

# **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: Mr H Huish (Third Party Appellant)

Site address: La Girouette, La Rue Laurens, St. Clement, JE2 6RJ

Application reference number: P/2022/0202

Proposal: 'Construct 1no. 3 bedroom dwelling. AMENDED PLANS REC'D: Alterations to fenestration and 630mm reduction to proposed ridge height. AMENDED PLANS REC'D: Land drain, soakaway and field access shown.'

Decision notice date: 11 July 2023

Procedure: Hearing held on 8 November 2023

Inspector's site visit: 6 November 2023

Inspector's report date: 20 December 2023

---

#### **Introduction**

1. This report contains my assessment of the third party appeal made by Mr H Huish (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to grant planning permission to construct a dwelling house at a site in St Clement.

#### **Procedural matters**

2. In the course of the application, amended plans were submitted and the development description was revised. I have made my assessment on the basis of the updated description and the amended plans listed in the Decision Notice.

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

##### *The appeal site*

3. The appeal site comprises a rectangular parcel of land (the plot) to the west of *La Girouette*, along with an existing access drive, which runs from the plot along the front of the dwelling and connects to the road. *La Girouette* is of relatively modern construction (1989 was suggested as the year it was built) and it is essentially a bungalow, although the sloping site has enabled

garaging and accommodation to be provided at a lower level. To the rear of the property, there is a retaining wall with grassed garden land above, and another wall beyond that. North of this wall there is a bank and agricultural land, Field C193, which rises northwards. The bank continues westwards just beyond the top (north) of the red lined plot. The field itself is currently owned by the applicant (and is shown blue lined on the site plan). However, the applicant intends to sell the field to the Parish of St Clement. I understand that terms have been agreed but, at the time of the Hearing, the transaction had not yet completed. This is a matter of some relevance that I discuss later in this report.

4. When I visited the site, the plot had been cleared of vegetation, bar for a few small trees.
5. There is some dispute between the parties concerning the history and planning status of the plot. The appellant considers that the plot is part of Field C193, but the planning authority states that it has been garden land for many years and that such use is apparent on a 1997 aerial photograph. However, it was not disputed that there was an agricultural access across the plot into Field C193, although there was little sign of its route when I visited.
6. Immediately to the south of *La Girouette* and the plot, is a cluster of 5 dwellings owned by the appellant, which includes his home. There is a distinct difference in levels between *La Girouette* and the appellant's properties, and the interface between them is formed by a retaining wall which spans the boundary. There is also a garage built up against the retaining wall on the appellant's side. The retaining wall contains a series of drainage pipe openings at its lower level.
7. To the west of the plot is the cemetery attached to the grade 1 Listed Parish Church of St Clement<sup>1</sup>. The Listing covers all of the church yard, including what appears to be a relatively recently constructed car park immediately adjacent to, but at a lower level than, the appeal plot. There are also Listed buildings to the east of *La Girouette*, comprising *Les Jardins* (grade 3) and to the south, where *Languedoc* (grade 3) is situated.

*The appeal proposal P/2022/0202*

8. The proposal seeks planning permission to erect a 3-bedroom dwelling on the plot. It would be partly set into the ground, with some of the excavated soil being used to enlarge the bank to the north, which would be planted for wildlife purposes. There would be 2 levels of accommodation. The lower level would include an open plan kitchen/living/dining area with bifold doors opening onto a rear terrace area, along with an attached garage. The first-floor accommodation would be housed within the roof space and dormers (2 at the front and 2 at the back), and would include 3 bedrooms and bathrooms. External materials would be pre-coloured render for the walls, with a slate covered pitched roof.

---

<sup>1</sup> Historic Environment record CL0072

9. The drawings also include proposed details of the parking/turning space, along with garden and amenity areas to the front, side and rear of the house, with indicative landscaping details. The plans also show a new land drain and a soakaway proposed within Field C193.

*The application determination*

10. The application was the subject of a fairly protracted determination, which included the submission of amended plans, further reports, and a re-consultation exercise. The appellant had lodged representations at the application stage and some of the matters raised, notably drainage concerns, were the subject of further submissions and assessments. One of the amended plans showed how an alternative field access would be created, under 'permitted development' provisions, in the south-east corner of Field C193.
11. Planning permission was granted under officer delegated powers on 11 July 2023. In addition to the standard time limit and plans compliance conditions, 5 further conditions were imposed. These required: implementation of the drainage measures (land drain, soakaway, and permeable paving); ecological mitigation and enhancement measures; an archaeological evaluation; approval of details of continued access to Field C193; and the provision of electric vehicle charging facilities.

**Summary of the appellant's grounds of appeal, and the responses of the planning authority, the applicant and interested parties**

12. The appellant's case is set out in the appeal form, which includes his briefly stated grounds of appeal, a more detailed Statement which includes some photographs, and a further comments document.
13. The grounds of appeal are twofold and state<sup>2</sup>:

*Ground 1 (location)*

*The house in question is intended to be built in a Green Field Site, which involves major excavation of a steeply sloping field, which has serious surface water problems, which eventually comes through my retaining wall, the field has already been bulldozed creating a bank which was not there before, the so called entrance to the field is part of the field, it is the field, the edge of the field is clearly defined, it is not part of the garden to Girouette, which has been subject to illegal construction, retrospective planning permission.*

*If this green field is to be built upon then it must be subject to rezoning, I would assume by law, which I would object to.*

*Ground 2 (access/highway safety)*

*The intended new entrance to the field, Rue Lauren's, involves the destruction of the highly unstable hedgerow, and as stated due to the amount of surface water coming off these fields, which can be torrential and at times make the road impassable, this new entrance will make it highly dangerous*

---

<sup>2</sup> I have made some very minor edits to the original text for clarity.

*for road users, the amount of stones, soil, water from this field which is highly elevated above road level, and probably cause damage and flooding to the lower lying properties, major destruction to the habitat, this has all been documented. The intended soak away I am sure will not by any imagination work, in fact the only time I saw the water drop from the test hole was when they pumped it out.*

*There are serious issues with visibility from the entrance to Girouette and there will be even more from this new field entrance, therefore a danger to the public and road users.*

14. The planning authority has produced a Response document which includes the officer report, and it maintains that the decision to grant planning permission was correct and that the proposal accords with the provisions of the Bridging Island Plan (BIP).
15. The applicant has also produced a detailed Statement which rebuts the appellant's grounds and supports the decision to grant planning permission.
16. I have also taken into account some third party representations received at the application stage.
17. At the Hearing, the appellant represented himself. The planning authority's case was presented by Ms de Gouveia. The applicant's case was led by his agent, Mr Smith, with contributions from Mr Southan and Mr Jones.

### **Inspector's assessment**

18. The appellant's grounds of appeal cover a range of matters and there is a degree of interconnection between the first and second grounds. In my assessment, there are three main issues to explore:
  - Whether the site is a suitable location for the proposed dwelling with regard to the spatial policies contained within the BIP.
  - Whether the proposal is acceptable with regard to flood risk.
  - Whether the development would prejudice the future use of Field C193 and whether a new field access to La Rue Laurens is necessary and desirable in planning terms.

### *Location*

19. The appellant is adamant in his belief that the plot is part of the agricultural field and, as a greenfield site, it would need to be rezoned to allow development and he stated that he would object to any such rezoning. However, I must give weight to the planning authority's submissions that the plot has been garden land for some years, and it says that this is corroborated by aerial photographs and by Land Controls records.
20. More significantly, the published BIP Proposals Map 'Part A' Planning Zones, shows the site clearly within the Built-Up Area (BUA), as defined by the boundary of the St Clement's Local Centre. For ease of reference, I have

copied a screenshot from the relevant part of the map below, and it shows the plot located just to the south of the Local Centre boundary (the thick pink line), and to the east of the protected open space designation covering the cemetery (the diagonal green hatching).

Extract – Bridging Island Plan Map A



21. It is worth noting here that the originally submitted application plans did extend the red lined area further north into the Green Zone, but the amended plans have reduced the red lined area, such that it falls entirely within the BUA. That may have created a degree of confusion.
22. Whilst I have noted carefully the appellant's submissions on the status of the site, it is a matter of fact that the site does fall within the defined BUA. This zoning is a matter that has policy implications. This is because the BIP adopts a concentrated development strategy that, through a combination of policies, including SP2, PL3 and H2, directs and encourages new residential development to sites within the BUA.
23. On this main issue of location, I do not accept the appellant's submissions that the site should be treated as green field, or require rezoning. The site is within the defined BUA and the development of a new dwelling on this site is, in principle, acceptable and indeed supported, in terms of the BIP's strategic and related policies, notably SP2, PL3 and H2.

### *Flood risk*

24. There is a notable rise in land levels from the bottom of La Rue Laurens northwards, passing the church, the appellant's properties, *La Girouette*, and Field C193, which continues to rise beyond the appeal site. La Rue Laurens is also set down 2 – 3 metres from the adjacent field level.
25. The appellant states that there are surface water problems in the area and explained that water runs off the hillside, through the site, and then affects his properties. He also reported that, in times of heavy rainfall, there have been torrents of water running down the road.
26. Whilst I do not doubt that the hilly terrain in the area has an impact on surface water flows and drainage, this is not a location that the BIP identifies as being at particular risk of flooding. The BIP's Proposals Map 'Part B' identifies areas considered to be at risk of inland and coastal flooding, and there are no risk designations covering the appeal site or the locality around it. When I questioned the appellant, he confirmed that there was no evidence of buildings being flooded, but that garden areas had been affected with standing water.
27. The planning authority and the applicant are united in their view that the evidence confirms that surface water runoff will be no worse than the existing situation. Indeed, they submit that the proposal is likely to deliver a betterment, through the effects of the land drain, the soakaway, and use of permeable paving, which will all contribute to the improved and more controlled management of surface water runoff.
28. There also appears to have been appropriate ground testing and calculations to support the drainage design, and this is confirmed in the consultation responses from the drainage and building control services. Moreover, at the Hearing, the applicant confirmed that the drainage design and calculations had now received building regulations approval (reference number B2023/0756). The applicant also submitted, quite correctly, that the planning implications are limited to the drainage effects arising from the development itself (a modest sized dwelling), and that the applicant is not responsible for solving any wider surface water issues that may arise from agricultural fields in the area.
29. On this main issue, I must give substantial weight to the technical evidence and expert opinion, as captured in the consultation responses from the drainage and building control services, and the subsequent building regulations approval. All of this indicates that flood risk matters have been properly assessed and mitigated, in line with BIP policy WER2. The appeal on flood related grounds should therefore not succeed.

### *Field C193*

30. It is accepted that the appeal site had historically provided a field access to Field C193, although it would be less than ideal for large modern farm vehicles and machinery. I understand that the field is currently farmed in association with Field C188 and access gained from the north. Should the envisaged sale of C193 to the Parish complete, it will be accessible from the

west via a field access from C194, which is just to the north of the cemetery and already in Parish ownership.

31. At the application stage, Land Controls issued a holding objection stating that, on the basis that although the land is currently accessed through another field, this is not the formal access to the field, and ownership could change leaving the field 'enclave' without any agricultural access.
32. In response to this objection, the applicant produced and submitted a drawing<sup>3</sup> showing how an alternative access could be constructed from La Rue Laurens, at a point a short distance to the north of *La Girouette*. I am informed that such an access would be constructed within the 'permitted development' parameters for a means of access to an agricultural field, as set out in the Order<sup>4</sup>. The relevant drawing is listed as approved in the Decision Notice. Moreover, condition 4 attached to the permission states: *'No part of the development shall be begun until details of the continued access to field 193 have been submitted in writing and agreed by the chief officer'* with an associated reason stating: *'To ensure that the field is not landlocked without an agricultural access, creating also of agricultural land, in accordance with Policy ERE1...which does not support the loss of agricultural land'*.
33. Whilst I have no reason to doubt that the access shown on the drawing would fall within 'permitted development' limits, forcing its creation (as implied by condition 4) seems undesirable in environmental terms and, most likely, unnecessary. It would involve some quite significant engineering work to cut through the bank, and the unavoidable loss of several trees, at a location very close to, and within the setting of, the grade 3 Listed *Les Jardins*. It also seems unnecessary as the current farming arrangement gains access from the north (via C188), and the likely sale of the field to the Parish will achieve a long term access from C194. Moreover, should some unforeseen future change in ownership occur which makes those other field accesses problematic, the Order provides a legal solution, by allowing a new access from the road frontage, which would avoid the scenario of the field becoming landlocked. To my mind, this should provide sufficient comfort in planning terms.
34. At the Hearing, there appeared to be a consensus that forcing the new field access creation would not be necessary or reasonable. Removing this requirement would address these matters and, perhaps, address some of the appellant's concerns.

### **Other matters**

#### *Historic environment*

35. I have reviewed the consultation response from the Historic Environment team. With regard to archaeology, whilst the site has no specific designation, I agree that that archaeological potential and impacts are appropriately addressed and managed by the imposed condition (Condition

---

<sup>3</sup> Drawing No 1630/21/SK04RevA

<sup>4</sup> Part 3, Class E of Schedule 1 to the Planning and Building (General Development) (Jersey) Order 2011

3 on the decision notice). The applicant's agent informed me that the Société Jersiaise had agreed to undertake some ground investigations on the site, which will assist understanding of any archaeological interest.

36. I have also looked very carefully at the setting impacts, including that of the grade 1 Listed church and churchyard, albeit the closest part to the site is a modern brick paved car parking area. I am satisfied that the well-mannered design, setback of the dwelling from the boundary, and the proposed native hedge alongside the boundary, will combine to protect, and marginally improve, the Listed building and place's setting and special interest.

#### *Landscaping*

37. The appellant expressed some concern about the prospect of large trees being planted on the site close to his (northern) boundary and he referred to 'Jersey Law' preventing such planting within a distance of 3 feet of boundaries. The applicant's agent confirmed that the planting in this area would be shrubbery, rather than trees.
38. Whilst I have heard reference to a minimum 3 feet distance in respect of the placing of windows, I am not aware of any Jersey Law that prevents planting within a property owner's garden close to a boundary. Indeed, if that were the case, it would lead to some very odd garden designs and a preclusion of hedging and shrub planting typically seen alongside garden boundaries, which contribute to the character and appearance of many areas. However, at the Hearing, there was a general consensus that the addition of a 'landscape scheme' condition would allow for precise details to be submitted and agreed to provide certainty.

#### **Conclusions and recommendation**

39. For the reasons stated above, I recommend that the Minister DISMISSES this appeal and confirms the grant of planning permission under reference P/2022/0202 with the following amendments:
- The deletion of condition 4, as the requirement to create a new field access from the road is not necessary or reasonable in this particular case.
  - The addition of a standard 'landscape scheme' condition, to provide certainty and to ensure that the landscaping details are of a suitably high standard.

*P. Staddon*

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