwelling house which forms part of a small development of detached houses known as the 'Hillside Estate'. Access to these properties is via a narrow private road, which leaves Le Vieux Beaumont on the outside of a hairpin bend.
6. Field P.983 adjoins the eastern boundary of 'Bramble Bank' and part of its external amenity area. The field is set at a lower ground level than 'Bramble Bank' and slopes broadly both west to east and north to south. There are steps which allow pedestrian access between 'Bramble Bank' and the field.

7. There are fields to the north, north-east, and south of Field P.983. A low, vegetated bank separates Field P.983 from adjoining fields to the north and mature planting separates it from adjoining fields to the south. A fence is present along part of the boundary of the field, including the eastern side. I saw signs of recent planting of evergreens along this boundary. A locked gate is present on the north-eastern boundary. Whilst this provides access through the fence, there are no signs of a vehicle track between the fields.
8. Residential development lies to the immediate east of the field. This includes a private road which extends up to the eastern boundary of the field, but there is no access to this through the fence.
9. There is no direct vehicle access to Field P.983 from any direction including from Le Vieux Beaumont. The appealed application seeks retrospective permission to create a vehicle access between the eastern boundary of the external amenity area of 'Bramble Bank' and Field P.983. Vehicles wishing to use this access would need to use the private access road to Hillside Estate from Le Vieux Beaumont and the driveway to 'Bramble Bank'.
10. Owing to the substantial difference in ground levels between 'Bramble Bank' and the field, an embankment is required to support the vehicle access. This is orientated approximately south-west to north-east/ east. The bank appears to be constructed of earth and gravel. A series of large boulders were present along the border of the embankment and vegetation was colonising it at the time of my inspection.
11. The appellant has referred to other applications relating to 'Bramble Bank' (P/2023/0110 and P/2023/1103). As these relate to the dwelling house itself, I do not consider that they have any relevance for the appealed application, other than in respect of information submitted in relation to traffic and transport.

Case for the appellant

12. The appellant has appealed on the following grounds:
 - The planning permission that has been granted is not adequately described.
 - The decision has not adequately taken into account all relevant material matters, including private property law matters.
 - The decision does not take into account the failure by I & E Transport to apply its own standards and fails to adequately address Policy TT4 - Provision of off-street parking.
 - The decision fails to adequately address the considerations of Policy ERE1 - Protection of agricultural land.
 - The decision fails to justify planning permission under all Bridging Island Plan Policies including Policies SP3 - Placemaking, SP4 - Protecting and promoting island identity, SP5 - Protecting and improving the natural environment, PL5 - Countryside, coast and marine environment, GD6 - Design quality, NE1 - Protection and improvement of biodiversity and geodiversity and NE3 - Landscape and Seascape Character. It is not agreed that the design of the ramp enhances the character of the island's environment and landscape.
 - The decision fails to adequately justify planning permission under Policies SP7 - Planning for community needs and GD1 - General development considerations. Allowing use of the private access road that serves Hillside Estate to be used by agricultural vehicles would result in unreasonable harm

to residential neighbours and detract from the sense of peace that is currently enjoyed.

Case for the Department

13. Key points raised in response to the grounds of appeal are:
- It is not accepted that the description of works is unclear: the proposal is for an access via a bank into a field.
 - The Department considered the merits of the proposal and the policies of the Bridging Island Plan 2022 and other relevant material considerations. Relevant material considerations do not extend to private agreements between third parties as they are beyond the control of the authority.
 - Car parking was not considered relevant to assessment of the application as no additional parking is required and the existing dwelling already has adequate parking.
 - The proposal is considered operationally necessary and ancillary to the primary use of the land as agriculture. The ramp is an agricultural use as part of the wider field.
 - The ramp is not considered to harm the landscape character of the area. It would allow necessary access to the field and be integrated within the field, with additional landscaping as required by condition to the application.
 - The test established by Policy GD1 is that there should not be unreasonable impacts on adjoining properties. The Department concluded that the development has not resulted in unreasonable harm to the neighbouring properties. Use of a private access is common to access a field.

Case for the Applicant

14. The key points raised by the applicant are:
- In response to comments from the appellant during the application, the applicant agreed to change the address and to expand the description of the proposal to include the private road between the application site and Le Vieux Beaumont. The address was changed and a new Site Notice displayed, but the Department did not require a change in the description.
 - I & E Transport will have considered traffic matters. The field will be managed by a sit-on mower which will be stored at Bramble Bank. There will be no need to use the private roadway onto Le Vieux Beaumont. No large tractors or other agricultural machines are intended to be brought to the field.
 - Bramble Bank will continue to have suitable residential parking.
 - In the absence of the access bank the field could not be managed, but would remain fallow, invaded by weeds, bramble and scrub, which would fail to protect agricultural land.
 - Ramps to access fields are not an unusual feature in the countryside.
 - The site is located in the Green Zone, which has the least level of protection of the countryside zones.
 - Policy SP7 - Planning for Community Needs is not relevant.
 - The proposal would not affect the health and well-being of the neighbours.

Consultation responses

15. The response from **IE Transport** (17 August 2023) commented that the site is on a Parish Road and the access would be remote to the strategic road network. It recommended that advice be sought from the Parish.

16. **Environmental Land Control's** response (11 September 2023) expressed support for the proposal on the basis that it would allow access for machinery to the field.
17. **The Natural Environment Team** did not object to the scheme (4 October 2023).

Representations

18. Objections were received from three correspondents. These:
 - Sought clarification of the red line boundary of application site.
 - Sought amendments to the address and description of development.
 - Sought clarification of status of works undertaken in grounds of 'Bramble Bank'.
 - Stated that the private road does not provide suitable access for agricultural purposes.
 - Stated that visibility splays onto Le Vieux Beaumont are restricted and not suitable for agricultural traffic.
 - Stated that alternative access options to the field are available.
 - Stated that the assessment should include an understanding of the agricultural use of the field.
 - Stated that there was no assessment of ecological effects.
 - Requested that a landscape scheme should be provided.
 - Sought details of material used to create the bank.
 - Raised concerns that the bank may be used to provide access to the field by construction vehicles.
 - Identified a potential change in use from agricultural use.

Key Issues

19. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan." The current Island Plan is the Bridging Island Plan, dated March 2022 ('Bridging Island Plan').
20. Having regard to the provisions of the Bridging Island Plan, the grounds of appeal and other material considerations, I consider that the key issues in this appeal relate to:
 - Adequacy of description of permission including supporting site plans.
 - Compliance with the Bridging Island Plan and in particular:
 - Policy ERE1 - Protection of agricultural land.
 - Policies relating to landscape, design and the natural environment.
 - Policies SP7 - Planning for Community Needs and GD1 - General development considerations.
 - Effects on traffic and parking.
 - Other material considerations.

Adequacy of description of permission including supporting site plans

21. The applicant states the purpose of the application is to allow vehicle access to Field P.983, so it can be managed. Previously, vehicles have had to be lifted in by crane.

22. The description of development, as included on the decision notice is: “RETROSPECTIVE: Create access bank into Field P.983 AMENDED”. However, in order to reach this access bank, vehicles will be required to leave Le Vieux Beaumont and pass along the private access road serving the Hillside Estate and then along the drive through the external amenity area of ‘Bramble Bank’. The application documents show that the location of the drive within the grounds of ‘Bramble Bank’ is to be moved further east, including construction of a new access point onto the private road serving the Hillside Estate. This was under construction at the time of my site inspection.
23. The Department considers that there are no current restrictions on the type of vehicle which can use either the private road from Le Vieux Beaumont or the drive within the grounds of ‘Bramble Bank’. In addition, it considers that the re-alignment of the drive is being carried out as ‘permitted development’ as provided for by Part 1 Class C of the Planning and Building (General Development) (Jersey) Order 2011. This relates to the formation within the curtilage of a dwelling-house of a driveway, turning area, car park, patio, pathway, decked area or other hardstanding or raised planting area, or the conversion of any driveway, turning area, car park, patio, pathway, decked area or other hardstanding to a lawn or planting area. Consequently, the Department considers that the proposed development relates only to the construction of the access bank.
24. There is no dispute between parties that the authorised planning use of the field is for agriculture. This field forms a separate planning unit to the external amenity space of ‘Bramble Bank’ and the private road serving Hillside Estate.
25. Development is defined in Section 5 (1) of the Planning and Building (Jersey) Law 2002 as:
 - “(a) to undertake a building, engineering, mining or other operation in, on, over or under the land;
 - (b) to make a material change in the use of the land or a building on the land.”That is, the definition includes for both operational development and a change of use.
26. Defining a change in use is a matter of fact and degree, unique to each circumstance. A key question is whether the character of the site has changed. As far as I am aware, there is no history of agricultural vehicle access to Field P.983 via the private access road and/or the drive serving ‘Bramble Bank’. I have not been provided with any evidence to suggest that the authorised planning use of the external space around ‘Bramble Bank’ is for anything other than the incidental enjoyment by residents of ‘Bramble Bank’.
27. I conclude that the introduction of agricultural vehicles through the private amenity area of ‘Bramble Bank’ would alter the character of that area and the private road serving the Hillside Estate, such as to represent a change in use, requiring planning permission. That change in use is not currently specified in the issued permission.
28. The notice states that permission is to be carried out “entirely in accordance with the plans, drawings, written details and documents which form part of this permission.” Three ‘approved plans’ are identified on the notice: ‘Location Plan’, ‘2666_PL12_Site plan as existing’ and ‘2666_PL13_East elevation & section AA as existing’. These differ from those listed on the ‘approved documents’ tab of the planning applications register website, which includes ‘Amended 2666_PL12A_Site plan as existing’.

29. The applicant confirmed that the ‘correct’ versions are those listed on the planning applications register website. However, there are inconsistencies in the location of the ‘red line’ boundary shown on the ‘Location Plan’ and the site plan as existing (Amended 2666-PL12A). At the hearing, the applicant confirmed that the ‘Location plan’ on the planning website should have been updated to duplicate the red line boundary shown on Drawing 2666_PL12A. However, this drawing is not listed as one of the approved documents on the decision notice.
30. Planning permission sets out what is allowed (the description) and conditions, which limit how that use or activity can be carried out. No conditions have been applied to restrict or clarify how the ramp and access to it may be implemented.
31. The proposed ramp provides a practical solution to enable vehicle access between ‘Bramble Bank’ and Field P.983, which are currently in the same ownership. However, S24 of the Planning and Building (Jersey) Law is clear that planning permission goes with the land. The appellant has pointed me to the findings in *Hillside Parks Limited v Snowdonia National Park Authority* [2022] 1 WLR 5077, quoted by the Royal Court ([2023] JRC193). This notes that interpretation of a planning permission is an objective exercise “concerned not with what the maker of the document subjectively intended or wanted to convey but with what a reasonable reader would understand the words used, considered in their particular context, to mean...” Thus, it is important that the permission is complete and accurate to all readers and not just those involved in seeking that permission.
32. The applicant has suggested that these are ‘minor’ discrepancies capable of being corrected as part of the Minister’s decision. I am not persuaded by this. I find that the planning permission as worded, including the description, conditions and approved plans does not provide a full, accurate and clear explanation of the development permitted. The description only considers the operational development and not the consequential change in use of the amenity area of ‘Bramble Bank’ or the access road to the Hillside Estate. There is a lack of clarity concerning which are the approved plans and the location of the ‘red line’ boundary. I consider that these deficiencies go to the heart of the permission.
33. The powers of the Minister in determining appeals are set out in Section 116 (2) of the Planning and Building (Jersey) Law 2002. These provide for the Minister to allow the appeal in full or in part; to refer the appeal back to the inspector for further consideration of such issues as the Minister shall specify; to dismiss the appeal; or to reverse or vary any part of the decision-maker’s decision. Whilst it is for the Minister (and ultimately the Courts) to determine the extent of these powers, it seems to me that a modification of the description and clarification of the red line boundary, would alter the substance of what is being sought, and hence would exceed what can be corrected by the Minister at appeal. However, in case the Minister does not agree with me on this matter, I have considered the other grounds of appeal and the compliance of the development with the requirements of the Bridging Island Plan.

Compliance with Bridging Island Plan

Policy ERE1 - Protection of agricultural land

34. Policy ERE1 seeks to protect agricultural land from development. Loss of agricultural land will not be supported unless in exceptional circumstances and where certain

criteria are met. This includes that the nature of the proposed use genuinely necessitates and is appropriate to its proposed location.

35. I accept that vehicle access to an agricultural field may be necessary and that the current proposals would facilitate that. However, they would also result in the loss of a small amount of agricultural land. Such a loss may be justified if there are no alternative means of securing that access. I consider this aspect further below.

Policies relating to landscape, design and the natural environment

36. The appellant has referenced several policies within the Bridging Island Plan which seek to safeguard the quality and character of the Island's environment and landscape (Policies SP3, SP4, SP5, PL5, GD6 and NE3).
37. I saw that the ramp is a substantial structure. However, its location, directly adjacent to the change in ground levels between the field and 'Bramble Bank', means that it is viewed against this higher ground and in the context of the external amenity space of 'Bramble Bank' and the building itself, which would act to reduce its prominence. Existing plant growth obscures views of the ramp from the south. It would be more prominent in views from the dwellings to the east of the site. However, I note that new shrubs have been planted close to the boundary, which, once grown, would act to obscure views of the ramp.
38. The ramp was developing vegetation at the time of my site inspection. A condition requiring submissions of a landscape scheme was appended to the permission. The Department explained this was to prevent planting of introduced species. However, given the ambiguities I have identified in the description of development and supporting plans, it is not clear what area should be included within the landscaping scheme.
39. The appellant has also referenced concerns in relation to Policy NE1 - Protection and improvement of biodiversity and geodiversity. Whilst no ecological information was submitted in support of the application, I note that the Natural Environment Team did not raise any concerns about the proposals.
40. Overall, subject to my comments below about demonstration of the need for the proposals, I am content that the proposals would be consistent with those policies which seek to safeguard landscape quality and character.

Policy SP7 - Planning for Community Needs and Policy GD1 - General development considerations

41. The appellant considers that Policy SP7 - Planning for Community Needs should have been considered during determination of the application. This policy seeks all new development to demonstrate that it is helping to meet the identified needs of the community and is supported by seven factors that should be considered. The appellant has identified criterion 3, which relates to development contributing to a sense of place, as being relevant. The policy is clearly aimed at ensuring that development (principally housing) provides the necessary infrastructure to support it. Consequently, I am not persuaded that this policy is determinative for this appeal.
42. Policy GD1 seeks to manage the health and wellbeing impact of new development. In particular, it aims to ensure that development will not unreasonably harm the

amenities of occupants and neighbouring uses, including those of nearby residents. In assessing this, it is often helpful to consider what amenity is currently enjoyed.

43. Hillside Estate comprises a small development of five detached dwellings, which are accessed from Le Vieux Beaumont via a shared private road. This is narrow (estimated by the appellant as 3.2 m wide) and vehicles are unable to pass each other. I have been provided with no evidence to suggest that agricultural vehicles have ever used this private road. Even so, I consider that the proposed relocated access to the driveway of 'Bramble Bank' is sufficiently close to the junction of the private road with Le Vieux Beaumont as to reduce the risks of frequent interactions between domestic cars and agricultural machinery.
44. I have also considered the effect of the proposals on the occupants of 'Bramble Bank'. Whilst I recognise that 'Bramble Bank' and Field P.983 are currently under the same ownership, there is nothing in the permission or conditions to ensure that this situation would continue. The proposals would result in the introduction of agricultural vehicles into the private amenity space of 'Bramble Bank', without any controls over that use, including removal of any rights consequential to the agricultural use of the driveway. I conclude that this would have an unreasonable impact on the health and safety of users of the external amenity space of 'Bramble Bank'.

Effects on traffic and parking

45. Although I & E Transport stated that Le Vieux Beaumont is a Parish Road, but the appellant has provided an extract from the Government of Jersey's website, which indicates that Le Vieux Beaumont is owned by the Department for Infrastructure. I & E Transport has also previously provided responses on traffic matters in response to other planning applications for 'Bramble Bank'. In the absence of a comment from I & E Transport, the Department has drawn its own conclusions in respect of traffic and concluded that the proposals would not result in a significant increase in traffic.
46. The private access road to the Hillside Estate leaves Le Vieux Beaumont on the outside of a hairpin bend. There is also a layby close to the junction. Whilst I have not been provided with details of sight lines, based on my observations, vehicles exiting the private road would have some visibility of approaching traffic. Given that the proposals would allow access to a single field, I do not consider that they would result in a significant increase in traffic. The width of the private access road at its junction with Le Vieux Beaumont is restricted by topography and stone gate posts, which would act to limit the size of vehicles entering the private road. I have concluded above that whilst visibility along the private road serving the Hillside Estate is restricted in places, the proximity between the driveway of 'Bramble Bank' and the junction with Le Vieux Beaumont reduces the potential for frequent interactions between agricultural vehicles and cars.
47. During my site inspection I saw that there is adequate space to accommodate parking at 'Bramble Bank'. Therefore, I conclude that the proposals would not have adverse effects on traffic and would be consistent with Policy TT4.

Other material considerations

48. Policy SP2 - Spatial Strategy seeks to focus development within the island's built-up area. Within the countryside, development will only be supported where a countryside location is justified, appropriate and necessary in its location.

49. The Department confirmed at the hearing that it had placed great importance on the need to gain vehicle access to Field P.983 to maintain its agricultural use. Environmental Land Control expressed support for the same reasons. However, I am not persuaded that sufficient evidence has been provided to demonstrate this need and that vehicle access could not be provided without loss of agricultural land.
50. The applicant refers to the field as being 'land locked', but that does not accord with my observations. There are open fields to the north and north-east of the site. There is existing development to the east, but there is a private road which terminates at the field boundary. Thus, there appear to be existing physical access points 'at grade' with the field that would not necessitate the construction of the ramp and consequent loss of agricultural land.
51. The applicant has explained that there are ownership issues that prevent use of these alternative physical access points. Whilst these explanations are helpful, I was not provided with any independent verification that these access points are no longer viable. Consequently, I am not satisfied that the need for the development has been adequately demonstrated.

Conditions

52. Permission was granted subject to one standard condition and one additional condition. The standard condition requires that the development should be carried out in accordance with the plans, drawings, written details and documents which form part of the permission. As noted above, there is a discrepancy between the approved plans listed on the permission and the planning register website and there are discrepancies between the approved plans in terms of the location of the red line boundary.
53. The additional condition requires that a detailed scheme of hard and soft landscaping should be submitted within 3 months of the approval. It should be implemented in full in the first planting season and maintained thereafter. I accept that landscaping would be advantageous in further integrating the ramp into the landscape. However, the condition does not specify what area should be covered by the landscaping scheme. Given the discrepancy in red line boundaries on the approved plans, these do not help to clarify the requirements of the condition.
54. At the hearing I held a 'without prejudice' discussion about conditions. The appellant suggested conditions to restrict the size of vehicles using the ramp, frequency of use and preventing separation of ownership of the field from 'Bramble Bank'. The Department considered that conditions on these matters may be too restrictive. However, I agree that it would be appropriate to clarify and restrict the way in which access across 'Bramble Bank' could be exercised. Removal of any permitted development rights associated with agricultural use of the driveway would also reduce effects on residential amenity.

Conclusions

55. For the reasons set out above, I conclude that the proposal involves both operational development in the form of construction of the access ramp and a change in use of the private external amenity area of 'Bramble Bank'. This change in use is not included within the description of the development on the decision notice. There are also inconsistencies between the approved plans as listed on the decision notice

and the planning applications website and differences in the extent of development ('red line' boundary) as shown on approved plans. Consequently, I find that the permission does not provide a full, accurate and clear explanation of what is permitted. I consider that these deficiencies exceed what can be corrected through this appeal process.

56. The authorised use of the Field P.983 is for agriculture and it follows that access is required to maintain this use. The introduction of a compacted earth bank between 'Bramble Bank' and Field P.983 would be a practical solution to enabling vehicle access to the field, but would result in a small loss of agricultural land. The field is located within the Green Zone. Policy SP2 allows for development in countryside areas, but only where a countryside location is justified, appropriate and necessary in its location. Likewise, Policy ERE1 allows for loss of agricultural land, where this is necessary. For the reasons set out above, I am not persuaded that the location of the proposed access ramp has been justified. In addition, the proposals would also introduce agricultural traffic into the private external amenity space of 'Bramble Bank', which I conclude would result in unreasonable impacts on the safety of residents contrary to the aims of Policy GD1. Consequently, I find that the proposals would not be consistent with the Bridging Island Plan.

Recommendations

57. I recommend that the appeal should be allowed, and that Planning Permission be refused.

Sue Bell

Inspector 11/03/2024