

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

Appeal under Article 108 against a decision made to refuse to grant a planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Jeremy Tomes

Site address: Meadowside, La Route du Nord, St. John, JE3 4AJ

Application reference number: P/2023/0011

Proposal: 'Form new vehicular access from La Rue de la Ville Guyon with parking to South of site.'

Decision notice date: 29 June 2023

Procedure: Written representations

Inspector's site visit: 6 November 2023

Inspector's report date: 20 December 2023

Introduction

1. This report contains my assessment of the planning appeal made by Mr Jeremy Tomes. The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to refuse to grant planning permission for a proposed new vehicular access and associated parking area at *Meadowside*, which is a Listed building.

Procedural matters

2. Article 114(1) of the Law states that planning appeals against decisions to refuse planning permission are to be considered by way of written representations and I have adopted this procedure in this case.
3. Amended 'landscape layout' plans were submitted at the application stage. The amended drawing¹ entails the retention of a greater number of trees within the garden area than the originally submitted scheme. As the amended plan was the proposal that was determined by the planning authority, I have made my assessment on that scheme.
4. At a very late stage in this appeal, and long after the deadline for submissions, a States Member sought to make a written representation on

¹ Drawing No. MS 001 Rev Ae

this appeal. In the interests of procedural fairness, I declined to accept the representation and I have not read its content.

The appeal site, the appeal proposal and the application determination

The appeal site

5. *Meadowside* is a Grade 4 Listed building, situated on the east side of La Rue de la Ville Guyon, a narrow country lane. It is in a rural location about 400 metres to the north of St John's village. The submitted location plan and landscape layout plan show the house occupying the northernmost part of the red lined curtilage, with all of its broadly rectangular shaped garden lying on its south side.
6. The garden is mature and contains a small terrace close to the house, and lawns beyond with trees, most of which are close to the garden boundaries. The garden is at a higher level than La Rue de la Ville Guyon and most of the length of its boundary to that road is formed of a traditional banque which runs uninterrupted for some distance beyond *Meadowside's* garden. To the east and south of *Meadowside's* garden is agricultural land (Field J645).
7. To the north of *Meadowside*, and physically attached to it, is a 1 bedroomed residential annexe known as *Meadowside Cottage*, and linked to it another dwelling, converted from outbuildings to create a 3-bedroom house, now known as *Le Menage*, which occupies a corner plot at the junction of La Rue de la Ville Guyon and La Rue de es Nonnes. On the west side of *Le Menage*, there is a hard surfaced yard area used for parking of vehicles and a range of outbuildings which link to the *Meadowside* house, which has a door in its northern wall accessing onto the yard area.
8. Based on the papers before me, I understand that *Le Menage* is occupied by the appellant, and *Meadowside* was formerly occupied by the appellant's mother until her death in 2021, after which it has remained vacant. I further understand that the annexe, *Meadowside Cottage*, was formerly occupied by the appellant's sister until 1994, after which it has remained vacant.

The appeal proposal

9. The application was submitted following the refusal² of an earlier access proposal. The latest application sought planning permission to create a vehicular access in the south-west corner of the garden. This would entail the removal of a 6.5 metre length of the banque and the removal of 4 existing trees. The drive would rise through a 1:10 gradient to the garden level, and expand to a hard surfaced area shown on the drawings as containing 3 car parking spaces and a turning area. The landscape layout plan identified 7 locations for compensatory and new tree planting, including 2 Field Maples in the vicinity of the drive.

² P/2022/0485

The application determination

10. The application was determined by the planning committee at its 29 June 2023 meeting. The committee considered the officer report, consultation responses, and 8 letters of support. It resolved to refuse to grant planning permission for the following reason:
 1. *The proposed development would harm the roadside and historic setting from the south as well as cause the removal of a traditional banque. The development would therefore fail to protect or improve the immediate or wider landscape setting of the site, contrary to Policy SP4, HE1 and NE3 of the Bridging Island Plan 2022.*
11. The appeal is made against this decision.

Summary of the appellant's grounds of appeal

12. The appellant's case is set out in the appeal form and expanded upon in a Statement of Case and a Further Comments document. The 4 stated grounds of appeal are:
 - 1) *Protection of Roadside Setting and Landscape Character*
 - 1a) *The proposed new access and parking area would result in some landscape change but would respect and protect the landscape character of the immediate and wider area.*
 - 1b) *Policy NE3 of the adopted Island Plan (the Bridging Island Plan 2022) lists circumstances where it is acceptable for development to not protect or improve the Island's landscape character. These circumstances are listed in points a) to d) of policy NE3. Notwithstanding the absence of material harm to the immediate and wider landscape, the proposal also accords with points a) to d) of policy NE3.*
 - 2) *Protection of the Historic Environment*
 - 2a) *The proposed new access and parking area would result in the protection of the historic environment and would protect the site, setting, and special interest of the adjacent listed building.*
 - 2b) *Policy HE1 of the adopted Island Plan lists circumstances where it is acceptable for development to not protect a listed building, or its setting and the significance of that building. These circumstances are listed in points a) to d) of policy HE1. Notwithstanding the absence of material harm to the site, setting, and special interest of the adjacent listed building, the proposal also accords with points a) to d) of policy HE1.*
 - 2c) *Policy HE1 advises that proposals for the re-use of listed buildings with compatible uses, which secure the long-term protection of their special interest, including the protection of their setting, will be supported. The proposal accords with this aim.*

3) Provision of adequate car parking and access

Policies of the Island Plan require development to be safe, inclusive, and accessible to all users and modes of transport. The Plan requires consideration to be given to, and provision made for, the travel needs of children, elderly people, and people with sensory or mobility impairments and other forms of disability, as a priority. Development should provide an appropriate level of accessible, secure, and convenient off-street motor vehicle parking. Development should demonstrate 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.

The proposal would provide off-street motor vehicle parking and access that is appropriate to the dwelling that it would serve.

4) Provision of Housing

The Government of Jersey's Strategic Policies seek to address the 'housing crisis' faced on the Island. To alleviate this crisis the GoJ seeks to provide a significant amount of additional housing. The GoJ also seeks to bring empty homes back into use. Policies of the Island Plan seek to make the best use of land and buildings and meet the housing needs of the Island. The proposal would assist with bringing an empty dwelling back into occupation in accordance with these policies and aims.

The planning authority's response

13. The planning authority's case is set out in its detailed report to the June 2023 planning committee meeting and a Response document, which provides rebuttals to the appellant's grounds.
14. In essence, the planning authority maintains that the decision to refuse planning permission was soundly based and justified for the reason set out in the decision notice. I include appropriate references in my assessment below.

The submissions of interested parties

15. I have noted the expressions of support submitted by the following interested parties: Messrs Bennett, Coutanche, De Gruchy, Gautron, Gottrell, Gray, Huelin and Le Monnier, Ms Le Cornu and Mrs Sharpe.
16. These submissions include the views that the proposal would assist in bringing an empty home back into occupation, that farmers regularly create accesses through banques and that cars will now park on the lane, causing safety issues.

Inspector's assessment

17. The main issues in this case are:

- (i) The effect of the proposal on the setting of the Listed building.
- (ii) In the event that harm is found to the setting of the Listed building, whether other material considerations provide a justification for the appeal proposal.

Listed building setting

18. *Meadowside's* Listing³ states: *This early Jersey house retains its irregular proportions and historic character from the south. It contributes to the roadside setting. There are no evident interior features of significance.* The plan attached to the formal Listing documentation highlights that the Listing covers the house and the connected northern range of outbuildings, part of which is within the appeal site.
19. The BIP includes in its glossary a definition of the 'setting' of a Listed building. This states that it is "... *the surroundings that it is experienced in. It often extends beyond the property boundary, or 'curtilage', of an individual building or place into the broader landscape or townscape context. The extent may have and will change over time following changes to the landscape or townscape, new or removed buildings or with our increased understanding of a building, site or its wider context. The importance of setting is not dependent upon there being public access to, or public views of, the building or place...*" There is a similar explanation in the narrative that supports policy HE1.
20. The setting of the Listed *Meadowside* building includes its garden to the south, the yard to the north, the roadside environment and glimpsed views from the surrounding countryside. The *Meadowside* garden is not historic, and the appellant's evidence confirms that it was formerly agricultural land, and the garden was created around 1960. Nonetheless the garden is very much the immediate setting of the heritage asset, and the Listing specifically refers to its historic character from the south. Moreover, the BIP glossary definition of setting recognises that change will occur over time and, in this case, there has not only been the addition of a garden, but modern interventions including the creation, from outbuildings and extensions, of a quite substantial dwelling to its north, i.e. *Le Menage*.
21. Whilst recognising the comparatively modern history of the garden, the setting of *Meadowside* from the south is verdant and natural, with significant tree cover. Indeed, on satellite imagery the presence of the garden is not clearly discernible, as it appears to give the impression of a wooded corner of field J645, from which it was presumably annexed around 1960. The garden is more evident when walking along La Rue de la Ville Guyon, as there is a pedestrian gate and length of fence atop the raised bank, and some glimpsed views of the lawn and a domestic greenhouse. As

³ Reference JN0020

you move further southwards, the bank and treeline adopt a more rural feel and melds into the rural landscape beyond.

22. The access and parking area would be created in this southern part of the garden. Due to the difference in levels between the lane and the garden, it would involve a not insubstantial amount of excavation and remodelling of the land. This, along with the resultant areas of hard surfacing and parked cars, would erode and harm this important part of the setting of the Listed building. The breach of the currently largely uninterrupted lane side banque would be notable and unwelcome in the viewing experience from La Rue de la Ville Guyon. Whilst recognising that landscaping and use of gravel for most of the surfacing would have some softening effect, it would nonetheless appear as an engineered, modern and somewhat suburban intervention, into the setting of this C18 house⁴.
23. The primary BIP policy on this main issue is HE1 which addresses 'protecting listed buildings and places, and their settings', and this is reinforced in policy SP4. Policy NE3, which addresses landscape and seascape character, is also relevant.
24. The first part of policy HE1 makes plain that development proposals that affect a Listed building's setting '*must protect its special interest*' and '*should seek to improve [its] significance*'. As I have judged the proposal to cause harm to the immediate setting of the Listed building, it does not protect *Meadowside's* special interest or improve its significance. There is therefore a clear conflict with the primary part of policy HE1. The second part of HE1 includes some exception provisions, which I explore under the second main issue.
25. The conflict with the primary part of policy HE1 leads to a consequential conflict with policy SP4, which includes similar heritage setting protections. There is also some conflict with policy NE3, which requires proposals to protect and improve landscape character.

Other material considerations

26. The construction of policy HE1 does allow for limited exceptions. The second part of the policy says that proposals that do not protect a Listed building or place, or its setting, will not be supported unless, and with regard to the comparative significance of the Listed building or place or its setting, and the impact of proposed development on that significance, stated criteria are met. These are: a.) the changes are demonstrably necessary either to meet an overriding public policy objective or need; and b.) there is no reasonably practicable alternative means of delivering those proposals without harm to the heritage values of the listed building or place, or their settings; and c.) that harm has been avoided, mitigated and reduced as far as reasonably practicable; and d.) it has been demonstrated that the predicted public benefit outweighs the harm to the special interest of the building or place in its setting and where the nature of that benefit to the public is clear, direct,

⁴ The Listing under HER Reference JN0020 confirms that the house appears on the Richmond Map of 1795 and is considered to have origins from c1700.

and evidenced. The use of 'and' through the criteria list means that each and all have to be satisfied.

27. The appellant makes the case that the proposal would accord with the HE1 exception provisions a) to d) and that it would lead to the re-use of the Listed building, which would secure its long-term protection. He also submits that BIP policy TT1 requires development to be safe, inclusive and accessible to all users and modes of transport, and that policy TT4 requires appropriate levels of off-street parking. He further submits that there is a recognised need for housing, that *Meadowside* is currently an empty home '*because no one wants to live in a rural, family house with no parking*', and that bringing the house back into occupation would be in line with government policy.
28. Whilst there is some merit in these submissions, they fall some way short of a convincing BIP policy case. In essence, the proposition made by the appellant is that the absence of parking renders the Listed building unsaleable and uninhabitable. I have noted the fairly complex family history and that the appellant and other family members now wish to dispose of *Meadowside*. I also appreciate that it would be more attractive to prospective purchasers if it had its own parking and vehicular access, as confirmed by the appellant's reported views from estate agents. However, these private property matters are not in themselves reasons to allow harmful development within the setting of a Listed building.
29. I have only been provided with limited details of the planning history associated with the creation of *Le Menage*. However, based on the information included within the appellant's submissions, it appears to have been created by extending and converting a range of outbuildings. The extension on the east side of the outbuilding included a double garage and car port structure, presumably to provide the new dwelling with its own vehicular access and off-street parking facilities. There is nothing in the plans before me to suggest that the yard area was to provide the parking and storage sheds for the dwelling that is now *Le Menage*, thereby rendering *Meadowside* devoid of access and parking facilities.
30. Indeed, a 1994 application plan⁵ that appears in the appellant's Statement of Case shows the new house having a separate vehicular 'entry' to the east, which is still in place, as I noted on my site visit. The plan does not show any parking for the new dwelling on the 'yard', nor is there anything to suggest that the outbuildings on the west side of the yard were to become part of the curtilage of the new property. I also note that on this plan, *Meadowside* itself is notated as the 'Main House'. Based on these plans, it is not unreasonable to assume that the yard was, at that time, intended to continue to serve the 'main house' for access and parking purposes.
31. It appears that, for various private property reasons and personal circumstances, the reach of *Le Menage* has increased such that it is now being contended that the 'main house' has no vehicular access or parking,

⁵ Figure 4: 3667/A Services on page 7 of the Appellant's Statement of Case (August 2023).

and hence the appeal proposal is necessary. I am unconvinced, as it appears to me that there is scope within the original 1994 red lined application area to provide vehicular access, parking and servicing for both *Le Menage* and *Meadowside*. I have noted the appellant's submissions about the narrowness of the yard, but it is clearly used for parking and some of the outbuildings are open sided and akin to a car port, which creates more space.

32. Over the years I have visited a number of such rural yards now used for parking and, whilst they may not meet modern car park design standards, they do appear to function adequately to provide off-street parking. I do also appreciate that family members' ownerships and control within the original red lined area may have changed over time, but that does not amount to a convincing policy argument, that would permit harm to the setting of a Listed building.
33. I do not therefore consider that the policy HE1 exceptions are met because the proposed development is not demonstrably necessary (criterion a), it has not been shown that there is no reasonably practicable alternative (criterion b), the identified harm has not been avoided or limited (criterion c); and the main benefit that would arise is primarily private in nature and any public benefit is not clear, direct and evidenced (criterion d). Given that all 4 criteria must be met to satisfy the policy exception, there is a clear conflict with HE1. There is also a conflict with policy NE3, which contains a similar set of criteria for proposals that do not protect or improve landscape character.
34. With regard to the transport policies cited by the appellant, these do not provide a basis for over-riding harm to the setting of the Listed building. I am also unconvinced by the suggestion that refusing this application will result in highway safety dangers through parking on La Rue de la Ville Guyon, as there is no realistic opportunity to park on the lane without blocking it, due to its narrow width and banques either side.

Other matters

35. I have noted a number of representations concerning the ability of farmers to create accesses as permitted development under the provisions of the Order⁶. However, that permitted development right exists for agricultural use only, and is subject to conditions and limitations under the Order. It has no direct relevance to the appeal proposal
36. I have also noted the appellant's submissions⁷ about 'permitted development' potential with *Meadowside's* garden area and his views on how the Order should be interpreted. However, the appeal proposal is not permitted development and requires planning permission and, as such, falls to be determined under the BIP policies.
37. I have also noted references to accesses and hardstandings permitted in other cases, but limited information has been provided, and, in any event, I

⁶ Part 3, Class E of Schedule 1 to the Planning and Building (General Development) (Jersey) Order 2011

⁷ Section 6.0 of the appellant's Statement of Case (August 2023)

must make my assessment on the planning merits of the scheme before me.

Conclusions and recommendation

38. On the first main issue, I have assessed that the proposal would be harmful to the setting of the Listed *Meadowside* house and this would conflict with policy HE1, which seeks to protect the settings of heritage assets. For similar reasons, it would also conflict with policy SP4. It would also result in some conflict with policy NE3, as the proposal would fail to protect and improve landscape character. The harm I have identified is not catastrophic or very substantial to the heritage asset and landscape character, but it is nonetheless negative, undesirable, and in clear conflict with the cited policies.
39. On the second main issue, I have assessed that the exception provisions under policies HE1 and NE3 have not been met. I have further assessed that the BIP policies relating to transport matters, and all other relevant material considerations, do not provide a justification for allowing this development.
40. For these reasons, I recommend that the Minister DISMISSES this appeal and confirms the refusal of application reference P/2023/0011, as set out in the decision notice dated 29 June 2023.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI