

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

**Appeals under Article 108 against decisions made under Article 19 to refuse
planning permission**

REPORT TO THE MINISTER FOR THE ENVIRONMENT

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

Appellant:

Gerald Le Ruez

Application reference numbers and dates:

P/2020/1645 - 11 January 2021
MS/2020/1646 - 11 January 2021
P/2020/1647 - 11 January 2021

All the applications were made under Article 20 (Application for planning permission
for development already undertaken)

Decision Notices dates:

P/2020/1645 - 21 October 2021
MS/2020/1646 - 21 October 2021
P/2020/1647 - 21 October 2021

Site address:

Home Farm, Le Mont de la Hague, St. Peter, JE3 7DE

Descriptions of the developments:

P/2020/1645 - "Surface existing track through Field No. P534".

MS/2020/1646 - "Site 11 containers and three structures for storage".

P/2020/1647 - "Change of use of existing yard (created during the German
occupation) to dry storage area for vehicle parking".

Inspector's site visit date:

8 February 2022

Hearing date:

11 February 2022

Introduction

1. All three applications were refused by the Planning Committee in accordance with the recommendations of the Infrastructure, Housing and Environment Department. The reasons given for refusal are as follows:

P/2020/1645

"1. The site is located on agricultural land located within the Green Zone. The hard-surfacing of the track over the field is not justified and is not a permissible exception to the general presumption against development in the Green Zone, nor of any assistance to the agricultural use of the land. The proposal is therefore contrary to policies NE7 and ERE1 of the Adopted Island Plan 2011 (Revised 2014)."

MS/2020/1646

"1. The site is located within the Green Zone and relates to agricultural land. The siting of shipping containers on the site for the storage of goods unrelated to any agricultural use of the site or justifiably requiring a countryside location is not a permissible use, and is therefore contrary to policy NE7 and ERE1 of the Adopted Island Plan 2011 (Revised 2014)."

P/2020/1647

"1. The site is located within the Green Zone and relates to agricultural land. The use of the site for the commercial long-term parking of vehicles unrelated to any agricultural use of the site or justifiably requiring a countryside location is not a permissible use, and the intensification of use will impact on the highway network. The proposal is therefore contrary to policy NE7, ERE1 and GD1 of the Adopted Island Plan 2011 (Revised 2014)."

The Revised 2011 Island Plan and the Bridging Island Plan March 2022

2. The parties' representations up to and including the hearing took into account the policies in the Revised 2011 Island Plan. These policies are no longer relevant to the developments following the adoption of the Bridging Island Plan, which replaced the Revised 2011 Island Plan in March 2022. The parties have been consulted about the application of the policies in the Bridging Island Plan to the developments and their written representations on these issues have been taken into account in the preparation of this report.
3. The Bridging Island Plan is now the Island Plan for the purposes of Article 19 of the Law. This provides that (a) in general planning permission shall be granted if a development is in accordance with the Plan, (b) it may be granted where it is inconsistent with the Plan if there is sufficient justification for doing so and (c) it may be refused.
4. Policies in the Bridging Island Plan that deal with matters related to the reasons for refusal are: -
 - One of the objectives of the Plan is to "direct growth to areas of previously developed land, or locations which minimise the need to travel by private vehicle" (Policy SP1 "Responding to climate change").

- Policy SP2 "Spatial strategy" states that development will be concentrated within the built-up area. Within the countryside it states: -

" ... development will only be supported where a ... countryside location is justified, appropriate and necessary in its location; or where it involves the conversion, extension and/or subdivision of existing buildings. ... The appropriate development of previously developed land and of under-utilised land and buildings will be supported. In particular, development which makes the most efficient use of land, and which optimises the density of development, will be encouraged."
- Home Farm is in the green zone. The Plan states that it is important that the strongly rural character of the green zone is protected and that development here "must protect or improve landscape ... character" (pages 76-78 & 124 and Policy NE3). Policy NE3 adds: -

"Applicants will need to demonstrate that a proposal will neither directly nor indirectly, singularly or cumulatively, cause harm to Jersey's landscape ... character and will protect or improve the distinctive character, quality, and sensitivity of the landscape ... character area ... as identified in the Integrated Landscape and Seascape Assessment.

Proposals that could affect the island's landscape ... character, but which do not protect or improve it, will not be supported unless, and with regard to the special qualities of the landscape ... character area ..., and the impact of the proposed development on those qualities:
 - a. the changes are demonstrably necessary either to meet an overriding public policy objective or need; and
 - b. there is no reasonably practicable alternative means of delivering those proposals without harm to landscape ... character; and
 - c. that harm has been avoided, mitigated and reduced as far as reasonably practicable; and
 - d. it has been demonstrated that the predicted public benefit outweighs the harm to the landscape ... character and where the nature of that benefit to the public is clear, direct, and evidenced."
- Policy PL5 is also relevant to development proposals in the countryside. It states: -

"Economic development that supports the maintenance and diversification [of] the rural and island economy will be enabled here, where the location of development is justified and appropriate; or where it involves the reuse or redevelopment of already developed land and buildings, where it is appropriate to do so."
- Policy ERE1 "Protection of agricultural land" states: -

"The development or loss of agricultural land will not be supported unless in exceptional circumstances and where:
 1. the proposal will not lead to the loss of high-quality agricultural land, having regard to:
 - a. the quality of the soil and historic use of the land;

- b. the location of the land relative to nearby farms and other active agricultural activity;
 - c. the overall of size of the land parcel and the impact that the development will have in on [*sic*] the integrity and viability of a farm holding; and
 - d. access to other agricultural land in the area.
2. the nature of the proposed use genuinely necessitates and is appropriate to its proposed location.”
 - The impact on the highway network is now dealt with by Policy TT1, which indicates that safe travel will be a consideration in all development proposals and that “the amount and type of traffic generation and the capacity of the local network to accommodate it” will be taken into account.

The case for the Infrastructure, Housing and Environment Department

5. The Department have examined how the various planning policy constraints apply to the developments concerned, and have concluded that all three of them are in conflict with the Bridging Island Plan. In particular: the Department maintain that private vehicular trips will be generated contrary to Policy SP1; that Policy SP2 will not be complied with because the storage uses can be successfully accommodated within the built-up area; that the developments are in conflict with the thrust of Policy PL5; that the developments do not protect the special qualities identified in the 2020 Integrated Landscape and Seascape Character Assessment and are therefore not supported by Policy NE3; and that exceptional circumstances do not exist within the meaning of Policy ERE1 to support the development or loss of agricultural land.
6. The Department maintain that development should take place in an orderly and plan-lead manner and that it is not appropriate to condone incremental non-agricultural development of the nature carried out in these appeals on agricultural land in the Green Zone. The Department note that Article 19(2) of the Law states that in general planning permission shall be granted if development is in accordance with the Island Plan and assert that “It follows therefore that where development is not in accordance with the Island Plan that it will *not* be approved”.
7. The Department make the following specific points in relation to the developments:
 - The track referred to in P/2020/1645 is presumed to have previously had a hardcore surface. It is understood to have been surfaced with tarmac in preparation for an event at the WW2 re-enactment area to which it leads. The event was to mark the 75th anniversary of the Liberation in 2020, but it was postponed because of the pandemic. However, the temporary planning permission for the re-enactment area expired in 2017 and it has not been renewed. Since the tarmac surface of the track serves no agricultural purpose, there is no longer any justification for its retention.
 - The containers and structures for storage referred to in MS/2020/1646 have been sited on land that was previously used for agricultural purposes and is in an open area in the countryside. Most of them are

used for general storage unconnected with the Farm. They have an alien appearance that is not appropriate to a rural location and are not acceptable for either general storage or long-term agricultural use.

- The land the subject of P/2020/1647 has changed progressively over a period of more than 20 years from agricultural use as part of a field to the area surfaced with hard core that currently exists. It is being used as a yard for the long-term parking of rental vehicles and campervans. There are about twenty-one parking spaces. These uses are not permissible policy exceptions and the land should be retained for agriculture.
 - In relation to MS/2020/1646 and P/2020/1647, the Department's transport section state that the use of the developments by larger vehicles would give rise to highway safety concerns at junctions onto the strategic road network in the surrounding area.
8. The Department point out that part of Home Farm is within the boundary of the listed arboretum associated with La Hague Manor. The track is within this part but the other two appeal developments are not. The Department accept that none of the appeal developments have a harmful impact on the arboretum, since the wooded area is in a deep valley beyond the re-enactment area.

The case for the appellant

9. In relation to all the appeals, the appellant states that the planning system should balance the need to protect agricultural land and the landscape from unreasonable harm, whilst supporting a viable and sustainable countryside economy and Island communities. He indicates that it is the responsibility of decision makers to carefully balance the planning merits of development; Island Plan policies pull in different directions; proposals should be considered holistically; and due weight should be ascribed to the various material considerations that arise. He maintains in this instance that the policy tests have been satisfactorily addressed and that on balance the developments have not resulted in identified harm.
10. The appellant has detailed knowledge of the Farm and remembers Field P534 being farmed by his father after it had been let to his father shortly after the War. He has described the history of the Farm since 1940 in detail. He makes the following points, in particular, about its history:
- All three appeal sites are on land that was used by the Germans during the Occupation; barracks and stables were erected on the field, slabs of concrete were laid down and aerial photography shows that fortifications were present. As a result, the subsequent use of the land for agriculture was severely compromised despite efforts being made to restore it after the War.
 - An active and extensive builder's yard has existed since 1948 within the Farm, next to the appeal sites.
 - Re-levelling of the field was approved in 1988. This project failed because of the condition of the field following the Occupation; drainage is poor and top soil placed on the field was regularly eroded by rainfall. It proved impossible to grow crops commercially.

- Approval was granted in 1998 for the change of use of a large agricultural storage building on the Farm for general (non-agricultural) storage purposes. This use is still in operation.
- The use of the land the subject of P/2020/1647 for parking started about 21 years ago when he laid some surface gravel and allowed some campervan owners to park there.
- The storage of site cabins and skips on part of the farmyard and a track was approved in 2003.
- The use of part of the field for the WW2 re-enactment area, together with temporary structures, fox holes and trenches, was given temporary planning permission in 2011, which was extended in 2014 but has now lapsed. The structures and excavations are still in place.
- In 2013, the construction of three dwellings on the Farm, replacing staff accommodation and outbuildings, was approved. These have been built and occupied.
- The containers referred to in MS/2020/1646 have been on the Farm for more than 35 years. They were displaced to their current location in about 2014 by the construction of the houses approved in 2013. They are not used for commercial purposes; some are used by charities to store their goods and the rest are used by him for agricultural purposes.
- Permissions were granted in 2021 for the construction of other structures for agricultural use on the field and for stables and hardstanding elsewhere on the Farm that are used to accommodate rescue donkeys. These works have all been carried out.
- The Farm as a whole is no longer operated as a working farm, apart from some land being rented to tenant farmers. Part of Field P534 is used for the grazing of the donkeys.

11. The appellant makes the following specific points in relation to the appeals: -

P/2020/1645

- The tarmacking of the track has not lead to the loss of any agricultural land since the track already existed and was already hard-surfaced. It does not compromise the use of the field for agriculture. The field is in any event of poor agricultural quality and can only be used for rough grazing.
- The tarmacking was carried out so as to provide an all-weather access to the re-enactment area for members of the public, particularly those with reduced mobility. The Liberation commemoration event is being re-scheduled. The authorities are aware that the planning permissions for the re-enactment area have expired but it is understood that enforcement action is not being contemplated.
- The tarmacking is not visible from any public locations. It is a minor development and its effect on the landscape is negligible.

- The Transport Statement he has submitted demonstrates that the tarmacking has not resulted in unacceptable transport impacts.

MS/2020/1646

- The containers have been on the Farm for very many years. Photographic evidence shows that the hard-surfaced area where they are now located was in existence in 2009 as a parking and storage area and that the containers had been located there by 2017. For the reasons already given, the area was previously poor-quality agricultural land and efforts to farm it had failed.
- Planning policies do not address the needs for storage space on the Island and there is evidence from commercial agents that there is currently a shortage. Charities are allowed to store items in the containers free of charge. This is an important social and community function because the alternative would be high-cost storage in permanent buildings elsewhere.
- The containers are not visible from any public locations and their impact on the landscape is negligible. They are located next to existing commercial uses on the Farm and are an acceptable example of farm diversification, which does not give rise to harmful intensification, noise or disturbance or trip generation.
- The Transport Statement submitted by the appellant demonstrates that the use of the containers has not resulted in unacceptable transport impacts.

P/2020/1647

- For the reasons already given, this area was previously poor-quality agricultural land and efforts to farm it had failed.
- The parking/storage use has been taking place since 2016. The appellant allows 16 campervans and several cars to be parked on the land. A nominal rent is charged and the proceeds go directly to charities.
- There is an additional community benefit because the facility allows Islanders' campervans to be kept in a secure location away from public roads and carparks and away from residents' homes where space may not be available. There is a shortage of land for storage of this kind, which current planning policies do not address.
- The parking/storage area is not visible from any public locations and its impact on the landscape is negligible. The vehicles are kept next to existing commercial uses on the Farm. The use of this area is an acceptable example of farm diversification, which does not give rise to harmful intensification, noise or disturbance or trip generation.
- The vehicles are moved on only a few occasions in the year. The Transport Statement he has submitted demonstrates that the use has not resulted in unacceptable transport impacts.

Representations made by others

12. A large number of representations about the developments have been made both at the application stages and the appeal stages. Over fifty people attended the hearing into the three appeals. Representations have been made by the Parish and by senators, deputies, constables, police, charitable organisations, users of the facilities, National Trust Jersey, residents at the Farm and concerned members of the public.
13. Nearly all the representations (and all those from holders of public office) are supportive of the developments. Many of the representations question why decisions to refuse planning permission have been made in respect of longstanding developments that they say cause no harm. They express strong feelings about the loss of charitable and community facilities that would occur if the uses had to cease. They make the point that a holistic approach should be taken to the application of planning policies, so that the best use is made of land in the interests of the community as a whole.
14. The representations submitted against the developments may be summarised as follows:
 - Continuous piecemeal non-agricultural development has taken place at the Farm over many years; it is inappropriate in the green zone and harmful to the landscape; it has resulted in the loss of agricultural land, and noise, and has caused traffic problems on the nearby road network; there can be no guarantees that the developments will not be used for commercial purposes in the future.
15. Specific points made by supporters are as follows:
 - The Parish Roads Committee have no concerns regarding any adverse effect on the nearby roads for which they are responsible. Traffic problems have not been drawn to the attention of or observed by the police during monitoring.
 - The Farm has diversified to meet the needs of the community. The developments are minor, out of sight and cause no harm. They make a significant contribution to community needs and their wider social benefits should be recognised. There have been no complaints about them although they have been there for many years. Nothing has changed recently and the containers and the motorhomes make the best use of land which would otherwise be of no use.
 - Residents at the Farm have not been significantly affected by noise, traffic, loss of outlook or other environmental issues. They and others comment on how well the Farm is kept and refer to the amount of planting that has taken place.
 - People with long-term knowledge of the Farm confirm the appellant's account of the Farm's history since the War and pay tribute to his public spiritedness and his contribution to society.
 - Charities play a large part in Jersey life and the planning system should support them. Some of the containers have been used by the brain injury charity, Headway, for many years to store items for later sale in their

charity shop in St Helier; the charity needs the storage space to keep going. Others are used by the Freedom Church and other charities for storage related to their work in Jersey and abroad. The containers provide secure, dry, safe, accessible and affordable storage space. It is unlikely that there are cost-effective storage facilities elsewhere, bearing in mind the low sale value of the stored items and the limited resources of the charities.

- Residents who own motorhomes are expected to store their vehicles out of public sight. Motorhome storage is needed by people who cannot park at home and cannot find suitable space elsewhere. Finding other sites has become increasingly difficult following the loss of alternative storage facilities. Some of the motorhomes stored here are used by people with disabilities. The spaces here provide an important service to local families. They are out of sight and do not result in any noise or other disturbance.

Inspector's assessments and conclusions

16. It is important to assess the extent, if any, to which the developments have in fact resulted in the loss of any agricultural land. None of them involve any land that was in actual use for agriculture at the time when they were carried out. Development P/2020/1645 is the tarmacking in 2015 of a track that was already hard surfaced at this time. MS/2020/1646 and P/2020/1647 are both storage facilities on land that was hard surfaced many years earlier. The appeals do not seek approval for any of the hard surfacing in view of its age. There is no identifiable prospect of any of the land being returned to agricultural use if any of the appeals are dismissed.
17. It is also important to assess these developments in the context of Home Farm as it exists today. Little is left of the working farm enterprise that was here before the War. Some of the land was despoiled during the Occupation, including the appeal sites, and efforts to restore it to productive agricultural use have failed. A sizeable builder's yard was established next to the appeal sites shortly after the War and it is still an active operation; it stores a range of building materials on the ground up to various heights; the storage of site cabins and skips in connection with this use has in the past been approved on land next to the appeal sites. A large former agricultural storage building near the appeal sites is now in active use by a company undertaking general commercial storage. Three private houses have been built near to it. Stables have been erected next to the appeal sites for rescue donkeys. The WW2 re-enactment area still exists a short distance beyond the appeal sites.
18. None of the developments looks out of keeping in this context. The tarmacking of the track is consistent with the tarmacking of other roadways on the Farm. The storage facilities are in keeping with the other storage uses that exist in this part of the Farm. Their limits are clearly defined by the trees and high hedging that separate them from adjoining fields. When the developments are assessed in their context, they are all minor additions to already well-established features of the Farm.
19. I turn now to the extent to which the developments comply with or are in conflict with the Bridging Island Plan. The plan states in its Introduction, on pages 3 and 4, that "The policies do not stand in isolation and should be read together, with other relevant policies and the proposals, as a holistic response to

the needs and issues facing the island ... It is likely that several policies will be relevant to any development proposal and that some policies can, seemingly, pull in different directions ... It is for the decision maker to carefully balance the planning merits of a development proposal with the policy requirements of the plan. Where policy conflicts do arise, a reasoned judgement must be made as to whether the wider benefits of a proposal outweigh any policy considerations provided by the Island Plan. This should only happen where there is considered to be sufficient justification to do so". The "wider benefits" could in my opinion include demonstrable benefits to the community.

20. The strategic Policy SP1 has an objective to "direct growth to ... locations which minimise the need to travel by private vehicle", and strategic Policy SP2 states that development will be concentrated within the built-up area. These are particularly important considerations, but it would in my view be an exaggeration to call these minor developments "growth" in the strategic context, and the use of the term "concentrated" means that the strategy does not exclude the approval of some development elsewhere. The developments in these appeals can be supported within the overall countryside protection strategy set out in Policy SP2, the countryside economic enabling provisions of Policy PL5 and the agricultural land protection provisions of Policy ERE1. The evidence does not demonstrate that the volume of traffic generated would give rise to concerns under Policy TT1.
21. As to green zone policies, the Department have asserted that the developments do not protect the special qualities identified in the 2020 Integrated Landscape and Seascape Character Assessment and are not supported by Policy NE3.
22. The Landscape Design Guidance in this Assessment contains "best-practice pointers" relating to various themes, most of which are not relevant to the developments because they relate to new buildings or to settlement form or to other kinds of works in the countryside. Insofar as the pointers are applicable, they indicate that the developments can be considered to be acceptable because of their small scale, their context, the absence of any viewpoints from which they can be seen and the lack of any adverse impact on the special quality of the rural landscape here, which is its pattern of woodlands and fields. The terms of Policy NE3 have therefore been complied with since it has been shown that none of the developments have, either directly or indirectly, singularly or cumulatively, caused harm to the landscape and that the character of the area has been protected.
23. For the above reasons, I have come to the conclusion that all three appeals should be allowed and that three planning permissions should be granted. As the developments already exist, the usual commencement condition would be superfluous, but the standard condition relating to compliance with the approved documentation is still needed in each case. No other conditions are required apart from a limitation on the number and types of vehicles that may be stored by virtue of P/2020/1647.

Inspector's recommendations

P/2020/1645

24. I recommend that the appeal is allowed and that planning permission is granted for development on land at Home Farm, Le Mont de la Hague, St. Peter JE3 7DE consisting of the surfacing of the existing track through Field No. P534, in

accordance with the application P/2020/1645 dated 11 January 2021 and the plans and documents submitted therewith, subject to the following condition: -

A. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

MS/2020/1646

25. I recommend that the appeal is allowed and that planning permission is granted for development on land at Home Farm, Le Mont de la Hague, St. Peter JE3 7DE consisting of the siting of eleven containers and three structures for storage, in accordance with the application MS/2020/1646 dated 11 January 2021 and the plans and documents submitted therewith, subject to the following condition: -

A. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

P/2020/1647

26. I recommend that the appeal is allowed and that planning permission is granted for development on land at Home Farm, Le Mont de la Hague, St. Peter JE3 7DE consisting of the change of use of an existing yard to a dry storage area for vehicles, in accordance with the application P/2020/1647 dated 11 January 2021 and the plans and documents submitted therewith, subject to the following conditions: -

A. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

1. No vehicles other than motorhomes, campervans and caravans shall be stored on the land and no more than 21 such vehicles in total shall be stored on the land at any time.

Reason: To protect visual amenity and to keep the land available for the recognised vehicle storage need.

Dated 27 May 2022

D.A.Hainsworth
Inspector