Planning and Building (Jersey) Law 2002

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Somerleigh Farms (1996) Ltd against a grant of planning permission.

Reference Number: P/2017/1395.

Site at: La Tache, La Grande Route de St Ouen, St Ouen.

Introduction

1. This case concerns a "third party" appeal under sub-paragraphs (1) and (2)(a) of Article 108 of the 2002 Law. The appeal is made by Somerleigh Farms (1996) Ltd (shortened below to "Somerleigh Farms") against the grant of planning permission for development at La Tache, La Grande Route de St Ouen, St Ouen. I held a hearing into the appeal and inspected the site on 18 April 2018.

2. The applicant is Mr Graham Pallot. The application was dated 26 September 2017 and was date-stamped as received by the Department of the Environment on 5 October 2017. The proposed development was described in the application as:

> "Application for the erection of a new structure to contain the existing skip sorting and waste transfer operations".

3. In the Department's decision notice granting planning permission, the development was described as:

> "Construct skip sorting and waste transfer station to East of site. EIS submitted."

4. In this report I refer first to legal matters concerning the right of appeal. A brief description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellant, the applicant and the planning authority. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary. These include a written statement for the appellant with 11 attached documents, a written statement for the applicant with 20 appendices (labelled "Respondent's Bundle"), and a written statement for the Department of the Environment with copies of officer's reports and other material.

Legal Matters - Right of Appeal

5. Before the hearing I was asked by the Judicial Greffe to comment on a written representation sent on the applicant's behalf contending that Somerleigh Farms had no right of appeal under the 2002 Law. I advised that from the information available to me, it appeared that Somerfield Farms had a right of appeal as a third party; but I also advised that if the applicant wished to pursue this matter as part of his case, I would consider it, together with any responses from other parties, and refer to it in my report with a recommendation.

6. At the hearing submissions were made by Advocate Benest for the applicant that Somerleigh Farms had no right of appeal. The main points of his submissions are also recorded in the written statement included in the bundle of documents

presented on behalf of the applicant. I invited responding submissions from Mr Townsend (for the Department of the Environment) and from Mr Smith (for Somerleigh Farms), who had also made submissions on this matter in his written statement. The gist of the submissions for all three parties is summarised below. I then present my assessment. Certain dates are mentioned here: if needed for reference purposes, a schedule of key dates is listed on page 2 of the written statement of case submitted by the applicant's advocate.

Submissions for Applicant

7. For the applicant, Mr Benest's primary contention was that Somerfield Farms did not have the necessary *locus standi* [1] to bring the appeal, so it should be dismissed without considering other aspects. Under Article 108(4) of the 2002 Law, a "third party" seeking to appeal must be able to show: (a) that they have an interest in, or be resident on, land any part of which lies within 50 metres of any part of an application site; and (b) that prior to the determination of the application, they made a representation in writing in respect of it.

8. Under Article 4 of the Planning and Building (Application Publication) (Jersey) Order 2006, representations on planning applications must be provided within 21 days of the application either being publicised by local advertisement, or first being publicised by site display. The 21 day limit may be extended by the Chief Officer if he or she considers that to be in the public interest.

9. It was accepted that the appellant company satisfied the requirement relating to ownership of land within 50 metres of the application site; but the second requirement relating to making a representation was not met, for two reasons. First, the planning committee approved the application on 25 January 2018; this amounted to a "determination" of the application under Article 108 of the 2002 Law. The committee meeting on 15 February 2018 ratified the determination, and the decision notice on 23 February simply evidenced the earlier determination. The applicant's representation was not made until 12 February 2018, 19 days after the application was determined, so the appellant did not fall within the definition of a "third party", could not be considered a "person aggrieved" and had no *locus standi* to bring an appeal under Article 108 of the Law.

10. Secondly, the appellant's representation was not made within 21 days of the first publication of the planning application (which period was not extended), as required by Article 4(2) of the 2006 Order, and so this could not be a representation in accordance with the 2002 Law. Therefore again the appellant did not have *locus standi* to bring the appeal. Moreover Somerleigh Farms had the opportunity to object to the application during the usual publicity period and chose not to because others had objected. The fact that the committee did not go along with objections by others did not create an entitlement to appeal.

11. The appeal should therefore be dismissed without considering its merits. If the Department of Environment were routinely accepting late representations in the way described by Mr Townsend the Department had been acting unlawfully for years.

[1] The applicant's advocate's written submission refers to *locus standii*; this is repeated five times, so is apparently not a typing error. The more widely accepted term, for those who want to use the Latin, is *locus standi*, hence my change to Mr Benest's submission.

Submissions for Planning Authority

12. For the planning authority, Mr Townsend said that the Department operated an open process whereby representations on planning applications were routinely accepted up to the time of the decision. The 2002 Law as subsequently amended was a later document than the 2006 Order. The decision on the application was when the decision notice was issued, which in this instance was delayed after the first committee meeting owing to the standard procedure which applied when a planning committee disagreed with an officer's recommendation, as the case was brought before a second meeting on 15 February to consider the matter of conditions and to finalise reasons.

Submissions for Appellant

13. The written submissions for Somerleigh Farms about the validity of the appeal are in Section 2 of the written statement. Somerleigh Farms owns fields within 50 metres of the appeal site (details of field numbers and ownership are in the statement). The company contends that the appeal was correctly submitted, using the correct form and accompanied by the correct fee on 19 March 2018, which was within 28 days of the planning decision notice dated 23 February 2018.

14. Mr Smith said that he had been dealing with planning applications for 25 years and the Department of Environment had for many years accepted representations made later than 21 days from the initial publicity dates. The second committee meeting could have reached a different decision on the application after a change of mind, so the first meeting was not the final decision. A third party appellant then had 28 days to appeal after the Department's decision notice. Somerleigh Farms were advised by the Department that the Department would accept the company's representation to be put to the second committee meeting.

My Assessment

15. My assessment of this matter is as follows. I should perhaps first clarify one point for the benefit of the applicant's advocate. His primary submission (on the first page of his written statement, and repeated with a similar invitation on page 5) is that "the inspector should dismiss the appeal". I am not empowered to do so, since unlike in other jurisdictions where I have decided planning appeals, in Jersey the decisions are made by you as Minister after receiving a recommendation by an inspector.

16. One way of testing the issue of whether the application was decided at the committee meeting on 25 January is by posing the question: if planning permission was indeed granted on 25 January, what conditions were imposed? The answer is that no decision was made about conditions. The committee may have resolved to permit the development, but this meeting did not actually grant a planning permission. Another way of testing this issue is whether, if a developer had started work on the proposed development immediately after the committee meeting, the development would have been authorised. The answer is no, because no planning permission document had been issued. The same applies to the second meeting on 15 February, although in any event the representation by Somerleigh Farms dated 12 February was received by the Department before that meeting.

17. At the hearing, after Mr Benest confirmed that he was not aware of any Jersey court judgments on this issue, I handed out a note which summarised the legal position based on a number of court judgments.[2] (For reference the content of

[2] These are judgments by UK courts which apply as a guide to interpreting this aspect of planning law in Jersey in the absence of any Jersey court judgments.

my note is attached as an appendix to this report.) These judgments provide case law confirmation that what constitutes the determination of a planning application is the decision notice.

18. In summary, the claim that the application was determined at the committee meeting on 25 January 2018 is misguided. A committee resolution is not a determination of an application; nor is it a planning permission. It is the decision notice itself dated 23 February 2018 which in this case granted conditional planning permission (subject to any third party appeal) and constitutes the determination of the application.

19. The second part of Mr Benest's argument relates to the Planning and Building (Application Publication) (Jersey) Order 2006. This Order specifies that (subject to action by the Chief Officer) representations on planning applications have to be made within 21 days of certain publicity dates. Whether the Department has been acting unlawfully in routinely setting aside that time limit is not for me to say.[3] Be that as it may, the Planning and Building (Jersey) Law 2002, as more recently amended, provides that in relation to appeals, a "third party" means (in addition to the criterion relating to an interest in land which is undisputed in this case) a person other than the applicant who, prior to the determination of the application, made a representation in writing in respect of it.[4]

20. A key point here is the wording of Article 108(4)(b) of the 2002 Law as amended. Somerleigh Farms did not make a representation within 21 days of the latest relevant application publicity date, and the Chief Officer did not take any specific action to extend that time limit. However, Somerleigh Farms did (on 12 or 13 February)[5] make a representation in writing in respect of the application, before the application was determined on 23 February. The appeal was then lodged several days before the expiry of the relevant 28 day period following the date when the application was determined, that is to say the period following the date of the Department's notice granting permission.

21. The fact that the Department of the Environment has evidently for many years been accepting representations on applications submitted after the 21 day period specified in the 2006 Order is primarily a matter for the Department to consider in relation to applications (as opposed to appeals). The 2002 Law was amended fairly recently to bring in a new planning appeal system. If the States had intended third party appeal rights to be limited to those who had made representations on the application in accordance with the 2006 Order, that could have been incorporated in the Law; but that was not how the Law was framed. In defining a "third party", the 2002 Law as later amended does not specify that such a party must have made a representation in accordance with the 2006 Order, or within the 21 day limit in the Order. The Law as amended merely

[3] I notice from a minute of a committee meeting held in February 2018 that: "The Director reminded members that the Department had a duty to ensure that the committee received all representations submitted in connection with applications". On the face of it there would appear to be inconsistency between that statement and the provisions of the 2006 Order setting a 21 day time limit on the receipt of such representations.

[4] This is not intended to be a full exposition of all the legal steps to the definition of a "third party" having a right of appeal. To be so defined, such a party has to be a "person aggrieved" under Article 108(3) of the Law, which in turn refers back to Article 108(1) and 108(2)(a) under which a person aggrieved may appeal against a decision to grant planning permission.

[5] The representation appears to have been sent by email late in the day on 12 February. Since this could be regarded as outside normal working hours it may be appropriate to treat the representation as being made on 13 February, but even so, it was received before the second committee meeting and before the decision notice was issued.

requires a body claiming third party rights to have made a representation before the determination of the application.

22. Somerleigh Farms met this requirement, and also met the subsequent 28 day time limit for lodging an appeal. Indeed because of what appears to have been a rather long period between the second committee meeting on 15 February and the decision notice being issued on 23 February, the first of these requirements would have been met even if Somerleigh Farm's representation on the application had not been submitted until up to about a week after the second committee meeting.

23. For those reasons I do not accept the submissions for the applicant about the validity of the appeal. I find that Somerleigh Farms (1996) Ltd qualified as a person aggrieved with third party rights of appeal and that the appeal was validly made.

Site and Surroundings

24. The hearing was held in the afternoon of 18 April. I saw part of the site briefly before the hearing any my main inspection started after the hearing at about the end of a normal working day, when some employees were leaving the site and various skip lorries were present. During the inspections I observed visibility along the road from different heights including the driver's seat of a lorry stopped at the site entrance.

25. The appeal site lies on the east side of La Grande Route de St Ouen. The surrounding area is rural or semi-rural, with some dwellings and other buildings interspersed with open fields. The gatehouse to St Ouen's Manor is nearby on the opposite side of the road.

26. The site is accessed off the road by a driveway which passes between two tall granite pillars. To the south of the driveway set back from the road there is a bungalow occupied by Mr Pallot and his family. Further to the east there is a square-shaped outbuilding. Most of this building appears to be used for storing various items of engineering equipment and miscellaneous items, including a fork lift truck, a jet ski on a trailer, two kayaks and motor cycles. There are also work benches in the building. There are stables in the rear part of the building, and a paddock further to the east.

27. Between the bungalow and the outbuilding just mentioned there is an open yard, in the southern part of which at the time of my late afternoon inspection I saw stacks of about 50 empty waste skips and seven skip lorries. A bin lorry was also parked behind the square-shaped building.

28. Some of the eastern part of the site appears to be used for car parking by employees. This area is also used for storing or parking various vehicles and other items, including about seven vans, some trailers, a horse box, a grit blaster and a container or cabin.

29. The bungalow in the western part of the site is mostly laid out as a dwelling, though one room is furnished as an office and appears to be in use as such in connection with the waste sorting and transfer business. There is no toilet in the rear part of the site; a toilet in the bungalow is apparently used by employees.

30. South of the site entrance next to the road there is a dwelling (La Petite Lodge). A small hard-surfaced yard or forecourt immediately north of La Petite Lodge, within its curtilage, appears to be used for vehicle parking by occupiers of this

dwelling. I saw a car and two vans parked there, one of which was a medium-sized box van. The plot of La Petite Lodge is bordered on the road frontage by a blockwork wall about 0.9 metre in height. To the north of the site entrance on the east side of the road there is a grass verge, roughly in the centre of which is a line of semi-mature deciduous trees.

31. Visibility from the access along the road, and visibility of the site entrance from the road, is partly obstructed in both directions - in the north, by the trees on the road verge; in the south by the neighbouring dwelling, the roadside wall and (at the times of my inspection) by vehicles parked within the plot of the neighbouring dwelling. From my necessarily limited observations of traffic flow, it appears that much of the traffic along this section of La Grande Route de St Ouen travels at or near the 40 mph speed limit. There are no major junctions, traffic signals or other such physical causes to slow traffic speeds in the immediate vicinity.

Case for Appellant

32. The main grounds of appeal are, in summary:

- The applicant submitted misleading information as part of the application. The granite pier and nearby wall on the north side of the site entranceare on land owned by Somerleigh Fams. The boundary line along the bank along the site's north boundary also encroaches on land owned by Somerleigh Farms. Thus planning consent has been granted for a site not wholly within the applicant's ownership. False information was supplied with the application and the planning permission should be revoked or modified.
- Poor visibility along the road in both directions from the site access raises highway safety concerns. Trees obstruct views to the north. The owner of the dwelling south of the access parks a van close to the front wall, obstructing visibility southwards. The 50 metre visibility splay lines shown on the architect's drawing with the application do not meet the Department for Infrastructure's 74 metre requirement.
- The planning officer's objections on planning policy and environmental grounds are supported. There are fundamental planning objections to the development on policy grounds relating to the location of the site in the countryside and Green Zone.

Case for Applicant

33. The applicant disputes the appellants' case and puts forward the following main points.

- The argument about ownership of the strip of land along the northern boundary of the site and of the granite pillar is not a planning matter and does not materially affect the grant of planning permission.
- The appellant's objection regarding visibility from the access merely seeks to reassert the objection raised by the Department for Infrastructure. The planning application showed the extent of visibility splays in excess of DFI's recommended distances. In any event any concerns about safety were adequately addressed by Condition 2 of the permission restricting operating hours.
- The existing access to the site has been used for at least 12 years without incident. This is not a proposal for a new access. There is no restriction on the type of vehicle using the access at present. Given the immediately adjacent position of an access to land owned by Somerleigh Farms, if

visibility from the access were as poor as was claimed by the appellant it is illogical for them to object on visibility grounds.

- Sites suitable for waste management use are difficult to find. This site is a proper and reasonable exception to normal Green Zone policy. The development would not involve setting up a new business. The proposal is to erect an enclosure to cover the existing facility for dry skip sorting of mixed loads, providing a valuable service in a manner not causing any concerns or problems to the environment.

Case for Planning Authority

34. In summary, the Department of the Environment make the following comments.

- The application was recommended for refusal mainly because of conflict with Green Zone policy and concerns about highway safety arising from inadequate visibility splays at the site access, but the planning committee decided that planning permission should be granted. As recorded in the committee minute, the applicant had been operating from the site for some time, the use was considered to be low impact, and the committee felt that there was sufficient justification to make an exception to Green Zone policy.
- Having visited the site and considered representations, the committee decided that the development was acceptable in terms of highway safety, and that it was acceptable on visual and other grounds as set out in the reasons for permission.

Assessment

35. I comment here on four main issues: first, the nature and scope of the development covered by the disputed application; second, the relevance of an enforcement notice; third, highway safety matters; fourth, wider planning aspects relating to the site's rural location and planning policy.

36. On the first issue, it is necessary for me to clarify the scope of the development subject to appeal. Some parties in this case, including the applicant and his advisers, seem to have believed that the application was for planning permission for the use of the whole application site (the area edged red on the application plan) for waste management purposes. That is not so, as I pointed out during the hearing. The application seeks planning permission for the erection of a building.[6] No application has been made for the use (or more specifically, for the change of use retrospectively) of the site as a whole - including all the ancillary areas such as the driveway access and employee parking area - for waste sorting and transfer purposes. If any confirmation is needed for this it is provided by the terms of the application, referring to "*the erection of a new structure*", and of the permission specifically referring to "*construct* skip sorting and waste transfer station *to East of site*" (my emphases). The Environmental Impact Statement for this application also refers in its description simply to the construction of a new shed. It also mentions the formation of an adjacent hardstanding, so a "use" component of the permission might possibly extend to the hardstanding next to the proposed building.[7]

[6] I established during the hearing that Question 14 in the application form (Does your proposal involve a gain, loss or change of use of non-residential floor space?) had been incorrectly answered "No". This should be "Yes".

[7] Among the submitted documents is a "Site Appraisal & Design Statement" headed: "Proposed regularisation of existing skip sorting & waste transfer station operations". That title is incorrect.

37. Moreover, there is an enforcement notice in force on the whole site. This notice was issued in July 2012; there was no appeal against it, and its period for compliance ended in April 2013. The requirements of the notice are: "Cease the use of land for skip storage and the storage and sorting of waste materials and the parking of commercial vehicles".

38. All parties in this case have been shy about the existence of the enforcement notice - so much so that it was necessary for me to make a specific request before the hearing to obtain a copy of the notice, which was not even mentioned in the written statements submitted for the appellant or the applicant, and only briefly mentioned in a report attached to the Department's statement. At the hearing I drew attention to the notice because it is a material consideration, of greater relevance than any of the parties appeared to think.

39. I am aware that discussions about the use of this site have been going on for some time - apparently a matter of years - between your Department and Mr Pallot or his advisers. No effective outcome seems to have been reached. Meanwhile the existence of the enforcement notice means that the current use is not merely unauthorised - failure to comply with an enforcement notice is a criminal offence. The use appears to be additionally unlawful because of the lack of a waste management licence. The enforcement notice was clearly not complied with by the end of the compliance period. No prosecutions have been pursued.

40. When a planning permission is granted for the construction of a building, the building can normally be used for the purpose for which it is designed. But in this case, permission for *operational development* (constructing a building to the east of the site) would not override the enforcement notice directed at *the use of the site as a whole.* Permitting the erection of a building which would have the effect of encouraging the unlawful use of land subject to an extant enforcement notice is also a strange thing to do. Although the planning committee were evidently made aware of the enforcement notice, I doubt that they fully realised the enforcement-related implications of granting planning permission.[8]

41. The fact that the enforcement notice has not been prosecuted undermines the Department's case, since it implies that the Department do not really object to the use being carried on, despite what is stated in published guidance.[9] There may be other factors. In response to a question from me at the hearing, Mr Pallot indicated that most other waste sites in Jersey are also unauthorised and have no waste management licence. If that is so, it seems that there is a major Island-wide problem, outside the scope of this appeal.

[8] To override the enforcement notice, planning permission would have to have been granted for the change of use of the site subject to the enforcement notice. This appears to have been noted by the Department - an officer's report to the planning committee stated: "The application didn't seek retrospective permission to regularise the existing operations on the site". There is no indication of any intention for the enforcement notice to be withdrawn. The enforcement notice is not very well worded as it does not identify all the components of the actual (unauthorised) mixed use of the site; but this flaw is not fatal to it and could have been corrected if the notice had been appealed - the notice adequately tells its recipient what has been done wrong and what is required to put matters right.

[9] States of Jersey Supplementary Planning Guidance Practice Note 4 ("Enforcement Procedures") states in paragraph 12 that the main objectives of the enforcement process are: (a) to remedy undesirable effects of unauthorised development; (b) to bring unauthorised activity under control; and (c) to ensure that the credibility of the Planning and Building Law is not undermined. Paragraph 34 states that failure to comply with the requirements of an enforcement notice is an offence, carrying the risk of a significant fine.

42. Turning to highway safety matters, the site access is located on the inside of a slight bend in La Grande Route de St Ouen. To the north the trees along the roadside verge hinder the view of approaching vehicles. However, from my on-site checks I judge that the intermittent visibility between the trees provides an adequate view from the site entrance and the view from the road of vehicles emerging from the entrance. The land within the visibility splay is not within the applicant's control, but the likelihood of some larger permanent obstruction being created in the area next to the highway appears remote.

43. I am more concerned about visibility to and from the south. The private yard where vehicles including high-sided vans are evidently often parked next to La Petite Lodge is immediately south of the access next to the road, and of course Mr Pallot has no control over the type of vehicles which could be parked on his neighbour's land. I found that the visibility splay in this direction has a distance along the road significantly less than the 74 metres which is the normal relevant standard for roads subject to a 40 mph speed limit. The precise extent of the shortfall depends on the position and size of parked vehicles at La Petite Lodge: from a standard set-back distance of 2.4 metres looking southwards across or above the land within La Petite Lodge's parking area, approaching vehicles can be seen up to about 60 metres away; from a lower height and allowing for the view being obstructed by vehicles in La Petite Lodge's parking area, the field of view only extends to about 30-35 metres.

44. The safety risk involving vehicles which could accelerate quickly when driven out of the site might perhaps be just acceptable. For slow-moving heavy vehicles such as skip lorries, the combination of restricted visibility, fairly fast-moving traffic, and what appears to be at times a fairly busy main road is potentially hazardous.

45. The fact that there have been no accidents (or at least no recorded accidents) in the 12 years or more since the waste business has been operated at the site is a point of support for the applicant's case. Drivers may have been careful enough to avoid accidents; but that cannot guarantee the future and does not mean that the situation is safe. Drivers of skip lorries have an elevated view which helps to some extent; but the same would not apply to employees driving their own vehicles. So these factors are not compelling arguments in favour of granting permission. The claim on behalf of the applicant that there are no restrictions on the type of vehicle using the site access at present ignores the fact that skip lorries and all other vehicles going into and out of the site in connection with the skip sorting and related activities are doing so unlawfully as an integral part of an unlawful use.

46. I have additional concerns about the difficulty of controlling the level of traffic generation if planning permission were to be confirmed. The Design Statement submitted in support of the application contains estimated figures for the number of "sorties" (two-way movements out and into the site) by skip lorries and refuse collection vehicles. Based on various assumptions a possible peak annual total of 1,656 sorties per year is predicted. This is equivalent to over 3,300 total movements in and out of the site annually, and ignores other traffic such as employees' cars.

47. The Environmental Impact Statement states (on page 33) that "A to B skips plan to continue operations with 3 skip collection vehicles, with one back-up vehicle only to be used as and when necessary", combined with an assumption that no new skip loaders are to be purchased. The traffic impact assessment appears to have been made on that basis. This does not square with the larger number of vehicles I saw at the site, and the stacks totalling about 50 skips suggest an

operation of some scale. Evidence was also given about a recent merger or acquisition involving another company.

48. Taking those points into account I judge that the amount and frequency of traffic movement into and out of the site could easily change and could be greater than in the past. As the planning committee rightly decided, this is not a matter which could in practice be controlled by planning conditions. Nor would total traffic generation be effectively controlled by a limit on working hours.

49. On more general planning issues, some of the objections raised in officers' reports to the planning committee appear weak. These include: the effect of the proposed building on the setting of the listed building at La Verte Rue, which is among other buildings more than 200 metres away across a field to the south-east; and drainage matters, which should be possible to sort out by requiring suitable arrangements to be subject to detailed approval.

50. More importantly, the site is in the Green Zone for planning policy purposes. The height of the proposed building would evidently be lower than was the case with a previous proposal. The visual impact of the building would to some extent be limited by its location set well back from the road. Nevertheless the proposal would involve the construction of a new industrial building in the Green Zone, where under policy NE 7 of the Island Plan there is a general presumption against development. The structure would be a new "employment building" under this policy and would not come within any of the allowable exceptions.

51. One of the aims of the Island Plan is to concentrate urban development into the built-up area. This site is in a rural location, well away from any built-up area or industrial estate. Permitting this proposal would conflict with the strategic policies of the Plan. The application site can be described as "brownfield land" for the purposes of policy SP 1, and there appears to be a need for waste management sites in Jersey, but no convincing evidence was put forward to show that this proposed building would be the most appropriate way of meeting identified need in the Island.

52. The appellant's argument about incorrect ownership information being supplied with the application really concerns an erroneous site boundary, wrongly including a narrow strip of land in the north which is owned by Somerleigh Farms. The practical effects of this error are not such as to invalidate the application or permission.

Conclusions

53. I conclude that the balance of considerations is against permitting this proposal. The development would be inconsistent with an extant enforcement notice, would help to consolidate and encourage a use of land which gives rise to highway safety risks, and would conflict with planning policies aimed at preventing the spread of urban development into the countryside.

Possible Conditions

54. None of the parties to this appeal covered the matter of possible conditions in their written material submitted for the hearing. I comment below on the conditions attached to the planning permission granted following the planning committee meeting.

55. If you are minded to grant planning permission, standard conditions A and B would be appropriate. Condition 1 would not be suitable, because the waste management use appears to be carried on by a business, not by Mr Pallot as an

individual. To impose a restriction such that the building and its use could only be carried on while Mr Pallot remains living in the bungalow at La Tache (which appears to be the aim of this condition so that the impact of the waste transfer activities on residential amenity is only suffered by Mr Pallot and his family), the condition should be so worded. I do not recommend such a condition, because a temporary permission for a permanent building is normally unreasonable; but if it were to be imposed, a conceivable wording might be: "This permission shall be temporary, and the building hereby permitted shall be demolished and all resultant rubble shall be removed from the site within 3 months of the date when Mr Graham Pallot ceases to live at the dwelling known as La Tache".

56. Condition 2 is impractical and unreasonable. It would purport to require that the site could only be used - for a use which involves storage - within certain daytime hours, thereby requiring all the stored waste and all the other stored items to be removed from the site overnight. What is really intended is a control over active operating or working hours. That is how the condition should be worded (for example: "No waste shall be sorted or any other working activity carried out between the hours of…." etc).

57. Condition 3 would probably be impractical as there would not be enough space to park employees' cars in the remaining parts of the site, and on-road parking would be undesirable here for safety reasons. The condition would also prevent parking of vehicles such as Mr Pallot's daughter's horsebox on the site. If this type of condition were to be imposed it would be better to aim it specifically at outside storage of skips, waste and equipment used in connection with waste sorting, and to restrict the outside storage of such items to the hardstanding area.

58. The other conditions would be reasonably suitable and appropriate.

Recommendation

59. I recommend that the appeal be found to be validly made, that the appeal be allowed and that planning permission be refused for the following reasons. (The first two are similar to, but not the same as, those recommended to the planning committee).

1. The application proposes a new employment building in the Green Zone for a use which does not meet the test of exceptional circumstances for such buildings in policy NE 7 of the Island Plan. The development would also conflict with policy SP 1 of the Plan because the development would not be appropriate to the countryside and would not be appropriate development of brownfield land.

2. The visibility splays available where the site access meets La Grande Route de St Ouen are sub-standard and the use of this access by vehicles including employees' cars and skip and refuse lorries would cause unacceptable safety hazards, contrary to policy GD 1 of the Island Plan.

3. The proposed building would encourage the unlawful use of land within the application site, which is subject to an extant enforcement notice requiring the use for skip storage and the storage and sorting of waste materials to cease by 30 April 2013. This requirement would not be overridden by permission for the construction of the proposed building, so granting permission would conflict with ongoing enforcement proceedings.

Concluding Comment

60. Although as I have indicated the topic of waste management in Jersey as a whole is outside the scope of this appeal, I feel I should draw your attention to the evidence mentioned in paragraph 41 above that numerous waste processing sites are being operated unlawfully. If Mr Pallot's evidence is true (and it was not disputed by any other party), the implication appears to be that unlawful or illegal sites are a necessary part of Jersey's overall waste disposal requirements. For all sorts of environmental and legal reasons this seems to be an unsatisfactory situation, causing problems which are unlikely to be solved by piecemeal planning decisions on individual sites. This issue would be best investigated on a more Island-wide basis than is possible when dealing with a single planning appeal.

G F Self

Inspector
30 April 2018.

Appearances at the Hearing

Mr Michael Smith	Of J Design Ltd (appellant's agent).
Advocate David Benest	Advocate for applicant.
Mr Graham Pallot	Applicant.
Mr George Pearce	of BCR Law, for applicant.
Mr William Harben	of PF+A Ltd, for applicant.
Mr Peter Falla	of PF+A Ltd, for applicant.
Mr Andrew Townsend	Department of the Environment.
Mr John Nicholson	Department of the Environment.

Appendix to Report

<u>What constitutes the grant of planning permission? UK Court Judgments</u>

R v Yeovil Corp Ex P Trustees of Elim Pentecostal Church Yeovil [1971] LGR 142
Court held that it was the notification rather than the resolution which granted permission, and that no permission had been granted when the authority resolved to grant it subject to the clerk being satisfied as to parking arrangements.

Co-operative Retail Services Ltd v Taff-Ely BC [1978] 38 P&CR 156.
Confirmed Yeovil judgment - the notification rather than the resolution constituted the grant of permission. This ruling remained despite subsequent appeals to C of A and H of L. Then re- confirmed in *R v West Oxfordshire DC Ex p Pearce Homes* [1986] JPL 523.

R (Kides) v South Oxfordshire DC [2002] EWCA Civ 1370.
Despite lapse of 5 years between decision in principle to grant pp and issue of decision notice, the latter was the point when the application was "dealt with".