

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

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

Report to the Minister

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

Appellant: Richard Amy

Planning Permission Reference Number: P/2023/1108

Date of decision notice: 6 March 2023

Location: Ville au Veslet Farm, Le Mont Isaac, St Lawrence, JE3 1GB

Description of development: Existing temporary access track to be permanent. Construct detached single storey garages and various hard and soft landscaping works.

Appeal procedure and date: site inspection and hearing.

Site visit procedure and date: accompanied 29 July 2024.

Hearing: 1 August 2024.

Date of report: 11 September 2024.

Introduction and planning history

1. This appeal concerns refusal to grant permission to allow the permanent retention of a temporary access track and for the construction of single garages at Ville au Veslet Farm.
2. The application was refused by the Infrastructure and Environment Department ('the Department') on 24 April 2024 using delegated powers. Reasons for refusal were:
 1. The proposal, by reason of its design, location and use of materials, would be harmful to the landscape character of the Island's Green Zone. This is contrary to policies SP2, SP4, PL5 and NE3 of the Adopted Bridging Island Plan 2022 as well as the aspirations of the Landscape and Seascape Character Guidance SPG.
 2. The proposal, in facilitating the permanent loss of agricultural land, fails to satisfy the criteria of policy ERE1 of the Adopted Bridging Island Plan 2022.
3. Relevant previous planning permissions, which are listed in the appellant's appendix to the Design Statement and the Department's Officer Assessment Report are:
 - P/2018/0414 - granted approval for the stables and livery and an extension to the sand school. It also included for a three-bed residential unit to east elevation of Unit 2 and a two-storey extension to the north-east elevation of Unit 4. It

included for a new vehicular access onto Le Mont Isaac and landscaping and parking alterations.

- P/2019/1161 - refusal of application to construct double garage to west of site and create vehicular access to form parking onto Le Mont Isaac.
- P/2020/0914 - approval for removal of existing pond and construction of double garage to south of site.
- P/2021/0551 - refusal to construct double garage and carport to east of site. (Note: this is listed as an approved permission in the Department's Assessment Report but is shown as refused on the Planning Register).
- P/2022/0492 - refusal for alteration of vehicle access to Le Mont Isaac Road.

The appeal site and proposed development

4. Ville au Veslet Farm lies to the north-east of Le Mont Isaac, which is a narrow lane linking La Rue de la Fontaine St Martin to the south and Le Mont Sorsoleil to the north. The site is under mixed use comprising elements of residential, agricultural and commercial activity. The farm complex includes a Grade 3 listed building historic farm group as well as more recent additions. There is a livery stables and sand school, together with agricultural sheds and domestic dwellings.
5. The main vehicle access from Le Mont Isaac is located close to a right-angled bend. The turning circle into the access is restricted through the width of the road and presence of buildings which border the road. This makes vehicle access problematic for the farm machinery used by the appellant and vehicles servicing the equestrian facilities, which has resulted in some damage to the property opposite the access.
6. The appellant has constructed a temporary access track, which allows access from the site south-eastwards to a newly constructed junction with Le Mont Isaac further south than the existing access and closer to the junction of Le Mont Isaac with La Rue de la Font Saint-Martin.
7. The site has a lengthy planning history, which was summarised above. The appealed proposals seek to allow for a temporary access track to be made permanent. The appellant states this was installed as part of permitted development rights to implement permission P/2018/0414. The proposals also include for two single garages to service two of the housing units on the site.

Case for the appellant

8. The appellant's grounds of appeal are:
 - The site is a single planning unit with three distinct uses: (i) residential; (ii) commercial livery yard and equine sand school, and (iii) a commercial agricultural yard. Its character and environmental setting should be considered holistically.
 - Field L400A has not been actively farmed for some time, due to its poor quality and size. It is not 'high quality agricultural land' and Land Control do not object to the proposals.
 - The existing site access across the immediate front of the buildings is considered dangerous and too restrictive.
 - The site access originally approved under P/2018/0414 has not yet been constructed.
 - The existing site access across Field L400A has already been constructed as Permitted Development.

- A detached single storey double garage has already been approved under Planning Permit P/2020/0914 but has not been built.
- The proposals would result in planning gain in terms of an improved setting of the listed building, more sustainable works, reduced waste generation, improved landscaping and biodiversity enhancements and improved site safety.

Case for the Infrastructure & Environment Department (the Department)

9. The Department's response to the grounds for appeal can be summarised as:
- For an access track to be lawful it must comply with the requirements set out in the Planning and Building (General) Development (Jersey) Order 2011 and must be removed as soon as reasonably practicable. It is unclear what works the temporary access track were in connection with and whether these works have been completed.
 - The garages were not identified in the Department Report as a reason to refuse the application.
 - The site is located within the Green Zone, where development must protect or improve landscape character. There is an existing access. The temporary access is sited through the centre of an agricultural field rendering it unusable practically for commercial agricultural use. The track is temporary during the course of building works under permitted development rights and needs to be removed as soon as practicable.
 - The Department considers that the field is capable of being used for agricultural purposes.
 - The Department does not consider that the track would be a benefit to listed buildings. Allowing the current temporary track to remain would not be more sustainable as there is an existing access. A track through the centre of a field would not improve landscaping or biodiversity.
 - Any highway safety issues are limited and do not necessitate the level of proposed works through the centre of an agricultural field in the Green Zone.

Consultations

10. The Parish of St Lawrence had no comments to make on the application (17 November 2023).
11. The Historic Environment Team response was labelled 'More Information'. It noted that whilst the grounds for refusal of the previous application (P/2022/0492) didn't relate to the setting of the listed building, the loss of the roadside bank and the openness of the field does have an impact on the rural setting of both Ville au Vislet Farm and La Fontaine, a Grade 3 listed mid 19th century house.
12. Two responses were received from the Natural Environment Team. The first (3 December 2023) sought further information about the proposed landscaping scheme to support claims that it would deliver biodiversity enhancements. The second (16 February 2024) stated that the Ecology Statement could be approved, provided its implementation was conditioned on any permit given.
13. No comments were received from either Land Control or the Landscape Officer during the consideration of the application. However, a response was sought by the Department during the appeal process. The response is primarily factual, stating that "Field L400A measures approximately 2 verges and has no agricultural restrictions imposed by the Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974." The response also describes the agricultural related activities of the appellant: "The

applicant runs a small livery and agricultural contractors from the premises. The applicant has invested in new larger equipment for his contractor's business and this application would give better access to the farm sheds and livery stable."

Representations

14. Five supportive representations to the application were received. Points raised were:
 - The track is difficult to drive down due to its uneven and rocky surface.
 - The existing access to and from the property has always been a safety issue, especially with small lorries and trailers with horses and it is impossible to leave the site turning right to go up the hill.
 - It is difficult for vehicles to pass on Mont Isaac and the proposals would allow residential and commercial vehicles to access the site more safely.
 - The proposals would be an improvement and allow farm machinery and horse boxes sensible easy access without having to negotiate the 2 tight right-angled bends in Mont Isaac.
 - It would take the strain off Le Mont Isaac.
 - The existing track means that heavy vehicles only use the lower part of the road making the road quieter.
 - If the track is removed then owners may consider withdrawing their horses from the livery.

15. Six supportive representations were received during the appeal. These were from those who had commented at application stage in addition to a new correspondent.

Inspector's assessment

16. Article 19 of the Planning and Building (Jersey) Law 2002 as amended states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Planning permission may also be granted for proposals that are inconsistent with the Island Plan if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.

17. The current Island Plan is the Bridging Island Plan, March 2022 ('the Island Plan'). Having regard to the policies within that plan, the reasons for refusal and the grounds for appeal, and points raised in representations, I conclude that the determining issues in this appeal are:
 - The acceptability of the proposed garages.
 - Status of the temporary track.
 - Effects of the proposals on landscape character.
 - Effects of the proposals on agricultural land.
 - Effects of the proposals on road safety.
 - Effects of the proposal on listed buildings.

The acceptability of the proposed garages

18. The Department confirmed that the proposed garages were not identified as a reason for refusal. I am aware that planning permission P/2020/0914 granted permission for a double garage and carport to the east of the site, albeit the scale and location of that approval differs from the current proposal. A later application, P/2021/0551, for a double garage and carport to the east of the site was refused (although the

Officer Assessment Report identifies (erroneously) it was approved). I have not been provided with details of reasons for refusal.

19. During my site inspection I saw that the proposed locations for the garages are within, but set back from the listed building. The northern garage would occupy an area currently used for parking whilst the southern garage would also lie close to an area of parking. I note that the Historic Environment Team has not raised any concerns about this element of the development. Consequently, I conclude that the proposed garages would be acceptable.

Status of the temporary track

20. Part 3 Class C of the Planning and Building (General) Development (Jersey) Order 2011 allows for the provision of a vehicular access required temporarily in connection with and for the duration of any works permitted by the Minister. Part C2 of the Order notes that work is not permitted where the permission of the highway authority has not been gained and Part C3 requires that when the operations have been carried out, the land is to be reinstated to its prior condition as soon as reasonably practicable. The appellant maintains that the existing temporary track was constructed as permitted development to enable implementation of permission P/2018/0414. The Department confirmed that pre-commencement conditions for that permission were fulfilled, and it considers it to be a live permission. Some of the works consented through that permission have been implemented, but others, such as the access arrangements, have not. As such, the temporary track could remain in place if required to enable completion of the works.
21. Whilst the use of the word 'temporary' within the Order suggests an activity of a limited, finite, duration, there is no clarification as to the maximum length of time that would be covered by this term. The appellant is clear that he does not wish to implement the access as consented on P/2018/0414 as this would not improve the safety or accessibility to Le Mont Isaac and would be 'worse' than the current temporary access. Indeed, he has proposed that this element of the permission could be removed if he receives approval for the appealed proposals.
22. The Department has confirmed that there is no time limit within which development consented by a permission must be completed. However, I note that Article 26 (2) of the Planning and Building (Jersey) Law 2002 does provide powers to enable limits to be introduced. Nevertheless, we have a situation where there is a valid active planning permission, which is providing the justification for permitted development of the temporary access track.

Effects of the proposals on landscape character

23. The appeal site is within the Green Zone. Policy NE3 - Landscape and seascape character states that development must protect or improve landscape character. Similar provisions are included within Policy PL5 - Countryside, coast and marine environment. Policy NE3 notes that the character, quality and sensitivity of landscapes is defined by reference to the Integrated Landscape and Seascape Character Assessment (ILSCA). The appeal site lies within the Interior agricultural plateau character type identified within the ILSCA. This guidance identifies that the strongly rural character should be protected as should the intimate pattern of small fields, enclosed by hedgerows and the rural character of narrow lanes.

24. I saw that the proposed access to Le Mont Isaac has been formed by widening and re-locating a previous field access. Because of the topography this has resulted in the removal of a length of banking between Le Mont Isaac and the field. This material appears to have been placed on top of the verges on either side of the track, further raising adjoining ground levels. Vertical and horizontal boards have been inserted along the length of the track to hold back the raised ground. In addition, gate posts have been inserted close to the junction with Le Mont Isaac. Although the track has been constructed as a temporary structure, I observed raised ironworks, which appeared to be associated with sub-surface drainage. The height of these would suggest that some form of 'top dressing' may be proposed - although there are no details of materials or drainage marked on the plans. I conclude that the proposed track, which would lead uphill away from Le Mont Isaac would be a prominent feature when travelling northwards along Le Mont Isaac, albeit numbers travelling this road are likely to be limited. As the buildings to which this track relates are not visible from the proposed access, I conclude that the proposed track would appear as an incongruous urban element unrelated to its immediate setting.
25. Field L400A would remain sub-divided by the access track. The proposals allow for soft landscaping. Whilst this has been designed for the benefit of wildlife, the scale and layout of proposed planting would appear more characteristic of a garden setting rather than agricultural land. I find these factors would further detract from the rural character of the narrow Le Mont Isaac, counter to the guidance of the ILSCA.
26. Policy NE3 does provide for developments which don't protect or improve landscape character, in certain circumstances. Such exceptions are for changes that are demonstrably necessary either to meet an overriding public policy objective or need; and there is no reasonably practicable alternative to deliver those objectives without harm to landscape character; and the harm has been minimised; and it has been demonstrated that the predicted public benefit outweighs the harm. The appellant considers that the proposals are demonstrably necessary in terms of the safe manoeuvring of agricultural and large vehicles on Le Mont Isaac; that there would be no landscape harm; there is no reasonable alternative; and that the safety of the public would benefit. However, I am not persuaded that the proposals are of a nature or scale as to meet an overriding public policy objective or need, or that there are no alternatives and that the public benefits outweigh the harm.
27. The appellant has asked me to consider the proposals within the context of the different land uses of the site and previous permissions. It was suggested that the total planning unit has been 'suburbanised' by these previous permissions for residential development and the sand school. Whilst I cannot comment on the extent to which access for those developments was considered, approval was granted based on the current access arrangements at the north of the site, modified by the revised access arrangements consented as part of permission P/2018/0214. All these rely on the existing access point onto Le Mont Isaac. The current proposals would create a new access point, which is remote from and visually unconnected to the consented development. As it is proposed to retain the existing access to Mont Isaac for some of the housing units, it would also represent an additional access point onto the road, further detracting from its rural character.
28. I acknowledge the appellant's view that even if the field through which the track is proposed were to be maintained for agricultural production, then the entrance to it from the road would require widening to allow access by modern machinery. However, that is not what is proposed here. In any case, an agricultural access would be unlikely to be accompanied by a surfaced track through the middle of the field.

Effects of the proposal on agricultural land

29. Policy ERE1 - Protection of agricultural land aims to prevent the loss of agricultural land unless exceptional circumstances are met. These are defined in the policy in two ways: (1) the proposal will not lead to the loss of high-quality agricultural land having regard to: the quality of the soil and historic use of the land; the location of the land relative to nearby farms and other active agricultural activity; the overall size of the land and the impact that the development will have on the integrity and viability of a farm holding; and access to other agricultural land in the area. (2) the nature of the proposed use genuinely necessitates and is appropriate to its proposed location. The policy does not specify that both parts need to be met but I have taken it to mean so. In all cases, the policy expects that proposals involving development of agricultural land should be accompanied by adequate information to justify the proposal and allow an assessment of the impact upon the agricultural industry.
30. I saw that Field L400A is small, consistent with the description of fields and agricultural land within this character area in the ISLCA. The eastern portion of the field appeared to have been re-seeded with a grass mix. Trees had been planted in an avenue along both sides of the temporary track. The area to the west of the temporary track appeared to be being used as a general parking and storage area for agricultural machinery and miscellaneous items.
31. The appellant has stated that the field has poor-quality soil and requires irrigation. It has not been used for crops for many years. A previous attempt by the appellant's grandfather to grow potatoes had failed. Also, the field would be too small to accommodate modern machinery, which would not be able to access the field without the track. However, I am aware that agricultural use has a broader definition in Jersey than just the production of crops. It also encompasses grazing, including for horses. The appellant suggested that the land to the eastern side of the temporary track could be used for short-term grazing for his horses. I therefore see no justification for suggesting that the whole field couldn't be used in the same way.
32. Policy ERE1 is clear that supporting information is required to demonstrate that the exceptional circumstances for loss of agricultural land have been met. As occupier of the land, the appellant is well-placed to understand the capabilities of his land. Whilst his views are important, I do not consider that his views alone are sufficient to align with the policy expectations. By his own admission, the land could have some, albeit limited, agricultural use for grazing. I have been assured that the Land Management Team is not concerned about the loss of the field but have no evidence of that. I understand it did not object to the previous refused application to make the track permanent (P/2022/0492) but believe its views may have been predicated on the proposals being required for road safety.
33. The appellant has questioned what evidence the Department used to support its views about the agricultural value of the field and adequacy of the existing access. The emphasis is on an applicant to provide the necessary information and evidence to support an application.
34. In conclusion, I do not consider that I have adequate information to allow me to conclude that the proposals align with the exceptions set out in paragraph (1) of Policy ERE1. Nor am I convinced that the proposals are appropriate for their proposed location or that the need has been demonstrated. Consequently, I conclude that the proposals do not align with Policy ERE1.

Effects on the proposals on road safety

35. I understand the reasons why the appellant wishes to improve vehicle access to his property. I saw that Le Mont Isaac is narrow with sharp right-handed bends, which would be difficult for large or long vehicles to navigate. Indeed, I saw the evidence of this in the form of damage to the building sitting opposite the current access to Ville au Veslet. I accept that the use of the livery requires transport of horses to and from the site and that this is problematic both in terms of vehicle access and the safety and comfort of the horses being transported. However, these are all matters that would have been considered as part of the previous application for the livery and sand school and must have been found acceptable when permission was granted.
36. I understand that use of the temporary track is considered to offer easier access to the farm and stables for larger vehicles than the consented arrangements. The Parish stated it had no comments on the proposal. I was also referred to comments made by the Environmental Land Control team for a previous application - but that information was not put before me. Whilst I accept that the proposed arrangements are considered 'better' than the existing by the appellant, I have no information as to whether they would be compliant with current road safety requirements, including provision of sightlines on exit. That is, I have no evidence that the proposed arrangements would be any more satisfactory in road safety terms than the current arrangements. In the absence of this information, I do not consider that the proposals as presented are justified.

Effects of the proposals on listed buildings

37. I understand that there are two listed buildings within the vicinity of the proposals: Ville au Veslet Farm and 'La Fontaine', which lies just to the south of the proposed access from Le Mont Isaac. As noted above, the Historic Environment Team has not objected to the proposals, although they commented that the loss of the roadside bank and the openness of the field would have an impact on the rural setting of both Ville au Veslet Farm and La Fontaine. The proposed track would be to the north and on higher land than La Fontaine, and I saw that there would be little inter-visibility between the proposals and the listed building. Likewise, the proposed track is set back from Ville au Veslet Farm. The Department has confirmed that effects on the listed buildings were not a reason for refusal of the application. I therefore conclude that effects on listed buildings would not be counter to the aims of Policy HE1 - Protecting listed buildings and places, and their settings.

Other matters

38. The appellant considers that the current proposals are preferable to the revised access consented under permission P/2018/0414, which has yet to be constructed. Whether or not that is the case, that permission has been granted. Consenting the current proposals would not negate or replace that permission but would provide for an additional access onto Le Mont Isaac.
39. I am not persuaded by the appellant's suggestion that the proposals would deliver significant planning gain. My assessment of the effects of the proposal on road safety were set out above. Excavation of the track has generated quantities of soil, which should be re-laid to restore the land to its former condition, in line with permitted development rights. Retaining the track would generate surplus soil to be dealt with together with energy and resources to implement drainage and a more durable finish

for the track. Nor am I persuaded that any benefits to biodiversity would provide justification for the proposed works.

Conditions

40. As the Department's Officer Assessment Report did not include any suggested conditions, I invited parties to circulate lists of any conditions that they would wish to see applied, should the appeal be successful. The Department circulated a list of eight conditions, which were discussed at the hearing.
41. The first two conditions relate to the time for commencement of development and require adherence with the approved plans. These are standard conditions.
42. Proposed condition 3 would require the closure of the existing access from Ville au Veslet Farm to Le Mont Isaac. The appellant questioned whether this would meet the tests for conditions, particularly in terms of whether it would be necessary to make the application acceptable. The appellant also noted that the plans show that this entrance would be retained to allow access to the courtyard and its parking. This is clearly shown on Plan 22024-103. Given that the concerns about retention of the temporary access relate to its effects on landscape, loss of agricultural land, and road safety, I do not find that the proposed condition would make the proposal more acceptable. Also, the condition would not be compatible with the submitted plans.
43. The fourth condition would require the implementation of the ecological provisions included within the submitted Ecology Statement. I agree that this is necessary to safeguard protected species and habitats, consistent with Policy NE1 of the Island Plan. It would also ensure that the biodiversity enhancements, which the appellant considers would act as planning gain, would be implemented.
44. The fifth condition would require the appellant to adhere to the landscaping provisions shown on drawing 2204-103-01. As worded, this condition duplicates the requirements set out in condition 2. Given the concerns about the effect of the proposals on the landscape, I accept that it would be important that these matters were addressed as part of the scheme. However, the stated plan lacks details such as species to be planted or any information about the hard landscaping details. Therefore, I consider that conditions requiring the submission for prior approval of hard and soft landscaping plans would be appropriate. I believe that the Department has standard conditions for these matters.
45. Proposed condition 6 relates to adherence with the submitted Site Waste Management Plan Statement. I accept that this should either be specified through a condition or added to the list of approved documents covered by condition 2.
46. The seventh proposed condition would remove permitted development rights associated with Class D.1 of Part 3 of Schedule 1 to the Planning and Building (General Development) Order 2011. The appellant questions whether this would be relevant, as the track would be mixed use to service the different land uses. Given the concerns about the effects of the scheme on landscape character I accept that this is necessary.
47. The eighth proposed condition requires that the electrical charging points are installed prior to first use of the garages. I accept that this is a reasonable condition to ensure that this element of the development is implemented.

Conclusions

48. For the reasons set out above, I conclude that the proposed development would not be consistent with the Bridging Island Plan. The proposed track would not protect or improve the landscape character and insufficient evidence has been provided to demonstrate that the proposals align with the exceptions set out in Policy NE3 of the Island Plan. There is also an absence of sufficient information to justify loss of the agricultural land, as required by Policy ERE1 or to demonstrate that the proposed vehicle access would meet the required road safety standards.

Recommendations

49. I recommend that the appeal should be dismissed, and that planning permission should be refused. If the Minister decides to disregard my recommendation, then the conditions as outlined in paragraphs 40 - 47 should be appended.

Sue Bell

Inspector 11 September 2024