

**STATES OF JERSEY**

**REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**

**APPEAL by David Cole under Article 108(2)(b) of the Planning and Building (Jersey) Law 2002, as amended, against refusal of planning permission for a ‘timber built double size double garage (4 cars) on a concrete base’.**

**Site Address: Craigie Hall, La Rue du Hocq, St Clement**

**Department of the Environment (DoE) ref P/2014/1223**

**Hearing and site inspection on 9 February 2016**

**Inspector Roy Foster MA MRTPI**

## **PROCEDURAL MATTERS**

### **The description of the development**

1 The site address is stated on the application form as 'Craigie Hall, Rue du Hocq, St Clement' and the nature of the proposal is described as 'timber built double size double garage (4 cars) on a concrete base'. The application was accompanied by a letter of 25 June 2014. This describes the purpose of the proposed garage as the storage of classic cars belonging to Mr Cole, who owns and lives at Craigie Hall and also owns the adjoining Field 151, on part of which parcel of land the garage would be built. The letter states that the application *'involves changing the use of this small piece of land so that it is within the domestic curtilage of Craigie Hall and approving the building of a simple wooden garage on the small piece of land'*.

2 In view of the contents of the letter of 25 June the application was registered by the DoE as being one to 'Change the use of part of Field 151 to domestic curtilage. Construct Double Garage'. It was subsequently refused as contrary to IP policies GD1 and NE7 since the site is in the Green Zone wherein NE7 imposes a presumption against all forms of development including the change of use of land to extend a domestic curtilage and there were not considered to be any exceptional reasons to justify such development.

3 Matters pertaining to these different descriptions of the proposal are discussed later in this report.

### **The relevant site plan**

4 The plans relating to the refused application include:

- a location plan showing a red line around the entire ownership (Craigie Hall and Field 151) with a somewhat imprecise indication of the siting of the building, also in red, and
- a site plan at 1:100 showing the site of the proposed garage but with no coloured line indicating the 'application site'.

5 Other plans were produced in the context of the appeal within the appendices and enclosures to the statement on behalf of the appellant from Carney and Co dated 15 September 2015. These are:

- a plan at 1:2500 dated August 2006 showing the location within field 151 of the 'dump', 'hill' and electricity substation (Appendix 1), and
- enclosed drawings 41 (south elevation) and 42 (site plan).

6 None of the application or appeal drawings defines a clear and unambiguous boundary to the intended limits of the application site. I therefore asked the appellant's agent to define and initial such a boundary on a copy of drawing 42. I am forwarding this to the Assistant Judicial Greffe.

7 I return to these matters in my Observations and Conclusions.

## CASE FOR THE APPELLANT

8 Mr Cole acquired Field 151 at a time when the previous owner had been making low key enquiries about developing it for housing. The field can be split into 4 main areas – (i) the main field to the north which descends a north-west facing slope, (ii) a disused former quarry and dump which had historically been used by the Parish and from which Mr Cole removed assorted items after he bought the site in 2007, (iii) the appeal site, which was formerly the access to the dump and which is said to have been continuously used for access and parking both by Mr Cole and previously and (iv) a hillside on the south east side of the field rising to La Rue de la Hougette.

9 Mr Cole currently has nowhere to store his classic cars except in the front courtyard of the house. Although permission for a garage within the courtyard was granted in 2009 (P/2008/2268) this was not implemented because the building would have significantly reduced the yard and damaged the outlook from the house.

10 The proposal is to erect the garage on the agriculturally unusable part of Field 151 fronting La Rue de la Hougette between Craigie Hall Chalet (within the curtilage of Craigie Hall) and an electricity substation. This small area is a rock-floored former granite quarry, and has no agricultural use or potential. When it ceased to be a quarry it was used for decades as a builder's dump/hardstanding. The use as a dump expired before Mr Cole bought the property. This is not an access to Field 151; that is further up La Rue de la Hougette. Although the site is just within the Green Zone a pragmatic approach should have been taken to the application as it would have no detrimental effect on people, the land or the Green Zone itself. The proposed simple wooden building (which could be removed in future if required) would improve the appearance of the area and make it more useful.

11 Handwritten notes of a pre-application advice meeting between the appellant and the Duty Officer of the Department in August 2014 show that Mr Cole was advised that *'it may be worth making'* an application for a double garage. No mention was made by the officer that vehicles parked here caused any problem even though they were clearly visible in aerial photographs. The subsequent application for a garage at the site (P/2014/1223) was refused in October 2014. A request for reconsideration was heard by the Minister at a public meeting in February 2015. Although the Minister upheld the original decision he *'expressed a degree of sympathy with the applicant as it was clear that the land was not viable in agricultural terms.'* He *'was not ruling out the possibility of the construction of a garage on the site, but suggested that the applicant submit professional drawings on the proposed scheme in order that it could be properly assessed in the context of existing buildings.'* This is what has now been done.

12 An enforcement notice issued by the Department in 2009 has been complied with. The fact that vehicles parked on the appeal site were not removed and have not latterly been required to be moved reinforces the applicant's belief that established use exists for parking on this part of the field.

13 The Department's wrong description of the application has severely compromised the outcome. As a non-professional Mr Cole did not realise the consequences of his description of the application in his letter of 25 June 2014. The application was not for a change of use of part of Field 151. The area has established use for parking and the true purpose of the

garage was simply to enclose those vehicles and upgrade this corner of the property. Letters from some local people support the point that the appeal site has been continuously used to park vehicles for quite some time before Mr Cole has lived here. A letter dated 2 October 2015 from Connetable Len Norman of St Clements Parish confirms his knowledge that the site has been used to park vehicles for the whole of the previous 22 years. It also confirms that the Parish Roads Committee has no objection to the principle of the development and that the area has not been used as access to Field 151, the site of that being further up La Rue de la Hougette.

14 Although the site is in the Green Zone the circumstances of the case provide exceptional circumstances for granting permission. No useful agricultural land would be affected. The building would be virtually invisible from nearby properties and reduce the intensity of use of the site by limiting the number of vehicles capable of entering and being parked. The scheme would enhance the landscape and the structure would be capable of being dismantled if necessary. The building would also house some of the agricultural equipment necessary to maintain Field 151. The adjacent granite wall to the bungalow at Craigie Hall would be repaired and proper drainage installed to resolve the current problem of surface water running off into the La Rue de la Hougette.

#### **CASE FOR THE DoE**

15 It is accepted that (a) the site itself is not of high agricultural value and (b) in the context of its location between Craigie Hall Chalet and the sub-station, the proposed building's impact on the landscape would be modest, despite its 'fairly substantial' nature. However, the proposal is not consistent with policy NE7 and is, in principle, unacceptable under the terms of that policy.

16 It is also recognised that the Minister expressed 'sympathy' for the applicant's case at the time of the previous similar application but this only suggested that there *might* be scope for some form of development along these lines.

17 An Enforcement Notice concerning this site was served in August 2009, stating that a breach of planning control had occurred, namely the change of use of the southern element of Field 151 to domestic curtilage. The notice required the cessation of that use and return of the land to its permitted use and condition through the restoration of the access to the field, the removal of all non-agricultural machinery, vehicles and other paraphernalia, and the removal of log steps within the field.

18 When the applicant sought pre-application advice he did not explain this enforcement history to the duty officer. The advice given by that officer states that the site is not within the domestic curtilage but that there *'is logic in relocating the (previously permitted) building to this area.'* Nevertheless, it also states that *'This is not a straightforward matter given the site's position in the Green Zone; however, it may be worth submitting an application and making the case.'* The enforcement file has been reopened on this matter but any formal action has been suspended prior to the outcome of this appeal.

19 The comments of Environmental Land Control on the application were that field 151 is used for agricultural or horticultural purposes only. However, provided that an adequate agricultural access to the field remains available, there is no objection to the scheme.

## **CASE FOR Mr M Taylor**

20 Mr Taylor has lived for 45 years at a house further up La Rue de la Hougette. In letters of 28 July 2014, 8 April 2015 and 4 September 2015 (first in the context of the application and then the appeal) he states that he has no objection to the proposed garage but that the entrance to Field 151 has always been through the appeal site. About 4 or 5 years ago, without planning consent, a JCB forced an entrance through the hedge at the south east corner of the field and a concrete strip was laid along the gap. This was immediately stopped and work ceased. In his view there are several options for creating a garage in the area in question while also keeping the appeal site as an access for possible future use.

## **INSPECTOR'S OBSERVATIONS AND CONCLUSIONS**

21 I consider that the DoE was correct in wording the description of the proposal as it did and I recommend that the appeal be dealt with on that basis. It seems to me a matter of fact that the appeal site would to all intents and purposes become an extension of the domestic curtilage of Craigie Hall if a building intended for the storage of private vehicles belonging to the occupier of that property were to be built here. Such a proposal would be contrary to the presumption of IP policy NE7 against all forms of development within the Green Zone, including but not limited to the extension of a domestic curtilage.

22 It has been claimed for the appellant that there is an existing use right for parking on this land. However, this appeal is not concerned with testing or ruling upon (a) the validity or otherwise of the references to parking in the enforcement notice or (b) the extent to which those references in the notice, if valid, have been complied with or not. Nor is it clear whether or not any existing use rights for parking vehicles, even if they were to exist, would relate solely to the use and occupation of Craigie Hall and could suggest that the land already has some established use as part of its domestic curtilage.

23 Despite all this, it is clear that the erection of the proposed garage would require the clear identification of sufficient justification to warrant this being found acceptable under Article 19(3) of the Law despite the principle of the development not being in accordance with the IP.

24 Consequently, the main issue in the appeal is whether or not such justification exists. The appeal site lies in the extreme south west corner of the land parcel known as Field 151 between 'Craigie Hall Chalet' (which is an outbuilding within the Craigie Hall site) and an electricity substation. Because Field 151 falls away to the north beyond the appeal site there are no long-distance views through the site into the Green Zone. Looking into the site from La Rue de la Hougette the most obvious features apart from the buildings on either side are the roofs of recently-built houses to the north of Craigie Hall. From this vantage point the appeal site is therefore largely enclosed and does not form an integral part of the Green Zone in any visual sense. The other views available from the road immediately in front of the site are of housing in La Rue du Hocq to the west and other housing to the south and east. Part of this arc of development is seen at quite close distances across the quickly tapering end of Field 149 on the opposite side of La Rue de la Hougette. Only to the north-east are views predominantly of open countryside.

25 Infilling of this small gap between the developed Craigie Hall site and the substation with a timber building of the type proposed would represent a very minor, almost technical

incursion into the Green Zone and in my view there would be no tangible harm to its landscape character. Consequently I consider the site-specific circumstances here sufficiently clear and exceptional to justify the appeal being allowed.

26 There appears to be somewhat conflicting evidence from local people about the status and/or satisfactory nature of the 'alternative' access further up La Rue de la Hougette. However, Field 151 has undeveloped frontages to both La Rue du Hocq and La Rue de la Hougette and it has not been suggested that it would be impossible to identify a site for an alternative means of access into the field if the appeal site were to be developed as proposed.

### **RECOMMENDATION**

27 I recommend that the appeal be allowed and planning permission granted.

28 If the Minister is minded follow this recommendation I consider that the appellant should first be invited to submit the required number of copies of the clarified site plan, as defined and initialled at the hearing (as discussed in paragraph 6 above). These can then be appropriately added to the planning registry, removing any scope for doubt about what has been approved.

29 Any permission should also be subject to the following two conditions:

i If the development hereby permitted has not commenced within 5 years of the decision date, this permission shall cease to be valid. [This is the DoE's standard time-limit.]

ii The development hereby permitted shall not be commenced until a scheme for surfacing and draining the hardstanding in front of the garage has been submitted to and approved by the DoE and such works shall be completed in accordance with those details before the first use of the garage. [This is ensure that the DoE is able to control this important matter of detail.]

Roy Foster, Inspector

24 February 2016

### **PERSONS SPEAKING AT THE HEARING**

For the appellant

Mr D Cole

Mr J Carney – Carney & Co, Surveyors and Property Consultants

For the DoE

Mr J Gladwin

Mr L Davies