

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 Breeze (Third Party Appellants)

Site address: La Robeline, La Rue de la Robeline, St Ouen, JE3 2EU

Application reference number: P/2021/1840

Proposal: 'Convert existing outbuildings into 6 no. self-catering units with associated parking and storage. Demolish existing storage structure. Various internal and external alterations to include; various replacement windows and doors, install 14 no. roof lights. AMENDED PLANS: Relocate visitor parking away from Field O1182.'

Decision notice date: 5 May 2022

Procedure: Hearing held on 6 September 2022

Inspector's site visit: 4 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 Breeze against the decision to grant planning permission for a development to convert some outbuildings at *La Robeline* in the Parish of St Ouen into 6 self-catering units of visitor accommodation. The proposed development is close to the appellants' home.

Procedural matters

2. At the time when the application was submitted, the Revised Island Plan (2014) (the RIP) was the operative development plan. However, a new development plan, the Bridging Island Plan (BIP), was adopted in March 2022. The application was determined under the BIP policies and my consideration of the appeal is similarly made under the BIP policy regime. As the main parties appear to be aware of the BIP policies and have cited them at the application stage and in their submissions on this appeal, I am satisfied that no issues of unfairness arise from the transition to the new plan.

3. The appellants' agent submitted some material after the deadline. These related to email exchanges with the Parish of St Ouen concerning the status of roads and the 'chemin' that runs through the site. I accepted this material and allowed discussion on it at the Hearing.

The appeal site, the proposal, and the application determination

4. *La Robeline* is a grade 2 Listed¹ farm house and associated outbuildings, situated to the south and east of La Rue de la Robeline. It is a distinctly rural setting and about a mile to the west of St Ouen village. Its elevated position affords views over surrounding farmland and towards the coast to the south-west. The site is within the Green Zone and the Protected Coastal Area (PCA) as defined on the BIP proposals map.
5. The statement of significance contained in the Listing says: *This farm complex spanning a large historical period, occupies a very picturesque position overlooking St. Ouens Bay. The early house to the west, with its (once detached) boulangerie, could be very early indeed, circa 1400s. The group retains historic character.* The Listing description refers to it as an 'historic farm group' and records that in the east side of the site is the house (*La Robeline*) with rear (north) outbuildings, and on the west side of it there is a cottage (*La Robeline Cottage*) with both south and north outbuildings.
6. The red lined application area covers the farm complex of buildings, which includes the main farmhouse, another dwelling (the cottage), the outbuildings, the courtyard (through which the chemin passes), garden areas, and Field O1182 to the south. The application seeks planning permission to convert the outbuildings into 6 self-catering units of accommodation for tourists. On the submitted drawings, the outbuildings are notated barns A – D.
7. Barns A and B are 2-storey structures to the north of the cottage and adjacent to where the road turns through a right angle; barn A would be converted to storage use on the ground floor and a 1-bed unit at first floor level, and barn B would contain a 1-bed ground floor unit, with the remaining ground floor space and all of the first floor retained as a roost/refuge for the resident bat population.
8. Barn C is to the north of the house and would be converted into a 2-bed unit and a 1-bed unit, with both units having accommodation at ground floor level and within the roofspace, lit by a number of proposed rooflights.
9. Barn D is an L-shaped 2-storey block attached to the south of the cottage; this would be converted into a 2-bed unit and a 1-bed unit.
10. The plans also show a bike store to be created just to the south of the complex. Parking is proposed in the existing yard area to the north of the main house and adjacent to barn C, with a few more spaces within the main courtyard area, along with 2 (existing) spaces to serve the cottage adjacent to the bike store. The main house would retain a good sized rear garden.

¹ Historic Environment reference number OU0194

The garden to the rear of the cottage would also be retained, but it is unclear from the plans whether the garden land to the west and south of barn C would be for its use, for guest visitors or a shared amenity space.

11. The application was supported by an ecological appraisal, engineers' feasibility study, a heritage impact statement and a letter (of support) from the States' Tourism Regulation service.
12. The application was considered and determined by the Planning Committee at its 5 May 2022 meeting. A committee site inspection had been carried out on 3 May 2022 and at the meeting the committee heard representations from those opposed to the scheme. The committee resolved to grant planning permission subject to conditions recommended by officers, which included requirements in respect of drainage and heritage matters, along with a condition requiring Field O1182 to be cleared of items unrelated to its agricultural use and retained as a field thereafter. The appeal is made by Mr and Mrs Breeze against that decision.
13. For clarity, under the Law², the decision to grant permission remains in place, but it is effectively frozen, and the development cannot be implemented until this appeal has been decided.

Summary of the appellants' grounds of appeal

14. The appellants' case is set out in their appeal form and its enclosures, and a statement of case with appendices.
15. The statement of case explains that, whilst the appellants are supportive of controlled visitor and tourist accommodation within the recognised curtilage of *La Robeline*, they have concerns about the intensity of the proposal. They summarise³ their concerns:

"...the Appellant believes that the appeal site has insufficient capacity to accommodate the level of development proposed on non-agricultural land.

The proposal would result in intense development on and around the farm group, and due to the site constraints, the extent of the application site, the Parish ownership of land within the appeal site, and the lack of restrictive planning conditions, the development would spill over onto field O1182 and the surrounding agricultural land. There is insufficient capacity within the appeal site on non-agricultural land to provide adequate car and cycle parking, manoeuvring, storage, waste and recycling storage, servicing, and amenity space to the existing occupants and proposed visitors. The overspill would bring the proposed development close to the appellant's home resulting [in] unreasonable harm to their amenity. The overspill would cause harm to the rural character of the area and the surrounding landscape and harm to the natural environment. The intensity of the development would cause harm to the setting of the Grade 2 listed buildings and result in danger to users of the limited local highway network.

² Article 117(1) and (2) - Planning and Building (Jersey) Law 2002 (As Amended)

³ Appellants' Statement of Case – June 2022 paragraph 1.3

The appellant has concerns over the processing of the application as it appears to have been submitted without the consent of all landowners.2

16. The statement includes a 'policy assessment' which reviews the proposal against BIP policies in respect of agricultural land (policies SP1, SP2, ERE1 and PL5); tourism (EV1, SP6, PL5, ERE2, and ERE3); landscape impact (NE3, SP2, SP3, SP4 and PL5); heritage and design (SP4, GD6 and HE1); amenity considerations (GD1 and SP7); transport (SP1, TT1, TT2 and TT4); natural environment (SP5, NE1 and NE2); and drainage (WER7). The review identifies areas where the appellants consider that there are conflicts and/or tensions with the BIP policies. The statement then sets out the appellants' 6 specific grounds of appeal which are:

Ground 1 – overdevelopment of the site

Ground 2 – lack of restriction of the proposed use

Ground 3 – encroachment onto agricultural land

Ground 4 – insufficient car parking

Ground 5 – unacceptable increase in vehicle trips

Ground 6 – failure to provide storage for refuse and recycling

17. The appellants conclude that the development is not in accordance with the relevant BIP policies and that this appeal should be allowed and the proposal refused.

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

18. The IHE case is set out in the committee report and in its statement of case. It rebuts each of the appellants' 6 grounds by stating:

Ground 1 – IHE disputes that the proposal would be an overdevelopment of the site, as there is no new floorspace being created and the alternative would be either to have a smaller number of bigger units with potentially the same occupancy, or to leave buildings vacant, and this would not be sensible in planning terms.

Ground 2 – IHE considers that the permitted use is clearly referenced by the term 'self-catering', although it would not oppose the imposition of an additional condition, reinforcing the tourism nature of the proposed accommodation.

Ground 3 – IHE states that Field O1182 will remain agricultural land as notated on the amended plans.

Ground 4 – on balance IHE consider the level of parking to be sufficient to serve the proposed use.

Ground 5 – IHE does not consider that there would be an unacceptable increase in vehicle trips and noted that the highway authority (The Parish of St Ouen) did not make any comment on traffic generation matters.

Ground 6 – IHE is satisfied that there is sufficient space within the site and the holiday let units for refuse and recycling storage.

Summary of the applicant's case

19. The applicant, understandably, supports the IHE analysis and its decision to grant planning permission. His statement of case and appendices similarly seeks to rebut the appellants' grounds of appeal. On ground 1, he says that there would be no loss of amenity to nearby dwellings, no harm to wildlife and no unacceptable traffic impacts. On ground 2, the applicant says the self-catering use is clear and set out in the reasons for approval in the decision notice and does not need to be the subject of additional conditions. On ground 3, he confirms that the authorised use of Field O1182 is agricultural, that this use will continue, and this is confirmed by condition 5. In response to grounds 4, 5 and 6, the applicant states that the proposal would be utilising existing buildings and would not be an over development, parking is adequate to serve the use, and waste and recycling will be dealt with by the operating management company.
20. The applicant concludes that the proposal is 'acceptable in every respect and complies fully with the policies' of the BIP and requests that the appellants' appeal be dismissed.

Inspector's assessment

Planning principle and common ground between the parties

21. BIP policy EV1 provides support for proposals which contribute to the quality and range of Jersey's visitor accommodation offer and states that '*outside of the built-up area, proposals for the development of new self-catering visitor accommodation will be supported where it involves the re-use and conversion of traditional farm buildings or where it can provide a viable use for listed buildings.*' Policy HE1 supports proposals for the re-use of listed buildings and places with compatible uses, which secure the long-term protection of their special interest, including the protection of their setting.
22. It is common ground in this case that the proposal accords with policies EV1 and HE1, as it will provide visitor accommodation through the conversion of traditional farm buildings and, in doing so, it will introduce a compatible use to secure the long-term future of these important heritage assets, in accordance with policy HE1, although some matters of detail are required by condition to ensure that the historic fabric is retained. It is also accepted that biodiversity matters are appropriately addressed, subject to the implementation of the Species Protection Plan, which is a requirement of an imposed planning condition, and this satisfies policies SP5 and NE1.

Ground 1 – overdevelopment of the site

23. The appellants do not contest the principle of converting the outbuildings into tourist accommodation, but consider that the proposed 6 units of accommodation is excessive, given the constraints of the site. However, there is no new floorspace being created and large parts of barns A and B are given over to storage and bat refuge areas, rather than active visitor accommodation space.
24. I agree with the IHE submission that a smaller number of units would not necessarily reduce visitor occupancy, as it would just facilitate larger guest groups and overall bed space numbers are likely to be similar. Therefore, the only realistic way of reducing intensity to satisfy the appellants' wishes would be to leave areas of the buildings unused or underused. The appellants' agent confirmed that, whilst they would not wish the buildings to be unused, some building areas could be used for less active functions, such as storage. In my assessment, this would seem to conflict with the policy HE1 imperative of securing compatible re-use of Listed buildings, which would secure the long-term protection of their special interest. It would similarly create a tension with the policy SP1(4) support for the retention and appropriate re-use of existing buildings.
25. There are some links between the appellants' first ground (overdevelopment) and other grounds (3,4,5 and 6) which, together, adopt the view that the proposal is excessive and does not fit comfortably on the site. I deal with these matters below.

Ground 2 – lack of restriction of the proposed use

26. The appellants are concerned that 'tourism accommodation' does not appear in the development description and no conditions restricting the use have been imposed, which would make it difficult to enforce against general residential occupation.
27. I note the submissions of IHE and the applicant, who feel that 'self-catering' defines the tourist use, and they do not consider that additional conditions are required. However, policy EV1 is quite explicit with regard to farm buildings converted to visitor accommodation. It states that '*...such accommodation must remain in tourism accommodation use only; this will be secured through the use of planning conditions or obligation agreements.*' This requirement of the policy has not been addressed by the IHE decision. A condition is required to satisfy the policy, as this would provide certainty and give effect to the limitation of the use permitted.
28. At the Hearing, I led a discussion on this matter. It became clear from the IHE officers' submissions that the approach to conditioning occupancy of tourist accommodation over the years had been inconsistent. I explained that such use restrictions are routine in England and usually define the permitted use and its parameters, which typically prevent stays of more than 28 days duration and require the operator to keep records of the visitor lettings, which must be made available to the planning authority, if requested. The planning purpose of such a condition is to ensure that the

buildings remain in use for visitor accommodation and to prevent conventional residential accommodation in locations that would be unsustainable. In the discussion, the IHE officers recalled one example which included such a (4 week) limit on the duration of stays. The applicant did not favour limiting stays and felt that this development should not be singled out and treated differently to others that have gone before.

29. I invited the parties to consider the wording of a suitable condition to address the policy EV1 requirement and to make post-hearing submissions to me. The IHE submission included 6 differently worded example conditions from earlier permissions in other locations, along with 5 accompanying reasons. All appear to date from the RIP era, as none reference BIP policy EV1. The applicant maintains that whilst he does not intend to offer winter lets, as he proposes high-end short lets to visitors, it is of paramount importance that he should not be treated any differently from other operators, for an industry that has purposely not been subject to time-limited permits in the past. He therefore suggests the following condition wording: *'The self-catering accommodation hereby approved is for tourist self-catering accommodation as registered under the Tourism (Jersey) Law 1948 and for no other purpose without prior consent of the Minister for Planning and Environment.'*
30. Whilst noting the applicant's preference, I do not regard it as good practice to frame a planning condition defining a land use by reference to other legislation. It should be precise and clear in planning terms. I am also unclear why a 4 week limit on visitor occupation, routinely imposed on developments in UK tourist destinations, should not be imposed in Jersey. Should the Minister be minded to confirm the permission in this case, I have included an appropriate condition in my recommendations for consideration.
31. On ground 2, I consider that the appeal should succeed.

Ground 3 – encroachment onto agricultural land

32. The approved site plan, drawing number 010/RevP2⁴, notes that Field O1182 will remain agricultural, and there appears to be no substantive operational development associated with the tourism use proposed on this part of the red lined area. In addition to the details contained on the approved plan, condition 5 requires that, prior to occupation of the tourism use, the field is cleared of any paraphernalia unrelated to agricultural use and maintained thereafter (as an agricultural field).
33. The appellants fear the possibility of a southwards creep of the tourism use over the field and closer to their property. There is no evidence before me to suggest that such encroachment would occur. Moreover, if it did ever occur, it would be quite apparent that this would be a breach of planning control that could be enforced against.
34. However, I do think that the site plan could be clearer. It does not define with precision the northern boundary of Field O1182, and submissions at

⁴ There is a typographical error in the Decision Notice, which refers to drawing 010 P1. The approved plan is drawing 010/ Rev P2.

the Hearing indicated that a timber pergola and the 2 cottage parking spaces may marginally encroach into the field. I also noticed that there is another fenced off space, which I was advised is a vehicle turning area, that is not shown on the plan. An additional planning condition could require a more accurate and precise site plan, which would give greater certainty.

Grounds 4 and 5 – insufficient car parking and unacceptable increase in vehicle trips

35. The proposal relies upon the farmyard areas around the cluster of buildings to provide parking to serve the 6 units of tourist accommodation and the main house (*La Robeline*), with 2 spaces indicated for the house and 5 for the tourist accommodation. A further 2 spaces located on the southern part of the garden, and accessed by an existing vehicle field entrance, is proposed to serve *La Robeline Cottage*.
36. Whilst there is no intention to mark out the spaces, the approved site plan shows 5 spaces to serve the 6 units. From my site inspection, I noted that 1 of the indicated spaces is impractical, as it is shown over the site of a fuel tank/bin store enclosure in front of the main house (which are not shown on the plan). Another of the spaces, whilst achievable, would involve removing some soft landscaping near the main entrance, and the detail of this is not shown on the plan.
37. Notwithstanding these plan accuracy issues, and taking account of the chemin route through the yard, I assess that it would be reasonably easy to satisfactorily accommodate up to 5 or 6 visitor vehicles in an informal manner, provided they were small/medium sized cars. Some adjustments to the landscaped courtyard would be needed. I endorse the informal approach to the parking, as it maximises flexibility and avoids white lined spaces, which would be inappropriate next to the Listed buildings. That said, an updated and more detailed site plan is required to provide certainty and to clarify the details of the external works and landscaping.
38. I do acknowledge the appellants' fear that the parking will be insufficient and that overspill will result. However, there is nowhere for excess parking to overspill to, as there is no available on street parking and the use of Field O1182 would be precluded by condition 5. I have noted reference in the IHE's case to 'parking standards' and that the scheme might be 1 space short of those requirements. However, I have previously assessed that such standards are woefully out of date⁵ and emanate from a 'predict and provide' era, which predated planning policies that seek to minimise car use and encourage other sustainable modes of travel. Moreover, those standards do not actually address tourist accommodation parking requirements at all.
39. No evidence has been presented to confirm the proportion of tourists that are likely to use cars. Given the rural location, it is not unreasonable to expect that some, and perhaps the majority, of the 6 parties will use cars, most likely hired in the Island. However, the location is not so remote as to

⁵ States of Jersey Supplementary Planning Guidance Policy Note 3 – Parking Guidelines September 1988

preclude cycling and walking modes of travel. Indeed, walking and cycling may well be an integral part of visitors' chosen holiday experience. A covered cycle store is included within the scheme and, although I note the appellants' criticism of its location and type, it will nonetheless provide a useful facility for visitors and residents. Moreover, the applicant appears to be cognisant of his management responsibilities in terms of operating a successful tourism venture. He explained that he has reduced the number of vehicles kept at the site and now has a 7-seater vehicle and is likely to offer visitors a 'shop run' service and will be able to pick up and drop off parties at various locations. Visitor vehicle numbers (and sizes) could also be managed through the booking system.

40. For those using sustainable travel modes, the main attraction of St Ouen's Bay is accessible and it is also quite possible to cycle or walk to St Ouen's village for provisions and its services. It is also possible to access Liberty Bus services (services 22, X22, 8 and 9) which link this area to St Helier, albeit that these routes have a limited frequency. All of these factors, along with the relatively small size of the units, leads me to the view that, subject to a more detailed and accurate site plan, which can be secured by a condition, the achievable level of parking provision will be adequate to meet the needs of the development. I therefore consider that the appellants' ground 4 should fail.
41. With regard to ground 5, there is no evidence to suggest that the modest amount of car trips that may be generated by the tourist use cannot be accommodated on the rural road network.

Ground 6 – failure to provide storage for refuse and recycling

42. The appellants draw attention to policy GD6 which requires development to demonstrate the sustainable use of resources. They say that the lack of details of refuse and recycling storage facilities renders the proposal contrary to this policy and to policies SP1 and SP5. They further state that the lack of thought and integration of these facilities might require bin storage on other parts of the site and encroachment onto agricultural land.
43. However, there is ample space in barn A to provide these facilities out of sight and I have noted the applicant's confirmation that waste and recycling will be professionally managed on a day-to-day basis. I find no conflict with policies SP1, SP5 and GD6.

Other matter – foul drainage

44. Although not one of the stated grounds of appeal, the appellants' statement of case includes concerns about drainage matters. However, condition 2 places a pre-commencement requirement for foul drainage connections to be agreed (and thereafter implemented in full). This requirement provides the mechanism to ensure compliance with BIP policy WER7.

Conclusions and recommendation

45. In many ways, the proposal is desirable and welcome. It would transform a range of important and largely unused Listed outbuildings into visitor accommodation. I attach significant weight to the support found in BIP policies EV1 and HE1 which, respectively, encourage the re-use and conversion of traditional farm buildings to provide visitor accommodation, and provide a viable use for Listed buildings. I also attach weight to the sensitive and sympathetic nature of the proposed conversion works, which will maintain the special qualities of these important buildings with minimal external alteration.
46. In my assessment, the development is not overly intensive and, whilst a more accurate and detailed site plan is required, the proposal can be accommodated in terms of likely parking demands; traffic generation; protected species measures; and space for housing waste and recycling facilities. I assess that ground 2 should succeed and a condition defining the use should be imposed as required by policy EV1. I further assess that an additional condition requiring an updated and more detailed site plan is necessary.

Recommendations

47. I recommend that the appellants' grounds 1,3,4,5 and 6 should fail and that the Minister dismisses the appeal in these regards. However, I assess that ground 2 should succeed and I recommend that the Minister confirms the permission with the imposition of an additional condition covering the tourism use of the accommodation, as required by policy EV1. I also recommend the imposition of a further condition requiring a more accurate and detailed site plan, to clarify the parking spaces and landscaping alterations, and to define more precisely the Field O1182 boundary (and the field free of any domestic use and paraphernalia). The recommended additional conditions and reasons are set out below:

Additional condition 1: The development hereby permitted shall not be used otherwise than for the provision of short let visitor accommodation. The 6 units of accommodation in the converted outbuildings shall not be occupied as permanent dwellings and shall not be occupied by any one person for a period exceeding 28 continuous days in any calendar year. The owner or operator shall maintain a register of occupants for each calendar year and, on request, this shall be made available for inspection by any duly authorised officer of the department for Infrastructure Housing and the Environment (or any successor body responsible for the States' planning functions).

Reason: In accordance with policy EV1, which requires proposals involving the conversion of farm buildings to visitor accommodation in locations outside the defined built-up area to be restricted to that use only.

Additional condition 2: Prior to the commencement of development, a revised site plan shall be submitted to and approved in writing by the department for Infrastructure Housing and the Environment (or any successor body responsible for the States' planning functions). The plan

shall clearly define the parking spaces, existing retained features (including the fuel tank/bin store), proposed associated alterations to the existing courtyard areas, and define the northern boundary of Field O1182 and its boundary treatment. The use of the buildings for visitor accommodation hereby approved shall not commence until the development has been carried out in full in accordance with such details as are approved pursuant to this condition and shall be maintained as such thereafter.

Reason: To ensure that these matters are recorded and agreed on an accurate and updated plan to provide certainty.

I further recommend that, should the Minister agree with my recommendations, additional condition 1 concerning visitor accommodation be added to the IHE's standard list of planning conditions, such that it can be applied consistently in similar future cases, to give effect to the requirements of BIP policy EV1.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Main Appearances at the Hearing

For the Appellants: Mr and Mrs Breeze; Mr Gary Palmer

For the Applicant: Mr Syvret; Mr Michael Stein

For the Department: Mr Jonathan Gladwin, Mr Lawrence Davies