

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

Appellant: Mrs Joy Morgan (Third Party Appellant)

Site address: La Botellerie Cottage, La Rue de la Mare des Cauchez, St. Ouen, JE3 2HP

Application reference number: P/2023/0087

Proposal: 'Demolish existing and construct new patio wall to restore the original exterior patio size.'

Decision notice date: 21 April 2023

Procedure: Hearing held on 1 August 2023

Inspector's site visit: 1 August 2023

Inspector's report date: 31 August 2023

Introduction

1. This report contains my assessment of the third party appeal made by Mrs Joy Morgan (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 at a dwelling known as *La Botellerie Cottage*, in the parish of St. Ouen.

Background

The appeal site

2. *La Botellerie Cottage*, is a dwellinghouse situated on the north side of La Rue de la Mare des Cauchez¹, a short distance to the east of its junction with Verte Rue. The cottage forms the eastern part of a grade 4 Listed farmhouse building complex.
3. The cottage sits on a compact plot, which includes a gravelled driveway and a modest sized patio/laundry drying area to the east of the cottage. This area is hard surfaced and enclosed on its north and east sides by a granite wall which forms the boundary with the neighbouring property. The patio part is also largely enclosed on its south and west sides by walls constructed

¹ On Google maps, the property appears to be on La Rue de Élysée, but I am advised that this road commences further to the east of the appeal property.

in stone effect blockwork, although the southern part of the original patio (closest to the road) sits outside of these walls.

4. To the rear of the cottage, there is a very small enclosed courtyard garden, and beyond that are further gravelled courtyard areas to the rear of the cottage, used for parking and access, and a bin store area.
5. The appellant has a legal right of way along the drive and across the courtyard area, to allow access to a garage behind the farmhouse, and to her agricultural land beyond. Her field O539, is cultivated, along with field O537 (owned by another party), by a tenant farmer. The north-east of the cottage plot includes an opening into the appellant's agricultural field and, near to this opening, there is an area of rough hard surfacing which was being used to park a horsebox vehicle when I visited the site. The appellant has been in a legal dispute with the applicants over the right of way.
6. To the west of the cottage is the attached (Listed) *La Botellerie Farmhouse*. To the east is a bungalow known as *White Haven*. I understand that the appellant owns both of these properties. The appeal site, and the appellant's properties and farmland, all lie within the designated Green Zone, as defined by the Bridging Island Plan (2022) (BIP) proposals map.

Planning history

7. In 2016, the planning authority granted planning permission² for a proposal described as: '*Demolish garage to North elevation. Convert barn to habitable space. Various window alterations to North and East elevations. Demolish bank and construct retaining wall to North-East and remove low level wall to South East of site.*' The approved site plan shows the low wall around the hard-surfaced area being removed and a car parking space being created (in the patio area).
8. Most of the development under this 2016 permission appears to have been implemented. However, I understand that the original low wall around the patio was removed, when the patio was being used temporarily to house a site hut whilst the 2016 permission works were being implemented. A perimeter wall was later rebuilt to enclose a more limited patio area; at the Hearing it was agreed that this happened around 2019.
9. There was a 2021 planning compliance complaint lodged with I&E concerning the rebuilt patio wall and a retaining wall running alongside the eastern site boundary from the rear of the patio area up to the field O539 opening. A retrospective application³ for the retaining wall element was submitted and approved on 13 December 2021.

The appeal proposal

10. The appeal relates to application submission P/2023/0087. The works proposed are minor in nature and entail the demolition of the blockwork walls (built in 2019) around the patio, and the construction of new walls to

² P/2016/1011

³ P/2021/1418

enclose the wider hard surfaced area, i.e., enclosing the small hard surfaced area just to the south of the existing walls. The new walls would be 960mm high and finished in painted render to match the cottage walls.

Application determination

11. At the application stage, the appellant submitted representations setting out objections based on access and highway safety concerns, and matters relating to the planning history of the site. A representation from a Mr Lee was also submitted, who I understand farms the appellant's field; he expressed concerns about the proposal restricting his vehicle turning/manoeuvring space, and that extending the patio would make it 'impossible' to use the access, which would limit the use of a good agricultural field.
12. The I&E planning officers assessed the proposal to be acceptable under the provisions of the BIP policies and granted planning permission under their delegated powers on 21 April 2023. Mrs Morgan's appeal is made against this decision. For clarity, under the Law⁴ 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

13. The appellant has cited 5 grounds in her initial submission and expanded on these in her Statement of Case. In summary, the 5 grounds are:

Ground 1 – Insufficient consideration has been given to the appellant's legal right of way over the driveway so that the tenant farmer can access the field.

Ground 2 – No consideration has been given to visibility splays on exiting the drive, and that the Department for Infrastructure and the Parish were seemingly not consulted. This results in safety issues and makes access more difficult for modern farm machinery, and calls into question the viability of the field for agricultural production.

Ground 3 – The planning case officer gave insufficient account to the fact that the patio was built without planning permission.

Ground 4 – The patio and walls do not fit in with the agricultural land surroundings and the Listed building. A full historic impact statement should have been submitted. The Historic Environment Officer's comments do not provide a full and proper response.

Ground 5 – The Agricultural Department was not consulted and this was essential with regard to legitimate concerns about access to the agricultural field.

14. At the Hearing the appellant and her agent, Mr Osmond, presented their case. The applicants, Mr and Mrs Heaven, and I&E, represented by Messrs Gladwin and Gibbons, have provided rebuttals to the appellant's grounds

⁴ Article 117(1) and (2) – Planning and Building (Jersey) Law 2002 (As Amended)

and attended the Hearing. I include appropriate references to these submissions in my assessment below.

Inspector's assessment

Ground 1 – The right of way

15. The appellant's primary purpose in pursuing this appeal appears to be her wish to protect the right of way across the applicant's property to her agricultural land. It is important that I make clear that my remit, in terms of assessing this appeal, is limited to planning considerations. It does not extend to arbitrating private property matters. That does not mean that the right of way is not capable of being a material consideration in this appeal. However, it does mean that it is material only insofar as it relates to planning matters and the application of associated BIP planning policies.
16. The Royal Court has already considered and passed judgment on the appellant's claim that the applicants' patio and wall constituted an unlawful encroachment over the right of way. That claim was rejected by the Royal Court in its judgment issued in March 2022⁵. I have read the judgment and noted its content; it confirms that the right of way exists; that it relates to vehicular movements to the garage and for farm vehicles to the field; that certain vehicle sizes/configuration movements may not be easily possible, but other movements can be made to enable access; and that there is nothing to prevent the applicants parking in the courtyard area, provided that it does not prevent the right of access.
17. The existence of the right of way was a matter that the planning authority was aware of at the application stage. It reached the view that the issues raised were private property/civil matters, which had no direct bearing on the planning merits of the appeal proposal, which it assessed to be acceptable with regard to the policies it identified as being most relevant. These were policies GD1 concerning 'managing the health and wellbeing impact of new development'; GD6 relating to 'design quality'; and HE1 concerning 'protecting listed buildings and places, and their settings'.
18. At the Hearing, the appellant explained that she owns field O539, but field O537, which has a direct road access, is owned by another family relative. The 2 fields are currently farmed as one large field, and there is no fence or hedgerow defining the interface of the 2 fields, although there is a telegraph pole, which I was told is located on the legal boundary. She further explained that the farmer pays rent to both her (for use of field O539) and to her relative (for field O537). However, she is concerned that this may not always be the case and if field O537 was sold to another party, the right of access across the applicants' land is the only route to access the land for farming purposes.
19. Whilst this hypothetical scenario may occur, it is not a direct planning matter. Moreover, the Royal Court has found that the right of way to the field (O539) has not been obstructed. I have noted submissions about difficulties concerning certain vehicle configurations and, in particular,

⁵ Mrs Joy Morgan v Mr and Mrs Heaven – Royal Court (Samedi) Judgment [2022] JRC060

reference to a 'cattle crush' trailer, but there is no evidence before me to demonstrate that such access would be rendered 'impossible'⁶ or that the field O539 would no longer be viable for agricultural purposes. I deal with the related specific issue of visibility under ground 2 below.

20. I am therefore satisfied that the existence of the right of way does not raise any planning policy implications, or other material considerations, that would justify withholding planning permission for the appeal proposal. Ground 1 should therefore fail.

Ground 2 – Visibility splays and viability of the field for agriculture

21. At the Hearing, the planning authority confirmed that it had not specifically consulted the parish council (as the highway authority), although it would have been notified of the application via the 'weekly list'.
22. Whilst I have noted the appellant's concerns about visibility and consultation, the appeal proposal does not materially change the visibility for a driver of a vehicle emerging from the access point.
23. In the westerly direction, visibility is compromised by the presence of the Listed buildings, and the proposal will not change visibility in that direction. In the easterly direction, visibility is a little better, but also compromised by a boundary stone wall, which I measured to be 1.55 metres in height from the road level; visibility would be greater if positioned in a high seated agricultural vehicle, but less so if in a car. The visibility from the access point in both directions is less than ideal, but it is also not unusual in rural Jersey.
24. Moreover, there is no evidence of any accident history on what I observed to be a lightly trafficked rural road. There are also mirrors fitted in the bank opposite the entrance to assist drivers. I have noted the appellant's agent view that the proposed wall around the full patio area may affect the precise positioning of a vehicle on exiting, but I have also noted Mr Gladwin's submission for the planning authority that, whether there was a wall in place or not, vehicles should not be driving over the patio area.
25. Overall, I assess that the proposal would not have a materially adverse impact on visibility for drivers emerging from the access point. Accordingly, there is no case to withhold planning permission on this basis.

Ground 3 – The patio was built without permission

26. The appellant contends that the patio was constructed without planning permission. However, Mr Gladwin, for the planning authority, explained that the patio itself, is 'permitted development' under the Order⁷ and the relevant class which allows for patio constructions is not precluded by the Listed status of the building. I share Mr Gladwin's assessment and consider

⁶ The term used in Mr Lee's representation

⁷ Planning And Building (General Development) (Jersey) Order 2011 – Schedule 1, Part 1, Class C.

that the patio itself is permitted development and therefore lawful in planning terms.

27. The situation with regard to the patio perimeter walls is less straightforward. Mr Gladwin initially submitted that, whilst these would not be permitted development due to the Listed status of the property, they would be exempt from any enforcement action due to the '8 year rule'. However, through the Hearing it became clear that the original perimeter walls had been demolished and rebuilt enclosing a slightly smaller area in 2019. The existing perimeter walls are not therefore authorised. However, this is a somewhat moot point, as the current proposal seeks to demolish the walls.
28. The appellant has also drawn attention to the fact that the site plan⁸ approved under the 2016 permission, notated 'remove low wall' in respect of the patio perimeter walling and showed a parking space on the patio area. However, Mr Gladwin submitted that there were no planning conditions requiring these works to be completed, and the 2016 permission is simply part implemented.
29. Whilst noting these matters, there is nothing here that constitutes the basis for withholding permission in this case. Moreover, it is an accepted planning principle that each application is determined on its own individual merits and a proposal is not 'marked down' simply because an element of the existing structure (the 2019 built low walls in this case) was built without permission at that time.

Ground 4 – Appearance and impact on the historic environment

30. The appellant contends that the patio and walls do not fit in with the agricultural land surroundings and the Listed building and says that a full historic impact statement should have been submitted and considers that the historic environment team officer comments do not provide a full and proper response.
31. However, as noted above, I agree with the planning authority that the patio itself is permitted development and its impact is therefore not a matter for consideration in this appeal.
32. With regard to the perimeter walls, these have been in place, in some form or another, for much of a long period time. The proposed new walls are of a similar low height (960mm), well below the higher (1250mm) boundary wall to the east and north of the patio, and would be of an improved and more sympathetic appearance by virtue of the 'Pierre Perdu' render finish. Whilst involving a limited extended area of enclosure, the walls would be extremely minor in nature and, in my view, not inappropriate within this domestic curtilage within this rural setting. I find no conflict with the relevant BIP policies, notably policy GD6 which addresses design quality.
33. In terms of the specific impact on the Listed building, the works would be within its immediate setting. I share the assessment of the planning

⁸ Drawing No 15/25/01 Rev A dated November 2015

authority's historic environment officer, who concluded that there would be 'some improvement in the appearance over the existing situation in terms of the adjacent listed building'. This means that policy HE1 which addresses 'protecting listed buildings and places, and their settings', would be complied with.

34. On this ground, I conclude that the appearance of the proposal would be acceptable and that the setting of the Listed building would be marginally improved. There is no conflict with policies GD6 and HE1.

Ground 5 – Agriculture Department consultation

35. The appellant is correct that the planning authority did not consult the Land Controls service at the application stage. However, the application proposal related to a minor development and the scope of interdepartmental consultation is a matter of planning judgment. Whilst the appellant may disagree, the planning authority did not consider that the development proposal presented any prejudice to the future use of the farm field for agricultural production. It was entitled to reach this view.
36. Through this appeal process, the planning authority has sought the views of Land Controls, in order that it can respond to the appellant's ground. The Land Control service has confirmed that: *Field O539 and O537 measure approximately 6.2 verges and have no agricultural restrictions imposed by the Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974. These fields have been farmed as a single field for a number of years (pre 1997). There is an access into the southeast corner of O537 from the road*
37. Based on this response, there is no evidence to suggest that there are concerns about the future of these agricultural fields for farming purposes. Whilst the response does not address the hypothetical scenario of a future separation of fields O539 and O537, those matters are addressed under grounds 1 and 2 above.
38. This ground fails, as there is no basis for suggesting that undertaking the Land Controls consultation at the application stage would have changed the outcome of the planning application. In the absence of convincing evidence that the future of the field for farming purposes would be compromised, I find no tension with policy ERE1, which seeks to protect agricultural land.

Conclusions and recommendation

39. For the reasons set out above, I am satisfied that this minor development is acceptable in planning terms and complies with the relevant provisions of the BIP policies. I therefore recommend that the Minister dismisses this appeal and confirms the grant of planning permission under reference P/2023/0087.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI