

PLANNING AND BUILDING (JERSEY) LAW 2002

Appeal under Article 108 against a decision made under Article 19 to refuse planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Richard Ledo

Application reference number and date:

P/2023/0705 dated 8 August 2023

Decision Notice date:

3 November 2023

Site address:

Part of Field S552 near Pigneaux House, Princes Tower Road, St. Saviour JE2 7UD

Proposed development:

The creation of a driveway and the formation of a new means of access onto La Rue de la Parade.

Inspector's site visit date:

1 February 2024

Hearing date:

2 February 2024

Introduction

1. The site address and the description of the proposed development are as set out above following the corrections I made at the hearing with the agreement of the parties.
2. This is an appeal against the Chief Officer's decision to refuse planning permission for the proposed development. The reason given for the decision is:-

- “1. The proposal, by reason of its urbanising design, and in facilitating the permanent loss of a part of an existing grass verge, would be harmful to [the] character of the surrounding landscape, including that of the Island's Green Zone. This is contrary to policies H9, NE1 and NE3 of the Adopted Bridging Island Plan 2022 as well as the guidance of the Jersey Integrated Landscape and Seascape Character Assessment.”
3. The decision is at variance with the stand point of the Transport section, who support the proposed development on the basis that it includes the formation of “a new access in accordance with the requirements of the Department's Access Standards including visibility to serve 6 existing dwellings. This will result in just a single unit using the existing access onto Princes Tower Road which is also a significant safety benefit”.
 4. In addition, the decision departed from the advice of the Natural Environment Team, who had no objection to the proposed development subject to the imposition of planning conditions that would maintain the wildlife corridor here in accordance with the provisions of Policy NE2.

Details of the existing and proposed driveway arrangements

5. The existing driveway from Princes Tower Road serves Pigneaux House by way of a right turn into the forecourt of the property and then continues between the property and its paddock and stables, before turning at right angles to proceed alongside the rear boundary of the property, at the end of which it divides to provide vehicular access to the six dwellings known as Pigneaux Farm House and Cottages.
6. In the proposed driveway arrangements, traffic leaving these six dwellings will proceed as now as far as the right-angled turn and then continue straight ahead over a narrow strip of land, which is a part of Field S552 that is already bounded by fencing and vegetation, to connect with La Rue de la Parade. The existing driveway will be closed as a route between Princes Tower Road and the six dwellings by gating it at the right-angled turn. The new driveway will also provide access from La Rue de la Parade to Field S552 through an existing gate opposite the right-angled turn, as well as an alternative route to and from the paddock and stables.
7. The new length of driveway will be 4.8 metres wide and about 37 metres long. The five-metre section next to the carriageway, where there is a low verge, will be surfaced with granite setts and defined by low (400mm) granite walls on each side. The roadside hedge has already been removed at this point and the hedgerows on each side of it have been moved back to provide the required sightlines. The verge between the hedgerows and the carriageway will be retained. An existing gap in the vegetation at the south-eastern corner of Field S552, which facilitates access between the field and La Rue de la Parade, will be closed by new planting.

The Bridging Island Plan policies and the guidance in the Jersey Integrated Landscape and Seascape Character Assessment

8. The decision refers to Policies H9, NE1 and NE3 of the Plan. The Department have also referred to Policy SP2 during the appeal; this is a strategic policy which indicates that the proposed development will only be supported where a “countryside location is justified, appropriate and necessary in its location”.

9. Policy H9 deals with “Housing outside the built-up area”. It is not relevant to the appeal because the proposed development is not for new residential development nor to extend the boundary of existing residential development.
10. Policy NE1 “Protection and improvement of biodiversity and geodiversity” indicates that applicants will need to demonstrate that a proposal will not cause harm to biodiversity or geodiversity value.
11. Policy NE3 “Landscape and seascape character” indicates that development must protect landscape character and that applicants will need to demonstrate that a proposal will protect the distinctive character, quality, and sensitivity of its identified landscape character area. The supplementary planning document “Landscape and seascape character guidance” was issued in July 2023. Field S552 is within Character Type E: Interior Agricultural Plateau, sub-area E4: Southern Plateau and Ridges Farmland, where the overall strategy is to protect the strongly rural character of the remaining less-developed areas and to maintain and enhance the intimate pattern of small fields, enclosed by hedgerows and boundary walls.
12. The Natural Environment Team referred to Policy NE2. This policy states that “Any development that would have an adverse impact on existing green infrastructure assets will be required to demonstrate that the benefit will outweigh the harm and provide details of how the features will be protected as far as practicable, and that measures are in place to minimise and/or mitigate their loss on-site, or will be otherwise compensated for.”
13. Reference has also been made to the road safety provisions in the Plan, which can be found on pages 263 to 265. A safe-systems approach to road safety has been adopted in the Plan and developers are advised that proposals should demonstrate how safe and suitable access to sites can be achieved.

Summaries of the parties' representations

14. The Department confirm what is set out in the reason for refusal. They state that the character of the green zone is of overarching importance and that it must be protected even from what they accept is the small-scale development proposed in this appeal. They consider the proposed development to be an engineered highway solution with an urbanising design that will harm the rural character of the locality and damage the hedgerow that is part of an extensive wildlife corridor.
15. The appellant maintains that the proposed development will not have an “urbanising” design and that it has not been correctly assessed against the Bridging Island policies and the landscape character guidance. He states that the existing access onto Princes Tower Road has poor visibility in both directions and that the new access onto La Rue de la Parade will meet access and visibility standards. The new access will be a simple construction with very limited impact, similar to countless others that exist in the countryside. It has the support of the Transport section and the Natural Environment Team do not object to it. The appellant adds that there will also be a benefit in eliminating the through traffic that passes between Pigneaux House and the paddock and stables, which has given rise to safety concerns.
16. The appellant has submitted a report from an ecologist dated 23 November 2023. This states that the roadside hedgerow is in a poor ecological condition

and describes the hedgerow management action that should be taken. The ecologist indicates that the closure and planting of the entrance in the south-east corner of the field will be suitable compensation for the loss of vegetation at the proposed access. He concludes that as long as his recommendations are followed, and secured by planning conditions, "the development will be able to protect and improve the biodiversity value of the proposed development site (NE1) and the proposed hedgerow management will help to ensure that the landscape character of Jersey's rural environment is maintained and enhanced through appropriate management (NE3)".

17. The appellant has also submitted a Transport Technical Note from a transport planning consultancy dated 19 December 2023. This note identifies the existing access as a road safety risk because it does not meet the Department's visibility standards and states that efforts should be made to reduce the volume of traffic using it in order to reduce the road safety risk.

Inspector's assessments and conclusions

18. The Department's officer assessment report refers to the Transport section's support for the proposed development but fails to mention that the section stated that there would be a "significant safety benefit". This omission has persisted throughout the appeal process. The Department have in addition incorrectly asserted that the proposed development would lead to an increase in traffic. Furthermore, they have not assessed whether the planning conditions recommended by the Natural Environment Team would overcome their objections. As a result of these shortcomings, the Department have not put themselves in a position where they could carry out a balanced appraisal of the planning merits of the proposed development.
19. The Department describe the proposed development as being an engineered highway solution with an urbanising design, but it does no more than meet the minimum required by the adopted access and visibility standards. If this were a convincing reason for withholding planning permission, many otherwise acceptable proposals would not proceed.
20. The Department assert that the character of the green zone is of overarching importance, by which I assume they mean more important than anything else. The Plan indicates that the green zone includes an environment where people live and work and which is important for the island's economic and social well-being (page 124). It states that it is important that the strongly rural character of the green zone is protected and that development in the green zone protects its landscape character (pages 76-78 & 124).
21. The proposed development will, as the Department recognise, be small-scale. There will be some visual impact but the proposed development will, with planning conditions imposed, protect the rural character and the landscape character of the area. Substantial weight should be given to the significant safety benefit that will arise from it, which demonstrates that it is justified, appropriate and necessary in its location. I have therefore recommended that planning permission should be granted, subject to the planning conditions set out in paragraph 23 below, all of which were discussed and agreed at the hearing in the event of the appeal being allowed.
22. In reaching my conclusions I have taken into account the decision made in 2003 to refuse planning permission for a vehicular access from La Rue de la

Parade (P/2002/2078), but have attached minimal weight to it for the following reasons. The circumstances then were much different than they are now: the planning policy at the time imposed a general presumption against all forms of development here for whatever purpose; the access would have been across an open field and the loss of agricultural land was a reason for refusal; the set-back and visibility splays required at the time by the highways section would have had a much greater impact on the landscape; the safety benefit was not considered; and there was an objection from the Parish.

Inspector's recommendation

23. I recommend that the appeal is allowed and that planning permission is granted for development on part of Field S552 near Pigneaux House, Princes Tower Road, St. Saviour JE2 7UD consisting of the creation of a driveway and the formation of a new means of access onto La Rue de la Parade, in accordance with the application P/2023/0705 and the plans and documents submitted therewith, subject to the following conditions: -

Standard conditions

- A. The development shall commence within three years of the decision date.

Reason: The development will need to be reconsidered in the light of any material change in circumstances.

- B. The development shall be carried out entirely in accordance with the approved plans and documents.

Reason: To ensure that the development is carried out as approved.

Additional conditions

1. Detailed drawings of the access to La Rue de la Parade including cross-sections shall be submitted to and approved in writing by the Chief Officer before any development takes place and the development shall be carried out as approved.

Reason: To maintain highway safety in accordance with Policy TT1 of the Bridging Island Plan.

2. Prior to the first use of the access to La Rue de la Parade, visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall be retained thereafter and no obstruction to visibility of any kind shall be placed within them above a height of 0.9m.

Reason: To maintain highway safety in accordance with Policy TT1 of the Bridging Island Plan.

3. Within 14 days of the first use of the access to La Rue de la Parade, the existing access from Pigneaux Farm House and Cottages to Princes Tower Road shall be permanently closed by gating it at the point marked "Existing driveway blocked off" on drawing number 1262-P02 revision B. The gate shall be retained thereafter.

Reason: To maintain highway safety in accordance with Policy TT1 of the Bridging Island Plan and to improve the safety and amenity of the existing driveway serving Pigneaux House and its paddock and stables, pursuant to Policy GD1 of the Bridging Island Plan.

4. Within 14 days of the first use of the access to La Rue de la Parade, the existing access point in the south-east corner of Field S552 shall be permanently closed by planting, in accordance with details to be submitted to and approved in writing by the Chief Officer. The planting shall be retained thereafter.

Reason: To protect and improve the natural environment in accordance with Policies NE1, NE2 and NE3 of the Bridging Island Plan.

5. Prior to the commencement of the development, a hedgerow maintenance and management plan, including long-term objectives, management responsibilities and schedules of maintenance, for the hedgerows replanted on each side of the access to La Rue de la Parade shall be submitted to and approved in writing by the Chief Officer. The hedgerow maintenance and management plan shall be implemented and retained as approved.

Reason: To protect and improve the natural environment in accordance with Policies NE1, NE2 and NE3 of the Bridging Island Plan.

6. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011 (or any order revoking and re-enacting that Order with or without modification), no operations falling within Class D.1 of Part 3 of Schedule 1 to the Order shall be carried out within the boundaries of the new driveway other than those expressly authorised by this permission.

Reason: To protect landscape character pursuant to Policy NE3 of the Bridging Island Plan.

Approved plans and documents

Location plan dated 07/08/2023

Site plan as Proposed, drawing number 1262-P02 revision B

Elevations and Sections/ details, drawing number 1262-P05

Dated 22 February 2024

D.A.Hainsworth

Inspector