

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

Appeal under Article 109 against an Enforcement Notice issued on

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr S. Baudains of J & S Growers

Site address: Field L507, Le Bu de la Rue, La Route de St Jean, St Lawrence

Enforcement Notice reference number: ENF/2022/00019

Enforcement Notice issue date: 23 February 2022

Related planning application reference number and description: P/2022/0430

RETROSPECTIVE - Alter vehicular access to main road and add concrete hardstanding. Form vehicular access to North of site. Form new hardcore based track to North of site with banque adjacent to field.

Procedure: Hearing held on 7 September 2022

Inspector's site visit: 5 September 2022

Inspector's report date: 30 September 2022

Introduction

1. This appeal is made by Mr S. Baudains of J & S Growers Ltd against an Enforcement Notice (EN) issued on 23 February 2022 by the department for Infrastructure Housing and the Environment (IHE). The EN relates to unauthorised work to create an access and a hard surfaced track, along with a small car parking area, at an agricultural field in the Parish of St Lawrence.
2. There is no dispute that the development alleged in the EN has taken place. The appeal is made under Article 109. The appellant contests the appeal solely on the ground set out in Article 109(2)(h) which is that, in all the circumstances, planning permission should be granted for the development in question.
3. In parallel with these appeal proceedings, the appellant has submitted a retrospective planning application (reference P/2022/0430) which seeks permission to retain the development, with the exception of the small car park. That application remains undetermined but, should the Minister be minded to allow this appeal and quash the EN, the submitted planning application provides the vehicle to grant planning permission to retain the development.

4. This report explains the EN, the retrospective application, the appellant's ground of appeal, the case made by IHE, and the views of other parties. It then provides my assessment of the proposal against relevant planning policies and sets out my conclusions and recommendations.

Procedural matters

5. Since the issue of the EN, a new development plan, the Bridging Island Plan (BIP), has been adopted. Following adoption, the BIP policies have full weight in decision making and supersede the policies of the earlier Revised Island Plan (2014) (the RIP). Accordingly, I have made my assessment solely in respect of the current BIP policies, rather than the RIP policies cited in the EN. As the main parties are aware of the BIP policies, and have referenced them in their statements and at the Hearing, I am satisfied that no matters of unfairness arise.

The Enforcement Notice

6. The matters alleged in the EN were specified, in its section 3, as follows:

3.1 At the western end of the northern boundary between Field L507 at the junction of La Grande Route de St Jean with Le Bu De La Rue, two sections of hedgerow and banque have been removed to modify an existing vehicular access path into field L507 (as indicated by two polygons shaded in green and annotated '3.1' on the attached 'Enforcement Notice Location Plan'). The removal of the hedgerows and banques was carried out without prior planning consent. The removal of these sections of hedgerow and banque amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

3.2 At the eastern end of the northern boundary between Field L507 and Le Bu De La Rue a section of hedgerow and banque has been removed to create a new vehicular access path into field L507 (as indicated by a polygon shaded in green and annotated '3.2' on the attached 'Enforcement Notice Location Plan'). The removal of the hedgerow and banque was carried out without prior planning consent. The removal of this section of hedgerow and banque amounts to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

3.3 At the northern end of Field L507, adjacent to the northern boundary between Field L507 and Le Bu De La Rue a section of aggregate hard standing has been laid, creating a vehicle access path and parking area amounting to approximately 960m² (as indicated by a polygon shaded in blue and annotated '3.3' on the attached 'Enforcement Notice Location Plan'). The creation of a hard standing vehicle access path and car park was carried out without prior planning consent. The creation of a hard standing vehicle access path and car park amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

3.4 At the northern end of Field L507 an earth bund has been created along the southern edge of the newly created vehicle access path and parking area (as indicated by a yellow line and annotated '3.4' on the attached 'Enforcement Notice Location Plan'). The creation of an earth

bund was carried out without prior planning consent. The creation of an earth bund amounts to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

3.5 At the western end of the northern boundary between Field L507 and La Grande Route de St Jean, an area of concrete hard standing has been laid, creating a vehicle access path (as indicated by a polygon shaded in black and annotated '3.5' on the attached 'Enforcement Notice Location Plan'). The creation of a concrete hard standing vehicle access path was carried out without prior planning consent. The creation of a concrete hard standing vehicle access path amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

7. Section 4 of the EN sets out the reasons for issuing the EN, which include the statements:

Field L507 lies within the Green Zone as defined in the Jersey Island Plan 2011 (Revised 2014), wherein there is a general presumption against development that would cause serious harm to landscape character.

The unauthorised development is considered to cause serious harm to the landscape character and wildlife of this sensitive rural area and would fail to meet the requirements of Policies SP4, GD1, NE7, EIW5 and ERE1 of the Jersey Island Plan 2011 (Revised 2014)

8. Section 5 of the EN sets out 5 steps required to rectify the breach of planning control. There is one step for each of the matters listed in section 3 (3.1 – 3.5), which if followed would, to all intents and purposes, reinstate the land to its former condition and appearance. Section 6 of the EN states the period for compliance as 120 days.

The connected retrospective planning application

9. Application reference P/2022/0430 seeks permission to retain the development, with the exception of the parking area at the eastern end of the track (part of the works covered by 3.3 of the EN), which would be returned to agriculture.

The site and its surroundings

10. Field L507 is roughly rectangular shaped and situated on the east side of La Route de St Jean; the frontage to that road is about 100 metres and is formed of a traditional banque containing a number of trees. The northern boundary of the field is defined by a hedgerow, which runs alongside a narrow road/driveway called Le Bu de la Rue¹. This road serves a number of residential properties and, at its eastern end (about 130 metres from its origin), terminates in a yard/parking area at the appellant's *Le Coin* farm complex, which includes the Listed farmhouse², agricultural sheds, buildings, and other residential accommodation. The agricultural buildings

¹ The road/driveway is also notated as 'Le Coin' on Google maps

² Historic Environment reference LA0030

include a recently constructed large shed, measuring about 30 metres long by 24 metres wide, which was granted permission in December 2018 under reference P/2018/0879. The eastern field boundary curves around, with a wooded area visible beyond. The southern boundary is formed with another agricultural field (L615). At the western end of Le Bu de la Rue (where it joins La Route de St Jean, there are some grade 3 Listed buildings³.

11. The surrounding area comprises open fields, interspersed with farmsteads, some agricultural buildings and a scattering of dwellings, and framed to the east and west by wooded enclosed valleys. The landscape has a distinctly rural character and appearance, typical of Jersey's interior agricultural plateau.

Summary of case for the appellant

12. The appellant's statement of case (and 4 appendices) seeks to respond to the EN and, at the same time, support the retrospective planning application. The statement explains that the access track is imperative to allow operations on the farm to continue and was carried out to assist vehicles accessing the field and the farm yard and buildings. It explains that the appellant was unaware of the need for planning permission, and the work was undertaken in ignorance and not through any intention to deceive.
13. The statement then addresses the site history. It explains that J & S Growers is a family farming business that has operated out of *Le Coin* for decades, growing Jersey potatoes and farming many fields in the surrounding area. It says that in 2018, a planning application was made (P/2018/0879) to construct a new agricultural shed on the north of the site for the purposes of storing farm machinery. Prior to this, the farm had to store their large machines off-site in St. Brelade, with the vehicles commuting to the site every day.
14. It says that the shed proposal was vital for the development of the business and was approved. At the time of this application, the intention was to access the site through the north of Field L507 and the appellant considers that this is clearly shown on the submitted drawings for this application at the time. The reasons for this were due to the size of the vehicles that are now used for modern farming.
15. The statement continues, explaining that, historically, the site was accessed through Le Bu de la Rue, which is shared by other properties. This was not desirable for the neighbouring houses and, as the machines used to farm the field became bigger, they struggled to use this access, and this is when they started using the north of Field L507 to gain access to the site. This alteration was, and is, supported by neighbours.
16. It further explains that, with the new agricultural building now in place and the farm vehicles currently using the access through Field L507, the business has been able to operate far better than it did before, and with the

³ Historic Environment references LA0001 and LA0024

benefit of not disrupting the neighbours or by having large agricultural vehicles travelling to and from the site from another parish.

17. The statement then provides specific responses to sections 3.1 – 3.5 of the EN, as follows:

EN section 3.1

There was always an existing field access on the La Route du Mont Cochon as is highlighted on the historic photographs contained within the enclosed planning application pack. The orientation of this did however cause problems with large farm vehicles entering it so this was opened up. It must however be noted and accepted that a field entrance was already in place. The alteration to this entrance increases the visibility splays to the adjacent driveway as is shown on the enclosed planning application drawings so an improvement is made in this regard. The loss of part of a bank, we appreciate, should yield some mitigation works and we would be committed to providing a landscape plan as part of a condition should this application be approved. Planting to the bank to the south of the newly formed track could be put in place using local species which benefit the environment and enhance wildlife and we would be happy to provide this.

EN section 3.2

We dispute that this opening was carried out without planning permission. In P/2018/0879, which was another application made for this site, the opening in question was noted on the submitted and approved documents. As this is on approved documents, we feel this was approved back in 2018 as part of P/2018/0879. We would also note at the time of this application in 2018 the field track was shown on the submitted drawings but was not queried or raised as being unaccepted at the time. The approved site plan is shown in Appendix 3 with the note highlighted in yellow.

EN section 3.3

The new field access road was installed to allow farm vehicles access to the farm. Prior to the implementation of this track the farm vehicles had to access the farm via Le Bu de la Rue but as modern farm machinery has grown and this has meant that this road, which is only 3m wide at parts, is not suitable for access to the farm. To give some context to this a 2row harvester is 3m wide by 11m long and this is towed by a tractor. You can see this makes it almost impossible for the machines to access the farm without going through the field. This is detailed further in appendix 2 by the site owner and is the fundamental reason that this access road has been formed.

The private road access previously used by farm vehicles to the north is shared by 2 other properties plus the houses on the Le Coin farmstead. When used for commercial farming vehicles previously this road was constantly muddy and in a state of disrepair. The introduction of a new track in the existing field, using the already in place entrance to the northwest of the field, allows the machinery to access Le Coin farm without effecting these neighbours who are all in support of this application as is shown in the letters of support in Appendix 4.

Although the field track is essential to the operation of the farm the parking area on the northeast of the field is not so as part of the enclosed planning documents this is proposed as being removed and returned to field.

EN Section 3.4

The earth bund formed was done so with the stripped material used when the track was formed, and this ensured that materials were not taken off site. This bund is not essential and if it was deemed necessary the owner has agreed he would be happy to have this distributed over the remainder of the field, so removed. Alternatively, as has been suggested earlier in this report, we would be happy to propose a planting scheme for this bank with native species to promote wildlife and mediate the hardcore track. This could be done via a condition, and we would be happy to accept this if it was deemed necessary.

EN section 3.5

The concrete hardstanding has been added to prevent mud and run off from the field going straight onto the main road or Le Bu de la Rue. Taken in isolation we don't believe this material finish over such a small area should be considered detrimental. We would also argue this element goes hand in hand with the track it serves which, as we have established, is vital for the farm to get more modern machines in and out of the site.

18. Appendix 4 to the appellant's statement is a set of letters of support in respect of the retrospective planning application. These include support from the States Department for Economy (Rural and Marine sector), Jersey Farmers Union, Albert Bartlett Jersey, and from local residents who say they have benefited from reduced traffic along the lane.
19. The statement concludes that the works are vital to allow the farm at *Le Coin* to continue to operate and adapt to future farming needs. The track is not a change of use of the field, in part or whole, and is purely for farm purposes. Policy ERE1 states that development of agricultural land will be supported if the nature of the proposed use genuinely necessitates and is appropriate to its proposed location. The works would not affect the neighbouring properties, and this is backed up by the letters of support and this would suggest the development is in line with the guidance set out in policy GD1. The appellant considers that it has been clearly demonstrated that the access is genuinely required to support the existing farm and should be supported and approved.

Summary of the IHE case

20. The IHE case is effectively that set out in section 4 of the EN, along with 2 responses to the appellant's appeal submissions.
21. The first response document rebuts the view that there has always been a field access here and draws attention to the fact that the old unsurfaced route into the field headed south, but the new access/drive heads east. It disputes the claim that the access and drive was included in the scheme approved under reference P/2018/0879 and draws attention to the 'no' answers stated in the application form at that time, regarding whether any

alteration to access was proposed or whether the development would increase the amount of traffic to and from the site. The document states that the development has a '*significant detrimental effect on the character of the area, and wildlife...*'.

22. The second response reinforces its first response and states that the works undertaken are outside the red line of the 2018 application. It also provides an update with regard to the now relevant BIP policies: ERE1 (protection of agricultural land); SP5 (protecting and improving the natural environment); SP6 (sustainable Island economy); EI1 (existing and new industrial sites and premises); PL5 (countryside, coast and marine environment); GD1 (managing the health and well-being impact of new development); NE1 (protection and improvement of biodiversity and geodiversity); NE2 (green infrastructure and networks); NE3 (landscape and seascape character) and the related Integrated Landscape and Seascape Character Assessment (2020) (the ILSCA); and HE1 (protecting Listed buildings and places and their settings). It does acknowledge that the appellant's case is premised on allowing access for modern farm machinery, but this would not justify the car park element.

Inspector's assessment

Review of the background facts

23. Based on the evidence before me, there are a number of background facts that should be recorded at the outset, as they are important in informing the subsequent assessment against BIP policies.
24. First, there is no dispute that J & S Growers operate a long established and significant agricultural enterprise, spread across a number of sites and rented fields in Jersey.
25. Second, *Le Coin* in St Lawrence appears to be the longstanding hub of the business, where there is a collection of farm buildings, a yard and associated residential property, along with agricultural fields (including Field L507). For many years, the sole vehicular access to these farm buildings has been from La Route de St Jean via Le Bu de la Rue, which is very narrow and is shared with a number of residential properties. At the Hearing, it was agreed between the parties that there is no other defined vehicular access route to the farm yard and its buildings.
26. Third, the case for building a large new agricultural shed at the *Le Coin* hub, to house agricultural vehicles and machinery, was accepted in the planning approval granted in December 2018 under reference P/2018/0879. The plans and documents supporting that application indicated quite clearly that large farm vehicles and equipment would be housed within the shed. At the time, little attention appears to have been given to vehicle numbers, vehicle sizes, trip generation and routes to and from the yard/new shed. Although notations on the plans gave some indication of an intention to route vehicles through the northern margin of Field L507, this was outside the red lined application area.
27. Fourth, the 2018 approved shed has been built and is being used for its intended purpose. This results in a not insignificant number of large vehicle

movements to and from the farm hub, all via the now widened access to La Route de St Jean. At the Hearing, the appellant indicated that 10 tractors of varying sizes, 2 trailers and several harvesters are based at the site. He also advised that, through the busiest 8 months of the year, which is between January and August, there would be 30 – 40 'out' trips from the site and a similar number of 'in' movements (sometimes a vehicle may stay overnight on or near land being worked). Movements to and from the site would typically start as early as 4.00 am and extend to 9.00 pm. The September – December period is less busy in terms of trip generation and the very quietest days might just involve a few movements in and out. At the Hearing, these numbers and durations were not challenged and I have no reason to doubt their accuracy.

28. Fifth, it is quite apparent that the widened access allows for easier movement of vehicles in and out. At the Hearing, the appellant explained that prior to the widening, large vehicles would have to enter La Route de St Jean and shunt forwards and backwards to turn, causing a highway obstruction and potential danger.
29. Sixth, it is an acknowledged fact that, over time, changes in farming practices have resulted in modern farm machinery significantly increasing in size. Having inspected Le Bu de la Rue and seen the size of one of the appellant's tractors with a cultivator attached, it would be physically impossible to turn the vehicle from the yard into the road. Based on the submitted width dimensions of other vehicles, it would also seem unworkable for them to use Le Bu de la Rue, without causing damage to the hedge, property or the farm vehicle itself.

Policy assessment – the access alterations and the access track

30. BIP policy SP2 states that outside the defined built-up area, within the countryside, around the coast and in the island's marine environment, development will only be supported where a coast or countryside location is justified, appropriate and necessary in its location. The policy's supporting text states: *'Whilst the agricultural industry has gone through significant change, it is still very much regarded as the custodian of Jersey's countryside. It is important, from an environmental, economic, community and cultural perspective, that agriculture and the rural economy, in general, is supported and that development, where a countryside location is justified and appropriate, in scale, character and use, is facilitated.'*
31. Based on my findings on the background facts above, I do consider that the access alterations and the access track meet the strategic SP2 policy test. Indeed, it appears to me that the track is essential to enable the efficient functioning of a not inconsiderable farming enterprise, given the nature, size and number of farm vehicles needing to enter and leave the site as a fundamental part of its business operations. These movements and activity cannot be satisfactorily achieved by the use of La Bu de la Rue, due to its narrow width and potential safety conflicts with residential uses. It would also not be feasible to direct these vehicle movements through the open field areas to reach the highway, as this will result in ground compaction and, in wetter months, a potential quagmire and mud deposits on the highway.

32. Policies PL5 and SP6 also contain similar provisions for developments which maintain and enhance a sustainable rural economy, with SP6 adding the proviso that such development should protect landscape character and high quality agricultural land. The protection of agricultural land from loss is also a requirement under policy ERE1. I consider that the PL5/SP6 economic policy test is met. Whilst the track takes a small margin of the field out of production, it is a necessary facility to enable the farming of not just the land at *Le Coin*, but at various farming locations across the Island. I do not therefore consider that it results in the 'loss' of agricultural land. In any event, the track, being constructed of a hoggin surface, is reversible and could be removed and the land returned to soil, should the access ever become redundant.
33. In terms of landscape character, I have noted the IHE submissions concerning policy NE3 and the ILSCA. In my assessment, the track has been neatly engineered and the retained (and well maintained) hedgerow along La Bu de la Rue, and the low banking on its south side, mean that it has little, if any, wider landscape impact. Indeed, what I observed did not seem out of place and, even in its recently constructed form, it seems to be quickly blending into the rural landscape.
34. In essence, it just looks like a farm track and that is not an unusual or discordant feature in the countryside and it adds to the '*maze of deep lanes, tracks and some wider roads*'⁴ that the ILSCA identifies as features in Character Area E4 (Southern Plateau and Ridges Farmland). Moreover, the counterplay of other policies (SP2, PL5 and SP6) which are supportive of development necessary for the rural economy, means that some localised changes will be necessary in supporting what is essentially a working landscape. For similar reasons, I consider that there is no conflict with policy HE1, as the settings of nearby Listed buildings are not harmed and can be considered to be protected.
35. I do agree with the IHE officers that the concrete apron at the widened access to La Route de St Jean is somewhat harsher than the appearance before the development was carried out. However, given the types of vehicles using this access, it does need to be a solid surface and the area in question is quite modest and not prominent in the landscape. It is well screened in most views and accommodates a roadside vegetable stall. I am satisfied that it does not result in landscape or heritage setting harm.
36. Concerning road safety, I have noted carefully the IHE Transport consultation response on the retrospective application. This response erroneously refers to Le Bu de La Rue being a parish road; it is not, it is privately owned and maintained. Whilst noting the requirement that new accesses should be 20 metres distance apart, what appears on the ground is more akin to a widened access, rather than 2 accesses side by side. The concerns about surface water/debris being washed onto the highway could be addressed by drainage details, which could be secured by a planning condition imposed on the retrospective application.
37. With regard to policies NE1 (protection and improvement of biodiversity and geodiversity) and NE2 (green infrastructure and networks), it is clear that the development has resulted in some loss of hedgerow. A short length has

⁴ Jersey Integrated Landscape and Seascape Character Assessment (2020) – page 103

been removed where the access has been widened and an area just wider than the track has been removed to make the access connection to the farmyard to the north. The loss is very limited and there is no evidence before me to confirm that there has been any tangible harm to biodiversity. At the Hearing, the appellant made clear that biodiversity is a key consideration for modern farming, with buyers routinely auditing farmer's environmental credentials and performance. He stated that he would be more than willing to undertake any required biodiversity enhancements, which could be secured by a planning condition on the retrospective application.

38. Concerning amenity implications, I assess that there would be no unreasonable amenity implications arising from the development and that policy GD1 would be satisfied. Indeed, it is clear from the third party representations, that local residents consider that the new track has resulted in an improvement to their living conditions and perceptions of safety.

Policy assessment – the car park

39. The car park does not meet the SP2/PL5/SP6 tests of being justified, appropriate and necessary. There is the facility to park workers' cars and vehicles elsewhere on the site, including within the yard area. There is no necessity to have vehicles parked in an open field, where their presence would erode the rural character. There would also be some, albeit limited, negative effect on the setting of the nearby Listed farmhouse, which would be contrary to policy HE1.

Conclusions and recommendation

40. At the Hearing, I explained to the parties that EN appeals are often messy and complicated. This is simply because the development has already happened and the normal processes of assessing plans and supporting evidence have been bypassed. As a result, the planning authority has to make assessments with limited information and make judgements in good faith, and it has done so in this case. The landowner/developer, who in this case says he did not appreciate the breach of planning control, and I have no reason to doubt that, has to make a retrospective case and seek to justify the planning merits of the unauthorised development.
41. However, with the full facts before me, and for the reasons stated above, I am satisfied that the access alterations and the access track comprise a development that, subject to some refinement, accords with the relevant BIP policies. In particular, I consider that it accords with policies SP2, PL5, SP6 and NE3. The refinements required are drainage details (at the site entrance) and landscaping/biodiversity enhancements, which could be secured by planning conditions imposed on the retrospective application. However, the car park is not acceptable, as it is not necessary and would be harmful to landscape character and to the setting of nearby Listed buildings.
42. I have considered whether to recommend that the EN be modified or be quashed in full. Given that the amendments to the EN would be so wide ranging (only part of 3.3 would remain), along with the appellant's

willingness to remove the car park if deemed necessary, it seems more appropriate to quash the notice with an advisory note setting a timescale for compliance.

43. My formal recommendations are:

- A. That the Minister allows the appeal and quashes the Enforcement Notice reference ENF/2022/00019.
- B. That the Minister grants planning permission for the retrospective application P/2022/0430 subject to conditions to secure: (i) appropriate landscaping details, the timetable for their implementation and ongoing maintenance; (ii) biodiversity enhancements, the timetable for their implementation and their maintenance; (iii) drainage details to prevent run off from the access onto the highway, a timetable for their implementation and their future maintenance; (iv) a requirement that, should the access track ever become redundant, it will be removed and the land reinstated.
- C. That the Minister advises the appellant that the unauthorised car park should be removed within 3 months and that failure to do so may result in the service of a fresh Enforcement Notice requiring its removal and reinstatement of the farmland.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI