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

Appeal under Article 108 against a decision to refuse planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: North Lynn Farm Ltd

Site address: North Lynn Farm, La Rue du Clos Fallu, St. Martin, JE3 6AA

Application reference number: P/2023/1291

Proposal: *'Change of use of Unit 2 from dry storage to mechanical repair workshop and Unit 6 from dry store to manufacture of garden pots, reposition vehicle access, and retrospective removal of conditions 1, 2, and 4 as well as variation of conditions 3 and 5 under planning permit P/2002/1553'*

Decision Notice date: 18 April 2024

Procedure: Hearing held on 24 October 2024

Inspector's site visit: 21 October 2024

Inspector's report date: 28 November 2024

INTRODUCTION

1. This report contains my assessment of the appeal made by North Lynn Farm Ltd (the appellant) against the planning authority's decision to refuse planning permission for a development at its farm building complex.

2. Specifically, the proposal sought retrospective permission to change the use of 2 of the units within a large barn type building; one to a mechanical repair workshop, the other to a use involving the manufacture of garden pots. The application further seeks permission to reposition the vehicular access serving the complex, and the retrospective removal of certain planning conditions, and the variation of others, imposed under an earlier planning permission.

PROCEDURAL AND LEGAL MATTERS

3. The appellant's originally submitted Statement contained incomplete appendices, specifically Appendix 10 (business plans) and Appendix 13 (a letter dated 2 April 2024). Whilst I have accepted the submission of the correct and full copies in this instance, appellants and their appointed agents are responsible for the accuracy and completeness of their submissions. They should ensure that all material is checked prior to submission, as late material can cause procedural fairness issues, and may not be accepted by the sitting Inspector.

4. This case does raise some complex legal matters concerning the site's planning history, lawfulness of uses within it, and the validity of the application made under reference P/2023/1291, which is the subject of this appeal. As these matters are quite fundamental to my assessment of the appeal, they are explored in detail in my assessment below.

5. A representation[1] received at the appeal stage indicates that the current Minister accepts that he is conflicted in this case. The Minister will therefore need to arrange for another Minister to consider this report, and make any related Ministerial Decision.

THE APPEAL SITE

6. The redlined appeal site comprises a plot of land containing a large building with a rectangular footprint, located on the south side of La Rue du Clos Fallu. The building sits fairly centrally on the plot and well back from the road, with a large forecourt on its north side, and open areas and vehicle circulation routes on its east, south and west sides. When I visited there was a significant number of cars, vans and commercial vehicles in the front forecourt area and, in places, external storage of items in the spaces around the building, and in the south-eastern corner of the site. Access to the site is gained directly from the road in the north-west corner of the site.

7. The building has the unmistakable appearance of a barn type agricultural structure, seemingly built in 2 adjoining sections, each with a low angle pitched roof structure, creating a central valley running roughly north-south. There are large door openings in all 4 sides of the building. Internally, the building has been divided into 6 units.

8. The appellant's Statement[2] confirms that the occupiers in the western wing (from north to south) are Cova Construction (Unit 1), North Lynn Farms Ltd (Unit 3) and James Ransom Landscapes (Unit 5). In the eastern wing the occupiers are SR Motors (Unit 2), Florida Pools (Unit 4) and Torc Pots (Unit 6). Three of the units (units 4, 5 and 6) include mezzanine floors.

9. The site is located in a rural location within the Green Zone. However, it sits within a cluster of residential properties. Immediately to the west is the Grade 3 Listed[3] North Lynn Farm, a mid C19 farmhouse, now subdivided into a number of dwellings, and further homes to the west of this complex. To the east there is a detached bungalow sharing a boundary with the site, the boundary being a wall of about 1 metre in height.

10. Directly opposite the site to the north, is an extended farmhouse complex divided into a number of dwellings, with garden amenity spaces set behind a roadside boundary wall which is about 2 metres high; there is a pedestrian gate within this wall that opens directly onto the road (there is no footway or verge).

[1] Mr Overland's representation dated 12 June 2024

[2] Paragraph 16 of the appellant's Statement (June 2024)

[3] HER reference MN0131

11. To the south of the redlined site is an agricultural field. When I visited, the field margin closest to the site contained sheds, a chicken pen, a storage unit and paraphernalia, including a carnival float structure.

PLANNING HISTORY

12. Based on the submissions and evidence available, the salient points concerning the site's history are as follows:

1989 – 1992 – Planning permissions were granted for the component parts of the agricultural shed (References 5605/I, 5605/J and 5605/O). All 3 permissions included *corpus fundi* conditions restricting the shed to North Lynn Farm and precluding any separate sale. Permission 5605/O also included a 'disuse or disrepair' condition. The building was constructed around this time period and the appellant's Statement says it was built in 3 parts: i) cattle shed ii) potato store and iii) mechanical workshop. It was subsequently used for agricultural purposes.

2002 – The appellant was encouraged to exit the cattle industry as part of the Dairy Exit Scheme, owing to overproduction of milk in the Island.

August 2003 – Contrary to officer recommendations, the Committee[4] granted planning permission for an application (P/2002/1553) for the 'change use of the cattle shed and potato store to dry storage'. It was a 3-year temporary permission. The requirements of the conditions attached to the permission are summarised below:

Condition 1: the use to cease by 22 Aug 2006 and the building to be restored to its former agricultural use.

Condition 2: limited the use to dry storage only.

Condition 3: required the planning authority's written approval of prospective occupants prior to their occupation.

Condition 4: prohibited subdivision or subletting of the building.

Condition 5: prohibited outside storage/display of materials, waste, machinery or vehicles (unless otherwise agreed).

Condition 6: required a separate application for any external alterations or signage.

Condition 7: prior to the commencement of development, required the submission and approval of a landscape scheme which *'shall provide details of planting around the new access to be created on to La Rue du Clos Fallu, including any excavation works, surfacing treatments, or means of enclosure and confirmation that all existing agricultural machinery and other related items (currently stored outside the shed) shall be removed from the site and the site left clear before the new use is commenced.'*

[4] Then known as the 'Environment and Public Services Committee'

Condition 8: precluded users of P30 vehicles at the site.

Condition 9: restricted the (dry storage) use operational hours to 8am – 6pm Monday to Fridays, 8am – 1pm on Saturdays, with no Sunday/public holiday use.

January 2004 – The planning authority wrote[5] to the appellant querying what was happening at the site. In the letter, the officer set out what was, and was not, allowed in planning terms. It also reminded the appellant of the requirements of the planning conditions. There is no evidence of any reply to that letter.

March 2005 – The planning authority wrote[6] to the appellant and advised that his request to subdivide the shed was 'not appropriate', as it was precluded by the P/2002/1553 permission.

30 September 2005 – The Committee considered a 'request for reconsideration' in respect of P/2002/1553. The minutes state that the Committee recalled that the dry storage use had expired in August 2005 (Note: it had not, and had another year remaining). Seemingly on the basis of this request, rather than a formal application, the Committee resolved to approve the dry storage use for a further 3 years, and also approved the subdivision of the shed into 2 separate areas. The Committee noted, however, that all existing conditions applied to the site remained, and that this would preclude any further subdivision. There is no evidence that a new Planning permit was issued. The minutes also record that a joinery workshop was not considered acceptable under the storage permit, and directed officers to inform the appellant that this should be deleted from the scheme.

October 2005 – The planning authority wrote[7] to the appellant and advised that current occupants had not been agreed, and that this was in breach of the planning permit (P/2002/1553). It further advised that a woodturning workshop, established at the building, was outside of the permitted use, and should be removed. The letter also referred to the Committee's agreement to the partial internal subdivision of the building, although the full paperwork concerning this (seemingly through the 'request for reconsideration') is not available to me. The letter also reminded the applicant that the dry storage use permit expired on 22 August 2006, unless an extension was requested and permitted by the Committee.

December 2006 – Planning application P/2006/2743 was validated. It sought permission for *'RETROSPECTIVE: Change of use of part of store into joinery workshop.'*

February 2007 – Permission was granted for the P/2006/2743 joinery workshop proposal, covering about 20% of the building's floorspace. The permission set no time limit on the duration of the use, i.e. it permitted the

[5] Letter dated 22 January 2004 from Ms Baxter (Planner) to Mr L Richardson of North Lynn Farm Ltd

[6] Letter dated 3 March 2005 from Ms Baxter (Planner) to Mr L Richardson of North Lynn Farm Ltd

[7] Letter dated 14 October 2005 from Ms Baxter (Assistant Senior Planner) to Messrs C and L Richardson of North Lynn Farm Ltd

use permanently. However, conditions were imposed covering noise controls, prohibiting outside storage, and limiting hours of use.

August 2023 – Application P/2023/0777 was validated. It sought planning permission for: '*RETROSPECTIVE: P/2002/1553 Remove conditions 1 (The use hereby permitted shall cease on or before 22nd August 2006 and the land and building restored to its former agricultural use.) 2 (Notwithstanding the provisions of the Island Planning (Use Classes) (Jersey) Regulations, 1965 and the Island Planning (Exempted Development) (Jersey) Regulations, 1965, or any subsequent amendment thereto, the shed at 'North Lynn Farm, La Rue du Clos Fallu, St, Martin', shall be used for dry storage and for no retailing, industrial business or manufacturing use.) and 4 (The building shall not be subdivided or sublet to form smaller individual units without the prior written consent of the Environment and Public Services Committee). Vary condition 5 (No outside storage or display of materials, waste, machinery or vehicles shall take place on the site, unless otherwise agreed in writing with the Environment and Public Services Committee) to allow the use of dry storage, change of use of 2 of the units to a mechanical repair workshop and a workshop for the manufacture of garden pots and condition 3 (That details of the prospective occupants of the premises shall be submitted to and approved in writing by the Environment and Public Services Committee prior to the occupation of the building. This includes*[8]*any subsequent changes in occupancy in perpetuity.'* The application was withdrawn in **November 2023**. The appellant's agent explained that this was because the planning authority would not entertain proposed amendments to the access arrangements, and required a fresh application.

December 2023 – Application P/2023/1291 (the subject of this appeal) was validated. The development description that appears in the Decision Notice differs from that stated on the application form, but is seemingly not challenged by the appellant. It states: *Change of use of Unit 2 from dry storage to mechanical repair workshop and Unit 6 from dry store to manufacture of garden pots, reposition vehicle access, and retrospective removal of conditions 1, 2, and 4 as well as variation of conditions 3 and 5 under planning permit P/2002/1553*

April 2024 – Acting under delegated powers, officers refused application P/2023/1291 for the following 6 reasons:

Reason 1: The development, due to insufficient robust evidence and substantial intensification of industrial uses in the rural countryside, does not relate to the agricultural industry, does not justify the use in this locality, and fails to demonstrate the redundancy of the shed to the agricultural industry contrary to policies SP2, SP5, PL5, EI1, ERE2, and ERE4 of the Bridging Island Plan (2022).

Reason2: The development, due to substantial intensification of industrial uses in a rural setting, would have a significant harmful impact on

[8] I have removed a duplicated word for ease of reading

neighbouring amenity contrary to policies GD1, EI1, and ERE1 of the Bridging Island Plan (2022).

Reason 3: Notwithstanding the first and second reasons for refusal, the development, due to significant intensification of industrial uses and repositioning the vehicular access, would detract from the character of the street scene, the surrounding area, and the countryside setting contrary to policies SP3, SP4, PL5, GD6, and NE3 of the Bridging Island Plan (2022).

Reason 4: Notwithstanding the first and second reasons for refusal, due to insufficient information, the applicant fails to demonstrate the development would not have a harmful impact upon the adjoining listed building or its setting contrary to policies SP4 and HE1 of the Bridging Island Plan (2022).

Reason 5: Notwithstanding the first and second reasons for refusal, due to insufficient and inaccurate information, the applicant fails to demonstrate the development would provide adequate on-site parking and manoeuvring space or would not have a harmful impact on highway safety contrary to policy TT4 of the Bridging Island Plan (2022).

Reason 6: Notwithstanding the first and second reasons for refusal, due to insufficient information, the applicant fails to demonstrate the development, resulting from intensification of industrial use, would provide adequate drainage and not have a harmful impact on water quality contrary to policies WER5, WER6, and WER7 of the Bridging Island Plan (2022).

SUMMARY OF THE APPELLANT'S GROUNDS OF APPEAL

13. The appellants' case is set out in the appeal form with appendices, which include a list of 10 grounds of appeal; a more detailed Statement with 16 appendices; and a Responses document with 2 appendices.

14. The 10 grounds of appeal are:

Ground 1

The proposal results in the maintenance of a sustainable and diverse economy, with support for existing businesses in accordance with the high-level policy SP6.

Ground 2

Apart from unit 3, the building and land has been outside of agricultural use since 2002.

Ground 3

The proposal complies with policy ERE4 (re-use of modern agricultural buildings over 20 years old).

Ground 4

The proposal complies with policy EI1 (existing and new industrial sites) for sites outside the built-up area.

Ground 5

The re-positioning of the access would have a neutral impact on the appearance of the area and would result in improved highway safety.

Ground 6

The proposal would have a reduced intensity of use compared to its original mixed farm use as a dairy unit and potato store.

Ground 7

The proposal by virtue of the re-positioning of the access results in improved highway safety and an improved impact on the setting of the adjoining listed building.

Ground 8

The proposed development provides adequate foul water drainage in accordance with policy WER7.

Ground 9

The proposal would not have a harmful impact on surface water quality.

Ground 10

The proposal would result in the removal of outside storage on field MN766 that is immune from enforcement action.

15. At the Hearing, the appellant's case was presented by his planning agent, Mr Stein, with contributions from the appellant (Mr Richardson for North Lynn Farm Ltd), Ms Fay de Gruchy (noise consultant) and Mr Kevin Ratnasingham (transport consultant). Mr Hugo of Torc Pots (the current unit 6 occupier) also attended and spoke about his business and its operations at the site.

SUMMARY OF THE PLANNING AUTHORITY'S CASE

16. The planning authority's case is set out in a Response document with appendices, which include the officer report, the minutes from the 6 June 2024 Planning Committee meeting, and the consultation response from the Environmental Health service, along with a Second Response document.

17. The responses explain that the application was assessed and determined under the Bridging Island Plan (adopted March 2022) (BIP) policies. It rebuts each of the grounds of appeal. In response to ground 1, the planning authority recognises that policy SP6 supports existing businesses to provide a sustainable and diverse economy, but states that this does not trump all other policies and the 6 reasons for refusal highlight the fundamental problems with the proposal. It rebuts ground 2 on the basis that uses at the site have changed over time, about 80% of the building benefit from agricultural only permission, and the uses include those that are not good neighbour uses, as evidenced by neighbour objections, and the Environmental Health service consultation response. With regard to the third ground of appeal, the planning authority submits that policy ERE4 is not complied with, as redundancy for agricultural use has not been demonstrated. On the fourth ground, it submits that the proposal does have

a harmful impact on neighbours' amenity and this conflicts with policies GD1, EI1 and ERE4.

18. Concerning the fifth and seventh grounds, the planning authority has concerns about the proposed new access opening up views of the site and harming rural character and the setting of the Listed building, and it considers there is insufficient information to demonstrate any improvement to highway safety. The planning authority rejects the sixth ground's claim that there would be reduced intensity of use compared to a mixed farm use. It also maintains its objection under the eight and ninth grounds, stating that insufficient drainage information has been provided. On the tenth ground, the planning authority says it will investigate whether the outside storage is immune from enforcement but, in any event, its offered removal does not override the planning objections it has identified.

19. At the Hearing, the planning authority's case was presented by Ms Tersia Venter and Ms Marion Jones.

INTERESTED PARTY'S VIEWS

20. At the application stage, the officer report records the receipt of 22 letters of objection. These covered a wide variety of objections and concerns, including: visual impacts and harm to the rural character, and that the intensification of uses at the site has become an eyesore in the rural landscape; the repositioned entrance would be closer to residential property; misleading plans; traffic generation and safety concerns and the narrow lane not being conducive for industrial traffic; harmful impacts on residential amenities through noise, appearance and general activity; that the shed should remain available for agricultural use; biodiversity impacts; and breaches of planning controls and conditions.

21. At the appeal stage, I received submissions from 5 households. These included similar concerns and detailed accounts alleging noise complaint issues; highway safety matters; articulated lorries arriving at 7am; formal statutory nuisance complaints; large numbers of vehicles, fork lift trucks, and other items stored in the front yard; inaccuracies in the submitted documentation; safety concern about the proposed new access being directly opposite a pedestrian access; consistency with other planning decisions in the vicinity, including an enforcement notice appeal.

22. During my site inspection I visited a number of interested parties' properties in the vicinity of the site. A number of neighbouring residents attended the Hearing and made contributions about the history of the site, and the impacts of the commercial operations on their living conditions.

INSPECTOR'S ASSESSMENT

23. This appeal case has proved to be complex and challenging to assess. After considering all of the submissions made in writing, and through the Hearing process, I have reached the conclusion that the Minister would be unable to allow this appeal for legal reasons, and as a result, the appeal should be dismissed. I explain my reasoning below, all of which emanates from a

confused and conflicted planning history, which includes a succession of significant breaches of planning controls, none of which appear to have been the subject of any meaningful enforcement/compliance action. My assessment has not been helped by missing documents, poor file keeping and, with hindsight, some questionable processes and decision making by the relevant committee in an earlier era. I have therefore needed, at times, to adopt a balance of probability approach, and also apply some UK based case law principles on the central legal matters.

24. There is no dispute that the building, and the site within which it sits, were originally entirely agricultural in use, and I regard this as the 'planning unit' in this case. It was a component of the appellant's wider mixed farm complex and the building was constructed, in a number of parts, in the late 1980s and 1990s, under planning permissions which included *corpus fundi* restrictions, and a disuse and disrepair condition. The applicant should have been aware of those restrictions and obligations at the time.

25. The building's design, nature and appearance were unquestionably agricultural. This is confirmed by the appellant's submissions which identify 3 specific uses within the shed, these being a cattle shed, a potato store, and a mechanical workshop, the latter presumably for farm vehicles and machinery. There is no dispute that the building was constructed, and used for those purposes, for circa 10 years.

26. The 2003 permission P/2002/1553 for a temporary dry storage use is important in my analysis. I have no reason to doubt that the appellant's exit from the dairy industry created the conditions where he wished to find an alternative use for the building. The partial file records for the P/2002/1553 application confirm that officers were unconvinced by the proposal. They recommended refusal. Officers pointed out that the shed was subject to conditions, that it should not be allowed in separate ownership from the adjacent site, nor should it remain on site if it became redundant to the agricultural industry. Officers also stated that, if the committee was minded to support the redevelopment of the adjacent site to 7 residential units [the subsequently converted North Lynn Farm dwellings], a commercial operation in the shed would create a 'bad neighbour' for the dwellings.

27. The Committee, as it was entitled to, made a decision which did not follow that officer recommendation. However, it is very apparent from the conditions imposed, that the Committee was alert to the issues and site sensitivities in terms of its location, amenity impacts, and access and transport matters. What was granted permission was a temporary, short term, use for 'dry storage', with a requirement that the shed should revert to agricultural use at the end of the permitted term. It was also subject to a range of conditions, which tightly controlled the use being permitted and how it could operate. It was therefore a temporary expedient and not, in my assessment, a significant new chapter in the planning unit's history. It was crystal clear to all, that what was being consented was not only temporary, but intended to be low key, as signalled by the conditions controlling specific occupiers, operating hours, types of vehicles etc.

28. What then appeared to occur was the occupation of the shed by various users, along with parts being retained in agricultural and private hobby use by the appellant. In this time phase, it seems that, for whatever reason, there was a widespread disregard for the conditions placed on the P/2002/1553 permit.

29. A legal issue here is that a number of the planning conditions attached to P/2002/1553 were what are known as 'conditions precedent'. This means that they have to be complied with before the permitted use (dry storage in this case) can commence. Notably, the submission and approval of occupiers did not appear to take place, nor does there seem to be any record of the landscaping scheme requirements being submitted and approved, which was again a pre-commencement requirement. At the Hearing, the appellant's agent confirmed that he believed that his client did not seek approval of the occupiers (as required by condition 3) and he 'can't be sure' that landscaping details were submitted pursuant to condition 7.

30. UK case law, known as the 'Whitley Principle' dating back to a case in 1992[9], and confirmed in later judgments[10], has established that breaching a condition that goes to the heart of a permission, renders its implementation unlawful. Having examined the phrasing and effect of the conditions precedent in this case, I am not convinced that the landscape scheme condition crosses that threshold, but I do consider that the occupancy condition does. I therefore have to conclude that P/2002/1553 was <u>not</u> lawfully implemented.

31. As a result of my finding here, it is not necessary for me to explore in any depth other alleged breaches of conditions, including those relating to subdivision, external storage, vehicle sizes, operating hours, or indeed whether the September 2005 committee had the ability to extend the temporary permit and agree to partial subdivision, or whether it was acting *ultra vires*. This is simply because, if the permission was not lawfully implemented, its conditions are not enforceable.

32. Even if the Minister did not agree with my assessment above, there is a further legal principle that results in a fatal flaw to application P/2023/1291, which is the subject of this appeal. This relates to the inability to vary or remove conditions from a temporary permit, once the temporary permitted use period has expired. The end date of the permission was 22 August 2006. Whilst it may have become a moving feast, as a result of the curious September 2005 committee decision, at its latest it would extend to 22 August 2009, a date that has long since passed.

33. A fundamental element of the current application/appeal proposal seeks to remove conditions 1, 2 and 4 and vary conditions 3 and 5, attached to the P/2002/1553 permit. These include controls limiting the use to dry storage,

[9] Whitley & Sons v Secretary of State for Wales (1992) 64 P&CR 296

[10] R (Hart Aggregates Ltd) v Hartlepool Borough Council [2005] EWHC 840 (Admin); Bedford Borough Council v The Secretary of State for Communities and Local Government and Aleksander Stanislaw Murzyn [2008] EWHC 2304 (Admin); Greyfort Properties Ltd v SSCLG [2011] EWCA Civ 908; and R (Howell) v Waveney District Council [2018] EWHC 3388

preventing subdivision/subletting, prohibiting external storage, and the requirement to seek written approval of occupiers.

34. In the absence of any known Jersey legal cases on these matters, I have again reverted to UK planning case law. This establishes that what is being proposed by the application simply cannot be entertained. The key case here is Avon Estates Ltd v Welsh Ministers [2011] EWCA Civ 553. This established that, following the expiry of the time limited condition, the permission no longer authorised the development (in this case the dry storage use), and the conditions attached to it could no longer bind the land or be enforced. It follows that such conditions cannot therefore be the subject of proposals to remove or vary them.

35. There is a further element of unauthorised use relating specifically to unit 1. This is the unit where a permanent full permission was granted in 2007 for a joinery workshop (P/2006/2743). It does appear that such a use operated for some years, and I have noted residents submissions that imposed planning conditions were routinely breached. However, when I visited the unit, expecting to see an operational joinery workshop, I was surprised to observe that there is a different use present. The unit contained a collection of vehicles (cars and a van), a vehicle shell, an industrial style vehicle lift and compressors. It is unclear whether this use is a commercial motor related activity or a private car collection hobby type use, but it does appear to constitute a material change of use from the previous (permitted) use as a joinery workshop.

36. Rounding up all of the above leads me to the conclusion that the current site is a complex muddle of significant breaches of planning control, which have arisen over a period of more than 20 years. Through this appeal process, the appellant has made claims that various uses, works and activities are immune from enforcement action by virtue of Article 40(1) (a), having been in place for more than the previous 8 years. Whilst that may be the case, there is only limited evidence before me and such claims would need to be comprehensively evidenced, particularly concerning some activities, such as external storage and vehicle parking, which can be intermittent on many sites. However, what is clear to me is that significant use activity at the site, including the motor repairs use in unit 2 and the garden pot manufacturing use in unit 6 which employs a workforce of about 10, are unauthorised.

37. Whilst appreciating that the appeal proposal was intended as a vehicle to regularise matters at the site, for the reasons set out above, I have found the application to be legally defective.

38. I did consider whether it would be possible to separate out and assess the merits of the appeal proposal in so far as it relates to units 2 and 6, and the proposed repositioned access. However, having reviewed the application documentation, I do not consider it possible to evolve and pick apart the appeal proposal in that way, as the application is firmly premised on the foundation of the P/2002/1553 permit, which I have assessed was not lawfully implemented. As a result, the appellant's case falls like a house of cards. It follows on that, in these circumstances, it is not appropriate to

make detailed assessments on technical matters, including location, noise, amenity, transport and highway safety, heritage etc.

39. My findings may be frustrating to all concerned in this appeal, but I cannot depart from clearly established legal principles and the evidence before me, patchy though it is in places. Should the Minister agree with my conclusions, I am mindful of the possibility that the appellant may wish to consider the submission of a fresh planning application, which does not seek to rely on P/2002/1553, seeking to regularise certain uses and activities at the site. I am also mindful that the planning authority, particularly in view of near neighbours' submissions and ongoing complaints, will be dutybound to consider the expediency of enforcement action at the site with regard to certain uses and activities.

40. Bringing these matters together, I do suggest that there may also be scope for the appellant's consultants and the planning authority to engage in discussions concerning what uses may be acceptable at the site, and what details and evidence would be expected, should a further planning application be contemplated. Such an application would clearly fall to be determined on its merits against the prevailing Island Plan policies, and would be subject to the usual publicity and consultation processes, enabling neighbours to make comments and representations.

CONCLUSION AND RECOMMENDATION

41. For the reasons stated above, the application which has led to this appeal is legally defective, which means that the appeal cannot succeed. As a consequence, I therefore recommend that the Minister DISMISSES this appeal.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI