Planning & Building (Jersey) Law 2002 - Appeal under Article 108

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Willow Farm Ltd against a refusal of planning permission.

Reference Number: P/2023/0026

Site at: Field No. L11, Le Hucquet, St Lawrence.

Introduction

1. I held a hearing into this appeal on 6 July 2023. I made a preliminary unaccompanied site visit on 5 July and carried out a more detailed accompanied inspection after the hearing.

2. The appeal is against the refusal of planning permission for development described in the application as: "RETROSPECTIVE: Construct vehicular access track across field L11 to Willow Farm".

3. The reasons for refusal as set out in the planning authority's decision notice were:

    1. The proposed development, for the creation of a track within Field No. L11, is contrary to Policy ERE1 of the Adopted Bridging Island Plan 2022, which prohibits the loss of agricultural land.

    2. The proposed development, for the creation of a track within Field No. L11, neither protects, nor improves, the landscape character of the Green Zone and is therefore contrary to policy NE3, of the adopted Bridging Island Plan 2022.

Format of Report

4. The format of this report is unusual. This is because the hearing was unusual. After opening the hearing I explained that there were a number of procedural and legal matters which I judged needed to be raised at an early stage. The result is reported below. The hearing was adjourned twice to give the parties the opportunity to consider and respond to the points I raised.

5. During my explanation of these matters I handed out copies of a written note to those present. A copy of this note, which covers some of the issues recorded below, is attached as an appendix to this report.

6. Normally in a report I would provide a site description followed by summaries of the cases for the appeal parties based mainly on the submitted statements, and then my assessment, conclusions and recommendation. In this instance I have placed the case summaries in an appendix so that you can refer to them if necessary, although for reasons which should become apparent much of this material may only be of limited relevance if you accept my recommendation and the reasoning behind it.

Site and Surroundings

7. The area edged red on Location Plan 001 is on the east side of a field (Field L11), which lies west of a group of buildings at Willow Farm, and is separated from

those buildings by a high hedge (except for a small gap where a pedestrian access has been formed into the garden of a nearby dwelling).

8. A roadway or track surfaced with what appears to be recycled tarmac and chippings runs roughly parallel to the eastern boundary of Field L11. The track is about 3.5 metres wide. Immediately to the east, there is a strip of mostly grassed land about 3 metres wide between the track and the eastern boundary of Field L11. Immediately west of the track is a mounded bund about 4 metres in width which appears to have been formed from soil scraped from the route of the adjacent track.

9. The southern end of the track just described is close to the west end of La Chasse de l'Est. In the north an east-west length of track between 3 and 4 metres wide surfaced with cement and chippings provides an access way usable by vehicles between the northern end of the track described above and other land within Willow Farm, close to the point where there is a vehicular entrance from the north off Le Hucquet into the main area of buildings at Willow Farm.

10. The main group of buildings known as Willow Farm is located north of the west end of La Chasse a L'Est and south of Le Hucquet. Hard-surfaced access ways provide routes between the buildings at Willow Farm and between La Chasse de L'Est and Le Hucquet. (Some of these access ways are not shown on the submitted plans.) The largest building stands to the west of the southern entrance to the farm complex, close to the main entrance which leads to a concrete-surfaced yard. At the time of my inspection this building was in active use as a warehouse, apparently mostly occupied by the Romerils company[1]. It contained high storage racks holding numerous household or kitchen items such as washing machines and other white goods. The racks were accessed by fork lift trucks. Nearby I also saw flooring mats, carpets and some building materials. A small adjacent workshop contained agricultural tools.

11. A much smaller building nearby to the east was closed and locked at the time of my inspection. I was told that it was used for storing medical supplies for possible use in the event of an epidemic. A container labelled "nitryl gloves" was visible through a window. Part of the open land near this building also appeared to be used for storing builder's equipment or as a builder's yard.

12. In the area further to the north there are blocks of modern terraced houses, some single-storey but mostly two-storey, set in small plots. Ten of the dwellings sited towards the north appeared to be fairly new (this is the area where evidently new housing development was permitted in October 2019 under permission reference P/2018/1601). In total there appeared to be about 26 dwellings including the newer ones. A little further north I saw six shipping containers, which were locked so I could not look inside.

13. La Chasse de L'Est is a cul-de-sac lane (apparently not a public highway) about 3.2 metres wide bordered partly by stone walls and partly by buildings close to the carriageway, leading westwards off La Rue du Bel Au Vent. There are two "speed humps" across the carriageway. There are dwellings on both sides of La Chasse de L'Est (about nine in total to the east of the entrance to the Willow Farm buildings), some set well back from the road, some adjacent to it. There

[1] The warehouse use by Romerils is evidently the subject of a temporary planning permission (reference 2021/1851) which is due to expire in May next year. The stated reason for the time-limiting condition was "to enable the department to assess the impact of and give further consideration to this use at the expiration of this permission" [also with reference to future circumstances and policies].

also appear to be three commercial premises (or possibly mixed commercial and residential) on the north side of this road on sites to the east of Willow Farm. Signs indicated occupation by a construction company (Scott Le Breton), a marquee hire company (Marquee Solutions) and a company named Flawless Flooring. Further eastwards, the land on both sides of La Chasse de L'Est consists of open fields which were in arable cultivation when I saw them. Apart from the dwellings and other buildings at Willow Farm and clustered around La Chasse de L'Est, the area has a mainly rural character.

14. Le Hucquet is a lane of mostly single vehicle width with passing bays, leading westwards from the north end of La Rue du Bel Au Vent and joining other roads to the east. There is a bank covered by grass and tree vegetation along the sides of this road. To the north of it are agricultural fields.

15. A property known as Handolls Manor, which is evidently a listed building, Grade 3, stands next to two (evidently unlisted) cottages in a plot south of the west end of La Chasse de L'Est and south of the red-edged area on Location Plan 001.

The Appellant, Development Description, and Application Plans

16. I refer below to three topics:

(i) The identity of the appellant, ownership and various related matters.

(ii) Descriptions of the development by both sides.

(iii) The application plans and the site.

Identity of the Appellant and Related Matters

17. The appeal in this case was lodged on the appellant's behalf by an agent,[2] and a written statement setting out the grounds of appeal was submitted with the appeal form. This statement was headed "Third Party Planning Appeal Under Article 108(2a) of the Planning and Building (Jersey) Law 2002 (As Amended)". In the first paragraph of this statement the appellant is named as Mr Le Marquand, and he is referred to as the owner of Field L11.

18. A Planning Statement dated December 2022 submitted by the agent on the appellant's behalf refers to Willow Farm Ltd as the owner of Field L11 (the location of the application site). In evidence during the hearing in response to one of my questions, Mr Le Marquand confirmed this statement to be correct – i.e. the agent's other statement about ownership was incorrect.

19. The statement submitted for the appellant in May 2023 refers somewhat ambiguously to the appellant – it states that the agent is "instructed by Mr Le Marquand of Willow Farm Limited (the applicant and appellant), the owner of Field No. L11". In a letter signed by him, Mr Le Marquand states: "I write as the appellant".

20. As noted in the heading to this report, the appellant – as specified in the appeal form - is Willow Farm Ltd. This appeal was not a "third party planning appeal" and was not by Mr Le Marquand. Nor did either Willow Farm Ltd or Mr Le Marquand have any right of appeal under Article 108(2)(a) of the Law, which refers to appeals against the grant of planning permission.[3] Nor is Mr Le

[2] The agent was KE Planning Ltd, but I understand that the name of this consultancy has recently changed.

[3] This particular error is acknowledged in a later written submission by the agent.

Marquand the owner of Field L11 - according to other evidence as mentioned above, the field is owned by Willow Farm Limited, and that was also the situation when the application was made and when the appeal was lodged.[4]

21. The planning authority's appeal statement does not refer to any of the above points.

Descriptions of the Development

22. Both sides in this case have used contrasting, inconsistent descriptions when referring to the disputed development. For example, despite the word "RETROSPECTIVE" in capital letters in the application, the planning authority's refusal notice refers to "proposed development". Other references include "proposed access track" in the planning authority's appeal statement, "proposed development" in the fourth paragraph of the grounds of appeal, and "Proposed Development" as the heading to Section 5 of the statement of case for the appellant company.

23. The basis of the appellant's case as set out in the statements and documents submitted before the hearing was that the disputed development (the formation of the vehicular access) was carried out as "permitted development" under the General Development Order[5] and that retrospective planning permission was now being sought. At the hearing when I asked the question: "Retrospective to when?" I could not get any clear answer from either of the two main parties. This query is linked to other issues discussed further below.

24. Another strange aspect of the appeal is that the appellant has contended that the application was not retrospective,[6] despite the wording of the application. The answer to my question about this confirmed that it was not a mistake or typing error – Mr Palmer of KE Planning as the appellant company's agent evidently worded the application in a way which he thought would satisfy the planning authority rather than the way which he believed to be correct.

Application Plans and the Site

25. The application plans are inconsistent. On the 1:2500 scale "Location Plan 001", the site is shown (edged red) with dimensions of about 196 metres north-south by 6 metres east-west. On the 1:1,000 scale plan titled "Proposed Access Track" (Site Plan 002), the site is shown (in grey and green colouring) with significantly different dimensions (about 180 metres north-south by 7 metres east-west). There are also differences in the location of the areas shown on the two plans just mentioned. On "Site Plan 002" there is a gap between the eastern edge of the site and the boundary of Field L11. The dimension of this gap on the plan varies between about 4 metres (in the south) and 2.5 to 3 metres (in the north). On "Location Plan 001" there is no such gap – the site boundary is shown as coinciding with the field boundary.

26. Another application drawing ("Proposed Access Track Cross-section 004") at a scale of 1:50 appears to show the access track with a width of 3.65 metres, and the adjacent mound or bund (to the west) also with a width of 3.65 metres. So if the bund was not intended to be included in the application, this drawing

[4] A change of ownership has evidently occurred fairly recently. A legal document (Planning Obligation Agreement) dated 1 October 2019 relating to application P/2018/1601 certifies Christopher Ian Le Marquand as the owner

[5] Planning and Building (General Development) (Jersey) Order 2011 as amended.

[6] Page 5 of the statement of case for the appellant.

indicates the site as having an east-west dimension of 3.65 metres. If the bund was intended to be included in the application, this drawing indicates the site as having an east-west dimension of 7.3 metres. Either way, this drawing appears to show the eastern edge of the site as located about 4 metres away from the field boundary.

27. In response to my questions the appellant's agent confirmed that the plan titled "Location Plan 001" was intended to be the application plan showing the site boundary. He also confirmed that the application was intended to include the earth bund immediately west of the track. As I pointed out at the hearing, the site boundary line on Location Plan 001 does not include the full width of the development including all of the track and the earth bund.

Basis of Application and Appeal

28. The basis of the appellant's case as set out in the documents submitted before the hearing, including the Planning Statement submitted with the application and later the appeal form, is that the disputed track was constructed to enable the building of "staff units" (evidently intended to mean dwellings for farming employees and their families)[7] following the grant of planning permission reference P/2018/1601. This permission was for: "Construct 8 No. two bed and 2 No. three bed agricultural staff units and associated landscaping works to north of site". The site referred to here is the northern part of the land east of the hedge which bounds the east side of Field L11.

29. According to the appellant's Planning Statement, the access track was constructed under Part 3, Class C of the Planning and Building (General Development) (Jersey) Order 2011 to enable the building work involved in permission P/2018/1601 to be carried out; and the application now subject to this appeal "is to permanently retain the construction access track beyond the period granted by Class C of the GDO".[8] A similar description appears in the statement of case under the heading "Proposed Development".

30. A basic point of planning law stemming from the definition of development in Article 5 of the Law is that the *retention* of something does not constitute development[9] - and no planning permission is needed for something which is not development. It might perhaps be possible to regard this aspect of the appeal as a mis-description capable of correction; but it is a symptom of the wider misunderstanding and confusion which has affected this case. In particular, there are two key matters of dispute about the legal basis of the application and appeal.

31. First, the appellant has contended that the application was made under Article 20 of the 2002 Law and sought permission for the retention of the track; but according to the planning authority's decision notice the application was made under Article 19. Second, although the appellant claims not to have considered the application to be retrospective – despite the word "RETROSPECTIVE" in capital letters in the application as mentioned above – the planning authority has

[7] The agricultural workers resident here do not necessarily work at Willow Farm; many apparently work elsewhere. The planning permission for 10 dwellings was subject to a legal undertaking about occupation.

[8] This quotation is from page 5 of the Planning Statement submitted for the appellant.

[9] In the interest of completeness, I add here that there is no doubt that the formation of the track constituted development as defined in Article 5 of the Law. It would have been either an engineering or other operation and evidently also involved a material change of use of the land from agriculture to a mixed use involving agriculture and warehousing or industry.

evidently considered the application to be retrospective. Leaving aside the obvious question as to why the appellant's professional adviser worded an application in a way which he believed to be incorrect, these contentions raise several issues which cannot be ignored. I explain them below.

32. Class C of Part 3 of Schedule 1 of the GDO, taken together with Article 2, permits (subject to limits and conditions):

> "The provision on land of a building, movable structure, work, vehicular access, plant or machinery required temporarily in connection with and for the duration of any works permitted by the Minister under any enactment being or to be carried on, in, under or over that land or adjoining land."

33. The permission is subject to conditions (labelled C3) as follows:

> "When the operations have been carried out –
>
> (a) any building, movable structure, work, plant or machinery permitted by Class C must be removed as soon as reasonably practicable; [10]
>
> (b) any land on which work permitted by Class C has been carried out must, as soon as reasonably practicable, be reinstated to its condition before that work was carried out."

34. Article 20 of the Law refers to applications for planning permission where development has been undertaken:

> (a) without planning permission; or
>
> (b) without complying with a condition subject to which planning permission was granted.

35. If the formation of the access track was permitted by the GDO, it obviously cannot be argued that sub-paragraph (a) of Article 20 applied. As for sub-paragraph (b), this refers to circumstances where there is non-compliance with a condition *at the time the development was undertaken* – that is to say, as soon as the first operation was carried out to implement a planning permission. If the GDO granted planning permission for the formation of the track, the only conditions which would have applied (Conditions C3(a) and C3(b)) would have related to a requirement for certain things (removal of the track and reinstatement of the land) to happen at some later stage ("as soon as reasonably practical") *after the development of the dwellings had been carried out*. So if the formation of the access was permitted by the GDO, no conditions were breached when this development was being carried out, and the conditions quoted above could not have been breached until some time later.

36. On the basis of the appellant's contention that the development was permitted by the GDO, what should have been applied for was not planning permission – which according to the appellant had previously been granted by the GDO – but the discharge of the conditions attached to the permission.

37. The planning authority also appear to have been confused, judging by the references in the grounds of refusal to "proposed development" when referring to development which had been carried out some years previously. The planning

[10] I note that the words "vehicular access" do not appear in this condition, but I judge that the term "work" covers the work of forming the disputed access in this case, bearing in mind that the expression "works permitted b the Minister" in this part of the GDO is clearly intended to cover wide-ranging matters such as the construction of houses and associated roads and other infrastructure. And even if sub-paragraph (a) of Condition C3 were considered not to apply, sub-paragraph (b) would apply.

authority evidently believed that Article 19 applied. This Article deals with the grant of planning permission, and it refers to "proposed development". This case does not involve a refusal under Article 19(5) to grant planning permission for proposed development.

38. The provisions for applications to be made for variation or discharge of conditions subject to which planning permission has been granted are in Article 21 of the 2002 Law. Article 21(4) provides that in response to an application under this Article, a condition may be removed or varied, or the application may be refused. Article 21A also makes it clear that an application under Article 21 is not an application for planning permission under Articles 19 or 20 (sub-paragraphs (a) and (b) of Article 21A), but is an application to remove or vary a condition (sub-paragraph (c) of Article 21A).

39. In summary, neither of the two main parties in this case appear to have realised that a permission granted by the GDO is a planning permission. But it is granted subject to both limitations and conditions. The planning authority appears to have accepted and processed an application for planning permission for a development which – according to the then applicant and later appellant – had previously been granted planning permission.

40. After hearing my comments on the above points at the hearing the planning authority's representative (Mr Gladwin) accepted that Article 19 did not apply to this proposal.

Limit of Permission under the General Development Order

41. I now turn to a further matter. So far, as well as mentioning above that retention does not amount to development, I have repeatedly used a qualifying phrase along the lines: "if the GDO granted permission"; and I have referred above to "limitations" as well as conditions in the GDO. The permission granted under Class C of Part 3 of Schedule 1 of the GDO for the provision of a vehicular access is not only subject to conditions – it is also subject to the limitation (at paragraph C.2(b)) that: "Work is not permitted by Class C if in a case where the work is for a vehicular access, the permission of the highway authority has not been obtained". The effect of this is that in the absence of such permission, planning permission is not granted by the GDO.

42. When I asked to see a copy of the highway authority's permission, as I had not been able to find it among the submitted documents, it became apparent that no such permission had been obtained. That was a serious admission, by both sides. It means that a key part of the appellant's case and much of the planning authority's response has no basis.

43. I am leaving aside here considerations as to whether the disputed access was genuinely "required" as specified in the GDO in connection with the recent building of dwellings in the northern part of Willow Farm. When this development was being carried out, the most direct route to the building site from the north would have been along the short length of access roadway from Le Hucquet, avoiding the existing dwellings and other parts of Willow Farm further to the south. For construction-related vehicles to have used the access subject to this appeal to reach the construction site from Le Hucquet would have meant taking a very indirect route westwards, southwards, eastwards and northwards (and the reverse when leaving), passing close to existing dwellings and other buildings instead of a short, direct route between Le Huquet and the construction site in the northern part of Willow Farm, avoiding existing dwellings and other buildings. In these circumstances the "requirement" specified in the GDO - apparently

accepted by the planning authority without question - looks extremely doubtful; but it is not necessary to decide this point since the appeal parties have accepted, albeit very belatedly, that the GDO is irrelevant for other reasons as explained below.

Other Matters - Use of the Access

44. I found it necessary during the hearing to explain some basic aspects of planning law, so I set them out briefly here.

45. Where development is proposed on an area of land set away from a highway and the use of the land would involve access to and from the highway, the application site has to be defined so as to include the access. Thus in a typical situation where a house with domestic garage and driveway would be sited on a plot next to a road, planning permission for such development would normally include the residential use of the whole site (the "planning unit") including the driveway. If, say, a house were to be proposed on an isolated plot set away from a nearby road, the site has to be defined so as to include an access way from the road, so that a planning permission for the development includes the residential use of the access way.

46. Where planning permission for such a site involves a mixed use a similar principle applies, although – depending on considerations of how the planning unit is defined – the use of the access may be for either mixed use or may be treated separately as use as an access. Either way, for a planning permission to be granted which is capable of being implemented without breaching planning control, it is necessary for the use of a private access link to the highway to be covered by a permission. Otherwise, the permission could not be implemented without causing a breach of planning control.

47. I explained these points to the hearing and drew attention to the fact that even assuming planning permission were to be granted for the formation of the disputed access and its use for the purposes sought by the application subject to the appeal (ie for access to the warehouses and other non-agricultural uses at Willow Farm as well as to agricultural land), any such permission could not be implemented without breaching planning control, because using the track in the way proposed would involve the mixed use of land between the end of the potentially permitted track and the highway, and the application site did not include this land. The change of use of that land (involving vehicles going to and from the commercial premises) would be material for planning purposes and no planning permission had been sought for this development. In effect the application only covered an inaccessible "island site" for the purposes of planning law.

Change of Basis of Case

48. Before the second adjournment I invited those representing the appellant company to consider withdrawing the appeal in the light of the various matters I had raised. When the hearing was resumed, the appellant's representatives asked that the proposal be changed in two respects. One was that it be treated as an application for permission retrospective from the initial formation of the access (on the basis that it was never permitted by the GDO, for the reasons I had pointed out). The other was that permission was now only sought for agricultural use of the access.

49. Bearing in mind that you as Minister make the decision on the appeal, I considered that I had no option but to continue with the hearing and subsequent site inspection; so the proceedings continued.

Assessment

50. I think it is necessary to be blunt here. This case has been poorly handled by both sides, from the application stage onwards. Basic points of planning law have been overlooked or ignored or not understood. The proposal as put forward should never have got as far as an appeal.

51. The whole basis of the appeal – in essence that the access way was permitted by the GDO and now permission is sought to "retain" it – is no longer contended. If that were the only problem, it might just have been possible to treat it as a procedural matter capable of being sorted out. But there are other issues.

52. As things now stand, the proposal is not what was described on the appellant's behalf in the appeal documents. The pattern of traffic movement in the area around the site will differ significantly depending on how and for what purposes the access might be used; so the planning merits or demerits of the development as proposed after the hearing adjournments would be significantly different from the scheme described throughout the earlier appeal process. The appellant company has resiled from key parts of its case, referring for example to "multi-use" and "delivery vehicles", and much of the planning authority's response no longer applies.

53. Interested parties – particularly the local residents who submitted written representations referred to in support of the appellant's case – were not present at the hearing and would not know that what the appellant company attempted to propose during the hearing would not achieve what many residents wrote to support.[11] That is one of the factors which make the changed scheme materially unlike the original proposal and refusal. Moreover, conditions purporting to change a development proposal so as to grant planning permission for something different from what was the subject of an application, a decision and an appeal cannot validly be imposed.

54. The proposal would also seek to obtain planning permission for development outside the application site. Bearing in mind the confirmation on the appellant's behalf at the hearing that Location Plan 001 is intended to be the application plan, it is notable that the application does not even cover the full width of the disputed access way, let alone the adjacent bund which is an integral part of the development. No attempt was made to submit a different application plan, which was probably just as well because by appeal hearing stage any such attempt would be unacceptably late.

55. Another wider concern is the fact that the change of approach sought by the appellant company could affect what happens when the temporary planning permission under which Romerils use the main large building at Willow Farm is due to end in May 2024. The Romeril company's use appears to be a significant generator of goods vehicle traffic along rural roads which are narrow and close to dwellings. Whether such traffic and its future impact will continue will depend on a decision to be made next year.

56. Quite apart from all the above issues, in my view it is doubtful whether a condition attempting to restrict the use of the access to use for agricultural purposes would be enforceable in practice. Given the location of the site, monitoring by the planning authority would be impractical, even if a condition could be suitably worded so as to define "agricultural use"; and it is easy to see how there would be no incentive for local people, including farm workers

[11] Many of the expressions of support were evidently spurred by action on the appellant's behalf before the hearing, and before the change of proposal.

occupying dwellings at Willow Farm, to report breaches. The likely result would be artificial – a "control" which would be more theoretical than real.

57. Taking all the above points into account, I consider the appeal should be dismissed. The effect would be to uphold the original refusal of planning permission. Alternatively, in the particular circumstances of this case you may wish to consider using your powers under Article 116(2)(d) of the Law ("to reverse or vary any part of the decision-maker's decision") so as to quash the planning authority's decision and return the application to the applicant's agent with a statement that the application and related plans are so flawed as to be invalid and not capable of being properly decided.

58. Since it seems probable that either a fresh application will be made or an enforcement notice will be issued directed at the unauthorised formation of the access way, it would not be appropriate for me to comment on whether planning permission should be granted for the changed proposal, for two reasons: first, the new proposal is not what was the subject of the appeal; second, any such comment would be likely to prejudice consideration of a future application or appeal.

Recommendation

59. I recommend that the appeal be dismissed and that the refusal of planning permission be confirmed.

G F Self

Inspector

21 July 2023

Appendix 1: Summary of Cases

This appendix provides summaries of the original cases as set out in submitted documents, followed by a note of the cases as put in the closing submissions at the hearing.

Case for Appellant

1. The appellant company's case is set out mainly in two documents - the initial grounds of appeal, where there are four grounds, and a statement of case dated May 2023. Further submissions are contained in written comments (dated 7 June 2023) made in response to the planning authority's statement.

2. The four grounds of appeal relate to: protection of agricultural land; protection of landscape character; benefit to the Island economy; and improvement to the amenity of nearby residents. The statement of case has about 24 pages including three appendices, one of which is a letter from Mr Le Marquand with attached photographs. The main topics in the statement are as in the sub-headings below.

Proposed Development

3. The access track was constructed under permitted development and the proposal is to retain the track. It enabled construction vehicles to avoid the homes on La Chasse a l'Est and bypass the agricultural worker's homes. The track was also used by agricultural vehicles and vehicles delivering to and collecting from the warehouses.

4. It is imperative that farm vehicles have access to and across Field L11. Such vehicles have increased in size and operate throughout a long day, which can be from 4am to beyond 9pm. The track has provided much benefit to the agricultural enterprise and living conditions of local residents.

Policy Context

5. The Jersey government has set seven strategic priorities in the Government Plan 2020-25 and the Common Strategic Policy 2023-26 (covering topics including housing and cost of living, economy and skills, children and families, ageing population, health and wellbeing, environment, and community), and also a "Pledge to Put Children First" in 2018. The proposal supports these priorities.

6. The supporting text of the Island Plan refers to the need for a balanced judgment to be made as to whether the benefits of a proposal outweigh any policy consideration in the Plan. For policy purposes the site is in the Green Zone and within a water pollution safeguard area, with no flood risk designation. Handois Manor to the south of the site is Grade 3 listed.

7. The track supports the agricultural business of Willow Farm in accordance with policies in the Rural Economy Strategy. Removing the track would harm this business and conflict with policies SP6 and PL5. The track benefits the rural business, has minimal impact on agricultural land or on the area's character, reduces traffic through nearby residential areas and improves road safety.

Precedents

8. The application subject to the appeal has many similarities to permissions P/2021/0867 (Home Farm, St John) and P/2022/0430 (Field L507, St Lawrence),

details of which are at pages 14-16 and Appendices 2 and 3 of the Statement of Case for the appellant. The benefits referred to for those schemes apply to this scheme.

Protection of Agricultural Land

9. Policy ERE 1 of the Island Plan seeks to protect agricultural land. The purpose of the track is to provide access to agricultural fields; the use of the land remains agricultural. The track is about 3.3% of the width and area of field L11 and the change of use of this area cannot be considered material. The track is on the eastern field boundary adjacent to a hedge and the size and location of the track does not cause the loss of high-quality agricultural land. The track also enhances the integrity and viability of the farm holding. The development is necessary and appropriate, and is in accordance with policy ERE 1.

Protection of Landscape Character

10. Policy NE3 requires development to either protect or improve landscape character, subject to exceptions. The track is screened from public view, is necessary, in an appropriate position, provides public benefit to nearby residents, presents no material harm to landscape character and so accords with policy NE3 of the Island Plan.

Benefit to the Rural and Island Economy

11. The track is multi-use; it improves access to nearby agricultural fields and to nearby warehouses. It benefits the local economy so is supported by Island Plan policies SP6 (on sustainable Island economy) and PL5 (on countryside, coast and marine environment).

Improvement to Amenity of Nearby Residents

12. The development helps to improve the amenity of nearby residents, reduce traffic on residential roads, improve road safety and have a positive impact on the community. The proposal is therefore supported by Island Plan policies SP3 (placemaking), SP7 (planning for community needs), GD1 (managing the health and well-being of new development) and TT1 (integrated safe and inclusive travel).

Summary

13. The Chief Officer acted unreasonably in refusing planning permission for the application, especially considering the recent approval of a similar scheme (reference P/2021/0867). The track has not caused a material loss of agricultural land and provides economic and agricultural benefits and benefits local residents. The track is well screened from view. The proposal is supported by strategic and Island Plan policies. Planning permission should be granted.

Case for Planning Authority

14. The planning authority's case is set out in a response statement, with appendices including an officer's report on the application and a land conditions document dated 3 December 2020. The main points in response to the four grounds of appeal in the initial appeal statement are as follows.

15. Field L11 is an agricultural field, part of Willow Farm. The statement by the appellant's agent confirms that several warehouses used for agricultural and general storage are at the centre of the Willow Farm fields, and that the farm operators try to route heavy vehicles via Le Hucquet to reduce disturbance and that this route causes more heavy vehicles to travel through the 26 homes

occupied by agricultural workers. This shows that the access track is predominantly to provide access to the warehouse buildings as well as to the fields. The track is not a genuine necessity and is a departure from the land conditions attached to the field restricting its use to agriculture.

16. The access track will result in the loss of high quality agricultural land. Under policy ERE1 the development or loss of agricultural land will not be supported unless in exceptional circumstances and where (among other things) the proposal will not lead to a loss of high-quality agricultural land, and the proposed use genuinely necessitates and is appropriate to its location.

17. The warehouses at Willow Farm already benefit from two other access roads, from Le Hucquet and from La Chasse de L'Est. The northern route runs close to staff accommodation but has a wide entrance and passing points; the access from the east is of good standard and typical of the Jersey countryside. Alternative accesses exist; the development does not accord with policy ERE1 as it is not a genuine necessity.

18. The planning authority disagrees with the claim that the development causes no material harm to landscape character. Policy NE3 states that development must protect or improve landscape and seascape character as identified in the Integrated Landscape and Seascape Assessment (ILSCA). The site is within the "Interior Agricultural Plateau" area as defined in the ILSCA, which states that particular care needs to be taken if development is taking place along roads and at settlement gateways to ensure that rural character is maintained and a sprawling suburban feel is avoided.

19. The access track development is not sensitive to the area's rural character or Green Zone location, would not protect or improve its landscape character, and is contrary to policies NE3, SP3(1), SP4(2), SP5 and GD6 (1) and (2).

20. The adjacent hedge and grass bank do not fully mitigate the loss of part of an agricultural field. Any benefits in terms of access to fields and warehouses or the Island's economy do not outweigh the landscape and visual harm caused by the new access.

21. The claimed benefits to the amenity of nearby residents or road safety need to be balanced against the harm to landscape character, considering the existence of an acceptable standard of the road access to the east.

22. In conclusion the decision to refuse planning permission was reasonable and the appeal should be dismissed.

Representations by Other Parties

23. According to the published information relating to this case, no third party comments were submitted on the application subject to this appeal. However, about 13 "public comments" were lodged at appeal stage between 23 May and 6 June 2023.[12]

Revised Summaries after Changes to Cases

24. The brief summaries here are based on the closing submissions for the planning authority and for the appellant at the hearing. No third parties were present or represented.

[12] The number of these depends on whether submissions made jointly by more than one named person or body are counted as one or more.

For the Planning Authority:

25. The development is not appropriate for this location. Alternative accesses are available. The development is contrary to policies, in particular policies ERE1 and NE3. The appeal should be dismissed.

For the Appellant Company

26. The track is important for the rural economy. Its benefits were not given due weight. Similar developments elsewhere have been permitted. Relevant policies are complied with. The landscape is protected and there are no public views. The planning department has ignored the support of the local community. Farm vehicles need to access fields during long daytime hours. The appeal should be allowed.

Appendix 2: Copy of Note Handed out at Hearing

(Parts of this Note refer to matters covered in paragraphs 25-40 of my report).

Note for Hearing. Case ref 0026.

1. The basis of the appellant's case as set out in the submitted documents is that the disputed track was constructed to enable the building of "staff units" following the grant of planning permission reference P/2018/1601. According to the appellant's Planning Statement, the access track was constructed under Part 3, Class C of the Planning and Building (General Development) (Jersey) Order 2011 to enable the building work involved in permission P/2018/1601 to be carried out; and the application now subject to this appeal "is to permanently retain the construction access track beyond the period granted by Class C of the GDO". A similar description appears in the statement of case under the heading "Proposed Development".

2. The following are some of the matters arising.

3. The numerous references in statements by both the appellant and the planning authority to "the proposed development" are all incorrect if the development has already been carried out.

4. The appellant has contended that the application was made under Article 20 of the 2002 Law and sought planning permission for the retention of the access; but the planning authority (in the decision notice) say that the application was made under Article 19.

5. According to the appellant's statement of case the appellant did not consider the application to be retrospective – despite stating "RETROSPECTIVE" in capital letters in the application. The planning authority has evidently considered the application to be retrospective.

6. A basic point of planning law (from the definition of development in Article 5) is that the *retention* of something does not constitute development - and no planning permission is needed for something which is not development.

7. Class C of Part 3 of Schedule 1 of the GDO, taken together with Article 2, permits (subject to limits and conditions):

> "The provision on land of a building, movable structure, work, vehicular access, plant or machinery required temporarily in connection with and for the duration of any works permitted by the Minister under any enactment being or to be carried on, in, under or over that land or adjoining land."

8. The dispute in this case evidently relates to the reference in this part of the GDO to the provision of a vehicular access. The permission granted by the GDO is subject to conditions (labelled C3) as follows:

> "When the operations have been carried out –
>
> (a) any building, movable structure, work, plant or machinery permitted by Class C must be removed as soon as reasonably practicable;
>
> (b) any land on which work permitted by Class C has been carried out must, as soon as reasonably practicable, be reinstated to its condition before that work was carried out."

9. Article 20 of the Law refers to applications for planning permission where development has been undertaken:

   (a) without planning permission; or

   (b) without complying with a condition subject to which planning permission was granted.

10. If the formation of the access track was permitted by the GDO, it obviously cannot be argued that sub-paragraph (a) of Article 20 applied. Sub-paragraph (b) refers to circumstances where there is non-compliance with a condition *when the development was carried out* (hence the phrase "where development has been undertaken"). But if the GDO granted planning permission for the formation of the access track, the only conditions which would have applied (Conditions C3(a) and C3(b)) would have related to a requirement for certain things (removal of the track and reinstatement of the land) to happen at some later stage ("as soon as reasonably practical") after the development of the dwellings. So if the formation of the access was permitted by the GDO, no conditions were breached when this development was carried out, and Conditions C3(a) and C3(b) quoted above could not have been breached until some time later.

11. As regards the planning authority's belief that Article 19 applies, this Article deals with the grant of planning permission and it refers to "proposed development". This case does not involve a refusal under Article 19(5) to grant planning permission for proposed development.

12. In summary, an application was made, and apparently accepted and processed by the planning authority, for planning permission for a development which - according to the then applicant and later appellant – had previously been granted planning permission. On the basis of the appellant's contention that the development was permitted by the GDO, what should have been applied for was not planning permission, but the discharge of the conditions attached to the permission.

13. The provisions for applications to be made for variation or discharge of conditions subject to which planning permission has been granted are in Article 21 of the 2002 Law. Article 21(4) provides that in response to an application under this the Article, a condition may be removed or varied, or the application may be refused. Article 21A referring to time limits for decision also makes it clear (in sub-paragraphs (1) (a), (b) and (c)) that an application to remove or vary a condition under Article 21 is not an application for planning permission under Articles 19 or 20.

14. All of the above is subject to whether the formation of the access was permitted by the GDO (hence the repeated reservations above, eg: "If the formation of the access track was permitted by the GDO").

Graham Self
Inspector
July 2023