

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Brigham Young, Sovereign Hire Cars against a refusal of planning permission.

Reference Number: P/2021/0294

Site at: Sovereign Hire Car Site, 14 Havre des Pas, St Helier.

Introduction

1. This appeal is against the refusal of planning permission for development described in the application as: (1) formalise 'private' & 'hire' car parking locations; (2) retrospective, construct 14No carports".
2. In the refusal notice the development was described as: "Change of use of part of site for 'private' parking. RETROSPECTIVE: Construct 14 no. carports. AMENDED DESCRIPTION: Change of use of part of site for 'private' parking. AMENDED PLANS RECEIVED: RETROSPECTIVE: Construct 26 no. car ports".
3. I held a hearing into the appeal on 8 March 2022 and inspected the site on the same day.
4. The reason for refusal as stated in the Decision Notice dated 18 November 2021 was:

"The proposed development is for a private car park in the Built-up Area of St Helier, which would not reduce the dependence on the car and will lead to unacceptable problems of traffic generation. The proposed development would also serve to stifle the potential redevelopment of the site. The proposed development would therefore be contrary to Policies SP1, SP2, SP6, GD1, and TT11 of the 2011 Island Plan (Revised 2014)."
5. In this report a brief description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellant, the planning authority and other parties. 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.

Site and Surroundings

6. The appeal site is on the north side of Havre des Pas. An access way leads off the road to the rear part of the site. The house immediately east of the access way next to the road is Number 14 Havre des Pas, in front of which is a hard-surfaced forecourt. Further to the rear and immediately east of the access way there is a pair of semi-detached cottages, and a fenced parking space apparently linked to one of the cottages. (I did not see inside these cottages but I understand that they are each two-bedroomed dwellings.)
7. A hinged barrier is positioned at one end of the access way. Further to the rear the site widens to form an approximately square shape. Near this point in the southwest corner of the square area is a building (labelled "office/store/workshop" on drawing number 066/02C) which at the time of my inspection appeared to be in use as a car sales office. Two other buildings in the

south-east and north-east corners of the square area appeared to be used for miscellaneous storage.

8. Most of the outer parts of the square-shaped area referred to above are occupied by a continuous line of open-fronted carport-type structures made of timber framing with corrugated sheet roofing. Near the north-west corner of the site there was a gap in this structure where an access had been formed between the appeal site and the rear plot of the apparently residential adjacent property to the west, where an area was surfaced with stone chippings. Five vehicles were parked in this area.
9. The hard-surfaced open, central part of the site was marked out with white-lined parking spaces. Altogether there were 38 spaces within the square-shaped part of the site (26 covered by the structures mentioned above, 12 in the open, central area.¹ Sales notices (typically reading "Trade Sales") were displayed on most of the vehicles in the carport-type structures (but not in the cars within the open central area). There were three other parking spaces on the west side of the access way opposite the cottages. Three cars were also standing on the front part of the site next to the road with signs advertising them for sale.
10. On its east side, the rear part of the site abuts the blank side wall of the adjacent building, between 2 and 3 storeys high. The rear (north) of the site is marked by a high boundary wall, beyond which to the north-north-west is a block of flats.
11. At the point where it passes the front of the site, Havre des Pas appears to be a busy main road; traffic flow along it was fairly constant at the time of my inspection (around midday on a Tuesday in March). Visibility from the site access westwards is obstructed by structures at the front of neighbouring properties. To the east, where there are railings about 1.1 metre in height along the site boundary, the field of view along the road is better than to the west, though at the time of my inspection visibility was obstructed by the cars displayed for sale. A nearby advertising sign indicates "Car Hub Cars Bought for Cash".
12. The immediately surrounding area has a mixed character though most of the properties appear to be in residential use. There are flats on the opposite side of the road. One of the neighbouring buildings appears to be used as staff accommodation for hotel employees.

Case for Appellant

13. The main grounds of appeal are, in summary:
 - The planning department's and highway authority's assessments were muddled and inconsistent. The application seeks to formalise a use for car parking which has existed or more than 80 years. The area was originally a coach park, then a hire car depot with spaces let out to residents and for commercial vehicle parking in the winter months.
 - The applicant never thought the application was necessary because the use as a residential car park had been carried on for more than eight years, but it is important that the use be formalised.
 - Policy TT11 and the related reason for refusal of permission is not relevant. The policy provides that "new private non-residential car parks with public access in St Helier" will not be permitted. This application does

¹ This figure includes the "gap" mentioned in the previous paragraph, which in effect as laid out at the time of my inspection took away a parking space to enable vehicles to be driven into the adjacent site.

not propose a new non-residential car park, only the formalising of an existing car park to a residential car park with no public access.

- The provision of private car parking in this location will assist with policy aims as it has access off the coast road and would help to reduce vehicular penetration of "core areas".
 - There have been no public objections to the proposal and many letters of support. The nearest public car park is 20 minutes' walk away.
 - The application does not stifle development opportunities.
 - The IHE objections are curious and biased and relate to historic traffic issues when the site was a busy hire car depot and drivers were unfamiliar with the area. The proposed exit and visibility provision are/would be a vast improvement on what exists and would meet modern requirements. Possible alternative uses such as a coach depot would be much worse.
 - The site has been improved with a new barrier to prevent public access. The proposed hire car spaces are for electric cars, conforming to sustainability policies. The proposal will greatly reduce vehicle movements. The planning department clearly want to see housing development on the site but this is an impossible prospect in the current market.
14. The documents submitted at application stage include emails on the applicant's behalf, referring to the past use of the site, to visibility splays and to matters such as the reduction in vehicle movement (estimated by the applicant's agent to be at least a 90% reduction since 2019). In an email dated 15 July 2021 the agent confirmed that a condition restricting car parking for use by residents in the vicinity would be acceptable, and gave an estimate that at full capacity there would only be a maximum of 20 vehicle movements daily, as most of the residents interested in using the site live and work in the vicinity and only use their vehicles occasionally.

Case for Planning Authority

15. In response, the planning authority make the following main points.
- The planning department's report to committee was based upon pertinent planning considerations and policies of the adopted Island Plan. The creation of a private car park is a change from previous uses undertaken by commercial operators.
 - Under Policy SP6 of the Island Plan a strategic objective is to reduce dependence on the private car. Other policies (SP1, H6 and GD3) aim to provide new residential development in the built-up area at the highest reasonable density.
 - The proposal prevents or stifles the potential for residential redevelopment of the site and encourages private car use rather than reducing dependence on it.
 - The proposal would also be contrary to Policies SP2, SP6, GD1 and TT11.
 - The objections by IHE as highway authority are not curious or biased. The authority objected strongly to the application on the grounds that manoeuvring to and from the adjacent busy highway is a source of casualties creating an accidents cluster, that the proposal promotes the use of private vehicles in an area where local services are accessible by other means, and that the proposal provides additional parking for private vehicles.

16. The planning authority also refer to supplementary comments on behalf of the highway authority,² saying, in summary:
- The current Island Plan sets out clear principles including supporting development which makes the most efficient use of land, reducing dependence on private cars, and supporting development of high quality design.
 - Policy TT11 presumes against the provision of private car parks in St Helier, other than in exceptional circumstances which do not apply to this proposal.
 - In December 2019 the States Assembly adopted a sustainable transport policy which declared a climate emergency, recognises that fewer motor vehicles will be good for Jersey, aims to reduce the impact of vehicles, and seeks a plan for Jersey to be carbon neutral by 2030.

Representations by Other Parties

17. Comments on the application were submitted by about 12 interested persons or other parties, one of which was on behalf of four clients, and one also submitted representations at appeal stage. They express support for the application or appeal, mentioning the need for parking in the area, the difficulty in finding a parking space, the benefit of having more parking spaces to reduce on-street parking, the recently improved appearance of the site and unobtrusive appearance of the car-ports, the reduction in traffic after use by hire cars mostly stopped, and the beneficial effect on traffic congestion locally from residents not having to drive around looking for parking space.
18. A submission on the appeal by a local resident explains that he owns a 15 flat lodging house next to the site and hopes to gain rear access to the property so that a bike shed could be installed, allowing tenants to own and use bicycles, since at present the layout of his building and its forecourt does not provide enough room for bicycles.

Assessment

19. It is necessary to mention first a point concerning the existing use of the site. My site inspection was after the hearing, and it only became apparent to me after starting the inspection that the current mixed use of the land includes a residential component. The majority of the site (including most or all of the space under the carport-type structures) is apparently used for car sales, and a smaller part is used for car parking not associated with the car sales business. As regards the residential use, an amended site plan (Drawing Number 02C) shows the site boundary excluding the cottages on the east side of the access, but the access way itself and the parking area allocated to one of the cottages is within the site. In these circumstances part of the site (the access way) is in mixed use for three purposes (car sales, car parking not associated with car sales and residential use); and the parking area next to the cottages is in wholly residential use.³

² This refers to an email dated 2 November 2021.

³ For the purposes of planning law, a typical driveway to a house, for example, is in "residential" use. An access to a car sales area would be in "car sales" use. Where an access is shared between two or more uses, the use of the access is mixed or composite, and in this instance the access is part of the overall planning unit. The parking space next to the cottages is partly fenced off from the rest of the site but is within the area edged with a red line on the amended site plan, Drawing 02C.

20. The application does not seek planning permission for the mixed use just described. However, for the purposes of reporting on this appeal I shall treat the residential component of the use as *de minimis*, that is to say not so significant or material as to affect the overall use. Whether in practice that would be so would depend on various factors such as frequency of use of the access by residential occupiers or visitors.
21. Part of the appellant's case contends that planning permission is not needed for what is proposed, primarily because the proposal does not involve a new use or new development. In other jurisdictions where planning law is broadly similar to the law in Jersey, such an argument could have appropriately been pursued through an application for a certificate of lawfulness. That option is not available in Jersey (although much the same effect could be obtained by an appeal on ground (c) of Article 109(2) of the 2002 Law). Be that as it may, Mr Young has applied for planning permission, and although the site history is a material consideration, the planning merits or demerits of what is applied for have to be weighed separately from any consideration of whether or not the development might be lawful because of immunity from planning control. To determine lawfulness, evidence about the recent site history would need to be more detailed than that put forward for this appeal.
22. The appeal site appears to have been used for many years as a hire car depot, though no planning permission was ever granted for such use. The company which operated the car hire business has evidently ceased trading and no longer occupies the site. The intensity of use, in terms of numbers of vehicles typically on the site and traffic generation, appears to have been considerably greater in the past than it is now. On this aspect of history, it is relevant to note that just as an increased intensity of use can cause a material change of use of land under Article 5(1)(b) of the Law, the same can apply to a decrease if it is "material".
23. Moreover, the appellant's argument that the application seeks merely to "formalise an existing use" ignores the fact that the existing use includes car sales as a major component of the existing mixed use. Car sales use is not mentioned in either the original application or the amended description of what is proposed, so it seems that the proposal if implemented would not include this component of the existing use.
24. Apart from those points, two main issues arise from this appeal: first, whether the development would meet current aims to control parking provision in this part of St Helier, having regard to Island Plan policy; second, whether the development would have an undesirable effect on road safety.
25. Policy TT11 of the Island Plan provides that planning permission for new private non-residential⁴ car parks with public access in St Helier will not be permitted, except where specified criteria are met. The criteria are aimed at (i) reducing vehicular penetration into "core areas", (ii) allowing the replacement of existing PNR car parks, and (iii) preventing any net increase in PNR parking spaces. This policy is evidently intended to support a strategic objective under Policy SP6 to reduce dependency on private cars and restrict the availability of parking, particularly for commuters in St Helier.

⁴ In some later text I abbreviate this term to "PNR".

26. The planning authority's case is not strengthened by a written comment from Mr Kevin Pilley on behalf of the planning authority⁵. He states that "the preamble to this policy [Policy TT11 of the Island Plan] makes it clear that the current plan maintains a presumption against the provision of private car parks". That is so – but is a selective reference to the supporting text of the plan, not to policy. Policy TT11 – and it is the *policy* which is key – refers to "the development of new private non-residential car parks with public access".
27. The appellant contends that this car park would not have "public access". At first sight, that is a tempting argument. But an important consideration here is whether and how the potential use of the site could be controlled. When I invited those at the hearing to suggest possible conditions for imposition if planning permission were to be granted, it was clear that any attempt to limit parking to "local residents" would be impracticable, and the appellant's representatives could not suggest how, for example, a restriction on where residents live could be imposed. Nor can I. Any such attempt would be almost impossible for the planning authority to verify and enforce, without unduly draconian measures involving checks on the personal details and addresses of individuals who have been issued by the site owner with some form of barrier-operating authority to use the car park, combined with controls aimed at preventing any such authority being passed to other people.
28. Much the same applies to the idea that cars parked on the site might only be used occasionally, for example at weekends. One of the appellant's arguments is that many local residents would not use their cars for daily travel, but need somewhere to keep their cars for occasional use. That is a possibility, but could not in practice be effectively controlled by the planning authority.
29. This is a case where the impracticality of enforcing conditions is a material consideration. No other means of control, including how a "local resident" could be satisfactorily defined, has been proposed by the appellant.
30. The general aim of Policy TT11, together with strategic policy SP6, is to control or reduce the use of private cars in St Helier and encourage "other transport modes" – which essentially means public transport, cycling or walking.⁶ Whether public transport provision is keeping pace with that aim is a matter outside the scope of this appeal. People living in the area may not be aware of Policy TT11, and any who are aware of it will no doubt dislike it, as indicated by the support for the appellant's case expressed in written submissions by local residents who refer to the need for and benefits of having off-street parking. It is clearly undesirable if, as one of the written submissions suggests, car owners are adding to traffic congestion while driving around to find a parking space. Many residents – quite understandably – prefer to be able to use cars and want parking space. But Policies SP6 and TT11 would only have been adopted after public consultation, and there is no evidence before me that the Island Plan Review is likely to involve significant change in this policy.

⁵ Mr Pilley is evidently Head of Space and Spatial Planning in Strategic Policy, Planning and Performance. I understand that as a result of re-organisation, two parts or sections or divisions (not "departments") of government both have planning functions. One is Strategic Policy, Planning and Performance; the other is Infrastructure Housing and Environment, which is within or associated with Regulation. So the planning function of the former is performed as an external adviser to the planning function of the latter – hence the arrangement for formal consultation between the two planning functions.

⁶ This reference to other transport modes is in the supporting text to Policy TT11 at paragraph 8.128.

31. The planning permission being sought would not only allow continued use of the existing parking spaces (ie the spaces not currently used for car sales) but would increase their number from around 12 to about 38. So what is under consideration here is not just a continuation of a use conflicting with policy towards the private car, but a significant increase in this use.
32. In summary, bearing in mind the enforcement problems mentioned above, I find that the proposal would conflict with policy TT11 and undermine a key aim of the Island Plan to reduce dependency on private car use. That is a sound reason for refusing planning permission.
33. Turning to the road safety issue, the past use of the site will have generated more vehicle movements into and out of the site than the proposal subject to this appeal. As the appellant has suggested, drivers of unfamiliar hired cars may have been more likely to cause an accident than car owners, although that is only surmise, and many hire cars would probably have been delivered to and collected from holiday addresses such as hotels. The length of road near the site evidently has a high accident rate, but the available statistics are apparently not sufficiently detailed to show whether past accidents have been directly related to the use of the site entrance.⁷ One contributory factor may be the restricted carriageway width in the vicinity of the site, combined with the high amount of traffic and the number of side turnings or accesses.
34. The proposal would enable visibility from the site entrance (and visibility of it from viewpoints along the road) to be improved by moving the entrance slightly to the east, using part of the forecourts of the two neighbouring properties over which the appellant has control. Planters would be positioned to "channel" vehicles into the centre of the realigned access.
35. Safety is helped to some extent by the 20 mph speed limit on this part of Havre des Pas. Applying the standards in currently published government guidance,⁸ the modified layout would provide adequate visibility splays; but the fairly narrow highway provides little room for drivers of vehicles on the road to take avoiding action if faced with unexpected vehicle movements. It would also not be easy for a vehicle approaching from the west to be turned into the site entrance while another vehicle was stationary at the exit, and any sudden stopping on the road carriageway could be a potential cause of accidents.
36. In summary, I consider that road safety concerns would not by themselves justify preventing the development, but have some weight as a supplementary objection to the proposal.
37. The planning authority's contention that the site should be kept available for residential development is not a compelling point, since landowners cannot normally be forced to use or develop their property for any particular purpose. Nevertheless it is another supplementary objection, having regard in particular to the aim under Policy GD1 of the Island Plan that development proposals will not be permitted unless they contribute where appropriate to reducing dependence on the car.
38. Part of the application subject to the appeal related to the erection of the carport structures. As amended, the application sought mostly retrospective planning

⁷ An officer's committee report states: "The area 50m either side of the site is home of a significant road traffic casualty site linked to right turning movements". But this statement does not identify whether these movements involve the appeal site.

⁸ "Access on to the Highway" – Standards and Guidance", August 2019.

permission for the erection of these structures. (I write "mostly" here because of the gap in these structures mentioned in my site description.) No substantive objection to this part of the application has been raised by the planning authority. However, no suggestion has been made that a "split decision" should be considered, allowing the structures whilst refusing permission for the parking use, and I do not see justification for such an outcome.

Conclusions

39. I conclude that although there are some weaknesses in the planning authority's case, the decision to refuse planning permission should be confirmed. The stated reason for refusal is adequate as it stands.

Possible Conditions

40. None of the parties to this appeal covered the matter of possible conditions in their written material submitted before the hearing. During the proceedings I invited suggestions and comments.
41. Among the suggestions was a condition requiring that vehicles should only be parked in marked bays, and that details of matters including the proposed planters and visibility splay arrangements should be submitted for approval. Implementation in accordance with an approval would also be required. The planning authority's witness suggested that a condition should prevent any commercial repairs being carried out, that the highway authority would want to see provision made for a bus shelter and cycle parking, and that a payment towards cycle route provision should be made subject to a Planning Obligation Agreement. The appellant disagreed with these latter suggestions.
42. If you were minded to grant permission, I suggest that a modified version of standard conditions A and B would be appropriate (to allow for the partly retrospective nature of the application as explained above). Conditions requiring the provision and retention of visibility splays in accordance with Drawing 2020/066/10B, preventing any use for commercial repairs, and specifying that cars could only be parked in marked parking bays would also be appropriate.⁹
43. You may wish to consider the possibility of a temporary permission for, say, one or two years. Neither of the main parties in this case suggested such a condition and I am not recommending it since the basic policy conflict would remain and would be increased as explained above; but a temporary permission could give car owners currently using the site time to adjust their lifestyles, dispose of their cars, or take whatever other steps may be necessary in the light of government policy. If you were minded to take this step, two conditions would be needed because the development would involve both "operations" and "use".¹⁰

⁹ Possible wording could be: (i) Within one month of the date of this permission, the access to the site shall be laid out in accordance with Drawing Number 2020/066/10B. The visibility splays thereby provided shall not be obstructed by an object or structure. In the event that the requirements of this condition is not met within the time specified, the use hereby permitted shall cease with 7 days of such failure being notified by the planning authority to the site owner. (ii) No vehicle repairs shall be carried out within the site. (iii) Vehicles shall not be parked on the site other than in marked parking bays.

¹⁰ Possible wording could be: (i) The use hereby permitted shall cease at the end of the period of [one year] [two years] from the date of this permission. By or before the end of this period all vehicles and any other objects brought onto the land in connection with the use shall be removed from the land. (ii) The structures hereby permitted shall be demolished by or before the end of the period of [one year] [two years] from the date of this permission, and all materials resulting from the demolition shall be removed from the land within a period of one further month.

44. Requirements for payments towards the provision of cycle routes are covered by Policy TT3 of the Island Plan. This refers to applications for "large new developments such as housing, shopping, employment, health or leisure proposals". This proposal would not be in any of those categories, so I do not consider that a requirement for payment towards cycle route provision would be reasonable.

Recommendation

45. I recommend that the appeal be dismissed and that the initial decision to refuse planning permission be confirmed.

G F Self

Inspector

23 March 2022.