

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 5th July 2022.

Appeal 1 Reference: P/2021/0718

Motor Mall, La Grande Route de St Jean, St Helier, JE2 3FN

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by The Range (Jersey) Ltd against the decision of the States of Jersey.
 - The application Ref P/2021/0718 by The Range (Jersey) Ltd, dated 19 April 2021, was refused by notice dated 22 February 2022.
 - The proposed development is change of use of motor showroom, sales, workshop and petrol forecourt into Class A Shop (non-food retail). Infill below ground petrol tanks. Remove petrol forecourt and canopy. Construct new entrance canopy and alterations to car parking layout. Alteration of pedestrian accesses and vehicular access onto La Grande Route de St Jean.
-

Appeal 2 Reference: P/2021/0811

Motor Mall, La Grande Route de St Jean, St Helier, JE2 3FN

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by The Range (Jersey) Ltd against the decision of the States of Jersey.
 - The application Ref P/2021/0811 by The Range (Jersey) Ltd, dated 25 May 2021, was refused by notice dated 22 February 2022.
 - The proposed development is install ventilation equipment and lighting to roof of main building. Install lighting to car park.
-

Recommendations

1. In respect of Appeal 1, I recommend that the appeal be dismissed.
2. In respect of Appeal 2, I recommend that the appeal be dismissed.

Procedural Matters

3. 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 applications and their subsequent determination by the Department in February 2022. The planning applications were therefore refused further to consideration against the previous version of the Island Plan.
 4. These appeals 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 three months prior to the date of the appeal hearing and that appeal submissions took this into account.
-

5. The two appeals, Appeal 1 and Appeal 2, relate to two different applications for development at the same site.
6. It was agreed during the Hearing that the development proposed in application P/2021/0811 is reliant upon permission being granted in respect of application P/2021/0718. This is because, amongst other things, the proposed site plan for P/2021/0811 (Proposed Site Plan 006) relies upon the development proposed in application P/2021/0718. Also, the development proposed in application P/2021/0811 relates to equipment and lighting associated with the operation of the proposed development subject to application P/2021/0718.
7. Taking this and all of the submitted information into account, I considered the two appeals alongside one another at the appeal hearing and have done so in the production of this Report. Please note that I refer to "*the proposed development*" (as opposed to say, "*the proposed developments*") in this Report.
8. I did not request further information prior to the hearing but note that informatives were provided by the appellant during the course of the hearing, including information relating to vacancy rates in St Helier (produced by Jersey Business), a "*Cost of Living Survey*" (produced by Island Global Research) and an article headed "*Cost of living leaves some choosing between eating or heating*" (headed Channel 103).

The Case for the Appellant

In respect of P/2021/0718

9. Land use planning policies provide for planning permission to be granted for the proposal. If this is not agreed then there is sufficient justification for the Minister to allow any departure from Policy.
10. In respect of the Island Plan, the proposed development complies with Island Plan Spatial Policies SP1, SP2, SP4, SP6 and SP7. Whilst the site is in the Green Zone and Spatial Policies direct development to the built-up area, the proposal makes use of previously developed land, does not harm heritage, maintains an employment use, counters loss of retail spend online and provides infrastructure spending, including improvements to public transport.
11. In respect of the previous Island Plan, the appeal proposals came squarely within the exception to the general presumption against development in the Green Zone and this position "*remains analogous*" under the current Island Plan.
12. The proposal is justified in its countryside location. It re-uses employment land and there are no suitable sites in the built-up area, thus, the proposal meets the requirements of Island Plan Places Policy PL5.
13. The proposal complies with Island Plan General Development Policies GD1, GD2, GD3 and GD6. The proposal has emerged further to consultation and if successful the package of planning gain will be secured by planning obligation. The proposal results in significant landscape and design improvements. It rationalises the operations of the business currently using the site, reducing trips on the overall network, notwithstanding that there will be a small increase of trips to and from the site. The strategic road network can support the additional trips created by the proposal. The proposal does not result in an

- overall worsening of the position regarding trips on the highway. The proposal complies with Island Plan Travel and Transport Policies TT1, TT2, TT3 and TT4.
14. The proposal accords with Island Plan Natural Environment Policies NE1 and NE3. It provides for ecological protection and there is no negative landscape impact.
 15. The proposal complies with Island Plan Historic Environment Policy HE1. It has no impact on heritage assets.
 16. Proposals for large-scale out of town retail are not supported by Island Plan Economy Policy ER2.
 17. Amazon sales in Jersey could be £37,514,000 and if average spend per parcel is £20, the estimated spend could be £54 million. A great deal of retail is lost to Amazon. The proposal will certainly take away some business from Amazon, keeping it on the Island.
 18. The proposal complies with Island Plan Minimising Waste and Environmental Risk Policies WER1, WER6 and WER7.
 19. The position is very similar to garden centres which are located out of the retail centre of St Helier and which retail similar goods to the proposed end-user.
 20. The nature of bulky goods being retailed means that customers will need to transport such items home and the bus or bicycle may not be practical; but there are two bus stops 135 metres to the north and one bus stop 250 metres to the south, providing an hourly service between the bus station and St John's village. Electric vehicle charging points and bicycle racks would be provided.
 21. Highways-related works, including a new right turning lane, a pedestrian refuge, a new footway across the site frontage and a bus shelter in the south west corner of the site comply on balance with Island Plan Transport Policies and relate reasonably to the projected impacts of the scheme.
 22. Insufficient weight was given to the importance of retaining retail spend on the Island that is currently being lost to online retailers as the bulky goods retail offering is presently unavailable on the Island. The sequential impact assessment failed to identify any alternative sites in St Helier. Insufficient weight was given to independent evidence re: the benefits to the economy of retaining retail spend, in the form of a retail impact assessment. The application is endorsed by Jersey Business.
 23. The proposal provides an exciting opportunity for a new retail business to locate in Jersey. There are no other opportunities on the Island for a retail offering of this magnitude and ability to meet the needs of islanders.
- Additional points in respect of P/2021/0811
24. It was clear that this planning application inter-relates to application P/2021/0718 and to suggest that the application was misleading or not of an appropriate level or quality required is unjustified and not founded.
 25. Sufficient information was provided to evidence that the proposed development would safeguard the safe and efficient operation of the highway in this location.

Evidence was provided to demonstrate that the proposed development would not harm road safety and would not result in harmful light pollution.

26. The appeal site is already lit to an extent. The proposal would reduce hours of operation and lighting could be satisfactorily controlled by a standard planning condition.

The Case for the Department

In respect of P/2021/0718

27. The site is in the Green Zone, outside any built-up area. Through its planning policies, Jersey has managed to avoid widespread out of town retailing and has retained a vibrant retail centre in St Helier. This has maintained the status, character and identity of St Helier as the Island's capital. Island Plan Spatial Policy SP4 highlights the importance of culture, history and identity.
28. Island Plan Spatial Policy SP1 establishes the Plan's aims to achieve a reduction in carbon emissions. A fundamental instrument for achieving this is to reduce journeys by private car. Island Plan Spatial Policy SP2 therefore directs development to existing built-up areas and to the town of St Helier, in particular.
29. The Island Plan recognises St Helier as the Island's primary centre for economic activity including retailing. The Plan seeks to concentrate development in the town, enabling one journey across several services and the use of a range of transport modes; and to reinforce St Helier's role and identity as the Island's capital and its viability as a centre of economic and social activity. Maintaining and enhancing the town centre's vitality requires support for the protection and provision of retail and non-retail uses.
30. The proposal will challenge rather than assist the Plan's objectives and will only increase difficulties for local businesses within the identified retail areas.
31. Island Plan Economic Policy ER1 supports retail uses within the core retail area and town centre. Island Plan Economic Policy ER2 states that large scale retail (over 200 square metres) may be supported in the Built-up Area, where it can be demonstrated that there is no harm to the primary retail function of the core retail area.
32. Further provision of large-scale retail outside St Helier town centre and the defined centre at Les Quennevais is not generally supported. This is because out-of-centre retail developments tend to be self-contained facilities that can draw shoppers away from the existing centres to the detriment of their vitality. Such developments are also generally more reliant on travel by private vehicle as they can be less accessible by other modes.
33. Journeys currently made to the site to purchase petrol, view cars or to visit the workshop will not be ceased, they will be made to other locations. Journeys made to the proposed use will comprise new and additional journeys.
34. The proposed development seeks to establish a large out of town retail use, which would inevitably compete with existing businesses for custom; and which would generate additional vehicle movements in the Green Zone.

35. The proposal, which includes a 100-space car park, anticipates a significant number of vehicle movements to the site, which is not in a sustainable location realistically accessible by most customers by a range of modes of transport. The relevant highways authority objected to the proposal. The Transport policies of the Island Plan emphasise the need to reduce car journeys and to focus development into locations where people are likely to combine journeys or use other modes of transport.
36. The road adjacent to the site is one of the Island's busiest, with a history of accidents. The proposal will generate significant levels of traffic to the detriment of other road users. The proposed bus shelter would obstruct views and would create a potential collision hazard. There is a lack of commercial parking and delivery vehicle space and on-site layout is poor, with insufficient stacking room. The proposal is likely to impede northbound traffic flow as the feeder lane can only accommodate 4 vehicles.
37. The products that would be sold by the end-user of the site are not unique but are available from other retail operations on the Island.
38. It cannot be guaranteed that the proposed use will primarily compete with online retailers. The store will overlap with several retail sectors, potentially undermining several existing shops. It is highly likely that customers will be drawn away from existing shops, reducing the viability of businesses located in areas where the Island Plan actively seeks to concentrate and protect retail uses.
39. There may be a business opportunity in creating large out of town retail in the Green Zone but it is considered that the Island's interests are better served by following the Island Plan's objectives rather than allowing out of town retail use predominantly reliant on the private car.
40. There is not an overwhelming need for the proposal, which fails to satisfy the Island Plan's policies.

Additional points in respect of P/2021/0811

41. The Department raised no objection to the ventilation proposed but concluded that the lighting was unacceptable. The proposed use would increase intensity of use, including during hours of darkness. The proposal would require a higher level of uniformity of lighting than proposed and the proposed floodlight-type lighting is unsuitable as it would distract motorists and mask vehicles and pedestrians exiting the site during hours of darkness.

Other Comments

42. M Lincoln – Letter of support for the end-use.
43. During the course of the hearing, Jersey Business and Jacksons expressed their support for the end-use.
44. It was noted that the proposal would provide for competitively-priced bulky goods not readily available on the Island; that the proposed site is the only available location for the development proposed; that the proposal would provide jobs; that the proposal would fit with the consolidation plans of the existing site user; that the cost of living is an increasingly important factor; that

the proposal would not result in significant harm to St Helier’s retail centre; and that the proposal would counter the loss of sales to on-line competition.

Main Issue

45.The main issue in this case is whether the proposal comprises sustainable development, having regard to the Policies of the Island Plan.

Reasons

46.The appeal site is an established commercial garage, with showroom, workshop and servicing facilities, and a petrol filling station. It is located in the Green Zone, to the north of St Helier, along La Grande Route de St Jean, from which the site is accessed.

47.Along the same side of La Grande Route de St Jean as the site there is housing to the north and south. The area opposite the site, across the road, comprises open countryside over which there are distant views to the west; and the site backs onto greenery to the east.

48.As part of my site visit, I walked to the site from St Helier and observed that, as one leaves the built-up area beyond Mont a L’abbe School, there is a significant sense of stepping away from Jersey’s built-up area and into the countryside. The appeal site is located a few hundred metres to the north of Mont a L’abbe School and whilst within a ribbon of development along one side of the road, is largely surrounded by countryside.

49.The current use comprises a busy garage and car showroom along a busy road. During my site visit, which took place before and after 09.00 hours on a weekday, I noted several occasions when cars queued northbound along La Grande Route de St Jean, as vehicles waited for gaps in southbound traffic, before turning right into the site.

50.The vehicle sales and service centre operates 7 days a week, between 08.00-19.00 during weekdays and between 08.30-16.00 on Saturdays and between 10.00-16.00 on Sundays. There are typically 12 staff on site on a work-day. The petrol filling station employs up to two staff at any one time and operates between 07.00-21.00 Monday to Saturday and between 08.00-19.00 on Sundays. There are plans to consolidate the vehicle sales and servicing operations onto a larger site in St Peter and to relinquish the petrol filling station.

51.The proposed retail use would involve the sale of home and garden products, including goods that are predominantly bulky in nature. It would comprise around 2,300 square metres of retail floorspace and would include a large car park.

52.The proposed use is squarely aimed at car-borne shoppers.

53.The proposed retail use would not offer a delivery service. As well as being able to purchase directly from the proposed store, “*click and collect*” would provide for the ordering of items on-line and their collection from the store during opening hours. Store opening hours are proposed to be 09.00-20.00 Monday to Saturday and 10.30-16.30 on Sundays.

54. In summary, the proposal is for a large out-of-town retail store, located in the Green Zone.
55. As noted above, the appellant considers that the proposal complies with the Island Plan. However, this is not the case. Rather, the proposed development is in direct conflict with the Island Plan's specific "*Large-scale retail*" Policy and is contrary to the clear spatial strategy of the Island Plan.
56. Island Plan Policy ER2 ("*Large-scale retail*") defines large-scale retail as 200 square metres and above. The proposed development is for 2,300 square metres of retail floorspace and falls under the control of Island Plan Policy ER2.
57. Island Plan Policy ER2 supports the provision of large-scale retail in the built-up area, subject to proposals following a sequential test and meeting various criteria, including demonstrating that there will be no harm to the vitality or viability of St Helier town centre, Les Quennevais centre or any local centre.
58. The sequential approach focuses new large-scale retail development towards sites in the following order of priority: to St Helier core retail area; to St Helier town centre or to the defined centre at Les Quennevais; to the built-up area of Town; and to the built-up area of other local centres – but such development should only be for between 100-500 square metres – where it can be demonstrated that the development would meet a local need and not unduly harm existing retail provision in other centres.
59. Where a proposal for large-scale retail does not accord with the sequential approach, Island Plan Policy ER2 states that it "*may*" (my emphasis) be supported in the built-up area where the need for the location, type and scale of development can be demonstrated and where there are no other suitable sites. The supporting text to the Policy states that any such need should be "*overwhelming*" – a high hurdle indeed.
60. Consequently, the appropriate Policy tests for the provision of large-scale retail are both clear and significant. They are fully reflective of the spatial strategy of the Island Plan, which are considered later in this Report.
61. Island Plan Policy ER2 directs large-scale retail to St Helier's core retail area. Where this cannot be achieved, large-scale retail will be supported in St Helier town centre, in Les Quennevais' defined centre or in the built-up area of Town.
62. In respect of other local centres, the Island Plan does not generally support the provision of large-scale retail any larger than 500 square metres, less than a quarter of the size of the proposed development the subject of this appeal.
63. Further, Island Plan Policy ER2 provides a supportive policy framework for large-scale retail, within which there is considerable flexibility. Under circumstances where it can be demonstrated that there is an overwhelming need for large-scale retail and there are no alternative sites, such a development "*may*" be supported elsewhere in the built-up area.
64. However, in respect of the development of large-scale retail outside of the built-up area, Island Plan Policy ER2 is explicit:
- "Proposals for the provision of new large-scale retail outside of the built-up area will not be supported."*

65. This is not an ambiguous statement. There can be no question that the proposed development, for 2,300 square metres of out-of-town retail in the Green Zone, is in direct conflict with the Island Plan.
66. In this regard, I am mindful that the Island Plan has only recently been adopted and that as such, its Policies provide an up-to-date land use planning policy framework. The Policies of the Island Plan steer large-scale retail to St Helier, whilst providing scope for such development to take place elsewhere in the built-up area.
67. However, Island Plan Policy ER2 actively seeks to prevent the development of large scale retail at any location outside the built-up area.
68. I note above that the proposal is contrary to the spatial strategy of the Island Plan. In this regard, the Island Plan recognises that land use planning is of fundamental importance in delivering sustainable development in a changing global context. The Island Plan states:
- “If Jersey is to demonstrate a commitment to an environmental responsibility, it needs to continue to develop a co-ordinated response to current environmental challenges that manages the island’s limited resources – particularly land and buildings – in the most efficient and effective way that ensures the most sustainable pattern and form of development.”*
69. To deliver the most sustainable pattern of development, Island Plan Policy SP2 (“Spatial strategy”) focuses development on the built-up areas and in particular, on the Island’s primary main urban centre of Town. The primacy of St Helier, as the Island’s centre for commerce, shopping, housing and public services recognises its position as the focus of Jersey’s transport, social and economic infrastructure.
70. The Island Plan focuses significant development and growth on those locations where there exists a greater range of facilities and services, thus limiting the need to travel, whilst offering genuine access to sustainable transport modes.
71. As a large-scale out of town retail development in the Green Zone, the proposal largely relies upon attracting car-borne shoppers to drive out of the built-up area (where most Jersey residents live) to shop for and/or pick-up goods and to then drive back home to the built-up area. Taking all of the above into account, this is directly contrary to what the Island Plan is seeking to achieve.
72. The appellant considers that the proposal complies with the Island Plan because it represents brownfield development and the re-use of employment land.
73. However, outside of the built-up areas, Island Plan Policy SP2 only supports development where it is justified, appropriate and necessary. As noted above, Island Plan Policy ER2 explicitly resists large-scale retail development outside of the built-up area.
74. Consequently whilst, as stated by the appellant, the proposal would maintain an employment use at the site, it would seek to do so by introducing a new use that would be inappropriate to the Green Zone and contrary to Island Plan Policy SP2.

75. In addition to this, I am mindful that whilst Island Plan Policy PL5 (“*Countryside, coast and marine environment*”) supports the re-use of already developed land and buildings in the Green Zone, this is only “*where it is appropriate to do so.*” Again, taking Island Plan Policy ER2 into account, large-scale retail in the Green Zone is inappropriate and therefore the proposed development would be contrary to Island Plan Policy PL5.
76. Taking all of the above into account, I find that there is fundamental conflict between the proposed development and the Policies of the Island Plan. Given this, even if elements of the proposal were in accordance with other parts of the Island Plan, including its General Development, Natural Environment, Travel and Transport, Historic Environment and Minimising Waste and Environmental Risk Policies, this would not overcome the fundamental conflict identified.
77. In support of the proposal, the appellant provided information setting out, amongst other things, that there were no alternative locations for the proposal, that there would be no significant harm to St Helier’s retail centre, that the proposal would not result in harm to the highway network, that the proposal supports the business strategy of the current user and that the proposal would counter on-line sales and provide more retail choice to Islanders.
78. However, none of these are matters that comprise or amount to relevant tests in accordance with the Policies of the Island Plan. Rather, the Policies of the Island Plan purposefully resist the development proposed.
79. Taking all of the above into account, I find that the proposed development would fail to comprise sustainable development, having regard to the Policies of the Island Plan. It would be contrary to Island Plan Policies ER2, SP1, SP2 and PL5, which together amongst other things, seek to respond to climate change by providing for sustainable development on the Island.
80. The appellant goes on to state that the nature of the proposed development is such that, in any case, it represents exceptional circumstances whereby there is “*sufficient justification*” for departure from the Island Plan.
81. Essentially, the appellant suggests that sufficient justification for a departure from the Island Plan arises from a combination of all of the evidence submitted in support of the proposal, including the lack of alternative sites, a supportive business case, no significant harm to St Helier’s retail centre, countering on-line sales, taking advantage of an available opportunity and providing more retail choice to Islanders.
82. In this respect I am mindful that the development of a large-scale out of town retail store in the Green Zone, offering a wide range of bulky products would likely attract shoppers and be commercially successful. However, it would also be the case that the development of say, new housing in the Green Zone with large gardens, green surroundings and distant views would likely attract homebuyers and be commercially successful.
83. Jersey is a small Island with various development pressures for its limited resources and the Island Plan establishes a land use planning policy framework to manage this. New large-scale out of town retail development in the countryside is considered inappropriate to Jersey, just as new low-density housing estates in the countryside are considered inappropriate to Jersey.

84. The fact that there is no directly comparable site available in the built-up area for the development proposed; the existence of demand for competitively-priced bulky goods; a desire to compete with Amazon and on-line shopping; and the various other factors submitted in support of the proposal may well amount to a strong business case, but they do not amount to such substantive evidence as to provide, either individually or cumulatively, sufficient justification for the setting aside of the Policies of the Island Plan.
85. The Island Plan has only recently emerged through the plan-making process. It is the culmination of three years of research and review, and the development of policies to meet the Island's development needs up to 2025. The Island Plan has followed extensive stakeholder and parochial consultation, in-depth assessment and a rigorous debate in the States Assembly.
86. Following the clear direction of the States Assembly to limit the spread of urban development into the surrounding countryside, the Island Plan adopts a spatial strategy focused on the built-up area. There was plenty of scope for the Island Plan to consider Jersey's large-scale retail needs during the plan-making process. This was done and the resultant adopted Island Plan identifies a specific and purposeful approach to large-scale retail which does not support, but explicitly resists, large-scale retail development like that the subject of this appeal.
87. Taking into consideration all of the information submitted, there is nothing to lead me to the conclusion that there is sufficient justification for a departure from the Island Plan. In this regard, I consider that setting aside the provisions of the newly-adopted Island Plan would severely undermine the status of Jersey's up-to-date land use planning framework, to the detriment of the Island's plan-led system.

Conclusion

88. For the reasons given above, I recommend to the Minister that in respect of Appeal 1, the appeal be dismissed.
89. Appeal 2 is entirely dependent upon the application associated with Appeal 1 coming forward and I recommend to the Minister that Appeal 2 be dismissed.

Nigel McGurk BSC(HONS) MCD MBA MRTPI
PLANNING INSPECTOR