

## PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

### Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEng, CWEM,  
An Inspector appointed under Article 107

**Appellant:** Mrs Emma Le Gallais-Marett

**Planning application reference number:** P/2024/0558

**Date of decision notice:** 22 October 2024

**Location:** 13, Clos du Ruisseau, La Grande Route de St. Martin, St. Martin, JE3 6UU

**Description of development:** Convert and extend existing garage to form 1 No. 3 bedroom bed dwelling inclusive of 2 No. balconies to South Elevation with associated parking, amenity area and storage. Install Air Source Heat Pump. New hard and soft landscaping. Create new vehicular access onto La Rue du Sergent. 2D MODEL AVAILABLE.

**Appeal procedure and date:** site inspection and hearing.

**Site visit procedure and date:** accompanied 14 January 2025.

**Hearing:** 16 January 2025

**Date of Report:** 14 February 2025

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### Introduction and relevant planning history

1. This appeal concerns a refusal to grant permission to convert and extend an existing garage into a dwelling house. The proposals would also entail construction of a new access to Rue du Sergent in St. Martin.
2. A previous application for the site (P/2020/1148) was initially approved by the Department but was subject to a third-party appeal. The Inspector recommended the appeal be refused, but the Minister declined to follow that recommendation. He allowed the appeal, and refused the application because:

*“1. The proposed dwelling, by virtue of its height, design and proximity to the Grade 3 listed Brook Farm, and the proposed intervention in the roadside bank, would neither preserve nor enhance the setting of the listed building and the proposal is, therefore, contrary to policies SP4, HE1, GD7 and BE6 of the Island Plan 2011 (Revised 2014).*

*2. The proposed vehicular access and associated visibility splays would result in the loss of an area of roadside banking which would be damaging to the landscape character of this rural lane and contrary to Policies GD1 and NE4 of the Island Plan 2011 (Revised 2014).”*

3. The current scheme is similar to that previously refused, although the location of the proposed new access has been moved approximately 3 metres to the east and changes to the external materials are proposed. In addition, there has been a change in policy context, arising from the adoption of the Bridging Island Plan 2022.
4. The application was determined by the Infrastructure and Environment Department (the 'Department') using delegated powers. A single reason for refusal is listed on the Decision Notice dated 22 October 2024:

*"1. The creation of the proposed access would require a significant intervention in the banque between the site and Rue de Sergent. This would be intrusive and would neither preserve nor enhance the character and appearance of the area or the setting of the listed building Brook Farm. The proposal is therefore contrary policies (sic) SP3, SP4 and HE1 of the adopted Bridging Island Plan 2022."*

### **The appeal site and proposed development**

5. The appeal site lies to the north of Rue du Sergent, within the built-up area of Maufant. It sits behind (to the south) and between houses that form part of the Clos du Ruisseau Estate. To the west lies Brook House, a Listed building, owned by the National Trust. To the south lies Rue du Sergent and open fields beyond. The site is at a higher level from the road and is separated from it by a bank. The height of this varies along its length but based on levels shown on drawing MSP-2501-PL01 and measurements on site is in the order of 0.8 - 0.9 metres above road level.
6. The proposal would extend the existing triple garage eastwards to adjoin the side of the double garage to the north. The ridgeline, material and pitch would match the existing garage. The building would be orientated to face southwards and would have three bedrooms. It would have two balconies on the southern elevation and would be viewed as a storey and a half from Rue du Sergent. The dwelling would have external garden areas and parking. It also includes for a new vehicle access to the south and planting of a hedge behind the visibility splay.

### **Case for the appellant**

7. The appellant states that the *"effects of the development on the general character of the area or on the listed building group at Brook Farm would not be so harmful as to justify refusing permission."* In support of this view, the appellant has referenced:
  - The conclusions of the Inspector's recommendation for the previous application.
  - That the reason for refusal is different to the reasons given by the Minister when he overturned the Inspector's recommendation for the previous application.
  - The current application is being considered within the context of a different Island Plan to the previous application.
  - There have been changes in the wording of policy HE1 and there is no specific reference to the protection of banques within Policy NE2.

### **Case for the Department**

8. In addition to the reasons for refusal, the Department noted:

- The changes made are not sufficient to fully overcome the reasons for refusal in P/2020/1148.
- The re-siting of the proposed new access onto La Rue du Sergent is considered to be a limited change that would not materially affect the position and setting of the proposed access into the roadside banque relative to the Grade 3 Listed Brook Farm.
- The proximity, form and impact of the proposed access would not protect the special interest of the Listed building.
- The addition of granite facing would not improve the appearance or impact of the proposed access.

## Consultations

9. Both responses from **IHE Transport** (13 June 2024 and 11 November 2024) stated that advice should be sought from the Parish as the site is on a Parish Road and access is remote to main roads under the management of IHE Transport.
10. **Environmental Health** issued two responses. In the first (20 June 2024) concerns were raised about the potential for noise nuisance from the proposed Air Source Heat Pump. A condition to address this was proposed. These comments were repeated in the second response (11 November 2024).
11. **Land Resource Management Team** (15 July 2024) accepted the findings of the Preliminary Ecological Appraisal. It did not object to the proposals, but requested a condition be applied to any permission, requiring implementation of the mitigation and enhancement measures set out in the Preliminary Ecological Appraisal. It also noted that if commencement of works on site were delayed for 18 months from 19<sup>th</sup> February 2024, further surveys would be required.
12. In a response dated 8 August 2024, the **Department for Infrastructure, Operational Services - Drainage** sought further information about any increase in occupancy numbers or loads / flows and noted that these would require an impact assessment. Comments also refer to a need to protect the existing sewer connection and recommendations for the design of soakaways, including the undertaking of percolation tests. A second response dated 21<sup>st</sup> October 2024, has been supplied by the appellant (Appendix 4 to the Statement of Case), although this is not on the planning register. This confirms that a drainage impact assessment is not required, and that the Department has no objections.

## Representations

13. Seven comments are listed on the Planning Register. This includes responses from the National Trust for Jersey, the Parish of St Martin, and St. Martin's Conservation Trust. Two responses were received from a single address.
14. In its objection (23 July 2024), the **National Trust for Jersey** notes that this is the third time that an attempt has been made to convert the garages into habitable accommodation and create a new access. It states, "*The Trust fully endorses the objections of both the St. Martin's conservation Trust and the Parish of St Martin's Roads Committee, and believes that this development will further undermine the remaining rural character and setting of both Brook Farm and Rue due Sergent.*" The response also refers to conditions for previous permissions, which the Trust considers have not been enforced.

15. The Parish of St Martin also noted that the scheme is similar to that submitted in 2020 and that the Roads Committee remains of the view that it is not appropriate or desirable to create new entrances on green lanes. It suggests that there is the opportunity to create an alternative access through to the Ruisseau estate. It states there has been no engagement between the applicant and the Parish despite previous objections in respect of access to the lane.
16. Other points raised in representations are:
- Previous conditions relating to landscaping and tree planting on the land have not been implemented or enforced.
  - The use of the land or structure as a separate dwelling is prohibited by the condition attached to P/2011/1062.
  - Previous planning permissions have refused vehicular access to Rue du Sergent.
  - The change of use from a garage to a house would change the setting of the Listed building by introduction of a façade and larger structure next to Brook Farm. Combined with the omission of the planted buffer this would inevitably alter the setting of the listed asset and its visual context.
  - It is not agreed that the traditional appearance of the new house would outweigh the negative impact on the lane and the listed asset next door.
  - A new vehicle access on the parish green lane would increase traffic and noise. There are a number of hidden entrances from Maufant village. Any increase in traffic would cause a danger to lane users. Its proximity to the junction would increase the risk of accidents.
  - The area is busy with wildlife, including protected species. These are likely to be adversely impacted by the proposals.
  - The proposed application with direct access onto the green lane would disrupt the rural aspect.
  - The open land is currently used as a builder's yard, resulting in noise and disturbance.

### Inspector's assessment

17. Article 19 of the Planning and Building (Jersey) Law 2002 as amended states "*In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan*". Planning permission may also be granted for proposals that are inconsistent with the Island Plan if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.
18. The current Island Plan is the Bridging Island Plan, March 2022 ('the Island Plan'). Having regard to the policies within that plan, the reasons for refusal and the grounds for appeal, and points raised in representations, I conclude that the determining issues in this appeal are:
- The effect of the proposals on the setting of the listed building Brook Farm.
  - Effect of loss of the banque on the character and appearance of the area including the green lane (Rue du Sergent).

### The effect of the proposals on the setting of the listed building Brook Farm

19. Concern about effects of the access on the listed building were also cited in the reasons for refusal of the previous application. The current proposals have sought to reduce these effects, by moving the access point further to the east. The appellant states that the access has been moved by 3 metres eastwards, although the Department considers it to be 2 metres.

20. The preamble to policy HE1 states “*the setting of a listed building or place relates to its surroundings, and the way in which it is understood, appreciated and experienced by people within its context.*” It notes that the placement and orientation of buildings is almost always deliberate and normally with reference to the environment.
21. There is a continuous vegetated banque along the southern side of Rue du Sergent, which provides a more rural feel to this side of the lane. By contrast, most of the northern side is flanked by existing development, including walls and fences associated with the Clos du Ruisseau development. Some of these appear in a poor state of repair. There is a section of banque, on the north side, which extends from the junction with Rue du Champ Colin along the front of the appeal site. This is topped by a post and rail fence. Whilst this provides a ‘double green edge’ to a short distance of the lane, overall, I find that the extent of development along the northern margins of the lane provides a distinct ‘urban edge’ character to the setting of Brook Farm.
22. The immediate setting of Brook Farm listed building, Grade 3, is constrained by the existing residential development associated with Clos du Ruisseau which surrounds it on three sides. The setting is more open to the south, over Rue du Sergent and agricultural fields. The main farmhouse is orientated southwards and there are no windows in the gable which faces the appeal site. This arrangement, combined with the presence of a mutual boundary wall, between the appeal site and listed building, acts to restrict inter-visibility between the appeal site and the listed building. The boundary wall also acts to limit views of the listed building when approaching from the east along Rue du Sergent.
23. Policy HE1 sets out that “*proposals that could affect a listed building, or place, or its setting, must protect its special interest.*” And that “*all proposals should seek to improve the significance of listed buildings and places.*” In addition, criterion 1 of policy SP4 - Protecting and promoting island identity seeks that “*all development should protect or improve the historic environment. Any development that affects a listed building ..... and their settings, will need to protect or improve the site or area and its setting, in accordance with its significance.*” These policies appear to set different expectations, in terms of things that are a requirement and things that are aspirational. Furthermore, the first component of policy HE1 appears to set an expectation of the protection of the special interest of a listed building or its setting, rather than the protection of the listed building or setting *per se*. This provides for sensitive change to occur, as long as the special interest of the listed building or its setting is maintained.
24. The listing schedule identifies the Special Interest of Brook Farm as: “Architectural, Historical.” The Statement of Significance describes this interest as “Mid C19 farm group. The house with extensive farm buildings retains its cohesive character with some historic features remaining. It contributes to its setting.” I find this last sentence ambiguous, as it is not clear what is being identified as contributing to the setting, beyond the listed buildings themselves.
25. I saw that the banque is prominent when approaching Brook Farm from the east, but it is experienced against a backdrop of built development on the northern side of Rue du Sergent, creating an ‘urban edge’ feel. The proposals would introduce a new break into this remaining section of banque and result in some re-grading to provide the necessary visibility splays.

26. Whilst the banque is an attractive feature, it lies outside the extent of listing and does not appear to be identified as a significant part of the special interest of the listed building or its setting. I accept that the re-grading of the banque and introduction of a new access would detract to a degree from the more rural aspects of the approach from the east. However, as noted, there is already an 'urban edge' feel to the approach. The urban character is even greater when approached from the west, owing to the number of existing vehicle entrances along Rue du Sergent and boundary features. In addition, there is an existing at grade access to Brook Farm from Rue du Sergent. When viewed in this context I conclude that whilst the proposals would introduce further change, these would not be so severe as to fail to protect the special interest of the listed building or its setting.
27. In reaching my conclusions about the effects of the proposal on the listed building, I have considered the objections from the Jersey National Trust and St Martin's Conservation Trust. I also note that there was no objection from the Historic Environment Team, although I understand that they were consulted.

Effect of loss of the banque on the character and appearance of the area including the green lane (Rue du Sergent)

28. Policy SP4 states that the protection and promotion of the island's identity will be given a high priority. This includes that all development should respect the landscape, seascape, or townscape character of the area in which it is proposed to be located. It should also make a positive contribution to the local character and distinctiveness of a place.
29. Policy SP3 - Placemaking, seeks that all development must reflect and enhance the unique character and function of the place where it is located. Development will be supported where it meets 8 criteria. These include that the development is responsive to its context to ensure the maintenance and enhancement of identity, character, and the sense of place and that it enhances and optimises the provision of green infrastructure.
30. The appeal site lies within the built-up area of Maufant and would be viewed within the context of the existing surrounding residential development. The proposed dwelling would extend an existing structure and lie adjacent to other residential developments. The ridgeline of the proposed building would match the existing. The design and proposed finishes are of a traditional style. I therefore find it would be consistent with the area's character.
31. I have described above, the general character of Rue du Sergent and that the position of the proposed access has been moved eastwards from the previous application. Nevertheless, the proposals would create a new entrance through the banque, fragmenting it. They would also require some re-grading to provide visibility splays.
32. At the hearing, it was explained that the visibility splays as shown on the proposal drawings are based on published standards, which do not apply to Parish Roads. I understand that the stopping sight distances required for a road with maximum speed of 15 mph would be less than that shown on the submitted plans. Even so, the maximum height allowance for visibility splays is 900 mm. Based on the ground levels shown on the proposal drawing MSP-2501-PL01 and measurements on site, I conclude that the extent of re-grading would be limited. However, there would be scope to reduce this further if the visibility splays were adjusted to reflect the lower stopping

safe distance. Thus, if the proposals are acceptable, I am content that a condition could be applied to the permission to obtain prior approval of visibility splays, which could result in a reduction in the extent of re-grading required.

33. I conclude that there would be a small loss of green infrastructure arising from the break in the banque. Whilst this would not make a positive contribution to the local landscape quality, the effects would be extremely localised and I am not persuaded that the scale of these would be sufficient to justify refusal of the proposal, when assessed in the round. These effects could be mitigated through planting and landscaping, which could be secured by condition.

#### Other relevant policies of the Bridging Island Plan

34. The proposal site lies within the boundary of an area identified as a local centre of the built-up area within the Spatial Strategy of the Bridging Island Plan. These areas are identified as able to accommodate limited development. Development in local centres, where it contributes to maintaining and enhancing sustainable local communities is also supported by policy PL3. Therefore, subject to detailed considerations, there is support for the principle of development in this area.
35. The appellant's statement of case suggests that part of the banque may lie within the green zone. There is no suggestion of this within the Department report and it is not cited as a reason for refusal of the proposal. The representative spatial strategy maps within the Bridging Island Plan 2022 are at too large a scale to determine the boundary with any accuracy. Nevertheless, the effects of the proposals on landscape character have been assessed above.
36. The design includes for two, south-facing balconies at first floor level. Given that the property would be set further south than the neighbouring properties to the north-east and north-west, the absence of built development to the south and the absence of windows in the side elevation of Brook Farm, I am content that the relationship with neighbouring properties would be acceptable and would not lead to unreasonable effects on neighbouring amenities through overlooking.
37. Likewise, I am content that the design of the proposals would be of a sufficiently high quality to conserve, protect and contribute positively to the distinctiveness of the built environment and hence would be consistent with policy GD6.
38. Policy NE1 states that development should protect or improve biodiversity and geodiversity. A Preliminary Ecological Appraisal has been completed, and the recommended mitigation measures could be secured by condition. The Natural Environment Team has not objected.
39. I have considered the concerns expressed in representations about the effects of the proposals on traffic and safety of those using the green lane. I saw that this road is narrow, with limited opportunities for passing. However, it is short in length; the geometry of the road is such that there is good visibility, it is labelled as a green lane, with a resultant low speed limit and driver understanding that it may be in use by pedestrians, cyclists, and horse riders. The appellant's 'Technical Design Note for traffic' shows that the proposed access is set back more than 20 metres from the junction with Rue du Champ Colin and meets access standards. The proposal is for a single dwelling and hence is unlikely to significantly increase traffic movements. I am therefore persuaded that the proposals would not result in unacceptable effects

on road safety and would be consistent with relevant transport policies of the Bridging Island Plan.

#### Other matters

40. Some of the representations have suggested that access to the site could be taken northwards, from Clos du Ruisseau. Whilst other options may be available, I am only required to consider whether the proposed option is acceptable. Nevertheless, the appellant's Technical Design Note demonstrates the sub-standard visibility that would result if access were taken from Clos du Ruisseau.
41. Some representations have referred to a lack of enforcement of landscaping conditions attached to previous permissions. Enforcement of conditions is a matter for the Department. Non-compliance with previous conditions is not material to my consideration of the appeal proposals.
42. Each application needs to be considered on its own merits. Nevertheless, the previous appeal (P/2020/1148) and the Minister's decision on it are material matters. The Inspector for the previous appeal noted that there was a fine planning balance. Since then, there have been some changes to the detail of the proposals, in terms of the location of the access, external finishes and planting. In addition, the policy context has altered following adoption of the Bridging Island Plan 2022. Of importance in the context of this application are changes to policies relating to the safeguard of listed buildings and green infrastructure features, such as banques.
43. Policy HE1 has been modified in terms of removing the need for preservation of settings and allowing for some change within the setting of listed buildings, provided the special interest of that listed building is maintained. In addition, the previous Adopted Island Plan (2011) included policy NE4, which provided specific protection for boundary features including banques which are of landscape or other specified value. This policy is not included within the current Bridging Island Plan (2022).

#### Conditions

44. I invited parties to submit proposed conditions. Responses from the Environmental Health and Land Resource Management Teams also included proposed conditions.
45. The Department suggested five conditions. These include conditions to limit noise emissions arising from any plant or machinery approved as part of the permission. They would also require implementation of the mitigation and enhancement measures detailed in the approved preliminary ecological assessment, prior to commencement of the development. I accept that these are appropriate and necessary conditions to safeguard neighbouring amenity and biodiversity and protected species, respectively.
46. Three of the conditions would require submission and approval of various matters. These relate to visibility splays; landscaping; and approval of external materials. I accept that these are all matters appropriate and necessary to be addressed through conditions. In terms of visibility splays, as noted above, the submitted plans show splays based on standards that are not directly applicable to green lanes and hence may be more onerous than necessary. Therefore, I recommend that the Department's suggested condition on this matter be modified to require submission of and approval of proposed visibility splays prior to development commencing. In



the case of approval of materials, it was confirmed at the hearing that descriptions or photographs would be sufficient, rather than provision of physical samples.

47. The Department's Officer Assessment Report had suggested that a condition for provision of cycle parking may be required. Although cycle parking is shown on the drawings, I accept that requiring this by condition would ensure that it is implemented in line with the requirements of policy TT2 - Active travel of the Bridging Island Plan.

## **Conclusions**

48. This proposal is similar to a previous appealed decision (P/2020/1148). The Inspector in that appeal found the decision to be finely balanced but he concluded that the effects of the development on the general character of the area or on the listed building would not be sufficiently harmful to justify refusing permission. The Minister did not accept this recommendation, granting the third-party appeal and refusing planning permission.
49. There have been some changes to the proposals since the previous appeal, comprising movement of the proposed access road further away from the neighbouring listed building and a change in external materials to those of a more traditional character. These are relatively minor in terms of mitigating the scale of effects within the setting of the listed building and to landscape character. However, there have also been changes in the policy context arising from the replacement of the Adopted Island Plan (2011) by the Bridging Island Plan (2022). In broad terms these alter the requirements for assessing changes within the setting of a listed building and remove specific protection for banquies. Policies within the Bridging Island Plan continue to direct development to the built-up area. For the reasons set out above, I conclude that the proposals would be in accord with the Island Plan overall.

## **Recommendations**

50. I recommend that the appeal should be allowed, and that planning permission should be granted, subject to the conditions discussed in paragraphs 44 - 47 and itemised in Annex 1.

Sue Bell

Inspector 14 February 2025

## **Annex 1 - Proposed Conditions**

1. Any plant or machinery hereby approved, shall be installed, maintained, and operated to such specification that noise generated from these units shall be at least 5dBA below background noise levels when measured, in accordance with BS4142:2014, from the curtilage of any nearby property.

Reason: To protect the amenities of occupiers of neighbouring properties, in accordance with policy GD1 of the Adopted Bridging Island Plan 2022.

2. The mitigation and enhancement measures detailed in the approved preliminary ecological assessment (ref. NE/ES/CDR.03, March 2024, Nurture Ecology) shall be implemented prior to commencement of the development, continued throughout

(where applicable), and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Chief Officer prior to works being undertaken. If commencement of works on site is delayed for 18 months from 19<sup>th</sup> February 2024, an updated survey and mitigation measures must be supplied to and approved by the Chief Officer prior to commencement of development.

Reason: To ensure the protection of all protected species in accordance with the requirements of policies SP5 and NE1 of the Adopted Bridging Island Plan 2022.

3. Prior to the commencement of development, detailed visibility splays shall be submitted to the Chief Officer for approval. Prior to first occupation, the agreed visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall then be retained thereafter and no visual obstruction of any kind over the height of 900mm shall be erected within them.

Reason: In the interests of safe and inclusive travel, in accordance with policy GD1 and TT1 of the Adopted Bridging Island Plan 2022.

4. Prior to commencement of the development of any phase, a detailed scheme of landscaping shall be submitted to and approved in writing by the Chief Officer. The scheme of landscaping shall provide details of the following: i) all existing landscaping features to be retained ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them and details of their role within the scheme of landscaping where they are specifically designed to negate the impact of development on the residential amenity of neighbouring residential properties: iii) other landscape treatments to be carried out to include any excavation works, surfacing treatments or means of enclosure; iv) the presence of any invasive plant species on site, and if present, a detailed method statement for the removal and long-term management/eradication of the species. Prior to first occupation of the development, the approved landscape scheme shall be implemented in full and shall thereafter be retained and maintained as such.

Reason: In the interest of the amenity of the area, the natural environment and to ensure precise landscape details serve to protect the amenities of neighbouring uses in accordance with the requirements of policies SP4, SP5, GD1, NE1, NE2 and NE3 of the Adopted Bridging Island Plan 2022.

5. Prior to their first use on site, details of all external materials to be used (including any hard landscaping materials) shall be submitted to and approved in writing by the Chief Officer. The approved materials shall be implemented in full and thereafter retained as such.

Reason: To promote good design and to protect the character and identity of the existing area in accordance with policy GD6 of the Adopted Bridging Island Plan 2022.

6. Prior to first occupation, the cycle parking facilities shown on Drawing MSP-2501-PL03 should be constructed.

Reason: To provide for active transport in line with policy TT2 of the Adopted Bridging Island Plan 2022.