

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

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

**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

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**Appellant:**

Roy Travert

**Planning permission reference number and date:**

P/2021/1881 dated 10 March 2022

**Applicants for planning permission:**

Jersey Property Holdings - Capital Projects

**Site address:**

Plat Douet Primary School, Plat Douet Road, St. Saviour JE2 7PN

**Description of development:**

"Install 6 no. floodlights to 3G pitch"

The application was made under Article 20 (Application for planning permission for development already undertaken)

**Inspector's site visits dates:**

13 June 2022 (in daylight) & 14 June 2022 (after dark, with the floodlights on)

**Hearing date:**

14 June 2022

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**Introduction and procedure**

1. This is a third-party appeal against the grant by the Planning Committee of planning permission for the development described above. The permission was granted subject to the standard planning conditions relating to the commencement of the development and compliance with the approved details and to the following additional condition: -

"1. The lighting hereby approved shall only be used between the hours of 8am to 8pm Monday to Friday and not at all on Saturdays, Sundays or Bank Holidays unless otherwise agreed in writing by the Department of the Environment."

The reason given for condition 1 is "To protect the amenities of occupiers of neighbouring properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014)."

2. The reasons given for the grant are: -

"Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received.

Notably, the brightness and hours of operation have been specifically considered in relation to the impact on the neighbours. Based on submissions and consultation responses it is confirmed that the installation of floodlights and use of the site will not result in serious harm to the amenities of neighbours."

3. The policies referred to here in the approved Island Plan are those in the Revised 2011 Island Plan. They are no longer applicable to the appeal decision following the plan's replacement by the Bridging Island Plan in March 2022.
4. The appeal is therefore proceeding on the basis that the Bridging Island Plan is now the Island Plan for the purposes of Article 19 of the Law. This article provides that (a) in general planning permission shall be granted if a development is in accordance with the Plan, (b) it may be granted where it is inconsistent with the Plan if there is sufficient justification for doing so, or (c) it may be refused.

### **The Bridging Island Plan policies**

5. Policy CI5 of the Plan deals with sports facilities. It includes the following: -

"The development of new or extended small-scale sports ... facilities will be supported where the proposal is:

- a. within the built-up area; or
- b. within the grounds of existing facilities".

6. Policy GD1 of the Plan deals with "Managing the health and wellbeing impact of new development". The relevant provisions of Policy GD1 are:

"All development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts, and will only be supported where:

1. the development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents, and in particular, will not:

...

- d. adversely affect the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions.”

### **Planning context**

7. The floodlights have been installed to serve the artificial playing pitch that was laid at the primary school following the grant of planning permission P/2020/1003. This permission was granted subject only to the standard planning conditions relating to the commencement of the development and compliance with the approved details. The permission does not limit the hours of use of the pitch or restrict its use to the primary school. It does not authorise the installation of any floodlights.
8. The application leading to this appeal relates solely to the floodlights that have since been installed around the pitch. The Minister's powers under Article 116 to allow or dismiss the appeal and to reverse or vary the decision therefore relate only to the permission P/2021/1881 granted for the floodlights. Permission P/2020/1003 granted for the pitch cannot be reversed or varied as a result of this appeal.

### **The case for the applicants, Jersey Property Holdings**

9. The applicants state that the floodlights will allow the pitch to be used in the winter months for evening school and community sports activities, which will be carefully managed by the school. They maintain that this accords with policies aimed at making the best use of existing resources and supporting learning and physical well-being.
10. The applicants have submitted technical data showing that the floodlights have been designed to avoid light spill and have been installed in accordance with specialist instructions. They accept that the additional use of the pitch which the floodlights will facilitate will result in some noise impact, but maintain that this will not be unreasonably harmful to neighbours. They have acknowledged that improvements need to be made in arrangements for consultation with nearby residents about the use of the pitch.

### **The case for the Infrastructure, Housing and Environment Department**

11. The Department point out that Policy CI5 supports proposals for small-scale sports facilities within the built-up area. They also draw attention to the key aims in the Common Strategic Policy 2018-2022 of putting children first and enabling Islanders to lead active lives.
12. The Department state that the closest boundary of residential property is 21.75m away from the nearest floodlight and that the floodlights have been angled to reduce glare. They acknowledge that there will be some additional noise from the evening use of the pitch, but point out that the adjoining supermarket is open until 9pm and that the effect of planning condition 1, which restricts the hours of use of the floodlights (see paragraph 1 above), will be that the times when the floodlights will be used will mostly be in the winter, when nearby residents are most likely to be indoors. With the restrictions in condition 1, the Department consider that there will not be an

unreasonable amenity impact on nearby residents within the meaning of Policy GD1.

### **The case for the appellant, Roy Travert, and other residents**

13. In general, residents acknowledge that the installation of the pitch for use only by the primary school is acceptable, but they object strongly both to the community use of the pitch, because it results in unacceptable noise, and to the installation of the floodlights, because they will make the disturbance worse by extending community use into the hours of darkness and cause further harm through light pollution. Residents are very aggrieved that they were not adequately consulted before the permissions were granted for the pitch and the floodlights and, in particular, that they were not notified that the pitch would be available for community use. They state that the failure to consult them is ongoing and that the use of the pitch is not being properly managed when the school is closed.
14. Reference has been made to guidance issued by Sport England and by SportsScotland relating to floodlighting and noise associated with artificial pitches. The guidance emphasises the benefits of consultation and good local communication. It gives guidance on matters of good practice and good management and suggests methods of mitigating impacts on neighbours. I am grateful to residents for drawing this guidance to my attention.

### **Inspector's assessments and conclusions**

15. The information available to me confirms that residents were not informed at the planning application stage of P/2020/1003 that the pitch would be available for community use and that this use has resulted at times in residents being unacceptably disturbed by noise and antisocial behaviour. The permission granted for the pitch does not contain any restrictions on its use though and, as I pointed out in paragraph 8 above, this appeal relates solely to the floodlights; the permission for the pitch cannot be reversed or varied as a result of this appeal. I do expect however, following the discussions that took place at the hearing, that the applicants and the school will in future address residents' concerns about the community use of the pitch in an ongoing and meaningful way in consultation with the residents affected.
16. As the applicants and the Department have pointed out there is policy support for the installation of the floodlights (see paragraphs 9 & 11 above); the main concern is whether the use of the floodlights will result in the amenities of neighbouring residents being unreasonably harmed contrary to Policy GD1. Three main issues arise. Firstly, the extent to which the floodlighting will add to the community use of the pitch and the disturbance this creates. Secondly, the extent to which residents may be affected by light pollution from the floodlights. Thirdly, arising out of the consideration of the first two issues, whether the planning condition 1 that has already been imposed and any further conditions that could be imposed by the Minister as a result of this appeal would satisfactorily address concerns about the consequences of the floodlighting for residential amenities.
17. As to the first main issue, it is clear that the floodlights will be of more benefit to community users than they will be to the primary school, since community users are much more likely to use the pitch during hours of darkness. Nothing apart from condition 1 has been put forward by the applicants or the

Department to deal with the impact of the additional periods of noise on residents' amenities, and condition 1 is in any case unreasonably worded because it allows the Department to waive compliance with it. Tailpieces such as "unless otherwise agreed" should be avoided in planning conditions wherever possible since they can be used to sidestep the procedures in the Law that regulate the variation of planning conditions and can deprive the public of the opportunity to comment on changes being proposed. In this particular instance, the tailpiece would allow one government body, the Department, to authorise another government body, Jersey Property Holdings, to increase the hours of use of the floodlights without making a formal application under the Law, something that I find disquieting and which without doubt would be wholly unacceptable to residents.

18. As to the second main issue, I agree with the applicants that the floodlights have been designed to avoid light spill and have been installed in accordance with specialist instructions. However, it was obvious when I inspected the pitch and its surroundings after dark with the floodlights on that there was a problem with reflected light from the pitch. This bathes the nearest houses to the east in a rather eerie green light, which clearly has an adverse effect on the occupiers' amenities.
19. Turning to the third main issue, the permission for the floodlights should not be upheld as it stands, since it fails to comply with Policy GD1 by not giving adequate consideration to the protection of residential amenities. This to my mind outweighs its compliance with Policy CI5 and the Common Strategic Policy, because the successful implementation of these policies in the built-up area depends on decision makers being able to demonstrate to residents that their amenities have been adequately protected in the balance.
20. I have considered whether the permission for the floodlights could be varied so that the drawbacks I have identified would be satisfactorily dealt with in accordance with Policy GD1. My assessment is that this could be done by deleting the tailpiece in condition 1 and imposing a range of additional planning conditions. These would involve: (a) reviews being made of the potential for residents to be disturbed by noise or by reflected light and the implementation of effective mitigation measures; (b) in consultation with residents, the drawing up and publication of an operational management and monitoring plan for the use of the floodlit pitch, which would include details of the person responsible for the plan's implementation and for dealing with complaints about the use of the floodlit pitch and details of the ongoing arrangements for engagement with residents; and (c) notices being displayed in prominent positions at the entrances to the pitch setting out the conditions that must be observed by users of the floodlit pitch.
21. For the above reasons I have concluded that the appeal should be dismissed but that the planning permission for the floodlights should be varied as set out in paragraph 23 below.

### **Inspector's recommendations**

22. I recommend that the appeal is dismissed.
23. I recommend that the planning permission P/2021/1881 dated 10 March 2022 for development at Plat Douet Primary School, Plat Douet Road, St. Saviour JE2 7PN consisting of the installation of six floodlights is varied (a) by deleting

the words “unless otherwise agreed in writing by the Department of the Environment” in condition 1 and (b) by imposing the following new additional conditions: -

“2. The potential for nearby residents to be disturbed by noise or reflected light as a result of the use of the floodlit pitch shall be re-assessed in consultation with residents before the floodlights are used again for sports activities.

3. If, within one month of the date of the Minister for the Environment’s variation of this planning permission, details of a scheme to protect nearby residents from noise emanating from the use of the floodlit pitch has not been submitted in writing to the Chief Officer responsible for planning for written approval, or if the approved scheme is not put into operation as approved within three months of the Chief Officer’s approval, the use of the floodlights shall cease until such time as a scheme has been approved and put into operation. If no such scheme is approved within six months of the date of the variation of the planning permission, the use of the floodlights shall cease until such time as a scheme has been put into operation in accordance with approved details. The scheme put into operation shall be retained as approved.

4. If, within one month of the date of the Minister for the Environment’s variation of this planning permission, details of a scheme to eliminate the reflected light cast on nearby houses as a result of the operation of the floodlights has not been submitted in writing to the Chief Officer responsible for planning for written approval, or if the approved scheme is not put into operation as approved within three months of the Chief Officer’s approval, the use of the floodlights shall cease until such time as a scheme has been approved and put into operation. If no such scheme is approved within six months of the date of the variation of the planning permission, the use of the floodlights shall cease until such time as a scheme has been put into operation in accordance with approved details. The scheme put into operation shall be retained as approved.

5. Within one month of the date of the Minister for the Environment’s variation of this planning permission, an operational management and monitoring plan for the use of the floodlit pitch shall be drawn up in consultation with residents. The plan shall inter alia include details of (a) the person responsible for the plan’s implementation, (b) the person responsible for dealing with complaints about the use of the floodlit pitch and (c) details of the ongoing arrangements for engagement with residents about the use of the floodlit pitch. The plan shall be retained in force for as long as the floodlights are capable of operation.

6. Within one month of the date of the Minister for the Environment’s variation of this planning permission, weatherproof notices shall be displayed in prominent positions at the entrances to the pitch setting out the conditions that must be observed by users of the floodlit pitch for the protection of residential amenities. Such notices shall be retained in position for as long as the floodlights are capable of operation.

7. All equipment installed as part of the approved floodlighting shall be operated and maintained in accordance with this planning permission and

shall be retained as such for as long as the floodlights are capable of operation.”

The reason for each of the conditions 1 to 7 is the protection of residential amenities in accordance with Policy GD1 of the Bridging Island Plan 2022 to 2025.

Dated 8 August 2022

*D.A.Hainsworth*

Inspector