

## **REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT**

**By Graham Self MA MSc FRTPI**

Appeal by the National Trust for Jersey against a grant of planning permission.

Reference Number: P/2020/1148

Site: Land West of 13 Clos du Ruisseau, La Grande Route de St Martin, St Martin.

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### **Introduction**

1. The appeal is against the grant of planning permission for development described in the application as: "Convert and extend existing garage to form 1 No. 3 bed dwelling. Create new vehicular access onto La Rue de Sergent". I held a hearing into the appeal and inspected the site on 22 June 2021.
2. The application was made by Mr Stephen Marett. Other details relating to the application are discussed in "Procedural and Legal Matters" below.
3. This report includes a brief description of the appeal site and surroundings, summaries of the cases for the appeal parties, my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

### **Reasons for Approval**

4. In the decision notice, the stated "reason for approval" (actually there were more than one) was:

"The proposed development is considered to be acceptable having due regard to all of the material considerations raised. In particular, the development has been assessed against Policy GD1, GD7, BE6 and H6 of the Adopted Island Plan 2011 (Revised 2014), in which the presumption is in favour of development within the Built-up Area. In this case, the proposed dwelling is regarded as acceptable because of its modest height and design which is considerate to neighbouring uses.

The representations raised to the scheme on the grounds of the formation of the new access and possible impact on the Listed building adjacent have been assessed. However, it is considered that the proposal accords with the terms of Policy GD1, HE1 and NE4 of the Adopted Island Plan 2011 (Revised 2014), in that the proposal will make efficient use of this underused site, is modest in its scale and overall will add to the landscaping of the area, improving the appearance of the site and its value to wildlife."

5. The planning officer's report recommending approval also recommended four conditions, covering access and parking arrangements, the provision of visibility splays, landscaping and the removal of normal permitted development rights.

### **Procedural or Legal Matters**

6. The application for planning permission was evidently made online. On the application form available on the government's website, the "document upload" date is specified as "10/09/2020" at "09.18AM", but the date "10/19/2020" is stated at the top of the form. Since there are only 12 months in a year it would

appear that the latter was date specified in continental style, so it seems that the first date may refer to 9 October 2020 and the second refers to 19 October 2020. The application named Mr Steve Marett as the applicant. The question "Is the applicant an owner of the land or property?" was answered "Yes". The question "Are there any additional owners of the land or property?" was answered "No". The question "Does the proposal affect a listed building or place?" was answered "No". The question: "Does the proposal involve a gain, loss or change of use of non-residential floor space?" was answered "No".

7. The case documents also include a copy of an application form describing the same development. On this form, the non-continental form of specifying a date using numbers seems to have been used (the dates next to signatures are specified as either "18/2/21" or "18/02/21"), referring to 18 February 2021. One of the dates on this form (next to the agent's signature) appears to have been altered, possibly using correcting fluid, on the original paper copy. Some of the other information and answers to questions (including the question referring to a listed building or place) were either similar or the same as that quoted above, but the property owner in this application was named as Ms Emma Marett in one part of the form and Emma Riley Marett Le Gallais in the part of the form next to the signature.
8. The government's website lists the application form apparently dated 9 October 2020 with a date of 19 October 2020. The website lists the application form dated 18 February 2021 (labelled on the website as "amended application form") with the date of 24 February 2021.
9. Your Department's decision notice granting planning permission is dated 15 January 2021. The appeal is dated 9 February 2021 and date-stamped as received on that date.
10. I comment on some of those matters in my assessment below.

### **Site and Surroundings<sup>1</sup>**

*Note: The north point on some of the application plans is inaccurate. I estimate that it should be turned anticlockwise by about 20 degrees; or if for example you are holding a paper copy of the Proposed Site Plan (Drawing Number MSP-2501-PL03) the paper has to be turned about 20 degrees clockwise to get north pointing conventionally towards the top. On this drawing the elevation with the balcony is shown as facing south-east, but it is labelled "south" on the elevation drawings and actually would be approximately south-south-east. For simplicity of description and for consistency with the elevation drawings I have adopted the approximations used on those drawings, treating south-south-east as south, north-north-west as north and so on for other compass directions. The submitted location plan (which has no reference number) is apparently based on a "Digimap" extract and appears to have north pointing towards the top.*

11. The appeal site lies on the southern edge of Maufant, on the fringe of a housing estate accessed by culs-de-sac roads leading off La Grande Route de St Martin. To its south, the site borders La Rue de Sergent, which is a turning off La Rue de Champ Colin and leads towards La Rue de Trot further to the south-west. There is a grass-covered embankment varying in height around 1.2 metres along the north side of La Rue de Sergent at this point topped by a timber post and rail fence, with no access between the site and this lane. There is a timber fence along the eastern boundary where the site borders the rear garden of a house. The property immediately west of the site comprises a group of buildings known

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<sup>1</sup>The submitted "Existing Site Plan" (Drawing Number MSP-2501-PL01) has photographs of the site and shows viewpoint positions.

as Brook Farm (the listed building referred to in evidence). The farmhouse itself is a two-storey Victorian-style building with stone walls, brick chimneys and a slate roof.<sup>2</sup>

12. The site itself has an approximately rectangular shape. Part of it is occupied by a garage building which has three up-and-over doors, stone walls and what appears to be an artificial-slate roof. At the time of my inspection much of the site was in an unkempt state, partly covered with rough earth and a heap of stone. In the western part of the site behind the garage building I saw a heap of plastic pipes, some scaffolding poles, a galvanised gate, and some large plastic tanks of the type used in septic tank sewerage systems. Tyre-marks indicating the recent presence of a large commercial vehicle were visible in a muddy part of the site. The doors to the garages were locked. The applicant's representative did not make a key available and I could not gain entry.
13. La Rue de Sergent is a tarmac-surfaced lane which borders the built-up area of Maufant to the north and countryside to the south. It is subject to a 15mph speed limit, has a fairly narrow carriageway less than normal two-vehicle width and is bordered by grassed banks with no footway or kerbed edge. On the south side of La Rue de Sergent opposite the appeal site there is an embankment and a line of trees, beyond which there are open fields. To the north and north-east are modern houses and their plots.
14. To the east of the site where the rear gardens of houses abut La Rue de Sergent there is close-boarded fencing along the top of the roadside embankment and no access points. To the west beyond Brook Farm a little further along La Rue de Sergent there is no roadside embankment, the residential plots of the terraced houses north of the road are unenclosed at the rear and have vehicular accesses off this road.

### **Case for Appellant**

15. The appeal documents submitted by the National Trust include the grounds for appeal, a statement of case (with photographs), and final comments. In summary, the main points of the appellant's case on planning issues are:
  - The proposed dwelling would increase the density of development. The appeal site was originally garden for nearby houses but has been subject to unauthorised use for storing building materials and has become in an untidy state. A previous planning application was refused because of its unacceptable visual impact and this proposal would be even worse.
  - The development would cause the loss of about one-third of the roadside banque, which is a characteristic and important feature of the area. This would erode the area's rural character, contrary to several Island Plan policies. Although most of the site is in the built-up area the banque is in the Green Zone.
  - The argument that the development would tidy up the site is irrelevant, since the proposal should be judged against what the condition of the land should be if landscaping had been carried out in accordance with previous planning consents. The planning officer's statement that the approved plans for the site left the current appeal site vacant is wrong. The approved use as garden land has never been rescinded and the commercial use of the site has never been approved.

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<sup>2</sup> The submitted documents include photographs of the house and main outbuilding.

- The development would have an adverse impact on the adjacent Grade 3 Listed Brook Farm by urbanising its setting. The design and proposed details such as PVC items are poor and a higher standard of materials should be required for a new building so close to a Listed Building, with reference to the Jersey Design Guide 2008 and Island Plan policy HE1. The proposal should be considered on its own merits, not whether it would be better than a previous proposal. It is crucial that the farm building should remain the most prominent building along the lane.
- The proposal would adversely affect highway safety by adding an unnecessary access and traffic movements to a narrow green lane with no pavements which is used by cyclists and pedestrians.
- The proposal is inappropriate as the site was originally re-zoned for first-time buyer and social rented housing, not for speculative development.

16. The appellant also raises a number of procedural issues, in summary:

- Past incremental development at the site is suspicious, an abuse of the planning system, and has not been properly subject to enforcement action. If permission were granted it would mean that persistent refusal to fulfil planning conditions could deliver planning gain, and so put at risk the planning system as a whole.
- The application and decision-making process was flawed. Notices about the application were not displayed on La Rue de Sergent. The Department gave advice to the applicant which was contrary to previous decisions. The application was determined under delegated powers but it should have been referred to the planning panel as four distinct objections were submitted.
- The ownership details on the application form were wrong, so an offence was committed under the Planning Law and the permission should have been revoked.

### **Case for Planning Authority**

17. The Department's case is set out in the Response statement (which refers to the decision notice, the planning officer's assessment and report on the application) and in a Second Response statement. The main points are:

- The site is in the built-up area as designated in the Island Plan, where under Island Plan policies H6 and GD3 there is a general presumption in favour of the construction of new dwellings at the highest reasonable density, commensurate with factors such as good design.
- The listed building group at Brook Farm is also within the built-up area and has existing buildings on three sides, and main public views from the south. The rural setting of the Brook Farm buildings when seen from the south, with 20<sup>th</sup> century housing estates to the east and west, would not be changed by the proposed development.
- The proposed dwelling would not be any closer to the listed building group or to the road than the existing garage building.
- The great majority of the north side of Rue de Sergent is not rural in character. The formation of the proposed access would not cause such harm to the area's rural character as to justify refusing planning permission.

- The Department consider that the design of the proposal would be in accordance with Island Plan policies GD1, H6, HE1 and GD7 and not out of keeping with the area.
- Suitable visibility splays would be achieved at the proposed access to meet highway safety requirements.
- The Department does not accept that the application should have been referred to the planning committee. Two of the comments dated 11 November were the same and both were from the Parish. A further submission dated 18 December confirmed the Parish's objection.
- In the current Island Plan the site is not specifically designated for affordable housing.
- The existing unkempt nature of the site was not relied upon as a reason for granting permission. Nor was the comparison with the previous scheme, which did not satisfy the caveats in Policy GD3.

### **Case for Applicant**

18. The applicant's arguments are contained in his statement of case and in a document headed "Applicant's Responses". The main points are:
- The proposal satisfies the test regarding the density of development set by Policy GD3 of the Island Plan and would meet the ethos in the current Island Plan which requires "greater residential yields than have generally been achieved in Jersey". The proposal would help to meet the need in particular for 3-bed family dwellings.
  - The appellant exaggerates the amount of roadside bank which would be lost. Only about 4 metres would be lost, about one-sixth of the total 24 metre length, not one-third as the appellant has claimed. The provision of a new house which would help to meet housing need carries greater weight than the marginal loss of a roadside bank, which would be mitigated by hedge planting along the retained bank.
  - Alternative access through Clos du Ruisseau is not feasible because of the risk of collisions with cars leaving the garages to Nos 13 and 14 Clos du Ruisseau, as explained in a submitted Technical Design Note.
  - The proposed new access and the enlarged building would preserve the setting of Brook Farm. No new build would be closer to Brook Farm than existing structures.
  - The proposed building would not be of poor design; it would be traditional in form with stucco external walls and slate pitched roof following the profile of the existing gable to 14 Clos du Ruisseau. The extension to the garage would be slightly higher than existing but would be mostly screened from Brook Farm by the existing garage. Brook Farm would remain the prominent building along the lane.
  - The access has been designed to meet visibility splay standards and highway safety would not be harmed.
  - The site notice was displayed in accordance with the law. The application was legitimately determined under delegated powers.
  - The ownership issue has been resolved. This matter was not picked up when the Department registered the application because the application

form and registration process does not involve a declaration of ownership. The owner submitted a declaration retrospectively and was not prejudiced.

- The Parish's claim that planning permission is conditional on obtaining permission from the Parish to create a new access is wrong. The only permission needed from the Parish relates to road closure at the time of access formation.
- The proposal would not be "creeping development". It would be the development of under-used land in the built-up area.

### **Representations by Other Parties**

19. Written comments were submitted by Karen Shenton-Stone, Connétable de St Martin. The Parish opposes the development on procedural and substantive grounds, summarised as:

- The site notice was not posted at the part of the site which abuts Rue de Sergent; this is significant for various reasons as set out in the detailed statement.
- This major application was decided at officer level. The use of delegated powers appears to conflict with the protocol set out in Appendix 1 of the June 2018 Planning Committee Procedures and Arrangements document, under which applications inconsistent with the Island Plan and applications which had received four or more effective objections will go to Committee.
- The new entrance would compromise highway safety and amenity. The fact that La Rue de Sergent is designated as a green lane does not prevent motorists and cyclists exceeding the speed limit. The site already has an access; the proposal to build across this access seeks to aggrandise the property and create self-imposed landlock.
- A previous application was refused partly because of conflict with Policy NE4, and this should also apply to the present proposal. The proposal would also conflict with Policy GD1, in particular the policy aim to reduce dependence on car use. Failure to enforce a previous condition on tree-planting should not count in favour of the proposal.
- Pre-application advice is not binding. The existence of some site entrances on Rue de Sergent does not justify a further breach of the roadside. The village of Maufant next to Rue de Sergent does not have accesses on to the road and there is a perpetually closed gate where Clos du Ruisseau adjoins Rue de la Bachauderie, showing intention not to encumber the road with entrances.
- The development of the original garages was permitted on the basis that the green lane would not be affected. The current proposal is an attempt to achieve development by stealth through repeated applications. The planning officer's report on application P/2010/0235 recorded that the size and quality of the garage building and other factors made it likely that the proposal was for a house and that the relationship with the green lane was of concern. What is now proposed is at odds with the stated intention and context of previous development.

20. Written representations on the application were also submitted by persons named in the redacted published copies as "Janine" and "Dan". They both object to the creation of an access on to La Rue de Sergent. The first objection is primarily on the grounds that there is already an existing entrance to the property and a dual

entrance would cause traffic issues on Parish byroads; the second contends that the green space was supposed to be a wildlife corridor.

## **Assessment and Conclusions**

### **Procedural or Legal Matters**

21. I comment first on several procedural matters relating to the application. The ownership declaration made with the application dated 10/9/2020 and 10/19/2020 was evidently incorrect. There is insufficient evidence to make a finding on whether this was deliberate, so it is reasonable to give the applicant the benefit of the doubt and assume not. The means of correction - a different, fresh application submitted after the date the decision was issued on the original application - is strange, since it is illogical for an application to be submitted after it has been decided.
22. The applicant has claimed (through his agent) that the planning application form and registration process does not involve a declaration of ownership. This claim appears to refer to the online form, not the paper form, but either way it is not correct - the online form includes a question asking whether the applicant owns the site and as noted above, the answer given was "yes". That was a declaration of ownership. (The paper form asks for the owner's name and address.)
23. Other procedural criticisms raised in this case include whether the application should have been put before the planning committee because of the number of third party representations, and whether the site notice was properly displayed. On the first point, it seems that allowing for duplicated representations from the Parish of St Martin the total number of comments from members of the public, excluding statutory consultees, would not normally trigger what I understand to be a Ministerial protocol under which applications are normally put before the planning committee. Although the site notice was not displayed so that it could be seen by passers-by on La Rue de Sergent, it was apparently displayed elsewhere in accordance with standard requirements.
24. In summary, incorrect information was supplied in the application. However, there is no evidence of prejudice being caused to the site's owner (who is apparently the appellant's daughter) or any other party. Although the concerns expressed by objectors about procedural matters are understandable, they do not provide any reason to refuse planning permission now.
25. It is clear from the available evidence that unauthorised development has taken place at the appeal site, which has been used for storing building materials and equipment - or use as a builder's yard - without planning permission having been applied for or granted for that use. The unauthorised use appears to have been carried on for some time, probably years, without any enforcement action being taken and was still continuing by the time of my inspection. The use has probably included not only open parts of the site but also the garages, which I am bound to suspect were deliberately kept locked to prevent me seeing inside, since the applicant - who has been professionally advised - should have been made well aware of the site inspection and the need to enable access.
26. The history of unauthorised use and failure to comply with conditions does not help the applicant's case, but should not be allowed to affect judgment about the planning merits or demerits of the proposal subject to appeal. This works both ways - the fact that the applicant has carried out development in breach of planning control should not weigh against the proposal; but neither should the prospect that the proposed development could get the site tidied up (which is part of your Department's case) provide any significant support for the proposal.

## Planning Issues

27. Two main issues are raised by this appeal: first, the effect of the proposal on the appearance or character of the area, or of the listed buildings and their setting at Brook Farm; second, the implications with regard to highway safety. These points have to be assessed in the light of relevant planning policies.
28. On the first issue, the proposal would in effect replace garages and what should be garden land used in association with nearby dwellings with a dwelling and attached garage on a small plot. The density of built development in this part of Maufant would be increased. But these changes would not significantly alter the urban character of the area. They would also be in accord with the general aim of Island Plan policies which apply here. Maufant is identified as a "main rural settlement" in the Island Plan and the site is within a designated built-up area where Policies H6 and GD3 support development at the highest reasonable density, subject to requirements for good design, the provision of amenity space, and other factors.
29. Many years ago, the group of listed buildings at Brook Farm evidently had an open, mostly rural setting. Now, Brook Farm is surrounded on three sides by quite high-density housing. The proposed increase in size and height of the building at the appeal site would obviously have a visual impact, but this would depend on the angle of view. From viewpoints to the south-west, looking north-east along La Rue de Sergent, the main part of the proposed development would be behind the buildings at Brook Farm and the setting of Brook Farm would not be much affected. From the opposite direction along Rue de Sergent, the enlarged building at the appeal site would be more noticeable as a foreground feature. From across the fields on the opposite side of La Rue de Sergent, the proposed development would make limited change to the overall scene, in which the modern housing estate provides the main backdrop to the rural foreground.
30. The development would not reduce the distance between Brook Farm and the building at the appeal site, as the enlargement of this building would be in the direction away from Brook Farm. But the appeal site abuts Brook Farm and the proposed house would be only about 4 metres from the nearest part of the group of buildings at Brook Farm. The enlargement of the building at the appeal site, the introduction of hard surfacing, and the creation of the proposed access with visibility splays would make the setting of listed buildings at Brook Farm even more urbanised than it already is, particularly when seen from the north-east.<sup>3</sup>
31. The design of the proposed dwelling would be fairly conventional. The general form of the building would reflect the shape of the existing garage building, although the projecting first floor "dormer-type" component with balcony would be a rather bulky feature, making the design as a whole in my judgment only marginally acceptable in this edge-of-settlement location.
32. Part of the visual impact of the development would arise from the proposal to create an access through the embankment along La Rue de Sergent. The presence of the roadside bank helps to give the eastern end of La Rue de Sergent a more rural quality than the length further west, although "more rural" does not mean rural, allowing for the "suburbanising" effect on the local scene of nearby houses and the high fence on the top of the bank behind their gardens. Between 5 and 6.5 metres of bank would be removed (rather more than the 4 metres

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<sup>3</sup> See the Existing and Proposed Site Plans MSP-2501-PL01 and PLO3 and photo 3 on the former.



claimed by the applicant<sup>4</sup>), a retaining wall would be constructed on either side of the entrance and a longer length of the bank would probably have to be lowered. The proportion of roadside bank which would be lost would not be as great as claimed by the National Trust, and some benefit would be gained by new hedge planting which could be controlled by conditions if planning permission were granted (and if conditions were enforced more than seems to have happened in the past here).

33. The grassed bank on the northern side of La Rue de Sergent is evidently within the Green Zone for policy purposes. Policy NE4 of the Island Plan provides that boundary features including banques which are of landscape or other specified value will be protected. The roadside bank here has landscape and historic value and the proposed development would conflict with this policy. The conflict has to be weighed against all the other considerations, taking into account the physical effects described above.
34. Turning to highway safety, a "Technical Design Note" prepared by a firm of consultants (KR Synergy) has been submitted for the applicant as Appendix 6 of his agent's statement of case. This document contains some clearly incorrect and potentially misleading statements. For example, under the heading "The Current Site Access Arrangements" the text refers to "the current site access arrangement" shown in Figure 1 of the document and states that: "The site access junction lies 30m into Rue de Sergent". Those statements are blatantly wrong, as is Table 1 of the Note which refers to "Current Site Access". There is no current access into the site from La Rue de Sergent, whether lying at 30 metres or any other distance into this lane. With careful reading, sense can be made of this document but it has to be interpreted with its faults in mind.<sup>5</sup>
35. La Rue de Sergent is a "green lane", evidently forming part of a route well used by cyclists and pedestrians as well as being open to vehicular traffic. The National Trust has alleged that the speed of some traffic here is well above the 15 mph limit, but there is no clear evidence of that (for example, no survey evidence of average or 85<sup>th</sup> percentile speeds). If the development were to be carried out as proposed, the access arrangements would comply with appropriate safety and visibility splay standards.
36. The Parish and the National Trust have contended that as the site has an existing access from Clos du Ruisseau the proposed access is not necessary. There are two problems with this idea. First, the proposal subject to appeal (with the access from Clos du Ruisseau blocked off) has to be considered on its own merits, not with regard to whether an alternative might be possible or preferable. Second, the layout of the garages serving the adjacent houses in Clos du Ruisseau would create conflicts between the movement of vehicles into and out of the appeal site and vehicles being moved, possibly while being reversed, into or out of the garages. Even at low vehicle speeds, there would be a significant risk of collisions.<sup>6</sup> For these reasons I find that the suggestions by objectors about an alternative access route have little or no weight.

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<sup>4</sup> The applicant's figure of 4 metres appears to refer to the width of the proposed opening at its narrowest point, also excluding the thickness of the proposed new retaining walls; but the opening would have a curved, splayed layout, up to about 6.5 metres wide next to the road (including the retaining walls), as shown on Drawing Number MSP-2501-PL03.

<sup>5</sup> Both an "author" and "reviewer" are named at the front of this document, so allegedly it was checked before issue, and should also have been checked by the applicant's agent.

<sup>6</sup> The layout of alternative site access arrangement is shown on Figure 2 of Appendix 6 of the Applicant's Statement of Case.

37. One of the arguments made in the Parish Connétable's written submission is that the part of Maufant village which abuts La Rue de Sergent "has no vehicular access points". That is only true for the relatively short length of this lane next to or close to the appeal site – a little further to the west, there are numerous vehicular access points, including one within a few metres at Brook Farm.
38. The planning authority's suggestion in the stated reasons for approval that the proposal would improve the site's value to wildlife seems unjustified. It appears to have been based on comparison between the current condition of the site and how beneficial it could be as a residential garden; but the site's current unkempt and spoiled state, resulting from unauthorised development and the apparent failure to enforce conditions on an earlier permission, should be discounted.
39. The proposal would help, albeit in a small way, to increase Jersey's housing supply. Appendix 5 of the applicant's statement of case provides some statistical background around this topic and refers in particular to a shortfall of 3-bedroom houses. However, care should be taken when interpreting these statistics, because although the title of this document mentions "housing needs", much of the analysis appears to be based on research into demand. Need and demand are not the same thing - demand is related to market forces and price, need is not. The document was also partly based on a survey sample size of only about 2.6% (a response rate of 32% on an 8% sample of all private households) and did not allow for recently built, planned or approved developments.
40. This is an instance where, with most of the site in a designated built-up area but a strip of land in the Green Zone, all parties can call on Island Plan policies to support their case. As previously noted, Policies H6 and GD3 support proposals for new dwellings in the built-up area, provided certain criteria are met. Policies GD1 and GD7 seek to achieve sustainable development and high design quality. Policy BE1 states that proposals to alter or extend existing buildings will be approved subject to criteria relating to matters such as design and materials. Policy NE7 establishes a general presumption against all forms of development in the Green Zone, though "minor development" which among other things is "small in scale" and does not cause serious harm to landscape character may be permitted. Policy HE1 provides that proposals which do not preserve or enhance the special or particular interest of a listed building or its setting will not be approved. Under Policy NE4, boundary features such as banques which are of landscape or other value will be protected. Thus Island Plan policies (with their numerous provisos) can provide arguments for and against the proposal.

#### **Past History and Other Matters**

41. The Parish Connétable has referred to previous applications, one of which in 2011 authorised the construction of the garages now on the site, and has described the current proposal as "development by stealth". In the past, the planning authority has resisted new accesses on to La Rue de Sergent, and an officer's report in 2010 evidently viewed the then application "with suspicion" because of the possibility that the scale of proposed garaging could lead to the development of a house. Given the high-roofed design of the garage block, such suspicion is understandable; anyway, permission was granted. At that time a landscaped buffer strip on the south boundary was also required by a development brief.
42. I can see why the Connétable has drawn attention to those points. However, the earlier proposals appear to have been made before current Island Plan policies were adopted. The benefits and disbenefits of the proposal now, including factors such as housing need and the presumption in favour of development in built-up areas, has to be assessed whilst considering current, not previous, policies.

43. The references by objectors to the site's "zoning" for first time buyers or social housing appear to be based on provisions in the 2002 Island Plan and a planning obligation agreement linked with the original permission for housing development off Clos du Ruisseau. No such designations now apply.
44. There appear to be no objections to the proposal by occupiers of any neighbouring properties in Clos du Ruisseau, although this may be because the adjacent houses are evidently owned by relatives of the appellant. Some minor overlooking or overshadowing of parts of neighbouring gardens could arise but such effects would not be so harmful as to warrant refusing planning permission

### **Conclusions**

45. Taking into account all the factors discussed above, I consider that there is some force in the arguments against the proposal by the appellant and others; there are also arguments for permitting the development; and there are flaws in the cases put by all parties. I find that the decision is more finely balanced than the applicant and the Department have suggested. Policies pull both ways.
46. On balance, I judge that the points of support for the proposal outweigh those against, and that the effects of the development on the general character of the area or on the listed building group at Brook Farm would not be so harmful as to justify refusing permission.

### **Possible Conditions**

47. If you are minded to grant planning permission I consider that the conditions set out in the planning officer's report on the application would be appropriate. Condition Number 4 would remove normal permitted development rights for enlargements to the dwelling or ancillary buildings. Such development would not be wholly prevented, but would be brought under normal planning control.
48. The applicant has indicated willingness to change the materials used for guttering and downpipes from PVC to aluminium<sup>7</sup>. Bearing in mind the constraints of this site and the possible effect which such development might have on the setting of Brook Farm, this condition would in my view achieve a small benefit. This matter could be controlled by an additional condition as follows:

"Notwithstanding the details shown in the submitted drawings, no development shall be begun until revised details of rainwater goods have been submitted to the planning authority for approval and have been approved. The development shall not be carried out other than in accordance with the revised approved details."

### **Recommendation**

49. I recommend that the appeal be dismissed and that planning permission be confirmed subject to the conditions set out in the planning officer's report, plus the added condition above.

*G F Self*

Inspector

9 July 2021

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<sup>7</sup> Statement of Case by Applicant's Agent – unnumbered paragraph near the bottom of page 6.