

PLANNING AND BUILDING (JERSEY) LAW 2002

Appeal A

Appeal under Article 108 against a decision made under Article 19 to refuse planning permission

Appeal B

Appeal under Article 109 against an enforcement notice served under Article 40(2)

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed under Article 107

Appeal A

Appellants:

The Barkley Club Ltd

Application reference number and date:

P/2024/0927 dated 5 September 2024

Decision Notice date:

7 November 2024

Site address:

Field No. MN494, La Rue des Buttes, St. Martin JE3 6HR

Development proposed:

"Demolition of existing Equine Office/ Tack Room/ Food Store and Stables. Construction of replacement commercial Equine Livery stable block to South East of the site, and 1 no. Canine Day care Centre with PV panel array to the roof to North of the site. Subdivision of existing field MN494 to provide dog day care centre. Revised parking provision, and associated planting and landscaping enhancements."

Inspector's site visit date:

10 February 2025

Hearing date:

13 February 2025

Appeal B

Appellants:

The Barkley Club Ltd

Enforcement notice reference number and date of issue:

ENF/2024/00016 dated 3 September 2024

The land to which the enforcement notice relates:

Field No. MN494, La Rue des Buttes, St. Martin JE3 6HR

The alleged breach of development controls:

"Without the necessary planning permission, a material change of use of the land for a canine care and training business."

The steps required to rectify the breach:

"Cease the use of the land as a canine care and training facility."

Time for compliance with the steps required:

"One calendar month"

Ground of appeal:

The appeal has been brought on ground (h) specified in Article 109(2), namely:-

"(h) ... that in all the circumstances planning ... permission should be granted in respect of the development in question".

Inspector's site visit date:

25 November 2024

Hearing date:

26 November 2024

Introduction

Appeal A

1. This is an appeal against the decision of the Planning Committee to refuse planning permission for the proposed development described above. The application was recommended for refusal by the Infrastructure and Environment Department.

2. The Department's report states that the application attracted 24 letters of objection (from 19 people) and 80 letters of support. The representations are summarised in the report, which has been published on the Planning Register.
3. The consultees' responses were as follows: the Parish of St Martin and the Land Controls section objected to the application; the Environmental Health section recommended that planning conditions should be imposed if the application was approved; and the IE Transport, Land Resource Management, IE Drainage and Rural Economy sections stated they had no objection to the application.
4. The decision notice gives two reasons for refusal, as follows: -
 - "1. The site is located within the Green Zone which enjoys a high level of protection. Any new development within this zone must be justified, appropriate and necessary, and it should protect or enhance landscape quality. Whilst there is provision within the Bridging Island Plan for new economic development in this zone, such development must protect landscape character, and not result in the loss of high-quality agricultural land. The proposed dog daycare building would be a substantial new structure (non-agricultural in nature), in an isolated location away from other buildings. Together with the associated areas of hardstanding, this new development would result in the permanent loss of a significant amount of protected agricultural land. For the above reasons, the application fails to satisfy the requirements of Policies SP2, SP5, SP6, PL5, NE3, GD6, ERE1, and ERE2 of the adopted 2022 Bridging Island Plan.
 2. It is considered that the application is likely to generate significant noise emissions, thereby unreasonably harming the amenities of nearby residents (taking into account the amenities of future residents of the nearby re-zoned housing sites). Accordingly, the application fails to satisfy the requirements of Policy GD1 of the adopted 2022 Bridging Island Plan."
5. Public representations were also received at the appeal stage reiterating those previously made at the application stage and several members of the public spoke at the hearing. A letter was submitted at the hearing from the charity, Jersey Employment Trust, which sets out how the dog day care centre has provided work experience and employment opportunities for individuals in need of guidance and support.

Appeal B

6. This is an appeal against the enforcement notice described above, which was issued by the Chief Officer. The notice gives the following reasons for its issue: -
 - "4.1 The breach of Development Controls has occurred within the last eight years, and it is considered expedient to issue a notice to remedy the breach.
 - 4.2 The material change of use of the land is contrary to Policies ERE1 and ERE2 (Protection of agricultural land) of the Bridging Island Plan 2022.
 - 4.3 The development of the land fails to protect and enhance the natural environment, contrary to Policy SP5 of the Bridging Island Plan 2022.

4.4 The development results in noise nuisance affecting the residential amenity of the locality, contrary to Policy GD1 of the Bridging Island Plan 2022.

4.5 The development generates additional vehicle movements to and from the land, contrary to Policy TT1 of the Bridging Island Plan 2022.”

7. The enforcement notice was issued before the decision to refuse application P/2024/0927 was made, but after the refusal of a previous application, P/2024/0019. P/2024/0927 was a resubmitted application which was made in an attempt to overcome the objections to P/2024/0019. One of the objections that was overcome was reason 4.5 above given for the issue of the notice, but this objection has been maintained in the appeals by the Parish and residents.
8. The hearing concerning Appeal B took place shortly before Appeal A was received. I deferred the preparation of my report on Appeal B until I could prepare and submit this combined report following the hearing concerning Appeal A. The combined report takes into account all the representations and submissions made in connection with each of the appeals both in writing and at the hearings.

Site description and existing and proposed developments

9. Both appeals relate to the whole of Field No.MN494, which is on the eastern side of La Rue des Buttes, a Parish Road leading southwards from St Martin's Village. The adjoining land is predominantly rural and agricultural but also contains housing near to its south-western and southern boundaries and a purpose-built 'dog hotel' near to its south-eastern boundary.
10. The nearest built-up part of the village is the sheltered housing development to the north-east at Le Court Clos. At its closest, the nearest dwelling in this development is about 120m away from the nearest boundary of the field. The fields between them are in arable use, but one of them, Field MN489, is zoned in Policy H7 of the Bridging Island Plan for the provision of homes for persons over 55 years of age. Another field in agricultural use to the north, Field No.MN410, which is separated from the field by Field No.490, is listed as an affordable housing site in Appendix 1 to the Bridging Island Plan. Proposals for development on these fields have not progressed beyond pre-application discussions at present. It is understood that there are unresolved issues about the capacity of the foul sewer network in the locality.
11. Planning permission already exists for equine use of the field, by virtue of it being agricultural land and as a result of planning permission P/2016/0009, which was granted by the Planning Committee on 19 May 2016 contrary to the Department's recommendation. The Environmental Land Control section advised at this time that commercial equine husbandry is recognised as an agricultural activity and as a result equines at a commercial livery are able to occupy agricultural conditioned land under licence. The planning permission relates to the whole of the field and the structures now on it, and is for the following development: -

“Construct store, tackroom and office to North of field with hardstanding for race horse training and livery business. Change of use of sand school to use by race horse training and livery business.” [It is understood that the sand school

had been created earlier under permitted development rights applying at the time, which precluded its use for commercial purposes.]

12. The reasons given for the approval include the following statement: -

"The use proposed is considered to be one which can only be undertaken in the countryside and an appropriate example of agricultural diversification. This has been balanced with the concerns expressed regarding impact on the landscape and nearby properties. It has been concluded that the proposed development does not result in serious impact on the landscape nor any unreasonable impact on the amenities of other properties."

13. The planning conditions that were imposed include the following: -

"7. No more than a total of 12 horses shall be accommodated on the area covered by Fields 491, 492 and 494, a maximum of 4 of which may be accommodated on a livery basis. The sandschool shall only be used by the race horse training/livery business operating from the site and shall not be made available to or used by any other party or the public.

8. In the event that the structures hereby approved fall into a state of disuse they shall be removed from the site and the land restored to its former state within a period of no more than 12 months."

14. The reasons given for Conditions 7 and 8 are: -

"7. Permission has been given on the basis of the specific nature and intensity of use set out in the application. An increase in the intensity of use could potentially create unacceptable levels of noise and traffic and be to the detriment of neighbouring properties and the surrounding area, thereby failing to satisfy the requirements of policies GD1 and NE7 of the Adopted Island Plan 2011 (Revised 2014).

8. Permission has been given on the basis of the stated requirement for the development for the site's current use. In the event that use ceases the Department wishes to secure the removal of the structures to return the site to its original appearance and to enable it to be reused for a suitable purpose, in accordance with policy ERE6 of the Adopted Island Plan 2011 (Revised 2014)."

15. Permission P/2016/0009 has been implemented. The approved structures have been erected and they are still in use as an office, tack room, food store and stabling for horses. Equine livery is recognised as an agricultural use and the appellants have a smallholder licence authorising them to use this agricultural land for equine livery. Horses are still accommodated here on a livery basis. The training of race horses does not currently take place here, but P/2016/0009 has no planning conditions restricting the type of equine livery business which can be carried out and a change in the kind of horse kept here is not a material change of use for planning purposes.
16. The appellants also hold an animal welfare licence authorising them to provide day care for dogs at the field, subject to conditions limiting the number of dogs to a maximum of 35 at any one time, requiring one full-time member of staff per 8 dogs with supervision at all times, and prohibiting the keeping of dogs overnight. It is common ground that this is not an agricultural use.

17. In Appeal A, the appellants now propose to replace the structures with a new purpose-built structure providing customer reception, staff areas and areas for dog-related activities, including grooming and quiet rooms and an indoor dog play/run area. The northern part of the field would be subdivided into several enclosures for different kinds of canine activities and types of dog. Acoustic panelling and hedging would be provided around this part. The southern part of the field would remain in equine livery use and a new stable block would be built in the south-east corner of the field for the horses.
18. The existing parking area would be remodelled. A vegetable patch would be provided in the north-western part of the field. Wildflower planting would take place in three sections of the field. Additional screen planting would take place alongside the proposed structures and the parking area.
19. Appeal B seeks planning permission under ground (h) for "the development in question", which is the change of use of the field for a canine care and training business. This would be a straight change of use with no building operations. The appellants' intention would be to confine the canine activity to the northern part of the field, where it takes place at present, leaving the southern part to continue in use for horses. If permission is granted, planning conditions could control such matters as dog numbers and hours of use.

The case for the Infrastructure and Environment Department and the objectors

20. The Department state that the lawful use of the field is agricultural and that the canine day care centre and associated facilities would not be an agricultural use. They point out that Policy ERE1 (Protection of agricultural land) states that the "development or loss of agricultural land will not be supported unless in exceptional circumstances and where" two criteria are met. They state that the criteria would not be met because the field is high-quality agricultural land and the proposed use does not genuinely necessitate being located here; nor is the location appropriate in view of the objections from local residents and the Parish about the noise of barking dogs. With regard to Policy ERE2 (Diversification of the rural economy), the Department maintain that the proposals do not comply with the conditions set out in criterion 2 for development outside the built-up area.
21. The Department maintain that dog barking occurs when the dogs are using the outside areas. They indicate that it is hard to predict when this will occur or its intensity and that its unpredictability makes it difficult to control. They consider that current residents and those who would live in the dwellings to be built on Fields MN489 and MN410 would experience significant noise nuisance.
22. The Parish object to the proposed development for the policy reasons set out in the decision notice and also on the basis of the current and potential disturbance to residents, particularly those in the sheltered housing at Le Court Clos who have already made complaints. The Parish also have concerns related to the volume of traffic on La Rue des Buttes and the adequacy of the parking area at the field. Residents in the locality have objected as a group and individually. Their objections align with those made by the Department and the Parish.

The case for the appellants and the supporters

23. The appellants maintain that the development will not lead to the loss of high-quality agricultural land contrary to Policy ERE1; the land has not been farmed for some time; other nearby fields have been rezoned for housing; and permission has been granted for the 'dog hotel' on adjoining land. They point out that the Department for the Economy have stated (in a letter to the Parish) that "a dog business will not necessarily degrade or impact agricultural land in terms of the quality of the land for future crops". The appellants point out that it is not unusual for a planning condition to be imposed limiting a use to a set period of, for example, 5 years to ensure that agricultural land is not lost permanently.
24. The appellants maintain that the development will contribute to the maintenance of the rural economy thus satisfying the terms of Policy ERE2; there are nearly 10,000 dogs in Jersey and the Parish has the third highest percentage of dogs to dwellings (Policy Centre Jersey, Policy Brief *Dogs*, 8 September 2024); a dog day care use requires a site that has space and openness within a reasonable travelling distance, which makes it very difficult to identify suitable sites.
25. The proposals have the support of a large number of dog owners. Many of them compliment the appellants on the standard of the facilities and the care and attention their dogs receive. They state that the appellants provide a valuable service by caring for their dogs whilst their owners are at work and by providing transport for the dogs to and from a central point in St Helier.
26. The appellants point out that Policy SP6 (Sustainable island economy) places a high priority on the creation of "attractive and rewarding employment opportunities". They state that the dog day care centre achieves this through its partnership with Highlands College, which provides work experience placements for animal care students to help them gain experience and understanding to support their studies.
27. The appellants state that the proposed new building for the dog day care centre would have the high standard of design called for by Policy GD6 (Design quality) and would be appropriate in scale, location, design, material and colour to minimise its visual impact and integrate with the character of the area; it would not result in landscape harm and would not be in conflict with Policy SP5 (Protecting and improving the natural environment) or detract from the green zone.
28. The appellants maintain that the proposals would not generate significant amounts of vehicle movements and that the terms of Policy TT1 (Integrated and inclusive travel) would be satisfied. They have submitted a Transport Statement Report prepared by consultants, which recommended the Parish not to object on transport grounds, because the proposals would not significantly change traffic or road safety impacts, and they have pointed to the similar conclusion reached by IE Transport.
29. The appellants maintain that the acoustic surveys they have submitted provide sufficient information to demonstrate that noise emissions arising from the existing use and from the proposed development will not cause unreasonable harm to the amenities of nearby residents nor be detrimental to their wellbeing contrary to Policy GD1 (Managing the health and wellbeing

impact of new development). They point to the fact that the Environmental Health investigation into noise nuisance complaints in respect of dogs barking on the site led to the conclusion that no evidence had been obtained to support the existence of a statutory nuisance. They have also submitted two letters from neighbouring residents that support the appellants' assertions.

Inspector's assessments and conclusions

Appeals A and B

30. The existing structures on the site that would be replaced by the new building were approved by planning permission P/2016/0009 and were not considered at the time to have an adverse impact on the landscape. The new replacement building has been well-designed for its purpose and would fit satisfactorily into its surroundings. I agree with the appellants' assertions as summarised in paragraph 27 above. I also agree with the transport related conclusions set out in paragraph 28 and that the remodelled parking area would provide satisfactory parking facilities for the development.
31. The main issues in assessing whether planning permission should be granted concern compliance with Policies ERE1 and ERE2 and whether the sound of barking dogs could unreasonably harm the amenities of nearby residents, including future residents of the developments on Fields MN489 and MN410, contrary to Policy GD1.
32. Policy ERE1 (Protection of agricultural land) is as follows:

"The development or loss of agricultural land will not be supported unless in exceptional circumstances and where:

 1. the proposal will not lead to the loss of high-quality agricultural land, having regard to:
 - a. the quality of the soil and historic use of the land;
 - b. the location of the land relative to nearby farms and other active agricultural activity;
 - c. the overall of size of the land parcel and the impact that the development will have in on the integrity and viability of a farm holding; and
 - d. access to other agricultural land in the area.
 2. the nature of the proposed use genuinely necessitates and is appropriate to its proposed location."
33. Policy ERE2 (Diversification of the rural economy) is as follows: -

"Proposals relating to the diversification of the rural economy will be supported where:

 1. it is within the built-up area; or,
 2. in the case of development outside the built-up area, the nature of the proposed use genuinely necessitates and is appropriate to its proposed location; and
 - a. it will complement and support an existing business, contributing to the maintenance of the rural economy; or,

- b. enables a new business that has the potential to make a significant contribution to the rural economy; and where
 - c. it makes use of existing buildings; or
 - d. it is well-related to existing buildings and is appropriate in scale, location, design, material and colour to minimise its visual impact and to integrate with the character of the area.”
- 34. The field is understood to be high-quality agricultural land, having regard to the quality of the soil and its historic use. In Appeal A, structures in agricultural use would be replaced by a building that would not be used for an agricultural purpose. Planning permission P/2016/0009 could have been drafted more precisely, but it is evident that the Planning Committee envisaged that the land on which these structures stand would be restored to its former agricultural state should the structures no longer be required. This land would be permanently lost for agriculture if the building were erected. In both appeals, the area of the field which would be used by dogs would be lost for agriculture for as long as the canine use continued, but the agricultural use could be resumed if it ceased (see Department for the Economy letter quoted in paragraph 23 above). I have considered the appellants’ observation about time-limited planning permissions, but there is no obvious rationale for such a permission being granted in this instance.
- 35. The evidence I have received about the sound of barking dogs is conflicting. I accept the consultants’ conclusion that the building could be fabricated and operated so as to reduce the potential impact from noise from within the building. It has not been possible to reach a conclusion about noise occurring when dogs are arriving or departing or being exercised or trained in the field. The consultants’ measurements, taken on a single day, indicate that there were only infrequent barking noises, the sound of which was exceeded by many other sources of noise in the area. On the other hand there have been complaints from residents over 100m away, although these have been challenged by other residents. The Environmental Health section’s investigations did not support the existence of a statutory nuisance, but the section expressed concerns about the potential noise from dogs barking when using the outdoor areas. There are several other sources of potential dog barking in the locality and the issue requires further investigation before a firm conclusion could be reached that the barking of dogs associated with the business would not occur to an extent that unreasonably harmed the amenities of either existing or prospective residents in the locality, contrary to Policy GD1.
- 36. Policies ERE1 and ERE2 impose exacting provisions on applicants when their proposals involve the development or loss of high-quality agricultural land. Policy ERE1 states that the development or loss of agricultural land will not be supported unless there are exceptional circumstances. Policies ERE1 and ERE2 both state that the nature of the proposed use should genuinely necessitate and be appropriate to its proposed location.
- 37. The proposals in the appeals have been thoroughly prepared and are supported by a range of professional reports and a business plan. It is clear from the supporting submissions received that the business is well-run and provides a much-needed service to dog owners, as well as providing employment and educational opportunities. The field is well-located in so far as it is reasonably accessible from the built-up areas where most of the

customer demand would be from. The natural environment would be protected. The landscape would not be harmed, and would in fact be enhanced by the proposed planting.

38. However, similar considerations could be put forward in respect of many other proposals involving the development or loss of agricultural land. They are not exceptional and do not demonstrate that the business genuinely necessitates being in this location. If such considerations were accepted, the protection afforded to agricultural land by Policies ERE1 and ERE2 would soon become ineffective in practice. I have taken into account all the positive aspects of the proposals and the benefits that the business offers, but have concluded that on balance they do not outweigh the clear-cut policy objections that arise in this instance and that both appeals should therefore be dismissed.
39. The compliance period allowed by the enforcement notice is only one month. Appellants are entitled to assume that their appeals will be successful. The notice should therefore allow a reasonable period for compliance with its requirement to cease the use, starting with the date of the decision to uphold the notice and taking into account the public interest in securing compliance expeditiously and the impact on the business and its clients, employees and assistants. On balance, I consider that a reasonable compliance period would be nine months.

Inspector's recommendations

Appeal A

40. I recommend that the appeal is dismissed.

Appeal B

41. I recommend that the appeal is dismissed and that the enforcement notice reference ENF/2024/00016 dated 3 September 2024 is upheld with the replacement of "One calendar month" by "Nine calendar months" in paragraph 6.1 of the notice.

Dated 25 April 2025

D.A.Hainsworth
Inspector