

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

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

Supplemental report to the Minister in relation to

P/2024/0558 13, Clos du Ruisseau, La Grande Route de St. Martin, St. Martin, JE3 6UU

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

Date of supplemental report: 29 May 2005

Preliminary matter

- (i) My original report refers to the 'Adopted Island Plan (2011)', but references should be taken as referring to the revised version of that plan published in 2014, known as either 'Adopted Island Plan 2011 (Revised 2014)' or 'Revised 2011 Island Plan (2014)'.

Introduction

1. I produced a report for the Ministerial Office containing my recommendations in relation to appeal reference P/2024/0558 against refusal to grant planning permission at 13 Clos du Ruisseau in St Martin. Having considered that advice, the Assistant Minister has referred the report back to me for further consideration of certain issues (documented below). This report provides my further consideration of those issues and should be read in conjunction with my original report dated 13 February 2025 and the Assistant Minister's report of 20 March 2025.

Issues on which the Assistant Minister is seeking further consideration

2. The Assistant Minister's report suggests that the substance of policy NE2 - Green infrastructure and networks of the Bridging Island Plan 2022 may not have been given appropriate consideration either in the initial decision or in the consideration of the appeal itself. It further noted that the policy was not cited in the departmental officer report, nor in the reasons for refusal, "despite the fact that a key tenet of the basis for the refusal was that the proposed development '*require(d) a significant intervention in the banque*'".

Procedures

3. To assist in the preparation of this report, I invited both the Department and appellant to comment on the relevance and application of policy NE2 to the appeal. Copies of the questions and responses can be provided, if required.

Provisions of Policy NE2 - Green infrastructure and networks

4. The policy seeks to protect and improve existing green infrastructure assets and contribute towards the delivery of new green infrastructure assets and wider green infrastructure. Specific examples of such green infrastructure listed within the policy wording are trees, hedgerows, wetlands, ponds and watercourses. Banques are not explicitly mentioned. However, 'green infrastructure' is defined in the Glossary to

the Bridging Island Plan as “assets including open spaces such as parks and gardens, playing fields, allotments, woodlands, fields, trees, hedgerows, banques and ponds, as well as footpaths, cycle routes and streams.” Thus, I conclude that the policy would be relevant to determination of this appeal.

5. Five ways of achieving the protection and improvement of existing green infrastructure assets are listed in the policy. Part a refers to “retaining and improving existing green infrastructure, including trees, hedgerows, wetlands, ponds and watercourses, as far as is practicable”. I interpret this wording as acknowledging that it may not be possible to retain or improve green infrastructure in all development.
6. Paragraph 3 of the policy also provides for circumstances where a development would have an adverse impact on existing green infrastructure assets. In such cases, developments are required to demonstrate that the benefit will outweigh the harm and provide details of how the features will be protected as far as practicable, and that measures are in place to minimise and/or mitigate their loss on-site or will be otherwise compensated for. The policy also requires sufficient information to be provided to enable this assessment.

Application of Policy NE2 to current appealed proposals

7. Policy NE2 is not listed as a policy consideration or discussed in the officer assessment report for the application. Nor is it listed in the reasons for refusal. In response to my request for further information, the Department has confirmed that the banque makes an important contribution to the character of the area, the green lane and the setting of the listed building. It notes that “there would be a negative impact from the loss of part of the banque, and this loss is a concern which contributed to the reason for refusal, however the primary concerns relate to the impact upon the character of the area and the setting to the listed building.”
8. Furthermore, the Department has confirmed that in reaching a decision, it assessed the Bridging Island Plan as a whole. The policies which were deemed most relevant to the proposed development were assessed. The Department accepts that policy NE2 is also relevant and notes in its response to my queries “..that said, the impacts upon the character of the area/green lane and the setting of the listed building were seen as being the most critical considerations in this case and influential in leading to the decision made.” It has also noted “The proposals would result in the loss of some of the green infrastructure afforded protection by the policy. It is a relatively minor loss, and the policies referred to in the reason for refusal (SP3, SP4, HE1) are considered to be most relevant given the negative impacts the proposal would have.”
9. It is often the case that effects of a development proposal may ‘overlap’ with several policies within the Bridging Island Plan. In this instance, it appears that the loss of a section of the banque has been assessed by the Department. However, this has been documented in terms of its effects on the character of the area and the setting of the listed building, and not explicitly stated in relation to policy NE2.
10. Considering the application in relation to policy NE2, my interpretation is that whilst the policy seeks protection for green infrastructure assets, inclusion of the words “as far as is practicable” within the policy provides for those circumstances where this absolute protection cannot be achieved. In those cases, the requirements set out in the third paragraph, that benefits will outweigh the harm, would apply.

11. As set out in my original report, the proposals would require the creation of a new opening through the banque and re-grading to provide sightlines. Whilst there is a continuous banque on the southern side of Rue du Sergent, which would remain untouched, the banque on the northern side of the road is much reduced in length, only extending from along the edge of the appeal site eastwards to the junction with Rue du Champ Colin. Paragraph 32 of my original report notes that the amount of re-grading could be further reduced by applying stopping sight distances for 15 mph and that this could be secured by condition. I therefore conclude that the amount of green infrastructure to be affected would be minimal, with much of the feature maintained. The proposals also include for soft landscaping, including planting of hedgerow species recommended by ecologists, along the top of the banque. I consider this would act to improve the quality of the remaining green infrastructure. Thus, I consider that the proposals demonstrate that the banque has been retained and improved as far as is practicable.
12. Whilst I consider the degree of harm to the green infrastructure asset to be minimal, I have considered whether the benefits of the scheme would outweigh this harm. The proposals are for the creation of a new dwelling, within the built-up area, in line with the spatial strategy of the Bridging Island Plan. The location and orientation of the proposed dwelling would avoid unreasonable effects on neighbouring amenity in line with policy GD1 and the design is of sufficiently high quality to conserve, protect and contribute positively to the distinctiveness of the built environment, consistent with provisions of policy GD6. Whilst the proposals would result in a loss of a short section of the banque, there is no suggestion of harm to biodiversity features and there has been no objection from the Natural Environment Team. Thus, I conclude the proposal would accord with the provisions of policy NE1. The proposals also include for planting of native hedgerow species, with benefits for biodiversity. The works to the banque would detract from landscape character. However, I find that these would be localised. As set out in paragraphs 19 - 27 and 43 of my original report, I find that effects on the setting of the listed building are also limited and would not detract from its special interest and so be consistent with the provisions of policy HE1 and SP4. When considered together, I conclude that the benefits of the scheme would outweigh the limited effects and that the banque has been safeguarded as far as is practicable, in line with the provisions of policy NE2.
13. I acknowledge that the Department considers the works to the banque would fail to preserve or enhance the character and appearance of the area or the setting of the listed building and hence that the benefits of the development would not outweigh the harm. However, for the reasons set out above and in my original report, I have reached a different conclusion.

Comparison of protection afforded to banques under Policy NE2 of the Bridging Island Plan (2022) compared to previous protection provided through Policy NE4 of the Adopted Island Plan 2011 (Revised 2014)

14. In paragraph 49 of my original report I refer to policy changes that have occurred since the previous scheme was considered under the Island Plan that was in place at that time (the Adopted Island Plan (2011) (Revised 2014) also known as the 'Revised 2011 Island Plan'). Policy NE4 - Trees, woodland and boundary features of that plan has not been carried forward into the Bridging Island Plan (2022). The closest comparable policy is NE2 - as set out above.

15. Whilst both policies provide for protection of banques, there are differences in the wording as to how this protection will be achieved. Notably, policy NE4 of the Adopted Island Plan 2011 (Revised 2014) set out that protection would be achieved by “1. Refusing development proposals which will result in their loss or damage”. This provided absolute protection and did not appear to provide, within the policy, for any circumstance where protection of features could not be achieved. This contrasts with policy NE2 of the Bridging Island Plan (2022), which seeks to achieve protection through “retaining and improving existing green infrastructure...as far as is practicable”. In addition, as noted above, the policy also includes requirements for those circumstances, where some harm to green infrastructure assets will occur.

Conclusions and recommendations

16. As summarised in my original report, the proposal is similar to a previous appealed decision. That decision was considered to be finely balanced, with the Inspector recommending approval of the scheme, but the Minister reaching a different conclusion. Since then, there have been some minor changes to the scheme, which nevertheless, reduce the scale of effects. Changes in policy wording, notably in relation to protection of listed buildings and their settings, but also boundary features have occurred. In the latter case, policy NE2 of the Bridging Island Plan (2022) provides for circumstances where loss of green infrastructure assets (which includes banques) may be acceptable. These require protection of features as far as practicable and that the benefits of a scheme should outweigh the effects. For the reasons set out above and in my original report, I find that the proposals seek to protect the banque as far as is practicable and that effects can be further reduced through applying reduced visibility standards. In addition, I consider the benefits of the proposal would outweigh the effects. I therefore conclude that the proposal would be in accordance with the Bridging Island Plan (2022).
17. My recommendation set out in paragraph 50 of my original report stands.

Sue Bell
29 May 2025