

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

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

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mrs R E Cox (Bellozanne Hamlet Association) (Third Party Appellant)

Site address: Carob Warehouses, Bellozanne Valley, St. Helier, JE2 3JX

Application reference number: P/2020/1304

Proposal: 'Construct first floor raised vehicular access platform and install roller shutter door to West elevation'

Decision notice date: 1 April 2021

Procedure: Hearing held on 15 July 2021

Inspector's site visit: 12 July 2021

Inspector's report date: 23 August 2021

Introduction

1. This report contains my assessment of the third party appeal made by Mrs R E Cox on behalf of the Bellozanne Hamlet Association against the decision to grant planning permission for a development at Carob Warehouses in the Bellozanne Valley. The development entails the construction of a raised vehicular access platform and a roller shutter door opening in 'Warehouse B' which is close to residential property.
2. I held a Hearing on 15 July 2021 and have considered the submissions and evidence of the appellant, the applicant and the department for Infrastructure Housing and the Environment (IHE).

Main issues

3. The main issues in this case are:
 - Whether the development would cause unreasonable harm to the living conditions of the neighbouring residential properties with particular regard to noise, vehicular movements and general activity.
 - The effect of the design of the development on the character and appearance of the area.

Procedural matters

4. The applicant did not submit a written statement of case within the prescribed time. I agreed a short extension to allow the applicant to make a submission, but there were some email issues in the communication between the Judicial Greffe and the applicant's agent, such that the message was not successfully relayed. However, the applicant and his agent attended the Hearing and participated fully. I am satisfied that all parties have had the opportunity to be heard and that no matters of unfairness arise.
5. Due to Covid-19 concerns, the appellant was unable to attend the Hearing in person but did participate through a speaker telephone system. Her agent, Mr Ted Vibert, attended in person.

The appeal site and its surroundings

6. Carob warehouses are situated in the Green Zone at the northern end of Bellozanne Valley road. Whilst there are green lanes running north-west (Ruelle Vaucluse) and east (Rue Fliquet) from this location, it is effectively the terminus for commercial traffic. The warehouses comprise the southern elements of a substantial block of commercial buildings and yards in this part of the valley, which are accessed by a private service road from the Bellozanne Valley road.
7. The submitted plans notate the Carob Warehouses as comprising 2 parts: Warehouse A being to the north and Warehouse B being to the south and including a lower level. The 2 warehouses are physically attached and linked internally such that the current existing service access to the main floorspace of Warehouse B is through Warehouse A. However, on the west elevation there is a personal door in the corner near where the warehouses join, which opens on to a hard surfaced area (near to an electricity substation). When I visited, there was a delivery vehicle on this hardstanding and product crates, indicating that the personal door was being used as a servicing route for Warehouse B (confirmed by the applicant in the Hearing).
8. The lower level of Warehouse B has separate accesses from a service drive / parking area which connects directly to Bellozanne Valley on the west of the site and Rue Fliquet on the southern site frontage. These hard surfaced areas encircle a dwelling house, *The Haven*, on 3 sides. There are also 3 houses just to the south of Warehouse B on Rue Fliquet (*Tiroen, Kaduna* and *Flicquet Cottage*). There are a small number of other residential properties located further up Rue Fliquet, and a few more to the south along the Bellozanne Valley.
9. The surrounding area, whilst superficially rural in appearance, with substantial blocks of woodland along the valley sides and green lanes, is interspersed with major commercial sites and buildings (including the complex to the north of the site) along with public infrastructure operations (the sewage works to the south). Whilst there are some dwellings in the area, these do not comprise the principal land use or character, albeit that

some clearly predate the modern day commercial uses. The topography of the valley and the road system is such that the commercial traffic generation is all channelled up and down (north and south) the Bellozanne Valley road. I also observed that noise from commercial traffic and activities appears to be contained within the valley and is audible at some distance.

The planning history

10. The planning history associated with the Carob Warehouses is an important material consideration in this appeal and requires close examination. At the Hearing, some of the chronology of permissions, planning conditions and construction was a little confused. Mr Townsend (IHE) has subsequently provided a factual resume of the planning history and this has been shared with the other appeal parties. Based on this account, and some helpful contributions from the appellant and her agent, the key points are summarised below under sub-headings to distinguish the older and more recent history.

Older planning history

11. Warehouse B was built first. It was constructed for Jersey Coal Distributors as a 'coal bulk storage building with link conveyor' pursuant to a planning permission granted in 1983 (reference 12364/D). The permission was subject to 6 conditions. Condition 1 required a detailed 'development application' which I understood to be akin to a 'reserved matters' approval today. Condition 3 states that "*the use shall not cause detriment to the amenities of the locality by virtue of noise, vibration, smell, fumes smoke, soot, ash, dust grit or effluent.*" Condition 4 required 'preventative measures' to protect the adjacent property (assumed to be *The Haven*) to be included in the development application. Condition 5 required a landscape scheme. A subsequent 'development application' was made and approved (reference 12364/E) and the records indicate that work was completed by 5 November 1985.
12. In January 1990, permission was granted for a proposal described as 'additional floor in existing warehouse with revised ramp to first floor with new canopy over loading bay at first floor. New entrance formed to ground floor and fire escape doors from ground and first floor levels with steel fire escape from first floor.' Condition 4 stated that "*Access to the new opening shall be restricted to the existing access from Bellozane Road*". The permission was renewed in 1992, 1993, 1994, 1995 and 1996 and work is recorded as part completed.
13. It is understood that in the late 1990s the occupancy changed, the warehouse having been acquired by the Channel Islands Co-operative Society as the distribution centre for its retail stores on the Island.
14. Warehouse A has its origins in applications made in the late 1990s (by the Co-op) and appears to have been built in the early 2000s. An application was refused in December 1998 (reference 12364/J) but a, presumably revised, subsequent application was approved in July 1999 (reference 12364/K). The approved development description reads: 'Demolish existing

offices, flats and storage buildings. Construct extension to existing warehouse. Form replacement flat within existing warehouse'. Conditions imposed include requirements in respect of external materials (3); that the accommodation is to be retained as part of the corpus fundi of the applicant and may not be sold separately (4); that the use shall be for storage purposes only (5); and there shall be no external storage, processing or display / trading of goods (6,7 and 8).

15. Mr Townsend has provided photographic evidence showing the old offices to the north of Warehouse B in place in 1997. He has also provided a 2003 image showing the site of the old offices and space to the north of Warehouse B occupied by the recently constructed warehouse extension (now known as Warehouse A).
16. In February 2002, a showroom was subsequently approved at the ground floor of Warehouse B alongside a store and flat (reference P/2001/1768).
17. In October 2002, permission was granted for the construction of a lift and stairs in the north-west corner of Warehouse B (reference PB/2002/1814).

More recent planning history

18. In recent years, the applicant has acquired the warehouse buildings. He operates his own businesses from Warehouse A (Carob Enterprises Ltd) and has a tenant in Warehouse B which operates an online groceries delivery service (Orderit.je). Since acquiring the premises the applicant has made a number of planning applications. The 2 most relevant are a 2018 approval and a 2019 refusal.
19. In May 2018, permission was granted (reference P/2018/0455) for a proposal described as 'form hardstanding to South of site. Replace wall to West of JEC substation. Increase height of wall and install railing to West elevation. Install roller shutter door to West elevation'. Other than the standard time limit and plans conditions, no further planning conditions were imposed. The approved roller shutter door is in a similar position to the appeal proposal. As the permission has been part implemented, it remain extant in perpetuity and is a genuine fallback for the applicant, should Mrs Cox's appeal succeed and permission be refused for the current scheme. I also note that the personal door I observed (see paragraph 7 above) appeared as a 'proposed escape door' on the approved drawings¹ under this application.
20. In May 2019, permission was refused for an application (reference P/2018/1857) to 'Construct raised access vehicular access platform to provide separate access to West of warehouse. Install roller shutter door and pedestrian doors to West elevation.' The access platform proposed under this application was much larger (the applicant says 85.6 square metres in area) and closer to *The Haven*. The application attracted a number of objections and was refused for 2 reasons:

¹ Drawing number 1537/18/SK11 under planning application reference P/2018/0455

1. *The proposed development by the nature of its use and siting in relation to the neighbouring property 'The Haven' is likely to adversely affect the environment of the occupants of this property in terms of overbearing impact and noise which is contrary to Policies GD1 and EIW4 of the Adopted Jersey Island Plan. 2011 (Revised 2014).*
2. *The proposed development by the nature of its siting and design does not respond well within the context due to its close proximity to 'The Haven' and does not respect, conserve or contribute positively to the diversity and distinctiveness of the landscape or built context which is contrary to Policies GD1 and GD7 and NE7 of the Adopted Jersey Island Plan. 2011 (Revised 2014).*

The proposal and the determination of the application

21. The application was presented as a 'revised plans' submission to the scheme approved under P/2018/0455. The revisions (from the approved scheme) entail enlarging the roller shutter door so it would be 600mm wider (to 3.6 metres) and 400 mm higher (4 metres high) and creating a wider platform leading up to the door to allow vehicular servicing. The widened platform would be just over 16 square metres in area and about 2 metres wide at its widest point. An acoustic fence is proposed on the edge of the platform.
22. The application was determined by the Planning Committee following a site inspection. The committee report records that 10 letters of objection had been received and the grounds of objection included traffic generation, impact on neighbours in terms of noise and loss of privacy, and that the proposal was considered overbearing and out of keeping with the character of the area. The report also recorded that the Environmental Health service had initially sought a noise report, but its second response confirmed that a proposed 2 metre high fence should assist with noise mitigation and that a noise survey was not required.
23. The committee resolved to grant planning permission. A planning condition was imposed requiring the close boarded fence to be erected prior to the first use of the platform, and the reason stated was to safeguard the amenities and privacy of the occupants of the adjoining properties. This third party appeal is made against that decision. For clarity, under Article 117(1) and (2), this decision remains in effect, but the development cannot be implemented until this appeal has been decided.

The appellant's grounds of appeal

24. Mrs Cox's statement of case explains that she has lived at *Tiroen* since 1998 and that she is the secretary of the Bellozanne Hamlet Association, which comprises about 20 residents within a half mile radius of the appeal site. She draws attention to the very close proximity of the warehouses to residential properties and explains how the valley acts as an amphitheatre for noise.
25. The statement explains the planning history and draws attention to the planning conditions imposed in 1983, which preclude detriment to the amenities of the locality, and the 1999 permission for the warehouse

extension (Warehouse A) which is conditioned to be for 'storage purposes only'.

26. It explains that Jersey Coal Distributors and the Co-op occupiers enjoyed good relations with their neighbours in terms of noise, late night and early morning working and that any complaints were dealt with quickly. Mrs Cox alleges that this is not the case today due to a range of businesses being operated from the 2 warehouses, including wholesale uses and the facility for customers to collect orders in their own vehicles. The statement says that the Orderit.je business operates long hours and delivery vans are still returning at 11.00 pm. Overall she estimates that there are 29 vans and lorries operating in the 2 warehouses and more than 20 people work there and arrive in cars.
27. Mrs Cox believes that the trainee planning officer failed to assess the nature of the commercial uses and had no evidence to support the view that the proposal would not create undue noise or disturbance or increased traffic generation. Whilst recognising that the platform has been reduced in size from the refused scheme, the same objections remain and the proposal is considered to be unacceptable in amenity and design terms and should be refused. Mrs Cox says the proposal is contrary to Island Plan policies GD 1 (general development considerations), GD 7 (design quality) and NE 7 (green zone).
28. Mrs Cox's statement of case was supported by a number of appendices. These included an initial representation made to planning officers, a letter from the First Tower Community Association, and a noise and disturbance diary covering the period 26 June 2020 to 7 June 2021.

The applicant's response

29. Whilst the applicant did not make any written submissions, his contributions and those from his agent, Mr Smith, rebut the grounds of appeal and understandably support the IHE decision to grant planning permission.
30. At the Hearing, the applicant's agent explained that the fallback position is extant forever and would be implemented if this appeal fails. The primary reason for the current application was to adjust the opening to miss the building's structural steelwork. He considers that the appellant has seized the opportunity to object to the applicant's operation on much wider issues than the scope of the application, and any such matters should be addressed separately.
31. He explained that any speculation about the tenant / occupier was misplaced because the user was already in place (Orderit.je) and the servicing activities are happening already, via the personal door, to load the Orderit.je vehicles on the upper hardstanding; the door would simply make those operations more efficient and quicker. He also explained that the warehouses generate less than 20% of the commercial traffic in the area.
32. The applicant submits that the IHE department was correct in its decision making, that the appeal should be dismissed and that the planning permission should be confirmed.

The IHE response

33. The IHE's case is set out in its officer report and this is supplemented by its succinct response and second response documents. With regard to the substantive main issues, the officer assessment is that the proposal should be assessed in respect of the specific revisions to the approved (extant scheme). In this regard it assesses that the changes are minor and that the proposal would be acceptable in amenity terms, subject to the erection of the acoustic fence, and in design terms.
34. The IHE further states that any tenant at the warehouses is required to conduct their operations in a reasonable manner and any planning breaches or matters relating to statutory nuisances would be dealt with separately.

Inspector's assessment

Main issue 1 – living conditions

35. The appellant's primary objection to the proposal relates to its amenity implications for nearby residents. The pivotal policy in this respect is policy GD 1 which addresses 'general development considerations' and, more specifically, part (3) of that policy which sets a requirement that new development does not 'unreasonably harm' the amenities of neighbouring uses, including the living conditions for nearby residents. The policy goes on to identify matters that 'in particular' will be considered and these include privacy, light, noise and emissions. The concept of what is 'unreasonable' is not defined in the policy and is a matter of judgement for the decision maker. Also of some relevance is policy NE 7(5), which allows for intensification and / or intensification of existing employment buildings and land subject to certain criteria, which include amenity considerations.
36. This is a case where context and planning history are highly pertinent to considerations of residential amenity.
37. Context is important because the GD 1(3) judgement of what might be unreasonable is an inescapably contextual one and it will differ by location. The context in this case is one where existing residential properties in the locality are subject to living conditions that are inevitably compromised by the proximity of commercial uses and the valley topography. Whilst noting the appellant's view that earlier chapters of commercial occupancy of the warehouses were less problematic, occupiers and uses inevitably change over time. Whatever the precise use, there can be no escaping the fact that a limited number of homes, and *The Haven* in particular, are uncomfortably close to the warehouses and their operations.
38. It is also the case that the 'one way in / one way out' route for commercial traffic along the Bellozanne Valley means that all traffic to the Carob Warehouses, and the substantial, and indeed much greater, employment areas to the north, inevitably passes in close proximity to the homes in the area. For *The Haven*, its living conditions are further compromised by the proximity of parking / servicing areas and commercial activities associated with the lower level of Warehouse B, such that it is effectively encircled on 3 sides by commercial uses.

39. Planning history is similarly important, as the proposal cannot be considered in a vacuum. The older planning history explains the evolution of the warehouses, with Warehouse B having been constructed almost 40 years ago and Warehouse A added to it about 20 years ago.
40. The appellant has made some submissions about the 'storage purposes only' condition (attached to reference 12364/K). However, that condition applies only to Warehouse A and not Warehouse B, where the door and extended loading platform are proposed. Moreover, I cannot see how a use could be, literally, limited to 'storage' as it would imply nothing stored could ever be despatched. Any commercial storage use inevitably entails an element of distribution and the associated importing and exporting of goods from the site. It is an inescapable fact that the logistics sector has become more dynamic in recent years with online operations, such as Orderit.je, defining new warehouse based business models. They may also include an ancillary element of 'click and collect' type activities which, if limited, are unlikely to amount to a material change of use straying outside of the Class E warehouse use as defined in the Order².
41. An important point with regard to the older planning history is that the loading / unloading activities associated with Warehouse B have been well distanced from *The Haven* and other residential neighbours. Originally, I believe Warehouse B's main floorspace (rather than the lower areas) was serviced from doors in its north elevation (near the old office building), which would have been well separated from *The Haven*, and screened by Warehouse B itself. That service route was then internalised within Warehouse A when it was constructed and the service route to both buildings was a comfortable distance to the north of *The Haven*.
42. The more recent planning history has established a fallback position for the applicant of implementing the originally approved (and extant permission) under reference P/2018/0455. The permission granted under P/2018/0455 has the potential to fundamentally change the location of Warehouse B's primary servicing activities to a position much closer to *The Haven*. Indeed, it would be just a few metres to the north of the property and at an elevated level.
43. I share the appellant's concerns that the evidence base underlying the officer's opinions with regard to amenity impacts, notably to *The Haven*, appears weak. With hindsight, I note that the officer report with regard to P/2018/0455 provides no evidence of the likely number of vehicle movements, the types of vehicles, or the hours of operation of the new servicing door. Without that quantifiable information, it seems difficult to reach a sound assessment on potential amenity impacts, and whether those effects might be 'unreasonable' in terms of policy GD 1(3). For example, a small number of light vans making deliveries and pick-ups in normal working hours might be acceptable, whereas high volumes of commercial vehicles arriving and leaving 24 hours a day / 7 days a week may cause unreasonable loss of amenity. The only planning safeguard in the latter circumstances would be reliance on a rather simplistic 1983 planning

² Schedule 2 of the Planning and Building (General Development) (Jersey) Order 2011 (as amended)

condition requiring no 'detriment to the amenities of the locality', which may be difficult to calibrate and, therefore, enforce.

44. Notwithstanding these hindsight reflections, there is no escaping the fact that P/2018/0455 is a valid planning permission which has been partly implemented and is therefore extant. There is no evidence to indicate that the applicant would not implement this permission, albeit that it involves a more complicated construction (and likely additional cost), if this appeal were to succeed. I therefore must attach significant weight to the fallback permission which has the potential to result in similar environmental effects to the current proposal, but without any specific amenity safeguards and measures.
45. Bringing together the already compromised living conditions context and planning history, including the applicant's genuine fallback development, I cannot conceive that an objection to the current proposal on amenity grounds could be reasonably sustained. This is not so much because I consider that there will not be any negative amenity impacts, but simply because a slightly larger door and a slightly enlarged platform, would not be substantially different in terms of amenity implications to the already consented fallback scheme. More importantly, the current proposal includes a mitigation measure in the form of a 2 metre acoustic fence, which appears to be endorsed by the Environmental Health service. There is also scope to add some amenity safeguarding planning conditions, which I discuss later in this report.
46. As a result, the current proposal would be superior in terms of protecting residents' living conditions when compared to the fallback development, which does not include an acoustic fence or any planning conditions. I therefore conclude that the proposal could not be reasonably opposed on amenity grounds under policy GD 1(3) or NE 7(5).

Main issue 2 – design

47. The second main issue concerns the design of the proposals and their effect on the character and appearance of the area. The appellant considers that the proposal would fail the policy GD 7 test of 'high quality' design. She contends that it will be seen as a mistake by the architect of the original building and that the fence would be out of keeping and would make the area look like a shanty town.
48. Whilst recognising the generic policy requirements for high standards of design under GD 7, this needs to be interpreted contextually and with reference to the nature of the development proposed. The site context is of a large scale warehouse building and, within that commercial backdrop, the works to create a service door and associated modest area of access platform are relatively minor and not out of character. As the works are essentially functional in nature, there is little scope for 'design' refinements beyond a neat and tidy appearance, which is indicated by the drawings. Indeed, they are not unusual or unexpected alterations to a commercial building and, once executed, will not in my assessment appear as obvious 'add-ons' or disrupt the simple design of the building.

49. I have taken into account the appellant's concerns about the appearance of the acoustic fence, but it will serve an important function and help to alleviate impacts on the living conditions of nearby residents. Subject to a neat specification and good maintenance, I see no reason to suggest that it would be harmful to the character and appearance of the area.
50. On this main issue, I conclude that the design of the proposal is acceptable and I find no conflict with policy GD 7.

Planning conditions

51. At the Hearing, I held a without prejudice discussion on planning conditions in the event that the Minister was minded to confirm the permission. I do think that 2 additional condition requirements are justified and necessary in planning terms.
52. The first would require precise specification details of the acoustic fence to ensure that it was of a suitable standard and design to achieve its purpose and that it will be maintained as such thereafter. This can be achieved by an amendment to condition 1 that appears on the issued decision notice.
53. The second would be a condition to control the hours of use of the loading door to avoid potential night time impacts on the amenities of nearby residents, notably at *The Haven*. At the hearing, the appellant's agent suggested 08:00 – 20:00, but the applicant made plain that this would be unworkable with the business which services the hospitality sector and needs to start early. The applicant offered 06:00 – 20:00 as a workable alternative. Whilst the early start might be considered less than ideal from an amenity perspective, I am mindful of the site context and fallback position, and would recommend the imposition of the applicant's suggested hours, which would offer some amenity protection over and above the fallback position.

Other matters

54. At the Hearing, Mr Townsend suggested that this may be a case where an informative could be added to the decision notice. He explained that this could remind the applicant about the requirements of earlier planning conditions in respect of the operation of the use and, outside planning controls, potential action under the Statutory Nuisances (Jersey) Law 1999, should there be ongoing evidenced problems. Whilst I note this suggestion, it is not a matter that I would normally recommend in my role in assessing a planning appeal. However, there is nothing to prevent IHE officers communicating those messages separately to the applicant.

Conclusions and recommendation

55. This appeal relates to some relatively minor works to a long established commercial warehouse building in the Bellozanne Valley. The works involve the construction of a raised vehicular access platform and a roller shutter door opening to create a new service access to facilitate loading and unloading. The appellant's primary ground of appeal relates to the impact of the proposal on the amenities of nearby residents and she also has concerns

about the design of the proposal and its effect on the appearance of the area.

56. My exploration of matters concerning amenity has revealed a long and complex planning history. It has highlighted some long standing tensions between the significant commercial uses in the valley, and their associated activities and traffic generation, and the relatively limited number of residential properties that exist alongside them. The issues of noise and traffic appear to be exacerbated by the valley topography and the single road route in and out for commercial traffic.
57. With regard to amenity considerations arising from the current proposal, I share some of the appellant's concerns and I do think that the establishment of this new servicing route for Warehouse B may have some negative amenity impacts on residents of nearby properties and, in particular, *The Haven*, which is in closest proximity. However, I must attach significant weight to the extant permission granted under P/2018/0455 which is a genuine fallback for the applicant. This permitted scheme enables a similar service door and access to be created, but without any mitigation measures or controls on hours of use. The changes involved in the current scheme, entailing a slightly bigger door and a modest increased platform area, do not substantially change or worsen the amenity implications when compared to the fallback scheme. Indeed, the current scheme, which includes an acoustic fence and could be subject to additional planning conditions, would be superior in amenity terms.
58. In terms of design, I find no conflict with policy GD 7, given the essentially functional and neat nature of the alterations and works proposed.
59. For these reasons I therefore recommend that the Minister dismisses this appeal. However, I do also recommend that the Minister confirms the planning permission under reference P/2020/1304 with 1 varied and 1 additional condition, in respect of details of the acoustic fence and hours of use of the door. I also consider it appropriate to revise the decision date to the date of the Ministerial Decision, to address time lost through the appeal process. I have set out below my recommended conditions.

Revised Condition 1

Prior to commencement of the development hereby approved, precise details of the acoustic / screen fence to be erected on the perimeter of the access platform hereby approved, shall be submitted to and approved in writing by the department for Infrastructure Housing and the Environment. The details shall include the alignment, height, specification and acoustic performance. The approved acoustic / screen fence shall be installed in full accordance with the approved details before the access platform and service door are brought into use and shall thereafter be retained and maintained as such.

Reason: To protect the living conditions of the occupiers of neighbouring properties in accordance with policy GD 1(3) of the adopted Island Plan 2011 (Revised 2014).

New condition 2

The new roller shutter door on the west elevation of the building hereby approved shall only be opened and in use for loading / unloading activities between the hours of 06:00 – 20:00 on any day and shall remain closed at all other times.

Reason: To protect the living conditions of the occupiers of neighbouring properties in respect of night time disturbance, in accordance with policy GD 1(3) of the adopted Island Plan 2011 (Revised 2014).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appearances at the Hearing

For the Appellant

Mrs R E Cox (by telephone link)

Mr Ted Vibert (appellant's agent)

For the Applicant

Mr Basilio (applicant)

Mr Smith (applicant's agent)

For the Department

Mr A Townsend