

# **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**

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Appellant: Mr Stephen B Falle (third party appellant)

Site address: Cleveland, La Rue de Samares, St. Clement, JE2 6LZ

Application reference number: P/2022/0722

Proposal: 'Construct single storey extension to West elevation. Demolish existing joinery workshops and ancillary structures. Construct two 3no. bedroom dwellings to East of site'.

Decision notice date: 17 April 2023

Procedure: Hearing held on 2 August 2023

Inspector's site visit: 1 August 2023

Inspector's report date: 31 August 2023

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#### **Introduction**

1. This report contains my assessment of the third party appeal made by Mr Stephen B Falle (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (I&E) to grant planning permission for a development comprising 2 dwelling houses, and an extension to an outbuilding to create a cottage, on a site adjacent to *Cleveland* in the Parish of St Clement.

#### **The appeal site, the appeal proposal and the application determination**

##### *The appeal site*

2. The appeal site is an irregular shaped area of land on the east side of La Rue de Samares. The main part of the site lies to the rear of *Cleveland*, a grade 4 Listed building, which is sited with its gable wall at the edge of the road. *Cleveland* is within the applicant's ownership, but is not within the redlined application site. There is a narrow drive on the north side of the house which heads eastwards, under a roofed structure, to the main part of the site, which contains a single storey outbuilding (the cottage) and a detached commercial joinery workshop. On the north side of this drive there is a residential property, *L'Enclos*, and beyond that a ribbon of residential development heading northwards.

3. From the main part of the site, the redlined area extends southward to include a private road, known as La Cote Verte, which then turns west<sup>1</sup> to a stretch known as Runnymede, where it has a junction with La Rue de Samares. There are 11 dwellings grouped around the private road (La Cote Verte/Runnymede) which provides vehicular access to on-plot garaging and parking spaces. The private road is brick paved and there are narrow footways on the Runnymede section, but there are no footways after its right angle turn northwards, where it becomes La Cote Verte. The private road is owned by the applicant and I understand there are rights of access over it granted to householders within the cul-de-sac.
4. Most of the site falls within the designated Built-Up Area (BUA) as defined by the Bridging Island Plan (2022) (BIP) proposals map. A very small part, in the north east of the site, falls within the Green Zone, although it appears to be accepted that it forms part of the curtilage of the commercial joinery workshop operation. Beyond the site boundary, but within the applicant's ownership, there is a large marquee type structure sited within a small paddock, which was being used for storage associated with the joinery business when I visited. I understand that this structure and its use is unauthorised and the subject of enforcement proceedings.

#### *The appeal proposal*

5. The appeal relates to the proposal made under application P/2022/0722 which seeks to redevelop the site for residential purposes. The scheme would entail removing the existing joinery workshop and developing a pair of 3-bedroom semi-detached houses with gardens in that part of the site, along with a freestanding garage block. It would also include an extension to the cottage outbuilding to create a 2-bedroom home, and this extension would be built over part of the existing narrow drive. The semi-detached houses and extended cottage would be served by a courtyard which would be accessed from the private road La Cote Verte. The courtyard would also provide access to *Cleveland's* garaging and parking.

#### *Application determination*

6. The application was determined by the Planning Committee at its 13 April 2023 meeting. The committee considered a significant body of local representations, comprising 17 submissions from 16 local residents. Whilst these covered a wide range of matters, the primary issue appeared to be concerns about, and objections to, extending the private road to serve 4 additional properties (the 2 semis, the extended cottage and *Cleveland*) with particular regard to highway safety and amenity considerations.
7. I&E planning officers assessed the proposal to be acceptable under the provisions of the BIP policies and the case officer's report to the committee concluded that:

*The application site is previously developed and largely within the built-up area boundary, where strategic policies direct new residential development. Policy SP1 specifically refers to using such sites for new development, and*

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<sup>1</sup> Part of this length was known as Runnymede

*SP2 also directs development to such locations. Marketing information submitted indicates no realistic ongoing business use of the building.*

*The site is within a predominantly residential area, where the removal of the existing business can have a positive effect on general amenity.*

*The layout of the site and the design of the buildings is considered acceptable, as is the parking provision. The scale, positioning and design of the buildings has been assessed and is acceptable.*

*Highway and access considerations have been an important part of the assessment of this proposal, having generated significant comment from local residents. From a planning perspective, putting civil matters aside as they cannot be material considerations when determining this application, the proposal is acceptable and will result in a better method of accessing the site than is currently available.*

*The setting of the heritage asset has been considered and it is assessed as being suitably protected in accordance with policy HE1.*

*It is considered that, given the layout and relationship with its surroundings, removal of permitted development rights is appropriate in this instance.*

8. The officer recommendation to grant permission, subject to conditions, was endorsed by the Planning Committee and the decision notice was issued on 17 April 2023.
9. Mr Falle's appeal is made against this decision.
10. For clarity, under the Law<sup>2</sup> the decision to grant permission remains in effect, but the development cannot be implemented until this appeal has been decided.

### **Summary of the appellant's grounds of appeal**

11. At the Hearing, Mr Falle explained that whilst he was the sole appellant, he represented all of the residents that had concerns about the proposal. Mr Falle also helpfully explained that he has no objection to the principle of the development, but the main issue is the extension of the private road and the additional traffic that will use it.
12. The appellant has cited 4 grounds in his appeal form and expanded on these in his Statement of Case. Each of the grounds relates to a specific BIP policy. In summary, the grounds of appeal are:

#### Ground 1 – Policy GD1 – Managing the health and wellbeing impact of new development

Failure to consider the interests of residents with regard to policy GD1, with particular regard to additional traffic and highway safety concerns.

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<sup>2</sup> Article 117(1) and (2) – Planning and Building (Jersey) Law 2002 (As Amended)

### Ground 2 – Policy GD6 – Design quality

Failure to consider the interests of residents with regard to policy GD6, with particular regard to where design relates to safe access and day-to-day use. The appellant contends that the cul-de-sac was not designed for additional housing and traffic.

### Ground 3 – Policy TT1 – Integrated safe and inclusive travel

Failure to consider the interests of residents with regard to policy TT1, concerning highways safety and inclusive travel.

### Ground 4 – Policy CI8 – Space for children and play

Failure to consider interests of residents in regard to policy CI8, regarding children's play space, as the cul-de-sac is used for play and socialising, and the development will introduce an unnecessary safety risk by significantly increasing traffic.

### **The planning authority's response**

13. The I&E planning authority's case is set out in its 2 response documents. These explain how the application was assessed and rebuts each of the appellant's grounds of appeal. It contends that the proposal, and its proposed access arrangements, comply with all relevant BIP policies, notably GD1, GD6, TT1 and CI8. The planning authority maintains that the decision to grant planning permission was soundly based and that the appeal should be dismissed.
14. At the Hearing, Mr Gladwin presented the I&E planning authority case.

### **The applicant's response**

15. The applicant's agent submitted a Statement of Case and a further comments document. In these submissions he explained that the applicant owns the private road and the owners of properties in La Cote Verte have rights of access along the road, but this does not extend to include parking or obstructing the road.
16. He further stated that the applicant's right to use his own road is not limited and that, should he wish, he could use it to access the joinery workshop. He also pointed out that the use of the private road to serve the development is much safer than the *Cleveland* drive, and that the development will include a courtyard which will allow refuse vehicles to turn.
17. At the Hearing, the applicant, Mr Le Viellez, his wife Mrs Le Viellez and their agent, Mr Wildbore-Hands, presented their case.

### **Interested parties**

18. I have noted the appeal submissions made by interested parties, Mr Chessun, Mr Cheesley and Ms Cheswick. I have also read and taken into account the other representations submitted at the application stage.

## **Inspector's assessment**

19. I have made my assessment under the four grounds of appeal set out by the appellant. It did become clear in the Hearing that there was a degree of overlap between the four grounds.

### *Ground 1 – Policy GD1 – Managing the health and wellbeing impact of new development*

20. Policy GD1 requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It cites some particular matters that developments must avoid, the most relevant in this case being set out in its section 1.d. which relates to 'adversely affecting the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions.'
21. The key test is not whether the development would result in harm *per se*, but whether any identified harm would cross the threshold of being unreasonable. What is 'unreasonable' is not defined in the BIP or guidance, and is a matter of judgment for the decision maker. However, case law has established that the judgement is context specific, reflecting different expectations in differing parts of the Island.
22. In this case, the existing context includes a commercial joinery workshop with its associated machinery, noise and comings and goings of commercial and other vehicles. This sits alongside La Cote Verte, which serves 11 properties in a cul-de-sac format, which has a pleasant and intimate character. La Cote Verte, the houses it serves and most of the appeal site all fall within the BUA and form part of a deep ribbon of suburban development on this east side of La Rue de Samares.
23. There is no disputing that the appeal proposal will increase traffic movements and general activity along the road. Whilst it will remain a cul-de-sac, it would be extended and it would serve an additional 4 properties, bringing the total number of dwellings to 15. This would represent a change and, whilst I can appreciate that the appellant and other residents would regard this as unwelcome and harmful, it is a relatively modest increase and the total number of dwellings (15) served would not be disproportionate or excessive for the specification of the road. Indeed, it is not unusual in Jersey for similar numbers of properties to be served by roads of this size and nature.
24. I have noted the appellant's references to use of the road for play and recreational purposes, but that is not the road's primary purpose. Whilst such use may have occurred over time, and be valued by residents, I do not consider that policy GD1 offers specific protection to these activities within road space. In any event, there is no evidence before me to suggest that certain activities, such as teaching a child to ride a bike, would be necessarily precluded by the modest increase in householders using the

road. I have also taken into account the applicant's submissions that he owns the road, that he could use it to service his joinery business, and that the rights granted to residents are for access purposes only.

25. The proposal would also provide a wider amenity benefit in terms of removing an unneighbourly use from this predominantly residential area, with likely consequent reductions in noise and commercial vehicle movements. At the Hearing, the applicant explained that there were 6 employees, 3 deliveries daily and often 3 client visits per day, along with other comings and goings, all associated with the joinery business. Whilst I appreciate that this commercial traffic does not currently use La Cote Verte, I must consider all aspects of amenity in my GD1 assessment and not just those that concern the appellant and his neighbours. There is clearly some amenity benefit in removing this commercial traffic from the locality.
26. The 'health and wellbeing' element of GD1 does link to issues of road safety. I have considered carefully the issue of highway safety and visibility, and the appellant's wish that the development gained access from the drive adjacent to *Cleveland*, leaving La Cote Verte unchanged. In my assessment, the *Cleveland* driveway is a poor option for access and not suitable to serve the development. The presence of *Cleveland* at the road edge means that visibility to the south when exiting is effectively blind. The access would also be less than ideal in safety terms for pedestrians and cyclists. The Runnymede access to La Rue de Samares is much better in terms of width and visibility, despite its southern visibility being compromised by a boundary fence on the corner property, which I am advised has planning permission. I have noted that there is no evidence of serious road accidents in the vicinity and that the speed limit on La Rue de Samares has recently been reduced to 20mph.
27. Overall, I assess that the proposal would not result in unreasonable levels of harm to the amenities enjoyed by neighbours and I find no conflict with policy GD1.

#### *Ground 2 – Policy GD6 – Design quality*

28. Policy GD6 requires developments to be of a high quality design. It sets out a list of 8 design principles and those most relevant are principles 4 and 7. Principle 4 relates to a development's '*...integration into the existing area with safe links to local spaces and places; achievement of the highest standards of accessible and inclusive design, having regard to the needs of those with disabilities; and the need to make provision for safe access, movement and parking, where relevant, by all modes, giving priority to active travel and promoting the use of low emission vehicles*'. Principle 7 relates to '*the operation of the development in practice and how people will access and use it on a day-to-day basis, both now and in future, having regard to its servicing and maintenance.*'
29. I have noted the appellant's view that the cul-de-sac was not designed for additional housing and traffic, but there is no convincing evidence before me to suggest that it is not suitable to serve the additional properties. The appellant has alleged a failure to meet the requirements of Government's

'Access onto the Highway Guidance', but that is guidance only and the planning authority submits that it does not apply anyway, as the cul-de-sac links to a parish road rather than a public road.

30. In terms of GD6 considerations, the private road already exists and its design will not change and, in my view, the scheme integrates well with the existing area and enables safe access by a variety of modes of travel, including walking and the bus service which runs along the coast road nearby. The scheme includes appropriate car parking, cycle parking and electric charging points. It will also provide a courtyard capable of allowing large vehicles, such as a refuse lorry, to turn; this provides an operational improvement.
31. I have noted the appellant's references to a claimed poor road quality, which he says is unsuitable for heavy traffic. However, the road has been in place for some years and subject to daily traffic of residents' vehicles, along with delivery and refuse vehicle traffic and appeared to be in relatively good condition, with no notable potholes or failings. In any event, the road condition and its maintenance are essentially private property matters rather than planning considerations. There may of course be some damage during construction, but planning condition No 1 requires the approval of and adherence to a construction management plan, and this is the mechanism to control such matters.
32. Overall, I find no conflict between the proposal and policy GD6.

*Ground 3 – Policy TT1 – Integrated safe and inclusive travel*

33. Policy TT1 states that the contribution to safe and integrated travel will be a consideration in all development proposals. It then lists a range of considerations to be taken into account. These considerations do overlap with GD6, which is considered above under ground 2. Accordingly, I similarly find that the scheme would achieve the integrated safe and inclusive travel requirements set out in TT1 and I find no conflict with this policy.

*Ground 4 – Policy CI8 – Space for children and play*

34. The appellant's fourth ground links to the amenity considerations explored under ground 1, concerning the claimed recreational use of the private road. However, policy CI8 that the appellant relies on is not engaged in this case. This is because its requirements for 'space for children and play' only applies to major developments, which are defined as 5 or more new homes. This ground therefore fails.

**Planning conditions**

35. I have reviewed the imposed planning conditions and consider that with one exception they are all reasonable, necessary and related to the development proposed. The exception is condition No 11 which amounts to the removal of significant classes of 'permitted development' rights, the reason given being that the site is 'on the edge of the built-up area'. The removal of 'permitted development' rights by condition requires a clear and convincing

justification. This is because legislators have decided that such developments do not need to fall under the rigours and scrutiny of formal planning control. There are many dwellings that are located on the edge of the BUA, and I do not consider that such a location alone justifies removing 'permitted development' rights. I recommend that condition No 11 be deleted.

### **Conclusions and recommendation**

36. For the reasons stated above, I recommend that the Minister dismisses this appeal and confirms the grant of planning permission under reference P/2022/0722, but that condition No 11 be deleted.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**