

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

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

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

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

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**Appellants:**

Mr D & Mrs J Ponniah

**Application reference number and date:**

P/2016/1603 dated 15 November 2016

**Decision notice date:**

21 January 2017

**Site address:**

The Daffodils, La Rue de la Maitrerie, St. Saviour JE2 7HZ

**Proposed development:**

"Proposed new vehicular entrance & driveway to existing house. Remove existing entrance gate to form new boundary wall & personnel gate."

**Inspector's site visit date:**

3 April 2017

**Hearing date:**

5 April 2017

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**Introduction**

1. This is an appeal by the applicants against the decision of the Department of the Environment to refuse planning permission for the proposed development described above. The Department also purported to refuse permission for the "Change of use from agricultural land to residential use in connection with The Daffodils", but the application was solely for permission to carry out the proposed development described above; the applicants did not make an application for permission for a change of use.

## **Description of the property and its surroundings**

2. The Daffodils is a substantial detached house at the junction of La Rue de la Maitrerie and La Route de Maufant. Outbuildings, gardens and a parking area adjoin the house. The present vehicular entrance is on La Rue de la Maitrerie, next to the parking area and a short distance to the east of the junction.
3. To the south of the property is a large orchard that extends alongside La Route de Maufant. Towards its southern end is an entrance that provides vehicular access to the orchard and to a field beyond it. Apart from the gap where the entrance exists, there is a continuous line of roadside trees between the orchard and La Route de Maufant.
4. The whole of the area is within the Green Zone designated in the Revised 2011 Island Plan.

## **Details of the proposed development**

5. The applicants propose to close the entrance on La Rue de la Maitrerie to vehicular traffic by replacing it with a wall and a personnel door. In its place they would modify the entrance on La Route de Maufant and construct a new driveway leading from there to the parking area. From the entrance, the driveway would turn northwards to run between the orchard and the roadside trees, before swinging east next to the boundary of the rear garden of the house and then turning northwards into the parking area. The driveway would have a hoggin surface and would be about 120m long. The entrance would continue to serve the orchard and the agricultural land.

## **The case for the applicants**

6. The applicants state that the existing access is unsafe, because of inadequate sightlines. They have looked at the possibility of improving it and into possible alternative access points. In their view the best option is the one proposed, since it would provide adequate sightlines with a minimal impact on roadside vegetation and be sufficiently far away from the road junction. They maintain that the driveway would be laid out, surfaced and landscaped sympathetically.

## **Representations made by others**

7. The Department for Infrastructure have no objection to the proposed development, since the sightlines would be acceptable and the closure of the existing entrance to vehicles would be a safety improvement. The Parish of St. Saviour Roads Committee support the application. The Department of the Environment's Environmental Land Control section do not oppose the application if there is a safety issue at the present entrance.
8. The National Trust (assuming the application to be for a change of use of agricultural land to domestic curtilage) do not support the proposed development, since in their view it would be contrary to Green Zone and agricultural protection policies.

## **The case for the Department of the Environment**

9. The Department stand by the four reasons given for refusing planning permission, which are as follows: -

- “1. The site is located within the Green Zone which will be given a high level of protection, and wherein there will be a general presumption against all forms of development, including the change of use of agricultural land to residential use to extend the domestic curtilage. The proposed development would result in the change of use of a significant amount of agricultural land to residential which is considered to result in harm to the natural environment and landscape character. There are not considered to be any exceptional reasons to justify the proposed development and accordingly, the application fails to satisfy the requirements of Policy NE7 and GD1 of the Adopted Island Plan 2011 (Revised 2014).
2. The proposed granite pillars; bonded material to define the entrance and hoggin track (including passing point) are considered to result in incremental loss and erosion of landscape character and to domestication in the countryside contrary to Policy NE7 of the Adopted Island Plan 2011 (Revised 2014).
3. The proposed new entrance involves the loss of rural boundary features, which provides landscape, biodiversity and amenity value to this rural country lane, contrary to Policy NE4 of the Adopted Island Plan 2011 (Revised 2014).
4. No information has been submitted to demonstrate that there is a traffic safety issue, in order to justify the creation of a new vehicular access having regard for GD1 of the Adopted Island Plan 2011 (Revised 2014).”
10. The Department accept that the standard of visibility at the existing entrance is poor and that the proposed development would improve vehicular access to the Daffodils, although they consider that this might be achieved by improving the existing entrance or by constructing a shorter driveway. They point, in particular, to the protection afforded to the Green Zone by Policy NE 7 and maintain that the applicants have not shown that sufficient justification exists for a departure to be made from planning policies in this instance.

### **Planning policies**

11. Policy NE 7 states that the Green Zone will be given a high level of protection from development and that there will be a general presumption against all forms of development. Paragraph 2.121 of the supporting text states that this is not an absolute moratorium against development within the Green Zone: the key test will be the capacity of the site and its context to accommodate development without serious harm to landscape character. It indicates that this is the starting point for the consideration of development proposals.
12. Within this framework, Policy NE 7 allows for a number of exceptions to be made for various forms of development in appropriate circumstances. The provision of a new driveway is not one of the exceptions, unless it constitutes minor development that is small in scale. Since the proposed driveway would be about 120m long, I do not consider that it could reasonably be regarded as being small in scale.
13. The other policies referred to in the reasons for refusal are Policies NE 4 and GD 1. Policy NE 4 states that trees and boundary features will be protected. It indicates that proposals that do not provide sufficient information to enable their likely impact on trees to be considered, understood and evaluated will

not be permitted. Policy GD 1 sets out a list of general development considerations applying to all proposals.

### **Inspector's assessments and conclusions**

14. The proposed development is in conflict with Policy NE 7. As I mentioned in paragraph 11 above, the policy does not impose an absolute moratorium against development; the key test is the capacity of the site and its context to accommodate the proposed development without serious harm to landscape character. For the reasons given in paragraphs 15 and 16 below, my assessment, based on the information available to me, is that serious harm is likely to occur in this instance.
15. I accept that the applicants would use their best endeavours to carry out the proposed development sympathetically. It does, however, appear to me to be inevitable that the character of the landscape would be damaged. What is at present a simple field access would be widened and hard surfaced at the entrance. There would be some loss of banking and vegetation to create the visibility splays. And the construction of a driveway of this length, even though it would have a hoggin surface, would detract substantially from the rural character of the orchard.
16. The driveway would be close to the roadside trees for the majority of its length and, in places, would be under the canopy of mature roadside trees. There is no arboricultural report describing the condition of the roadside trees or their root systems. It is therefore not possible to assess how the health of these trees would be affected by the proposed development, and in particular how their root systems would be affected by the excavations needed to construct the driveway. In these circumstances, Policy NE 4 indicates that permission will not be granted. This is not, in my opinion, an issue that could be dealt with properly by planning conditions in this instance, since without such a report the decision-taker would not be in a position rationally to conclude that planning permission could be granted without giving rise to an unacceptable environmental impact.
17. I agree with the approach taken by the Department in their representations and at the hearing that, in principle, a departure from Policy NE 7 may in appropriate circumstances be justified for reasons of road safety. I also agree with the Department that the applicants have not so far put forward sufficient justification in this instance. As discussed at the hearing, more information is needed as to (i) the extent to which visibility could be improved at the existing entrance on La Rue de la Maitrierie and the effect this would have on outbuildings, boundary walls and the street scene and (ii) the feasibility (supported by an arboricultural report) of reducing the length of the driveway by forming an entrance on La Route de Maufant in a suitable position that was closer to the property, had acceptable sightlines and did not cause serious harm to landscape character.

### **Inspector's recommendation**

18. For the above reasons, I recommend that, in exercise of the power contained in Article 116(2)(c) of the Planning and Building (Jersey) Law 2002 (as amended), the appeal should be dismissed.

Dated 5 May 2017

*D.A.Hainsworth*  
Inspector