

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

Appeal under Article 108 against a decision made to grant a planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant 1: Mr Jon Needham (third party appellant)

Appellant 2: PBS Property Holdings Ltd (third party appellant)

Site address: 1 Traders House, L'Avenue le Bas, St Saviour, JE4 8NB

Application reference number: P/2023/0305

Proposal: *'Demolish existing building structures on this site. Construct new trade unit. Create new vehicular access onto Longueville Road. Various landscape improvements.'*

Decision Notice date: 29 February 2024

Procedure: Hearing held on 27 June 2024

Inspector's site visit: 24 June 2024

Inspector's report date: 9 August 2024

INTRODUCTION

1. This report contains my assessment of the third-party planning appeals made by Mr Jon Needham and PBS Property Holdings Ltd (third party appellants), against the decision of the department for Infrastructure and the Environment (hereafter the planning authority) to grant planning permission for a commercial development proposal on a site at the Rue des Pres Trading Estate on L'Avenue le Bas in St Saviour.

PROCEDURAL MATTERS

2. As there are 2 separate third party appellants in this case, there are 2 appeals. Whilst that is uncommon, there is nothing within the Law that limits the right of appeal to one single party. Both appellants have used the same planning consultancy to set out their cases and represent them at the Hearing, and although there is much common ground between the 2 cases, they are not identical. Whilst I provide my assessment in this single report, I provide separate recommendations for each appeal.
3. At the further comments stage, both appellants included a substantial new document¹ relating to ecology. Whilst I recognise the appellants' wish to

¹ Sangar Conservation Ecological Review dated 22 May 2024

rebut and challenge the planning authority's assessment and the evidence provided by the applicant, it is not appropriate to introduce new technical reports at the final comments stage, the purpose of which is to allow the parties to make comments on each other's already made cases.

4. The planning appeal system in Jersey has so far avoided a detailed and stringent set of procedural rules, but the guide published by the Judicial Greffe² does make clear that full arguments should be set out at the Statement of Case stage. Indeed, it says, in bold, that the '**statement of case should fully disclose the respective arguments of the parties involved and must include all supporting evidence and documentation.**'
5. Introducing substantive new evidence, particularly where it is of a technical and detailed nature, and which was not part of the original Statement of Case, is unfair to other appeal parties. This is because they have not had the opportunity to review and rebut the material, and, if they consider it appropriate, arrange for their own experts to attend and take part in the Hearing. This is not the first time this issue has arisen in my Jersey planning appeal casework, and I have recorded the concern previously in another report³.
6. On this occasion, whilst the appellants' ecology report has been published on the planning website, I have decided that, for reasons of procedural fairness, I should not accept it for the purposes of this appeal. I have therefore excluded it from my assessment.

THE APPEAL SITE, THE APPEAL PROPOSAL AND THE APPLICATION DETERMINATION

The appeal site

7. The site is rectangular in shape and occupies the north-east corner of Rue des Prés Trading Estate, with its longer northern boundary running alongside the Longueville Road footway, and its shorter western boundary being formed with L'Avenue le Bas, the spine road that serves the trading estate.
8. The western part of the site includes built development, comprising an existing building known as *Traders House* which is in office use, and a 16-space car park which serves it. The applicant states⁴ that the building has a footprint of 435 square metres and a gross internal area of 672 square metres. The building is physically attached to *Cimandas House* to the south, a large building in employment use (suppliers to the hospitality trade), and both buildings' car parks gain access from L'Avenue le Bas.
9. The greater part of the site, to the north and east of Traders House and its car park, which the applicant says covers 2,760 square metres, is currently

² Judicial Greffe Appeals - Planning and Building (Jersey) Law 2002 - A Brief Guide

³ Paragraphs 3 – 6 of the Inspector's report - P/2022/0388

⁴ Applicant's statement of case, page 2

undeveloped. It comprises a vegetated area with grass, shrubs and some trees. There is a notable row of trees just inside the low wall running alongside Longueville Road. That low wall is damaged and broken in part, I am told as a result of vehicle impacts.

10. To the south and west of the site are commercial/employment buildings and uses on the trading estate. To the north, on the opposite side of Longueville Road, there are residential properties, including a group served by a private drive, and a side road, New York Lane, that meets the main road at quite an acute angle. Beyond the eastern boundary, is Green Zone land, comprising a small field, beyond which there are some roadside residential properties.
11. The appeal site and the surrounding area lies within the Built-up Area (BUA) as defined in the Bridging Island Plan's (BIP adopted 2022) proposals map. The site also falls within a Protected Industrial Zone designation.

The appeal proposal

12. The proposal is to demolish Traders House, clear much of the vegetated area and trees whilst maintaining the main trees along the Longueville Road frontage, and redevelop the site to construct a new large 'trade unit'. The building would have a rectangular footprint of 1,565 square metres. The applicant advises that the internal floorspace would include the following main elements:

'Commercial drive-through warehouse' – 1,222 square metres

'Mezzanine storage platform' – 330 square metres

'Trade counter' – 217 square metres

13. The building would be of a simple modern warehouse style design, with profiled panel walls and a very low angle pitched roof, with solar photovoltaic (PV) panels on the southern roof plane. The roof and PV panels would be largely hidden when viewed from street level, as they would sit behind parapet walls.
14. The front elevation would face L'Avenue le Bas and it would be sited a little forward of the existing Traders House front wall. This would be the main customer entrance to the 'trade counter'. There would also be a large vehicular door in this elevation to serve the warehouse space within. A customer car park is proposed in front (in a similar position to the existing car park).
15. A new access is proposed from Longueville Road at the eastern end of the proposed building, leading to a service yard, some parking and a large vehicular door to the warehouse. The drawings indicate that vehicles would operate on a one-way system, entering the building from the front, via L'Avenue le Bas, and exit via the rear door and out through a yard to Longueville Road. However, it is understood that larger delivery vehicles would enter and exit from L'Avenue le Bas, with turning manoeuvres undertaken in the front service/parking area.

16. The building is intended for occupation by Quantum Building Supplies Ltd (QBS) which has existing premises nearby on the trading estate. The submitted Design and Access Statement explains that QBS is wholly owned by J&D Norman Ltd and it is a significant Island based business, that has been trading for over 20 years and has over 20 staff.

The application determination

17. The application was determined by the Planning Committee at its 11 January 2024 meeting. The committee considered the officer report, 27 letters of objection, and consultee responses. It resolved to grant planning permission, subject to officer recommended planning conditions, and to the applicant entering a Planning Obligations Agreement (POA) to secure a contribution to the Eastern Cycle Route Network. The POA was subsequently completed and the Decision Notice issued on 29 February 2024. The appellants' appeals are made against this decision.

SUMMARY OF THE APPELLANTS' GROUNDS OF APPEAL

Appellant 1 – Mr Jon Needham

18. Mr Jonathan Needham's case is set out in the appeal form and expanded upon in a Statement with 24 appendices, and a further Response document, with the appended late ecology report (which I have not accepted). The 5 grounds stated in the appeal form are set out below:

1. Policy TT1 (integrated safe and inclusive travel)

The proposed plan is unsafe and increases the scope for conflicts on the public highway and therefore does not conform with this policy.

2. Policy EI1 (Existing and new industrial sites and premises)

Under the Island Bridging Plan the proposed development involves a change of use away from light industrial use contrary to this policy.

3. Policy ER2 (Large scale retail)

The proposed retail development sits within the definition of a large retail development for which no case has been made and therefore in breach of ER2

4. Policy NE1 (Protection and improvement of biodiversity and geodiversity) and NE2 (Green infrastructure and networks)

The proposal results in the loss of a green buffer, numerous trees and habitats contrary to policies NE1 and NE2

5. Policy GD1 (Managing the health and wellbeing impact of a new development)

The proposed development will unreasonably harm the amenities of nearby residents and will be detrimental to their wellbeing

19. At the Hearing, Mr Needham's case was made by Mr Nicholson (planning consultant), with contributions from Mr Needham himself.

Appellant 2 - PBS Property Holdings Ltd

20. The PBS Property Holdings Ltd case is set out in its appeal form, with 6 grounds stated on an attached sheet; a Statement with 24 appendices; and a Response document with the appended ecology report (which I have not accepted). The grounds of appeal are stated as:
- A. *The proposal fails to comply with Policy TT1 of the Bridging Island Plan (2022)*
 - B. *The proposal fails to comply with Policy EI1 of the Bridging Island Plan (2022)*
 - C. *The proposal fails to comply with Policy ER2 of the Bridging Island Plan (2022)*
 - D. *The proposal fails to comply with SP2 of the Bridging Island Plan (2022)*
 - E. *The proposal fails to comply with NE1, NE2 and NE3 of the Bridging Island Plan (2022)*
 - F. *Fails to comply with the Bridging Island Plan (2022) when considered as a whole*

Note – I have added the alphabetical A – F labelling for ease of reference.

21. At the Hearing, the PBS case was made by Mr Nicholson (planning consultant).

THE PLANNING AUTHORITY'S RESPONSE

22. The planning authority's case comprises a response email document and appendices, which include the officer report, the Decision Notice, the completed POA and the Planning Committee minutes. In essence, these submissions rely upon the officer report as the substantive case, and, the planning authority maintains that the decision to grant planning permission was soundly based.
23. The summary conclusion in the officer report reads: '*...the principle and details of this scheme for the demolition of the existing office building and construction of a new commercial warehouse with ancillary retail is considered acceptable in the Built-Up Area and Protected Industrial Site.*' The reasons for approval section states that '*Notably, the redevelopment of the site has been specifically considered in relation to highway safety, impact on the environment and amenities of the neighbouring properties. Based on submissions and consultation responses it is confirmed that the proposal is considered acceptable.*'
24. At the Hearing, the planning authority's case was presented by Mr Gladwin and Ms Vasselin, with contributions from their highway officer colleagues, led by Mr Heywood.

SUMMARY OF THE APPLICANT'S CASE

25. The applicant, understandably, supports the planning authority's decision to grant planning permission. It sets out its case in a Statement of Case with appendices, and separate response documents to each of the 2 appeals. These documents review the legislative framework, explain the site and the proposal, explore the relevant BIP policies, and provide point by point rebuttals to each of the appellants' grounds of appeal.
26. At the Hearing, the applicant's case was led by Ms Ginny Duffell (planning consultant) with contributions from its team, notably Mr Kevin Ratnasingam on transport matters, and from the applicant.

SUMMARY OF THE VIEWS OF INTERESTED PARTIES

27. At the application stage, 27 objection representations were lodged. These included objections based on: traffic generation and highway safety concerns, including those relating to servicing and large vehicles; noise, air, light and disturbance concerns; overbearing impact; privacy impacts; loss of trees, biodiversity and green space; design and impact on the character of the area; and concerns about hours of operation. At the appeal stage, 12 further representations were received covering similar grounds of objection. One of those letters was from the Parish of St Saviour, which stated that its Roads Committee 'vehemently objects' to the proposed new access onto Longueville Road on highway safety grounds. At the Hearing, a number of interested parties attended and made contributions.
28. The appellant's agent advised that the parish council was unable to attend in person, but maintained its 'strong objections' and that it supported the appeals.

INSPECTOR'S ASSESSMENT

Identifying the main issues

29. Having reviewed all of the submissions, both written and contributions through the Hearing itself, I have defined the following main issues, based upon the appellants' combined grounds of appeal:
 - Whether the development would be acceptable in terms of highway safety (Appellant 1 ground 1; Appellant 2 ground A).
 - Whether the proposal is acceptable in terms of the BIP policy approach to development concerning existing and new industrial sites and with regard to the location of retail space (Appellant 1 grounds 2 and 3; Appellant 2 grounds B, C and D).
 - The effects of the proposals on the natural environment (Appellant 1 ground 4; Appellant 2 ground E).
 - The effects of the development on the living conditions of occupiers of land and properties in the vicinity of the site (Appellant 1 ground 5).

Highway safety

30. BIP policy TT1 addresses 'integrated safe and inclusive travel' and states that this will be a consideration in all development proposals. Amongst other matters, it says that proposals will be supported where the development is safe, inclusive and accessible to all users and modes of transport.
31. The application was supported by a Transport Statement (TS) originally dated March 2023, but amended and updated in June 2023. The TS explains the proposals, including the access, parking and servicing arrangements, and undertakes assessments of likely vehicle trip generation and road safety implications. The TS concludes that the proposal is '*... not expected to result in any significant traffic increase or road safety impact on the operation of the highway network in the area*' and states that all internal transport infrastructure is designed to meet relevant standards and visibility requirements.
32. The TS was supplemented by some further submissions. These included a 'Technical Design Note 02' issued in July 2023, which addressed access related objections set out by the appellants' transport consultants. The Note explained that all 'ports vehicles'⁵ would ingress and egress the site from the west via L'Avenue le Bas and included tracking drawings to demonstrate this. It also stated that the new 'exit only' access to Longueville Road is not too close to the New York Lane, as it would be 26 metres away, compared to the minimum standard of 20 metres. The Note reiterates the TS conclusion that the proposal would be acceptable in highways impact and safety terms.
33. I&E Transport initially objected⁶ to the application, expressing concerns about large vehicles exiting from the proposed Longueville Road access point, given its close proximity to the New York Lane junction. I&E Transport later confirmed that, following meetings and discussions, it was satisfied with the proposals, stating⁷:

'The proposal would see new premises for one of the main building supply merchants on Island offering customers improved facilities including the ability to drive through the site and exit onto Longueville Road via an enhanced existing agricultural access improved. The location provides the necessary visibility, is sufficiently distance from New York Lane and typical position of vehicles exiting which is the actual consideration in these matters, and provides for the passage of pedestrians over it by continuing the footway rather than creating a formal new driveway access.

HGV deliveries to the site would enter and exit via the existing one way system operating at the site via L'Avenue le Bas usually out of opening hours.'

⁵ The term 'ports vehicles' is ambiguous, but appears to be a proxy term for larger vehicles, principally delivering products to the proposed building for distribution/sale.

⁶ IHE Transport consultation response dated 2 May 2023

⁷ IHE Transport consultation response dated 3 July 2023

34. I&E Transport also confirmed in a separate email⁸ that its earlier expressed requirement for a new/improved footway provision, along the Longueville Road site frontage, would not be feasible due to tree retention issues.
35. Both appellants maintain significant concerns about highway implications and challenge what they see as a volte face in the IHE Transport verdict on the proposal. They draw attention to this area being a known accident blackspot, with evidence disclosed through a Freedom of Information (FOI) request. They also highlight further submissions from an accident repair centre and the Roads Committee of St Saviour (RCSS), which says that it 'vehemently objects' to the new access on road safety grounds, and strongly advises against granting permission for the development in its current form. The appellants also submit the results of Automatic Traffic Count (ATC) data from January 2024, which they say indicates 'on average 179 trips per day exceeded the speed limit'. They also challenge, as a matter of fact, the proximity of the New York Lane junction, stating that it is 19.5 metres from the new entrance and therefore below the 20 metre standard.
36. On my site inspection, I made a number of observations concerning the existing situation. First, Longueville Road (A3) is a busy road, described in the applicant's TS as 'a primary east-west distributor road', which carries large volumes of traffic, including notable numbers of commercial vehicles, i.e. vans, trucks and lorries. Second, Rue de Pres trading estate is a large area of commercial uses, which has its primary access via a T junction where L'Avenue le Bas (the trading estate road) meets Longueville Road. Third, at this junction, L'Avenue le Bas is wide and joins a straight stretch of Longueville Road; whilst there are some obstructions (trees), visibility in both directions along Longueville Road is good. Fourth, there is evidence of an historic access point in the location of the currently proposed access onto Longueville Road, but this appears to have been a field access, which is unlikely to have resulted in many vehicle movements. Fifth, just beyond this point to the east, Longueville Road has a notable kink, which along with roadside walling, limits forward visibility. Sixth, moreorless opposite the proposed new access, is a group of about half a dozen dwellings, most of which are served by a shared private drive, which has very limited and poor visibility for drivers of exiting vehicles, particularly to the east. Seventh, a short distance to the west of this private drive is the junction of New York Lane with Longueville Road; the geometry of that junction is unusual and extreme, the lane meeting the road at a very acute angle, with limited visibility for exiting drivers, and a right turn from the lane being a challenging manoeuvre.
37. The appeal proposal would introduce a new active access point into this quite complex and dynamic road context. Throughout the trading day it is reasonable to assume that there would be a stream of vehicles exiting onto Longueville Road, making either left (westbound) or right (eastbound) turns, and this is confirmed by the TS evidence.

⁸ I&E Transport email to case officer dated 4 July 2023

38. In terms of the principle of creating this new access to serve a commercial use, it would depart somewhat from the existing pattern, whereby the employment type uses on the trading estate are served primarily from L'Avenue le Bas⁹. However, there is no policy or guidance that I am aware of that would preclude the establishment of such an access in principle.
39. In terms of the technical acceptability of the proposed access, the applicant has demonstrated that drivers exiting the new access will have the required visibility (43 metres) in both directions.
40. With regard to the junction positioning, the relevant Guidance¹⁰ states: *Access roads should be at least 20m away from other road junctions, meeting the highway at right angles, and wherever possible should not be opposite any other access to avoid creating a cross roads, which increases risk of accidents.*
41. Whilst there have been disputes about the measured distance the new access would be from the New York Lane junction, I have no reason to dispute the accuracy of the drawing¹¹ contained in the applicant's TS, which notates a distance of 26 metres from the midpoint of the proposed junction with the midpoint of New York Lane. On the face of it, the separation distance exceeds the minimum.
42. However, I do have some concerns here. As the appellants' agent was correct to point out, due to the unusual junction configuration, drivers of vehicles exiting left (eastbound) from New York Lane will be positioned much closer to the new access point and, in his words, 'somewhere short of 17 metres'. Moreover, whilst I note Mr Ratnasingam's submission that only 'roads' should be considered in terms of junction spacing, that is not what the Guidance states. The Guidance actually counsels, '*wherever possible*', against locating an access road '*opposite any other access*'. There can be no dispute that the private driveway access, with its poor visibility, which serves the cluster of houses to the north, is 'opposite'. There is therefore a tension with the Guidance in terms of the positioning of the new access.
43. In terms of accident evidence, there are disputed positions between the main parties. Residents and the RCSS regard this area as an accident blackspot. The appellants' FOI data confirms 54 road traffic collisions, resulting in 48 casualties, albeit in quite a long period of 15 years in the period 2008 – 2023. I noted the applicant's agent's submissions in this regard, that this data related to a wider area and would include the staggered junction to the west adjacent to Longueville Manor, although I also noted that junction lacked the accident scars of damaged walls that can be seen at the appeal site. The applicant's TS records 4 'slight' severity accidents in the period of just over 3 years between October 2016 and

⁹ I noted some seemingly secondary and, perhaps, emergency accesses from Rue des Pres on the west wide of the trading estate.

¹⁰ Section 4.11 of 'Access onto the Highway - Standards and Guidance - A technical guide for the preparation of Planning Applications' published by the Government of Jersey (August 2019)

¹¹ Transport Statement (June 2023) – pdf reader page 41

December 2019. At the Hearing, Mr Heywood for I&E Transport reported that in the last 5 years, there had been 2 'slight' recorded collisions.

44. It is also apparent from other evidence that the official accident recording will not capture all collisions. In this regard, I do attach weight to the local knowledge and accounts given by the RCSS, local residents and the submissions from a longstanding accident repair centre¹² based on the trading estate, which express the view that this location is an 'accident blackspot'. I must also attach some weight to my own observations in my relatively brief site inspection, during which I witnessed a near miss, with an emerging vehicle exiting the private drive, causing a driver of a vehicle on Longueville Road to take evasive action.
45. Data concerning vehicle speeds is also subject to differing interpretations. At the Hearing, Mr Ratnasingam reported that 85th percentile speed data indicated average speeds of 26 mph eastbound and 24 mph westbound. However, the residents' ATC data indicates that a proportion of vehicles are speeding. The data sets are not necessarily in conflict, and, informed by my own observations, it does suggest that whilst speeding vehicle movements are a minority cohort, they are nonetheless a real world factor in this location.
46. In the light of the above exploration of what is quite a complex road safety assessment, I asked the applicant and I&E Transport about road safety audits (RSA). In simple terms, a RSA is undertaken where changes are proposed to a highway network and it identifies potential road safety issues or problems that may affect all users of the highway, and it will recommend measures to eliminate or mitigate these problems. An important point here is that a RSA is not simply a check that a scheme meets design standards, but that it takes an holistic view on safety. It is also a requirement that RSAs are undertaken by experts who are independent of the promoter (the applicant in this case). There are usually 4 stages: i) completion of the preliminary design ii) completion of the detailed design iii) completion of construction and iv) post completion monitoring.
47. Mr Heywood advised that a RSA had not yet been required, but would be needed as part of the licensing of the works (to the A3 Government road). However, Mr Gladwin pointed out that I&E Transport had not identified a RSA as a planning requirement in its consultation response. For the applicant, Mr Ratnasingam, advised that at this stage the access was 'schematic' and it would be expensive to provide the technical details to enable a RSA to be undertaken.
48. Given the site context and nature of the proposed access, I find the lack of a stage 1 RSA to be concerning. I am not swayed by reasons of cost, given the 'life and limb' implications of road safety. I am also not comforted by the prospect that a RSA may be conducted at some later point as part of the works licensing, as there is a possible scenario that a RSA may determine that the scheme, in its currently proposed form, is unsafe. Given that the new access is part and parcel of the development proposal, rather than an

¹² Letter dated 10 May 2023 from Martin Fernando Ltd

'optional extra', it is a matter of fundamental importance to a sound planning decision to establish with certainty its road safety credentials.

49. Bringing all of the above together, I conclude that I cannot currently be satisfied that it has been demonstrated that the new access onto Longueville Road would be safe for all users, as required by BIP policy TT1. On this main issue, I recommend that the appellants' appeals should succeed.

Industrial sites and retail

Industrial sites

50. The BIP's strategic policy SP6 gives a high priority to the creation and maintenance of a sustainable, productive and diverse economy, with support for new and existing businesses. To achieve this, it sets out particular support for the protection and maintenance of existing employment land and floorspace for employment-related uses (SP6 1), and the redevelopment of vacant and under-used existing employment land and floorspace for employment uses (SP6 2).
51. This strategic policy position is reinforced by policy EI1, which addresses 'existing and new industrial sites and premises'. The policy lists 9 protected sites, the first of which is Rue des Prés Trading Estate. The policy states that proposals for the development of new; or the redevelopment, renewal, or intensification of existing light industrial sites and premises within protected industrial sites and the BUA, will be supported.
52. It further states that proposals for a change of use away from light industrial uses within protected industrial sites; and at other existing light industrial sites, will only be supported where: a) the use is related to and ancillary to the main industrial use; or b) the premises have been appropriately marketed for light industrial use and there is no longer a reasonable prospect of a site or premises' continued use for light industrial purposes; and c) it does not have an unacceptable impact on the overall provision and mix of unit sizes and specifications of light industrial accommodation across the Island, including whether need can be met even with the loss of light industrial floorspace; or d) the overall benefit to the community of the proposal outweighs any adverse effects.
53. The appellants each contend that, whilst the storage and distribution of bulky building materials 'out to customers' might fall with the BIP understanding of light industrial and storage uses, the 'trade counter' appears to be a retail shop. They further state that, when combined with racking systems for goods requiring collection by customers, the 'retail' area amounts to 31% of the net floor area and cannot be regarded as ancillary to the principal use as a builders' merchant. They contend that the retail element is too large and would be accessible to the general public, without any controls through planning conditions, and this use would be in conflict with policy EI1. They also draw attention to another permission¹³ for a 67 square metre trade counter (within a 1,228 square metre unit), which

¹³ P/2018/0426

included a condition limiting the counter to ancillary use only for sales directly to trade customers.

54. One of the problematic issues here is the somewhat ambiguous development description and the uses that sit within it. The development description that appears on the Decision Notice, drawn directly from the application form, states 'construct new trade unit', but there is no meaningful planning definition of what a 'trade unit' is, or what planning Use Class that might fall within, or whether it is a *sui generis* use.
55. Although it is quite apparent from the application supporting documentation and the plans that the unit is intended for occupation by QBS, that prospective occupier is neither the applicant, nor is there any planning condition framework, or other approved documentation, that attempts to pin down the precise use being consented. At the Hearing, the applicant suggested a better description might be 'builders' merchant with ancillary retail sales', but that is not what was stated in the submitted application. Given that any permission granted runs with the land, and occupiers can change over time, it is important that there is clarity over the specific land use (or land uses) being permitted within the planning unit.
56. Within the proposed unit itself, the inclusion of a 'trade counter' adds further confusion. Approved drawing number ME(GF)100 Rev P clearly notates 'retail shop' with a precise floorspace area of 220.58 square metres, and there are references to retail in the application documentation and the planning authority's assessment report. However, at the Hearing the applicant appeared to concede that this area would be for trade customers only, rather than open 'retail', and it would have no objection to a planning condition to this effect. Mr Needham pointed out that it was easy for anyone to open an account and get a trade card from QBS.
57. Whilst I am not persuaded by the appellants' argument that the racking area ought to be included in the 'retail' space calculation, the area indicated on the plans as the 'retail shop' is quite substantial, and much larger than I would normally associate with the term 'trade counter'. Without evidence to confirm the precise use of this large area, and to demonstrate that it is genuinely ancillary to the main use (which itself is not clearly defined), there is a tension with policy EI1, which clearly intends to maximise and prioritise light industrial uses in this location.

Retail

58. Closely linked to the above matter is whether the alleged retail 'shop' element of the proposal has been properly assessed and whether it complies with relevant BIP policies concerning the location of new retail facilities.
59. The BIP defines¹⁴ 'large scale retail' as being any type of retail with a floorspace of 200 square metres gross internal floor area or above. It says it includes both food retail, as well as non-food retail involving any larger comparison good stores, and retail warehouses selling bulky goods

¹⁴ Bridging Island Plan (adopted 2022) – page 157

associated with home improvement or gardening, furniture, flooring and electrical goods.

60. Policy ER2 sets the criteria for acceptable large-scale retail in the BUA. It offers support provided that: a.) it accords with the sequential approach to development; b.) it will not cause detriment to the vitality or viability of the St Helier core retail area and other defined retail areas; c.) it represents an effective use of land and does not materially prejudice the adequate provision of other land uses, particularly the supply of land for other employment uses, homes, community uses and open space; d.) will not unreasonably affect the character and amenity of the local area; e.) it is accessible by a choice of means of transport; and f.) it provides adequate space and facilities for servicing and deliveries. The policy continues by stating that proposals which do not accord with the sequential approach may be supported in the BUA where it can be demonstrated that: g.) a need exists for the location, scale and type of development; and h.) that there are no other sites higher up the sequential approach that are suitable or available.
61. The supporting text to policy ER2 advises that applications for large scale retail should include proportionate evidence of retail impact, which might include evidence demonstrating that there is an overall quantitative and qualitative requirement, and that the provision will not have an unacceptable negative impact on the vitality and viability of existing retail provision in defined centres.
62. The appellants contend that the retail element has not been justified or supported by evidence and this places it in direct conflict with policy ER2 and the objective of protecting the St Helier defined core retail area, the town centre and the centre at Les Quennevais. Appellant 2 has also cited conflict with policy SP2, citing a failure to apply the sequential test; however, the principal policy on this matter is ER2, and I therefore focus on its provisions.
63. The floorspace in question is quite substantial, and the submitted plans appear to indicate shelving, displays and tills, and even what appears to be a customer accessible WC. Its size, and implied use and format, means that it would exceed the BIP threshold for a large-scale retail unit and that policy ER2 is engaged and requires consideration.
64. Neither the planning authority or the applicant address this policy matter in any detail, each simply treating the retail area as a 'trade counter' ancillary to the main use, which is itself not precisely defined. I am unsettled by reliance on the use of the term 'trade counter', which is undefined in the BIP, but in common parlance and understanding would be a relatively small reception area where tradespeople and other customers can arrive to collect goods, these days often pre-ordered online. What is proposed is far more substantial than that, and the floorspace has the potential to carry quite a significant amount of retail stock, the type and range of which is unspecified.

65. Whilst noting the applicant's offers at the Hearing to limit the shop element to 'trade only', this does feel like amending the application 'on the hoof' in response to the appellants having shone a light on a policy tension. I also noted the applicant's agent's submission that reducing the shop floorspace to less than 200 square metres would remove any policy ER2 tension. However, that again, does feel like evolving the proposal on the hoof, rather than focusing on the substantive application plans and documents that were presented for determination. Those plans and documents indicate clearly that the policy ER2 threshold is exceeded, and the application does not include proportionate evidence to demonstrate policy compliance, including in terms of retail impact. There is therefore a tension with policy ER2 and the case for this element of the proposal has not been satisfactorily made.

Conclusion on the industrial sites and retail main issue

66. The application proposal is a complete muddle in terms of its land use content. I do not doubt that the intended proposal, at least in terms of my understanding of the prospective occupier's primary use, has the potential to accord with policy EI1 in terms of expanding employment type uses within an allocated industrial site, and that this, in turn, may support strategic policy SP6 objectives. However, the poor definition of the primary use, and the confusion over the large area of 'retail shop' use within it, and lack of evidence to demonstrate that it would be truly ancillary, leads me to conclude that there are significant unresolved tensions with important BIP policies, most notably policies EI1 and ER2.
67. In reaching this conclusion I have taken into account the suggestions and concessions offered by the applicant. However, the application comprises the submitted documents and plans, and it was assessed by the planning authority on that basis. It is not the role of a Planning Inspector, in considering an appeal under Article 108, to negotiate or agree a substantively revised proposal to that submitted. However, it will be apparent that, should the Minister endorse my recommendations in respect of these appeals, the matters identified under this main issue are capable of being addressed by evidence and amendments, should a further application be submitted.
68. I conclude on this main issue that Appellant 1's ground 2 and 3 should succeed, and that Appellant 2's ground B and C should succeed.

Natural environment

69. The appellants each argue that the undeveloped part of the site is a 'green buffer' and it extends to some 2,210 square metres. They state that this will be reduced to only 982 square metres and that this represents a 130% loss of green infrastructure, along with the loss of 18 mature and 30 other trees within the site. They allege conflict with policy NE2, which seeks to protect and improve existing green infrastructure. Appellant 2 also alleges conflict with policies NE1 (protection and improvement of biodiversity and geo-diversity) and NE3 (landscape and seascape character).

70. The application was supported by a Preliminary Ecological Appraisal (PEA) and a Species Protection Plan¹⁵ (SPP). The PEA was undertaken by expert ecologists and provides an appropriate assessment of the site's nature conservation value, the likely presence of protected species, and identifies any further survey effort and mitigation measures. The SPP addresses the clearance works and habitat creation measures, including the provision of birdboxes, tree planting (at least 12 standard lime trees) and hedgerow whip planting.
71. The Land Resource Management Team consultation response confirmed that it had no objection to the scheme, subject to the SPP. However, the Decision Notice did not include the SPP as an approved document, although it is referred to explicitly in condition 4. The applicant has indicated that, should the Minister dismiss these appeals, it would support updating the Decision Notice to address this anomaly.
72. I am mindful of the BIP objective in seeking to maximise biodiversity and green infrastructure through policies NE1 and NE2 respectively. Whilst the site does not fall readily into the types of green infrastructure listed in the Glossary definition, it nonetheless has some green infrastructure value and contains biodiversity that has been assessed through the PEA. However, the BIP needs to be read as a whole, and the site forms part of a wider area which is specifically protected for employment purposes which, in turn, supports the high priority, under policy SP6, ascribed to the creation and maintenance of a sustainable, productive and diverse economy, with support for new and existing businesses.
73. In my assessment the economic development benefits are weightier considerations than the alternative of maintaining more, or all, of this land as an area of green infrastructure and biodiversity. Moreover, not all of the site, all of which falls within the protected employment area, would be developed, and appropriate green infrastructure would be maintained and its biodiversity enhanced through the identified SPP measures. Policies NE1 and NE2 each allow for scenarios where such benefits outweigh any adverse impacts on existing green infrastructure, subject to such effects being minimised and mitigated as far as is practicable. I am satisfied that the evidence confirms that the policy is complied with in this case.
74. I have taken into account recent reports that rare orchids have been found on part of the site, but I was advised that these were not in an area to be developed and could, if needed, be relocated, subject to licensing procedures.
75. I conclude that the proposal is acceptable in terms of its effect on the natural environment and I find no conflict with policies NE1 and NE2. Accordingly, I conclude that appellant 1's ground 4, and appellant 2's ground E, should not succeed.

¹⁵ Species Protection Plan for Trader's House – Nurture Ecology Report Reference: NE/ES/TH.03

Living conditions

76. Mr Needham's appeal includes concerns about impacts on the living conditions of residents. He submits that the site has long acted as a 'green buffer' which protects homes opposite, including through mitigating noise from the trading estate. He fears detrimental impacts from larger vehicles' reversing beepers in the western yard early in the morning, and the ongoing fear and mental upset of more road traffic accidents. He considers that these effects are unreasonable and contrary to policy GD1.
77. Policy GD1 covers 'managing the health and wellbeing impact of new development'. The policy requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents.' There are similar considerations contained in policy GD6(3).
78. There is some Jersey caselaw¹⁶ which helps inform how amenity assessments should be made in planning determinations. Whilst these cases related to an earlier Island Plan era, and policy GD1 has evolved somewhat in the intervening period, there is nothing to suggest a departure from the main principles that arise from those judgements. These include the recognition that assessments are contextual and relative, and that in locations where development is directed, i.e. the BUA, some harm from new developments is to be expected. The key consideration for the decision-maker is whether any identified harm crosses the threshold of being unreasonable.
79. In this instance, whilst recognising the concerns of appellant 1, and other residents, the important context here is that the appeal site is part of a large established trading estate, and is within the BUA. It is zoned for employment/light industrial purposes on the BIP proposals map, and policies contained within the plan (notably EI1 and SP6) provide clear support for light industrial uses, development and intensification.
80. Moreover, in this case, the new building and its yard area would be well separated from residential uses to the north, and the tree retention/planting and landscaping works will screen the development and soften its impact. I am also mindful that the Environmental Health service was consulted and raised no concerns regarding noise or other amenity matters. The Decision Notice also includes a condition which limits opening and operational hours.
81. On this main issue, I am satisfied that any impacts on the living conditions of residents of nearby residential properties would not be unreasonable, given the site context and characteristics. I find no tension with policy GD1 and I conclude that appellant 1's ground 5 appeal should not succeed.

¹⁶ Boyle and Kehoe -v- Minister for Planning [2012] JRC036; Winchester -v- Minister for Planning and Environment [2014] JRC118

CONCLUSIONS AND RECOMMENDATIONS

82. This has proved to be a complicated and somewhat frustrating appeal. I cannot help but sense that there is an underlying proposal that may be acceptable and desirable, in terms of expanding and intensifying an employment/industrial use in a location specifically zoned and protected for such development in the BIP. However, the application proposal, as submitted, is not, in my assessment, capable of being permitted, for 2 clear reasons.
83. First and foremost, I have concerns that the safety of the proposed new access onto Longueville Road has not been sufficiently assessed and demonstrated. I find conflict with policy TT2. The appellants' appeals on this ground should succeed.
84. Second, I have found the development description and land use components of the development proposal to be muddled and unclear, such that the development's conformity with key BIP policies, notably policies EI1 and ER2, cannot be made with any certainty. I have taken account of the applicant's suggestions in terms of revised description and possible planning conditions to control the retail element, but that would be re-inventing the submitted proposal, which is not the role or purpose of an appeal under Article 108. The appellants' appeals on these grounds should succeed
85. I have assessed that the proposal would be acceptable in terms of policies designed to protect the natural environment and with regard to impacts on residents' living conditions, and the appellants' appeals should not succeed in these regards.
86. My formal recommendations to the Minister are set out below:

RECOMMENDATION A: Appellant 1 Mr Jon Needham

That his appeal should be ALLOWED in respect of grounds 1 (transport), 2 (industrial sites) and 3 (large scale retail).

That his appeal should be DISMISSED in respect of grounds 4 (natural environment) and 5 (living conditions).

RECOMMENDATION B: Appellant 2 PBS Holdings Ltd

That the appeal should be ALLOWED in respect of grounds A (transport), B (industrial sites) and C (large scale retail), and as a consequence of A, B and C, ground F.

That the appeal should be DISMISSED in respect of grounds D (policy SP2) and E (natural environment).

RECOMMENDATION C

That application reference P/2023/0305 be REFUSED for the following reasons:

- 1. The proposed access to Longueville Road would be in close proximity to the junctions with New York Lane and to a private drive which serves residential properties to the north, each of which is compromised in terms of visibility, existing roadside obstructions, and geometry, and in a locality where there is a history of road accidents. The introduction of the new access in this site context, which appears to be a fundamental component of the development proposal, has not been satisfactorily demonstrated to be safe, such as through the undertaking of a Stage 1 Road Safety Audit. As a consequence, the development conflicts with Bridging Island Plan (adopted March 2022) policy TT1, which requires access proposals to be safe and suitable to all users.*
- 2. The application proposal is muddled and confused in terms of its land use content, including the definition of the primary use of the proposed building and site, and the large retail area that appears within the proposed building. It is therefore unclear whether the proposal's land use content accords with key Bridging Island Plan (adopted March 2022) policies, notably policy EI1 in terms of acceptable uses within a Protected Industrial Zone, and, in turn, whether it supports strategic policy SP6 objectives of promoting a sustainable Island economy. Furthermore, the confusion over the large scale 'retail shop' shown on the drawings, and the lack of evidence to demonstrate that this retail use is justified and acceptable in this location, means that the proposal has not been demonstrated to comply with Bridging Island Plan policy ER2, with regard to the acceptable location of large-scale retail uses.*

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI