

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

by **N McGurk** BSc (Hons) MCD MBA MRTPI,
an Inspector appointed by the Judicial Greffe

Site visit made on 27 August 2024. Hearing held on 27 August 2024.

Reference: P/2023/1055

Field L11, Le Hucquet, St Lawrence, JE3 1NT

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by Chris Le Marquand against the decision of the States of Jersey.
 - The application Ref P/2023/1055 by Chris Le Marquand was refused by notice dated 25 April 2024.
 - The proposed development is RETROSPECTIVE: Form agricultural track and raised bank along the eastern edge of Field L.11.
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Recommendation

1. I recommend that the appeal be dismissed.

Introduction and Procedural Matters

2. The description of the proposed development on the application form and decision notice refers to it being retrospective. However, whilst constructed in part, the proposed development has not been completed. Consequently, I refer to the "*proposed development*," rather than to the "*development*," below.
 3. In refusing the application the subject of this appeal, the Department stated that the proposed development would result in the permanent loss of high-quality agricultural land, harmful to the rural economy and contrary to Island Plan Policy ERE1. However, relative to the size of the landholding, the amount of agricultural land lost as a result of the proposal would be minimal.
 4. The Department has provided no substantive evidence to demonstrate that such a minimal loss of land would be harmful to the rural economy. By way of contrast, the appellant has provided evidence to demonstrate that the purpose of the proposed development is in part, to increase the viability of the relevant landholding - it is part of the appellant's case that the proposal would enhance the landholding's contribution to the rural economy.
 5. During my site visit, I observed that the proposal would speed up the time it would take for wide agricultural vehicles and machinery to access fields on the few occasions each year that these would be required. This would likely have some positive economic benefit. In weighing this benefit, however slight, against the absence of any substantive evidence to demonstrate economic harm, I am unable to conclude that the proposed development would necessarily be harmful to the rural economy.
 6. I have taken this into account in setting out the main issue, below.
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7. In its representations, the Department refers to a previous application¹ for the use of a track along the same route as that the subject of this appeal. This previous application was refused and dismissed at appeal. The Department notes that this previous application sought access to warehouse buildings as well as to agricultural fields, whereas the application the subject of this appeal relates to the use of agricultural fields only.
8. In this regard, the Department has expressed a concern that it would be difficult to enforce a planning condition limiting the use of the proposed development to agriculture; and considers that there is a risk that over time, the proposed development would be used to provide access to commercial warehouse storage use.
9. In this regard the Department notes that the Planning Inspector, in dismissing this previous appeal, stated that in his view it is doubtful whether a condition attempting to restrict the use of the access to that for agricultural purposes would be enforceable in practice.
10. Whilst I acknowledge these points, the appeal before me relates to an application for an agricultural access only and I have considered it on that basis.
11. The appellant expresses concerns that the Department made its delegated decision without consulting the Parish or Rural Economy Team. However, I note that the planning application related to this appeal was determined by Committee on 25 April 2024 and that well in advance of this, the Rural Economy Team wrote a letter of support on 2 February 2024 and the Parish, in an email of 19 January 2024, offered “no comment.”
12. This Report refers to the Planning Department as “*the Department.*”
13. The Bridging Island Plan, adopted on the 25th March 2022, is referred to in this Report as “*the Island Plan.*”
14. The summaries of the various cases set out below are neither exhaustive nor verbatim but briefly summarise main points made by the relevant parties. In reaching the recommendation set out in this Report, I have considered all of the information before me, including evidence presented at the public hearing.

Case for the Appellant

15. The refusal will likely result in the inability to farm 30 verges of productive agricultural land.
16. The refusal will result in potential safety issues with nearby residential and commercial neighbours.
17. The proposal is for an agricultural track that would not appear as an alien feature in a traditional agricultural landscape.
18. Other permissions elsewhere provide for agricultural tracks and the circumstances are similar.
19. The refusal will result in potential safety issues with nearby residential and commercial neighbours. Existing roads are too narrow for vehicles and

¹ Reference: P/2023/0026.

machinery, such that traffic movements regularly cause conflicts and highway safety issues. Children routinely play on the roads.

20. The proposal would improve the lives of residential neighbours, comprising the residents of 11 dwellings of Chasse L'Est and 26 dwellings providing farmworkers' cottages.
21. Marginal land will become more dispensable and if access becomes too problematic, good agricultural land will be lost.

Case for the Department

22. The Department does not accept that a hardstanding track is required for farm machinery like tractors and harvesters to access the fields. Farm machinery is designed to be able to navigate fields and a hard surface is not required.
23. The proposed access track will result in the loss of high quality agricultural land.
24. Even without the proposed access track, the fields would still benefit from access at the same point of access as the start of the proposed hardstanding access track. Access to agricultural fields does not genuinely necessitate the proposed development.
25. Any benefits of the proposal in terms of improved amenity to neighbours, including safety, needs to be balanced against harm to the landscape character of the Green Zone resulting from the development of a new access road across an agricultural field. Consideration should also be given to existing alternative access from the north and east, which is of an acceptable standard.
26. The proposal would not be sensitive to the Integrated Landscape and Seascape Assessment (ILSCA) character area or its Green Zone location.
27. The proposed track would not be in keeping with the rural character of the area and the proposed trees would not mitigate against the loss of part of an agricultural field.
28. Whilst the proposed development would provide an alternative route, enabling agricultural vehicles to avoid passing close to residential properties, such vehicle movements would be very low in volume and confined to limited periods each year. Any benefit arising would be marginal and would not outweigh other harm.

Other Comments

29. Representations were received from Messrs Burch, Saraiva, Henriques, Cox, Oliviera, Bartlett, Le Marquand and from Jersey Farmers Union, Marquee Solutions and The Royal Jersey Company.
30. In addition to similar points raised by the appellant, comments were provided to the effect that: the proposal would increase the efficiency and viability of agricultural land; farm machinery has grown over the years; an access road has potholes; the proposal will result in less noise pollution; planting, a hedgerow and wildflowers will enhance the appearance of the site and biodiversity; the proposal will help public wellbeing and safety; the only viable access is via the

proposal; without the proposal, the land will be far less viable and may cause its release from the leasing company's rotation.

Main Issues

31. The main issues in this case are the effect of the proposed development on the character and appearance of the area; and its effect on highway safety.

Reasons

Character and appearance

32. The appeal site comprises a small area of land adjacent to the country lane, Le Hucquet and an 11.5 vergee (2.5 ha) agricultural field, Field L11. The field forms part of a wider agricultural landholding, including Fields L28, L29 and L30, which are located to the south of the appeal site and comprise 30 verges of agricultural land.
33. Fields L28, L29 and L30 are not adjacent to the appeal site but are connected to it via a relatively narrow right of way which skirts around a private garden via an indirect, sloping route.
34. Immediately to the east of Field L11 is Willow Farm, a built-up mixed-use area, where rows of small modern terraced properties provide 26 farm-workers dwellings within a high density residential area adjoining large modern commercial warehouses.
35. This mixed use area is accessed via roads from Le Hucquet to the north and La Rue du Bel-au-Vent to the east. The latter of these passes several residential buildings, one of which has its main front elevation close to the road edge, before it reaches the commercial warehouses.
36. During my site visit, I observed the commercial warehouses to appear relatively busy and in active use. I noted there to be lots of parking and parking spaces around the housing and warehousing.
37. By way of contrast to the relatively busy, high density, built-up mixed use area of Willow Farm, Field L11 appears more typical of rural Jersey - as a tranquil, open agricultural field bounded by trees.
38. The appeal site is located in the Green Zone and is identified in the Integrated Landscape and Seascape Assessment (ILSCA) as falling within the "*Interior Agricultural Plateau*" landscape character type and within the "*E4 Southern Plateau and Ridges Farmland*" character area. This character area is recognised as forming part of a gently sloping plateau with a strongly rural character, much of which is used for agriculture. The area is notable for the presence of woodland and for its sense of enclosure and intimate scale.
39. During my site visit, I observed that Field L11, as a rural agricultural field with trees to its boundaries, reflects the above qualities.
40. As noted earlier in this Report, the application for the development the subject of this appeal was for retrospective development, albeit the development proposed is not complete. However, at the site visit I observed that the semi-

developed form of the proposed access road provided for a good sense of its likely finished form.

41. The proposed access track appears as a heavily engineered straight road leading from close to Le Hucquet to the end of Field L11, close to the start of the winding route to Fields L28, L29 and L30 and close to the southern end of the commercial warehouses and the end of the route to La Rue du Bel-au-Vent to the east. This heavily engineered effect is emphasised by the presence of bunds to either side of what appears to be, for an agricultural field, a wide road.
42. Whilst I note that the appellant considers that a central grass strip, hogging to soften the engineered road surface and planting to the bunds will result in the visual improvement of the proposed development, I find that even when such measures reach maturity – however long that might take – the proposed development would still appear as a substantial engineered road through an agricultural field.
43. Given the above, to some considerable degree, I find that the characteristics and appearance of the proposed development would lead that part of the field within which it is located to relate more to the adjacent built-up mixed use area than to the agricultural field itself.
44. The harm arising from this would be exacerbated by the width, bunds, surface and straight alignment of the proposed development, which combine to result in its engineered appearance, contrasting starkly with and appearing incongruous when seen alongside, the simple, rural agricultural appearance of Field L11. I find that in this way, the proposal would fail to reflect and would appear detrimental to the area's strongly rural character, as identified in the ILSCA.
45. Island Plan Policy NE3 ("*Landscape and seascape character*") requires development not to cause harm to Jersey's landscape character and requires it to:

"...protect or improve the distinctive character, quality and sensitivity of the landscape and seascape character area...as identified in the Integrated Landscape and Seascape Assessment."
46. Taking all of the above into account, I find that the proposed development would harm Jersey's landscape character.
47. Further, whilst I note that trees have been planted between the proposed development and the Willow Farm complex, this would not serve to change the proposed development's contrasting appearance to the rest of the agricultural field.
48. Similarly, to some considerable degree, planting and other measures to "*soften*" the appearance of the proposed track serve to demonstrate that it comprises an engineered track so out of character with the field within which it is located that it requires measures to mitigate against its harmful impact.
49. As above, I find that this would be of limited success and in any case, such measures would only mitigate against the harm arising from the proposed development, rather than protect or improve the distinctive character, quality and sensitivity of the character area.

50. Taking the above into account, I find that the proposed development would harm the character and appearance of the area contrary to Island Plan Policies SP4, SP5, PL5 and NE3; and to the Island's Landscape and Seascape Character Supplementary Planning Guidance (2023), which together amongst other things, seek to protect local character.

Highway Safety

51. Island Plan Policy NE3 provides an opportunity for development that does not protect or improve the Island's landscape character to come forward where it is necessary, where there is no other practicable solution, where harm has been reduced as far as practicable and where it has been demonstrated that clear, direct and evidenced public benefit outweighs harm. All of these things need to be addressed in order to meet Policy NE3's requirements.

52. The appellant considers that public benefits will arise from the development of the proposed track by way of improvements to highway safety.

53. In this regard, I am mindful that the proposed development would provide an alternative access to agricultural vehicles, such that they would not need to travel along roads close to houses.

54. However, the nature of Jersey's rural area is that it is characterised by the presence of narrow lanes and agricultural vehicles. It is not unusual in the rural area for agricultural vehicles to pass close to houses, especially when wide machinery is being moved from place to place.

55. In the case of the proposed development, wide agricultural machinery only needs to be taken past dwellings on occasional days during the course of a whole year. Further, evidence has been provided to demonstrate that where wide machinery needs to pass through pinch-points, this can be achieved and it is a process that takes place slowly and carefully.

56. Given this and the fact that residents living in the agricultural rural area, not least those living in agricultural dwellings, will generally be familiar with the movement of agricultural vehicles, there is nothing to lead me to conclude that the proposed development would result in so significant a benefit to highway safety as to outweigh the significant harm to local character identified above.

Other Matters

57. Notwithstanding the above, Policy NE3 sets further requirements, all of which need to be met if a proposal that does not protect or improve landscape character is to come forward.

58. Whilst the proposed development would provide an alternative route for wide agricultural machinery, it has been demonstrated that such machinery can reach fields without the proposed development. I do not consider that the proposed development is necessary to meet an overriding public policy objective or need.

59. Also in this regard, whilst wide machinery would, as a result of the proposal, be able to pass through Field L11 quickly, it would still then need to manoeuvre in order to make an awkward, indirect journey between Field L11 and the other Fields that form part of the same landholding. Thus, despite its heavily

engineered form, the proposed development through Field L11 would simply provide for quicker travel through Field L11. It would not provide for direct, immediate access to Fields L28, L29 and L30.

60. Further to the above, I am mindful of representations to the effect that the proposed development is necessary to enable the viable farming of Fields L28, L29 and L30.
61. The proposed development could speed up and simplify a small part of the journey to these fields, but it would not provide direct, immediate access to them. As above, the landholding is already reached and can already be reached by wide agricultural machinery. Part of the landholding is in a location that is awkward to reach and the proposed development would make part of the journey to this landholding less awkward.
62. However, I find that what amounts to a partial improvement to access for wide agricultural machinery on the few days a year that it is required does not amount to necessary development.
63. In support of his case, the appellant refers to an appeal decision in respect of another proposed agricultural track elsewhere², as well as to another planning decision³. I viewed the site relating to the former of these after visiting the appeal site.
64. Whilst I do not have all of the information relating to these other proposals and decisions before me, in relation to P/2022/0430, I do note that the characteristics of the site and surroundings relating to that permission are quite different to those the subject of this appeal and consequently, I do not consider that this other permission for development in a different location provides for direct comparison with the appeal before me.
65. Notwithstanding this and in any case, I have found that the proposed development the subject of this appeal would result in significant harm and this is not something that is outweighed by permissions for other developments elsewhere.

Conclusion

66. For the reasons set out above, I recommend to the Minister that the appeal be dismissed.

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PLANNING INSPECTOR

² Reference: P/2022/0430 and Enforcement Notice ENF/2022/00019.

³ Reference: P/2021/0867.