

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

Appeal under Article 108 against a decision made to grant a planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellants: Mr and Mrs V Goguelin (Third Party Appellants)

Site address: Chambard Farm, Field No. C202, Rue de Jambart, St. Clement

Application reference number: P/2022/0257

Proposal: 'Demolish 2 no. sheds to North of site. Construct 90 no. 8' x 6' allotment sheds.'

Decision notice date: 26 May 2022

Procedure: Hearing held on 8 September 2022

Inspector's site visit: 5 September 2022

Inspector's report date: 30 September 2022

Introduction

1. This report contains my assessment of the third party appeal made by Mr and Mrs V Goguelin against the decision to grant planning permission for 90 allotment sheds on a site near their home.

The appeal site, the proposal and the application determination

2. Field C202 is part of Chambard Farm. It is a roughly rectangular shaped field which is relatively flat. It is located within the Green Zone, but is surrounded on 3 sides by housing, giving it an enclosed feel.
3. The site's eastern boundary is formed with the rear gardens of residential properties at Sydney Crill Park. The southern boundary adjoins the rear gardens of properties on Le Jardin de l'Est and La Grande Route de La Cote, there being a track access from the latter, although it would not be suitable for most vehicles as it involves a rough surface and a drop down to the field.
4. To the west of the field there are more dwellings, accessed off a private road, Le Petit Jambard. Some of these houses, including the appellants' home, face eastwards towards the field and there are some small trees along this boundary, but also gaps giving open views into the site. The northern boundary is a fence/hedge line and, beyond that, are derelict glasshouses and open land owned by the applicant, which extends north to La Rue Hamel from where the main access track to the farm begins.

5. The field is being used as allotments. I understand that the allotment use has only been operational for a short time, but the majority of the plots seem to be under cultivation for vegetables and fruit. I observed a number of allotment holders tending their plots on my site inspection. The plots are laid out in 6 distinct blocks, with areas around the periphery, and through the middle of the site, retained for deliveries/drop off.
6. Vehicular access to the allotments can be gained from the farm track (via La Rue Hamel) and informal parking appears to be available in the yard area, along with a WC for plot holders' use, located just outside the red lined field boundary. Access can also be gained from the west from Rue de Jambard and via Le Petit Jambard (also known as Jambard Lane), although this is a private road. The use of this road by allotment holders is a matter of contention between the appellants and applicant.
7. The application sought planning permission to demolish 2 no. sheds in the northern part of the site and to construct '90 no. 8' x 6' allotment sheds.' The 2 existing sheds are of no consequence and their removal is not at issue in this appeal. The application includes a detailed site plan which shows the siting of the sheds on the individual plots, in a regular pattern, along with 3 new sheds for communal use.
8. There are no detailed plans of the sheds, but their size and materials (dark stained timber and felt or shingle roofs) would be controlled by a planning condition. At the Hearing, the applicant confirmed that the sheds would be sited on timber bearers or plastic shed bases; no concrete bases would be allowed. Whilst the application seeks the provision for 1 shed per plot (plus the 3 communal sheds), plot holders are not obliged to have a shed, so the actual number installed may be less.
9. The appellants were one of 3 objectors to the application. There were also a number of supporting representations. The application was assessed under the Bridging Island Plan policies (adopted March 2022) (the BIP) and determined under officer powers. Permission was granted on 26 May 2022.
10. In addition to the standard time limit and plan compliance conditions, 3 further conditions were imposed. The first controlling the size and materials of the sheds; the second restricting the use of the sheds to that solely in association with the use of the allotments for agricultural activities; and the third requires the removal/land reinstatement should any shed fall into disuse or disrepair.
11. The appeal is made against this decision.

Summary of the appellant's grounds of appeal

12. The appellants' case is set out in the appeal form and an accompanying objection document (plus appendices) dated 12 April 2022, and a statement of case document (plus appendices) dated 8 August 2022.
13. The 2 grounds stated in the appeal form are:

1) Due process has not been followed. Those wishing to make objections have not been heard and relevant matters have not been taken into account. This matter should have been referred to the Planning Committee for due consideration.

2) See attached Objections to Application P/2022/0257

14. The 'attached Objections' documents sets out concerns about the 'position of field C202, the lack of information and the assessment of specific matters. It concludes that the proposal is in repeated and material conflict with the BIP and is problematic because:

1) Field C202 is not redundant land. Far from it, this field is one of a number of neighbouring fields of real value to the local agricultural industry:

2) The impact of the proposed allotments on its setting (in addition to that upon the neighbours) has not been assessed at all let alone demonstrated to be neutral or less than its existing use;

3) This proposal would take place along roads and at settlement gateways. It fails to protect the rural character of narrow lanes;

4) It would generate very significant and dangerous levels of additional traffic in a narrow country lane with a blind spot;

5) We have no assurance of the proper management of the site;

6) There are no clear limits and conditions on future use, structures and maintenance;

7) We have no commitment to restore the site after a specified period, or upon redundancy.

15. The above 7 grounds also appear in the appellants' statement of case (August 2022) numbered 4 – 10, along with 3 procedural grounds, numbered 1 – 3.

16. At the Hearing, the appellants' case was led by their advocate, Ms Heidi Heath. The appellants also attended and made contributions to the Hearing.

Summary of the applicant's case and responses

17. Ms Le Quesne, the applicant, rebuts the grounds of appeal. Her statement of case explains that the allotments are an agricultural use which has been established for a year and is running successfully.

18. The statement includes a tabulated review against BIP planning policies, provides some case study examples of other Jersey allotment sites and contends that the appeal should be dismissed. It states the following conclusions:

- *The same objections have been re-submitted by the Appellants for consideration, evidenced by the re-submission of the duplicated document dated 12.04.2022.*
- *These objections have already been considered and dismissed by the Planning Department.*
- *No new evidence or material change has been submitted by the Appellants.*
- *Due process has absolutely been followed – all objections were heard in the proper forum following the correct procedures.*
- *The Appellants are seeking to dislodge the decision of the Senior Planner, who under Article 9(7) has powers of decision making bestowed on her by the Chief Minister.*
- *The original application did not meet the test to be considered by the Planning Committee as shown by Article 19(3) of the Chief Minister’s Decision Making Protocol (November 2017).*

19. Ms Le Quesne attended the Hearing and explained her case in person.

Summary of the Infrastructure Housing and the Environment (IHE) Department’s case

20. The IHE case is set out in the officer report and a response document. The officer report provides an analysis and assessment of the proposal to construct the sheds. It summarises policy considerations, consultation responses and representations, which included 23 letters of support and 3 letters of objection. It concluded that permission should be granted, subject to planning conditions.

21. The response document reinforces the analysis contained in the officer report. It asserts that the correct procedural route was followed in determining the application. It explains that IHE regard the allotment use as falling under Use Class D ‘Agriculture’ and that there is therefore no change of use of the land. It contends that sufficient information was available to make a decision and that the decision to approve the application was reasonable.

22. Mr Gladwin presented the IHE case at the Hearing.

Inspector’s assessment

23. The appellants’ case is based on 2 broad grounds. The first being procedural, namely that the Planning Committee should have considered and decided the application. The second being their substantive planning objections. The planning objections are heavily premised on the appellants’ view that a change of use of the land has occurred. I will therefore address the procedural ground first, then examine the issue of ‘use’, and then assess the appellants’ planning grounds of appeal.

Procedural ground of appeal

24. In submitting the appellants' statement of case, their advocate requested that the application be remitted to the Planning Committee and that the appeal should not be dealt with by an Inspector (at this stage). The advocate argued that the application should have been referred to, and determined by, the Planning Committee, as it was outside of the scope of the officer decision making powers that had been used and the decision was therefore *ultra vires*.
25. I could not agree to this request because it is a legal fact that planning permission has been granted and that permission will remain in place unless, and until, either this appeal was to be allowed (and a refusal decision issued), or there were to be a successful challenge against the grant of permission in the Royal Court. I therefore saw no basis for delaying the appeal.
26. The IHE statement of case includes a document titled Planning Committee - Procedures and Arrangements dated 19 June 2018. The document includes 'Appendix 1' which lists the circumstances where matters will be allocated to the committee for consideration. These include proposals where a grant of planning permission would be inconsistent with the Island Plan (circumstance 1) and where an application attracted 4 or more representations which are contrary to the recommendation of the chief officer (circumstance 5). At the Hearing, it was confirmed that this document was formally approved at the 5 July 2018 Planning Committee (and recorded in its minutes). There have been no changes to the arrangements since that time.
27. Ms Heath submitted that another document, listing committee referral circumstances, had been published on the States website and had been removed recently and that her requests to get it reinstated have not been successful. Ms Heath was not able to produce a copy of the said publication, but felt that it would have required this application to be considered by the committee.
28. Whilst noting Ms Heath's submissions, the facts before me are that the current arrangements defining committee and officer decision making are those set out in the 2018 document and its Appendix 1. The parties appear to accept that the number of objection letters received that were contrary to the officer recommendation was 3 (Mr and Mrs Bisson, Mr Sutton, and the appellants). This number did not reach the threshold for a committee referral (under circumstance 5).
29. For reasons explained later in this report, I also find no inconsistency between the proposal and the BIP (circumstance 1), which would trigger committee referral.
30. On this matter, I conclude that there is no evidence before me to suggest any procedural error or unfairness.

Is the allotment use 'agriculture'?

31. The appellants contend that a material change of use has taken place that requires planning permission. IHE and the applicant disagree and consider that the allotment use falls under 'agriculture' and there is no change from the field's longstanding agricultural use.
32. Strictly speaking, this is a matter outside of the scope of the planning appeal I am considering, as the application did not seek permission for a change of use and is strictly limited to the shed development applied for. However, as it has implications for my assessment of the appellants' planning grounds, I consider it necessary to examine the matter.
33. 'Agriculture' is the use class defined as Class D in Schedule 2 of the Planning and Building (General Development) (Jersey) Order 2011. Article 3(1) of that Order establishes that changes within a use class are permitted; this would mean that changes from say arable to livestock to market gardening use would not require planning approval. Article 3(2) allows for incidental uses alongside the primary use. Article 3(3) defines specific uses that are not covered by the defined use classes; none of these exclusions include allotments.
34. The interpretation section of the Order states that: "*agricultural land*" means land to which the *Protection of Agricultural Land (Jersey) Law 1964** applies. Article 1 of this Law covers interpretation, and this states that:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, market gardens and nursery grounds; and references to "agricultural land" shall be construed accordingly.
35. Based on this definition, it seems reasonable to me to consider that allotment activities would readily fall within it, most notably in terms of 'seed growing', 'fruit growing' and 'horticulture'. The primary use of the majority of the site, as confirmed by my site inspection, therefore appears to fall within Class D.
36. However, at the Hearing, Ms Heath contended that the key legal distinction is that allotments are a 'hobby' use and agriculture is 'commercial'. She also submitted that, in the absence of clarity, any court of law would revert to a dictionary definition. Ms Heath offered no case law, or a specific dictionary definition, to support her submissions. References were also made to Law concerning sales and leases of agricultural land¹.
37. From a planning law perspective, there is nothing that defines the Jersey 'agriculture' land use as being contingent on a commercial enterprise, a financial return or the occupation of any persons involved in that use. I have referred to the dictionary on my desk² for its definition of 'agriculture', which it states as '*cultivation of soil and rearing of animals*' which, also,

¹ Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974

² The Pocket Oxford Dictionary

does not reference a commercial pre-requisite and the '*cultivation of soil*' appears to be a primary allotment activity.

38. I also looked at my dictionary's definition of 'horticulture', which states that it is '*the art of garden cultivation*', which seems to have a strong affinity with the typical allotment use that I observed on my site inspection. I have noted the references to law concerning land sales and leases, but consider that it has limited direct relevance to defining a land use for planning purposes.
39. I am satisfied that the allotments use at this site falls within Class D 'Agriculture' and that no material change of use, requiring planning permission, has taken place. However, it is worth noting that BIP policy CI10, which addresses new allotment provision, does rather create the impression that location, accessibility and other matters will be considered for new allotment proposals. Whilst this may be the case in some instances, new allotment sites that are established on existing agricultural land (where no change of use is involved), cannot be subjected to the stated policy controls.

The appellants' planning grounds of appeal

40. My findings on the issue of 'use' have consequential implications for the extent to which I can consider the appellants' planning objection grounds. Indeed, I explained at the Hearing that the grounds were largely premised on an illusory application that had not been made (but the appellants felt should have been made) and that the scope of my consideration was limited to the development applied for under reference P/2022/0257, i.e., the sheds.
41. The grounds concerning redundancy of the land, traffic generation, traffic safety matters, use of the private road (Le Petit Jambard), site management, maintenance and restoration of the land upon redundancy, are not matters that have any great relevance or bearing on whether the sheds should be permitted.
42. There are some considerations relating to landscape impact and character issues, but these are confined to those effects arising solely from the proposed sheds. As the sheds are all small low-level structures and appropriate to the agricultural use to which they are intended to facilitate, I consider that any impacts would be very limited. The site is also enclosed on 3 sides by housing, with a mature hedge along the fourth side.
43. There is a short length, opposite the appellants' home, where the boundary hedge is intermittent, with some gaps, which would allow views of the sheds. This could be softened by additional landscaping, which the applicant indicated she was willing to undertake. Subject to this requirement, which could be secured by an additional planning condition, I am satisfied that landscape character would be protected and that policy NE3 would be complied with.

Planning conditions

44. At the Hearing, I held a without prejudice discussion concerning planning conditions to explore whether, should the Minister be minded to confirm the grant of planning permission, additional or varied conditions should be imposed.
45. As noted above, I consider that some additional landscaping to soften the visual impact of the sheds in views from Le Petit Jambard is reasonable and necessary to ensure that landscape character is protected. I also consider it prudent to increase the permitted shed height from 2 metres to 2.2 metres, simply because many standard sheds are just over 2 metres in height.
46. The question of whether a condition to prevent vehicular access via Le Petit Jambard was discussed. However, such a condition would not meet the normally applied tests of being relevant to the development to be permitted (the sheds), being enforceable, or reasonable in all other respects. I cannot therefore recommend that the Minister imposes such a condition. I do appreciate that one of the appellants' primary concerns is the use of this road by allotment holders, but the legal rights to use that road are not matters that fall within the scope of this planning appeal.

Conclusions and recommendation

47. This is a somewhat unusual planning appeal, due to the appellants' allegation of procedural error in the application determination and their contention that the allotment use requires planning permission.
48. I have assessed that there is no evidence of procedural error or unfairness to the appellants (or any other party) and the application was determined in accordance with established and agreed procedural arrangements. I have also assessed that the allotments use falls under Class D 'Agriculture' and that no material change of use, requiring planning permission, has taken place.
49. Having reached those conclusions, I find that there is very little of the appellants' planning objections that I can legitimately assess within the legal scope of this appeal. Subject to an additional condition requiring landscaping along the western boundary, I am satisfied that landscape character would be protected and that policy NE3 would be complied with. I also consider there should be some minor adjustment to condition 1, to allow for standard shed sizes.
50. For the reasons stated above, I recommend that the Minister dismisses the appeal, and that the permission granted under reference P/2022/0257 be confirmed, subject to the following changes to the decision notice:

Condition 1: delete the '2m' height limit and insert '2.2 metres'

Additional condition 4: Prior to the installation of any of the sheds hereby approved, details of a scheme of landscaping along the western boundary of the site to fill gaps and create a continuous hedgerow shall be submitted to and approved in writing by the Department for Infrastructure Housing

and the Environment (or its successor body). Such details as are approved shall be implemented in the first available planting season and maintained thereafter, including the replacement of any trees/hedge plants that die within the first 5 years after planting.

Reason: To preserve landscape character in accordance with policy NE3 of the Bridging Island Plan (adopted March 2022).

P. Staddon

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