

Appeal of a Decision

Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended)

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

by **N McGurk** BSc (Hons) MCD MBA MRTPI,
an Inspector appointed by the Judicial Greffe

Site visit made on 4th July 2022. Hearing held on 4th July 2022.

Reference: RC/2021/1407

Le Clos d'Or, La Grande Rue, St Mary, JE3 3BD

- The appeal is made under Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended) against the granting of permission to develop land.
 - The appeal is made by M and L Pope against the decision of the States of Jersey. The appellants live within 50 metres of the appeal site.
 - The application Ref RC/2021/1407 by JB Groundworks, dated 8 October 2021, was approved by notice dated 10 March 2022.
 - The application granted permission is "Vary condition: Condition No.2 RC/2014/1949 (No machinery shall be operated, no process shall be carried out and no deliveries taken or dispatched from the site outside the following times 08.00 and 18.00 Monday to Friday and 08.00 and 12.00 Saturday nor at any time on Sundays or Public Holidays) to:
 - A. No HGV or plant vehicle trip shall be taken from the site outside the following times: 07.00 and 18.00 Monday to Friday, and 07.30 and 13.30 Saturday, with no working on Sundays or Public Holidays.
 - B. No machinery shall be operated and no process shall be carried out outside the following times: 08.00 and 18.00 Monday to Friday, and 08.00 and 12.00 Saturday, nor at any time on Sundays or Public Holidays
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Recommendation

1. I recommend that the appeal be upheld and planning permission be refused.

Introduction and Procedural Matters

2. The Bridging Island Plan, referred to in this Report as "*the Island Plan*" was adopted on the 25th March 2022. This post-dates the submission of the application and its subsequent determination by the Department in early March 2022. The planning application was therefore refused further to consideration against the previous version of the Island Plan.
 3. This appeal must be considered against current land use planning policies, as set out in the Island Plan adopted on the 25th March 2022. In this regard, I note that the Island Plan was adopted around three months prior to the date of the appeal Hearing and that there has been an opportunity for appeal submissions to take the revised Island Plan into account.
 4. The proposal the subject of this appeal seeks to vary a condition imposed on the planning permission relating to application number RC/2014/1949. This permission, granted in 2015, provided for the removal of a condition relating to limiting the occupation of a new outbuilding and staff accommodation to agricultural employees.
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5. Whilst approval was granted for this condition to be removed, the 2015 permission was subject to other conditions. These conditions remain and require the use of the premises to not materially differ from light industrial use; prevent the external storage of materials, equipment, waste, goods or other products; prevent subdivision or sub-letting; prevent advertisements; prevent uses which require to be serviced by vehicles with special "P" plates; prevent retailing; and prevent vehicle servicing and the sorting of skips.
6. Condition No.2, requires that no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside 08.00-18.00 Monday to Friday, 08.00-12.00 Saturday, nor at any time on Sundays or Public Holidays.
7. The appeal site lies adjacent to two dwellings and amongst other conditions, condition No.2 was imposed to protect the amenities of the occupiers of neighbouring properties.
8. The site is currently used by a groundworks contractor and comprises a large shed and an area of hardstanding.
9. The proposal the subject of this appeal would result in a variation to Condition No.2 such that HGV and/or plant vehicle trips could be taken from the site between 07.00-18.00 Monday to Friday and 07.30-13.30 Saturday. The restrictions to process and the operation of machinery would remain the same.
10. In addition, the proposed variation to the condition would remove the restriction on deliveries, thus allowing deliveries to be taken or dispatched from the site at any time, 24 hours a day, 7 days a week.
11. The applicant seeks the variation to provide increased flexibility for the groundworks business, including enabling HGVs and/or plant to leave the site earlier in the morning, thus avoiding busier times on the road network.
12. The focus of the appellants' grounds of appeal is the overall effect of the proposed variation, particularly on the living conditions of neighbours. The appellants also refer to a number of procedural matters, the first of which is their consideration that the Environmental Health Team was not consulted, would have objected and that their views should be sought.
13. The Department has sought and provided comments from the Environmental Health Team. The Environmental Health Team has therefore had the opportunity to provide comments, these have been taken into account and I am satisfied that the appellants case has not been prejudiced in this regard.
14. The appellants note that the elderly resident of La Cucagna, the dwelling located adjacent to the appeal site, between the appeal site and La Grande Rue, was unable to attend the Committee to provide evidence. The appellants requested that I visited La Cucagna.
15. I confirm that I viewed the appeal site from La Cucagna as part of my site visit and I also note that the resident of La Cucagna has commented on the appeal.
16. Whilst the appellants' appeal statement refers to "*untrue statements.*" this is a matter between the appellants and the applicant and this Report focuses upon land use planning matters.

17. The appellants consider that “*too much emphasis*” was given to other vehicles which use the road network, rather than on-site operations. However, I note that, in reaching the decision that it did, the Committee was entitled to apportion weight to those matters that it considered to be important in a manner that it considered to be appropriate.
18. The summaries of the various cases set out below are not exhaustive but provide a reasonable indication of the main points made by the main parties. I confirm that, in reaching my recommendation, I have considered all of the available information.

Case for the Appellants

19. The new wording will permit all vehicles to enter the site 24 hours a day and other vehicles, with the exception of HGV/plant vehicles (which will be able to leave from 07.00 hours), but including small trucks and vans, to leave the site 24 hours a day. We do not believe that the Committee understood the impact this will have on residential amenity.
20. The new wording will enable any vehicles that are not HGV or plant to enter and leave the site at any time. An earlier start will increase disturbance.
21. The proposal will result in unacceptable disturbance to ourselves and our elderly neighbour. The vehicles entering and leaving the site, as well as moving into and around the shed, create disturbance including engine noise, reversing warning alarms and the noise created by loading and unloading equipment to/from lorries. In winter, vehicle headlights cause visual disturbance.
22. The noise and disturbance cannot be compared to passing traffic on La Grande Rue. Vehicles passing along the road do so in a few seconds. Outside the hours of 08.00 to 18.00 the road is particularly quiet.
23. Passing vehicles do not reverberate up the long driveway to the shed, get fuel from the fuel tank alongside the shed or reverse into the shed itself, which involves opening metal doors whilst the lorries are kept running, before being moved into the shed. Additionally, beavertail, diggers and fork-lifts are operated in order to deliver and move building materials around.
24. Whilst it is noted that the application refers to an economic case around restrictions on hours of operation being harmful to business, the business was aware of the time restrictions before moving into the site and has operated successfully from the site since 2017.
25. It is unfair for the occupants of neighbouring properties to suffer additional noise, over and above that which can currently occur within the controlled limits.
26. Once the permission has been granted, there is nothing to prevent the business from expanding to employ more drivers, leading to more vehicle movements.
27. The Planning Report states that La Grande Rue is used by numerous commercial operations with no such restrictions regarding hours of operation. There are only two other businesses along the road - these have time restrictions and neither are served by HGV/plant vehicles.

28. Dandara use a shed along La Rue de la Grosse Epine, nearby. There are no adjacent residential properties but the hours of operation are restricted to 08.00-18.00 Monday to Friday and 08.00-12.00 Saturday, to protect residential amenity.
29. The site has been the subject of an enforcement notice for infringing conditions.
30. Whilst we are impacted, lorries pass just yards from our elderly neighbour's window. The impacts on our neighbour are more serious.
31. Diesel emissions are a source of concern.
32. Island Plan SP1 seeks to reduce carbon emissions. Increasing hours of use of the site is likely to increase trip generation in the Green Zone.
33. Island Plan Policy GD1 seeks to ensure that development does not adversely affect people's health and wellbeing. The increased disturbance from noise and light pollution and diesel emissions does not align with this.
34. The two parts of the proposed condition appear contradictory – if no machinery shall be operated or process carried out prior to 08.00, how can HGV/plant be moved ?
35. The shed is in the countryside and the conditions have been imposed for a reason. It is not appropriate for the hours of use to be extended.

Case for the Planning Authority

36. The Department recommended refusal of the application. Following a site visit the application was considered by Committee, which ultimately concluded that the application should be approved.
37. The Planning Committee considered that condition No. 2 was unduly restrictive and harmful to the business. In the Committee's view, a small number of additional vehicle movements from 07.00 hours will make minimal difference to residential amenity but will be of significant benefit to the applicant, allowing the business to operate more effectively as part of the wider construction industry.
38. It was the Committee's view that La Grande Rue is used by numerous other commercial operators with no such restrictions placed upon them regarding hours of operation.

Case for the Applicant

39. The applicant runs a specialist groundworks business to the construction industry for which there is high demand. Condition No. 2 is negatively impacting the applicant's business and in turn, negatively impacting the Island's construction industry.
40. The construction industry generally starts work at 07.00 hours during the week and at 07.30 hours on Saturdays. The business's vehicles make or receive deliveries in the morning.
41. Condition No. 2 prevents the applicant from making deliveries from the site or taking deliveries at the site before 08.00 in the morning for when the

construction industry requires the service. Making deliveries at 08.00 means joining commuter traffic flows and arriving at site after the construction industry has started work.

42. The variation to Condition No. 2 are reasonable and in line with the requirements of the construction industry. The business could plan deliveries efficiently and avoid peak hour traffic and congestion.
43. Island Plan Policies ERE2 and PL5 support a diverse rural economy and Island Plan Policy SP6 supports the protection and maintenance of existing employment land. The proposed variation would make best use of existing employment land in accordance with Island Plan Policy EI1.
44. There is a shortage of premises and land in Jersey for light-industrial use. The proposal makes best use of the site.
45. Moving HGV movements outside peak commuter flows would make walking and cycling more attractive. It would make for more efficient journeys, thus reducing carbon emissions.
46. Vehicles need to wait on the access road until 08.00. Changing this to 07.00 would get the vehicle off the road more efficiently and result in less disturbance.
47. In Jersey, many redundant agricultural buildings are used for light-industrial uses or warehousing. It is commonplace for businesses to be scattered around the island in rural locations. Several of these businesses are involved in the construction industry and operate from 07.00.
48. If the site returned to agricultural use this could result in the movement of agricultural vehicles at any time.
49. Refuse collection vehicles operate at 06.00 and there is a bus stop along La Grande Rue, with early morning buses operating before 07.00. A change of condition to the earlier time is non-material in this context.
50. The distance to the appellants' dwelling provides sufficient noise attenuation to prevent unreasonable harm. The dwelling is closer to La Grande Rue and subject to unrestricted vehicle movements along that road. A change of condition to the earlier time is non-material in this context.
51. The proposal would provide economic support to an existing business and benefits in terms of transport, travel and emissions. There would be no material harm to neighbouring occupiers.

Main Issue

52. The main issue in this case is the effect of the proposal on the living conditions of neighbouring occupiers, with regards to noise and disturbance.

Reasons

53. The appeal site comprises a large detached shed, shed yard and vehicle access located in the Green Zone. The detached shed has an attached flat and the vehicle access is shared with this flat.

54. The shed is located close to and directly behind La Cucagna, a detached single storey dwelling. La Cucagna is located between the shed and La Grande Rue.
55. The shed is accessed from La Grande Rue via an access which runs immediately alongside La Cucagna, between it and the garden of the appellants' dwelling, Karian Dawn, located a small distance to the north. There are fields to the north, west and south of the shed.
56. The Island Plan recognises the need to balance the use of land and buildings to better meet the needs of individuals, the economy and society with ensuring that development does not harm people's health and wellbeing, or "*have wider amenity effects that erode community wellbeing.*"¹
57. To achieve this, Island Plan Policy GD1 ("*Managing the health and wellbeing impact of new development*") requires development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts and only supports development where it:
- "...will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents..."*
58. In this way, in determining whether or not to support a development impacting upon residential amenity, the appropriate test for the decision-maker is not whether such development will result in harm, but whether or not such harm would be *unreasonable* (my emphasis).
59. Effectively, there is an acceptance that some degree of harm is likely to be acceptable – as this would simply reflect the balance that needs to be reached in providing for the Island's development needs. However, the Island Plan provides a safeguard to ensure that no development should result in unreasonable harm to the amenities of Jersey's residents.
60. The evidence submitted in this case has shown that the juxtaposition of the appeal site and neighbouring dwellings already results in some degree of harm to residential amenity. Neighbours have expressed concern at the noise and disturbance resulting from the permitted use of the appeal site. However, the very nature of Jersey, as a small island, means that different land uses are often located close to one another and the conditions attached to the permitted use of the appeal site serve to prevent unreasonable harm.
61. This case then, rests upon whether or not the proposed variation to condition No. 2 would result in unreasonable harm to residential amenity.
62. The proposed variation would bring the hours of operation forward to an earlier time in the morning. Early morning tends to be a relatively peaceful time when people might be expected to be resting, waking up and preparing for the day ahead. Consequently, it is reasonable for people to expect noise and disturbance prior to 08.00 to be minimal.
63. The proposed variation would enable HGVs and plant to leave the appeal site an hour earlier, from 07.00 hours, midweek and half an hour earlier, from 07.30 hours, on a Saturday. This would inevitably result in any noise and disturbance associated with such movements experienced from 08.00 hours being

¹ Supporting text to Policy GD1, page 85, Island Plan (2022).

experienced at an earlier time in the morning, when residents are likely to be especially sensitive to noise and activity.

64. Whilst I am mindful that the construction industry can commence operations from early in the morning, this is no different to many other businesses and industries and notwithstanding this, Policy GD1 does not provide exemptions for the construction industry, or for any other specific businesses or industries.
65. As above, the relevant policy test is not whether or not unreasonable harm might be acceptable due to other considerations, but whether or not harm is unreasonable. Development resulting in unreasonable harm will not be supported.
66. As part of my site visit, I viewed the appeal site from the appellants' property.
67. The main area of the appellants' garden is located directly between their house and the site access, which runs alongside the appellants' garden. The house itself is set back from this access.
68. I recognise that noise or disturbance resulting from the movement of HGVs and/or plant prior to 08.00 would be likely to be heard or felt by the appellants when inside their home. However, I consider that the distance between the house and the appeal site, together with the presence of planting and greenery in this area, is such that any increase in noise and disturbance arising from the proposed variation to condition No. 2 is likely to be mitigated to some extent.
69. Whilst the degree of mitigation would depend on a variety of factors, including the time of day/night, the time of year and the nature of vehicle movements or activities, I consider that, overall, it is generally unlikely that the level of harm arising would amount to unreasonable harm.
70. During my site visit, I observed the appellants' garden to be carefully designed and managed. It is evidently a focus of time and attention and comprises an attractive country garden in the Green Zone, where the occupiers might reasonably expect to be able to enjoy peace and tranquility, albeit subject to any reasonable activities associated with a small and busy island.
71. In this regard, I am mindful that the existing conditions imposed on the appeal site, which are focused upon safeguarding residential amenity, generally provide for this balanced approach. However, the proposed variation would inevitably result in noise and disturbance associated with the movement of HGVs and/or plant from 07.00, an hour earlier than is currently the case.
72. The main part of the appellants' garden is located between their house and the access to the appeal site. The appeal site access runs adjacent to the appellants' garden and HGV and/or plant movements along the access and manoeuvring outside the shed would inevitably result in considerable levels of noise and disturbance when the appellants are in their garden.
73. Given this, outside of the darker winter months, the ability of the appellants to enjoy their garden at a time when they might reasonably expect it to be particularly peaceful and tranquil – prior to 08.00 – would be severely compromised.

74. I find that this would verge on comprising unreasonable harm. However, taken in isolation, it does not amount to harm that is so unreasonable that it would, on its own, justify the appeal being upheld. Rather, it is a factor that adds overall weight to the recommendation made in this Report.
75. I also visited La Cucagna during my site visit. As noted above, the appeal site access runs immediately alongside La Cucagna. HGVs and/or plant needs to pass within a few metres of the house in order to access the shed and area of hardstanding.
76. As well as the house being located immediately alongside the appeal site access, the windows to two of La Cucagna's main living areas look out directly towards the appeal site, which is situated a very small distance away.
77. Further to my site visit, there is little doubt in my mind that HGV and/or plant movements along the site access have the potential to result in significant levels of noise and disturbance to the occupiers of La Cucagna. Again, I note that the current controls, in the form of the conditions imposed on the permitted development, serve to prevent the harm arising in this regard from being unreasonable.
78. However, the proposed variation to condition No. 2 would result in HGV and or plant movements creating significant levels of noise and disturbance, including noise from related on-site activities, from the manoeuvring of vehicles and from visual disturbance, including from headlights during darker mornings, taking place from 07.00 hours - a time in the morning during which the occupiers of La Cucagna should reasonably be able to expect there to be peace and quiet.
79. Taking this into account, I find that the proposed variation to condition No. 2 would result in unreasonable harm to the occupiers of La Cucagna. Consequently, the proposed variation would amount to unreasonable harm to the living conditions of neighbouring occupiers, with regards to noise and disturbance, contrary to Island Plan Policy GD1.

Other Matters

80. In addition to the above, the proposed variation to condition No. 2 would remove existing controls over the times during which dispatches from the appeal site and deliveries to the appeal site can be made. The variation would allow dispatches and deliveries to take place 24 hours a day, 7 days a week.
81. The existing conditions imposed on the permitted use of the site currently prevent this and given the immediate proximity of La Cucagna in particular, I find that the proposed variation in this regard would inevitably result in unreasonable harm.
82. At the Hearing, the applicant stated that there is no intention for 24/7 dispatches and deliveries to take place in the future. However, I am mindful that the planning permission runs with the site and not the occupier. Consequently, were the proposed variation to be permitted, any future user would have the ability to operate the appeal site for 24/7 dispatches and deliveries.

83. The applicant stated at the Hearing that this part of the proposed variation could be dropped. However, this is not something that would serve to lessen or mitigate the unreasonable harm identified earlier in this Report.
84. Both the applicant and the Committee, when considering the application the subject of this appeal, referred to other commercial operators using La Grande Rue with no such restrictions placed upon them regarding hours of operation.
85. Whilst clearly road-users, including commercial operators, generally enjoy the freedom to travel along the Island's roads at all times of day and night, the appellants provided evidence to demonstrate that commercial operators based along and near to La Grande Rue *are* subject to restrictions regarding hours of operation.
86. Contrary to this, there is no substantive evidence before me to demonstrate that commercial operations from sites the same as, or similar to that the subject of this appeal, operate without similar operational hours restrictions. Notwithstanding this, I have found that the proposed variation would result in unreasonable harm and hence the recommendation below.
87. Whilst I recognise that there is a general shortage of commercial sites across the Island, this in itself is not a factor which overrides the requirements of the Island Plan. I note earlier that Island Plan Policy GD1 seeks to achieve a balance between development needs and the well-being of the Island's residents.
88. Further, the Island Plan provides an up-to-date land use planning policy framework for decision-making across Jersey. Whilst it is of course possible for the Minister to recommend a departure from the Island Plan, as suggested by the applicant, there is nothing to lead me to recommend that the circumstances associated with this case are so exceptional as to warrant ignoring the Island Plan's provisions. Indeed, I consider that setting aside an Island Plan which is less than 6 months old would, in this case, severely undermine its status.
89. Whilst I recognise that enabling earlier HGV and or plant journeys may provide for efficiencies and could avoid peak hour congestion, I also note that the journeys would simply be moved to a different time, rather than replaced and in so doing would have the potential to make quieter times on the road busier. Notwithstanding this, I have found that the proposed variation would result in unreasonable harm, resulting in the recommendation set out below.

Conclusion

90. For the reasons set out above, I recommend to the Minister that the appeal be upheld and that planning permission be refused.

Nigel McGurk BSC(HONS) MCD MBA MRTPI

PLANNING INSPECTOR