

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

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

Report to the Minister

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

Appellant: Mr Ray Hedges

Planning Permission Reference Number: P/2022/0679

Decision notice date: 1 March 2023

Location: La Petite Robeline, La Rue des Bonnes Femmes, St. Ouen, JE3 2ET

Description of Development: Retrospective: Temporary changes of use of Cider Shed and external courtyard to Class B Restaurant, annually from 1 April to 30 September on Thursdays, Fridays and Saturdays. Convert existing shed to North West of site to commercial kitchen. Construct lean to extension to South Elevation to facilitate catering business.

Appeal Procedure and Date: Hearing, 5 June 2023

Site Visit procedure and Date: Accompanied, 5 June 2023

Date of Report: 3 July 2023

Introduction and planning history

1. This is a third-party appeal by Mr Ray Hedges against a decision to grant retrospective planning permission to allow use of the cider barn and courtyard at La Petite Robeline as a restaurant on certain days of the week during the summer months. It also permits conversion of an existing shed to a preparation kitchen and construction of a new lean to shed to the cider barn to act as a kitchen for the restaurant.
2. Permission was granted on 1 March 2023 under delegated powers.
3. A previous application (P/2022/0170) for a similar proposal was considered by the Planning Committee in May 2022. That application was refused for a single reason related to the proposed parking arrangements. These would have involved the removal of part of a granite wall to allow access to field O1183A for parking. It was considered this would result in visual harm to the landscape character of this part of the rural area, contrary to policy NE3 of Bridging Island Plan 2022. The current application was submitted to address that reason.
4. In considering this appealed proposal, the Infrastructure, Housing and Environment Department (the Department) took the view that the applicants had addressed the previous reason for refusal and therefore granted permission.
5. A summary of the cases presented by each party during the application and the appeal are presented below. Further details are available in the statements and

other documents submitted by each party, which are available through the Planning Applications Register website.

6. I note that the description of development refers to a 'temporary' change in use. I find that term to be mis-leading. The general meaning of 'temporary' is an activity or event which is not permanent and occurs for a limited period of time. The current proposals are for an activity which, whilst it would only take part on certain days of a portion of the year, nevertheless, would occur regularly at those same times every year going forwards. That is, it would represent a permanent change of use during the summer months. Thus, I find that it would be better described as a seasonal change in use, rather than a temporary change of use.

The appeal site and proposed development

7. The appeal site is an existing cider barn and courtyard associated with La Petite Robeline. La Petite Robeline forms the last group of buildings towards the southern end of La Verte Rue. The road forks just before the appeal site, with the north-western arm being heavily overgrown and little more than a footpath. The southern arm becomes an over-grown track beyond the entrance to La Petite Robeline.
8. The cider barn was consented in 2018, following signing of a Planning Obligation Agreement (POA), which limits the use of the barn for the use of the applicant's company in connection with their cider production business. Should the barn no longer be required for cider production, or the current directors sell the business, then the barn, including its foundations, require to be removed.
9. The barn is located adjacent and to the south of the applicant's home. It forms part of the southern boundary of the courtyard, with the applicant's home forming the western boundary and a workshop forming the northern boundary.
10. The application seeks retrospective planning permission and I understand that the restaurant developed in response to the covid pandemic. A lean-to shed has been constructed along part of the southern wall of the cider barn. During my site inspection I saw that this houses a commercial grill and kitchen, with the eastern end sub-divided to provide toilets. This lean-to shed and the toilets form part of the planning application.
11. The second shed mentioned in the application refers to a stand-alone structure located to the rear (west) of the appellant's home. At the time of my site inspection, I saw that it contained commercial catering apparatus, which the appellant says are used for making sausages.

Case for the appellant

12. The appellant raised five broad grounds of appeal:
 - access to the appeal site - the information and measures approved by the permission do not result in the appeal site being accessed and serviced safely or without harm to the residential amenity of the appellant, the appellant's neighbours, or the character of the area, or in accordance with the adopted Island plan;
 - impact on amenity and landscape - the description lacks any restriction on the hours of use of the restaurant, numbers of covers or sittings and music. This results in an unclear permission, which is difficult to control. The lack of clarity about opening hours would result in further harm to the amenity of

the appellant, the amenity of his neighbours and harm to the character of the area and appears contrary to the adopted Island plan;

- commercial kitchen and catering business - there are no restrictions governing the use of the kitchens. Without any controls or understanding about what measures are in place to ensure that these operations would not result in harm, the permission fails to demonstrate how the uses can be undertaken in accordance with the adopted Island plan;
- Planning Obligation Agreement - The relationship between the proposed Planning Obligation Agreement for this application and the existing Planning Obligation Agreement for permission P/2017/0138 is unclear. The First schedule of the Planning Obligation Agreement for P/2022/0679 is unclear and not precise;
- lack of adequate sewerage infrastructure - the appellant is concerned that there are not adequate details on how the foul drainage from the proposed restaurant and commercial kitchen would be managed, particularly in terms of the capacity and servicing of the septic tank serving the appeal site.

Case for the Department

13. Key points noted during consideration of the application and to the appeal are:
- the Department accept that the appeal site is not located in a sustainable location and has poor access to a good bus service, but contend that the measures proposed by the applicant are appropriate for this site and location;
 - parking in the fields is not proposed as part of the current planning application and the Department would take the necessary planning compliance action should this occur in the future;
 - there would be limited servicing of the site and this would take place outside restaurant opening hours;
 - the Department would have no objection to conditions restricting the opening hours, number of covers and use of music;
 - the description of the development is considered sufficient;
 - the two permissions P/2017/0138 and P/2022/0679 are standalone planning permissions with different descriptions, conditions and wording of the Planning Obligation Agreements. The separate wording of these would be required to be complied with and can be enforced against if necessary;
 - there was no objection from the Drainage section about the proposed drainage arrangements. A foul water drainage survey was appended to the previous application P/2022/0170. That was not submitted as part of this application, although it would have been helpful if it had been re-submitted. This could be conditioned;
 - the previous application P/2022/0170 was refused for one reason, which related to loss of part of a granite wall to facilitate the use of Field O1183A for parking, which would result in visual harm to the landscape character. As that application was not refused on drainage grounds it would be unreasonable to now refuse the current application on drainage grounds.

Case for the Applicant

14. The key points raised in the applicant's response are:
- the appellant's property is 160 m at the closest point to the application site and increases to 200 m to the appellant's house. This distance would suggest that a seasonal restaurant running three nights a week for the summer months would not severely harm the appellant's property in any way;

- the proposals look to encourage bike travel and eliminate cars using a park and ride scheme. The proposals meet policy TT1 of the Island plan;
- reducing the use of cars and encouraging the use of bikes and dropping off patrons will be safer with less vehicle noise;
- conditions could be added to address the hours of opening. However, the Traffic and Site Access Statement did set out the opening hours and this is an approved document;
- music is not played at the venue and this could be conditioned, if required;
- the existing shed is a preparation kitchen, not a commercial kitchen and has no cooking appliances. It is used for the preparation of sausages;
- the lean-to kitchen is to serve the seasonal restaurant only;
- the Planning Obligation Agreement is connected to the cider business and not the site. This means that once La Robeline Cider Company ceases trading the shed on site, new adjoining kitchen and use as a seasonal restaurant will have to stop and the buildings be removed;
- the Department of Infrastructure did not object to the drainage proposals;
- the Planning Committee supported the principle and proposals of the development but only objected to the parking arrangements. The current application has addressed this matter in full through the implementation of the park and ride scheme.

Consultation responses

15. The **Department of the Environment Environmental Health** response (4 July 2022) stated “More Info”. It included a number of recommendations for conditions that should be applied, if permission were granted. These relate to setting restrictions on playing of music, preventing dining in external parts of the site; placing restrictions on use of the site; limiting the number of people at the site and numbers of events and limiting the number of cars at the site. It also included a proposed condition in relation to noise from machinery used at the site. A second response dated 18 July 2022 referred to the previous response.
16. **Jersey Fire & Rescue’s** response (6 July 2022) stated “No Objection”, but noted that compliance was required with the Licensing (Jersey) Law 1974. It also required forwarding of plans showing all active and passive fire safety measures and access and facilities for firefighting personal.
17. **IHE Transport** noted (8 July 2022) that the site is a Parish Road and that advice should be taken from the Parish as to the suitability of the road in terms of traffic and travel, road user safety and highway performance.
18. The **Environment Rural Economy, Rural Economy** team expressed “support for diversification of this rural business.” (18 July 2022).
19. The **Natural Environment Team** (24 July 2022) stated “no objection” and “no comment”.
20. **Environmental Land Control** also stated “no comment.” (22 July 2022).
21. The **Historic Environment Team** did not object to the scheme (25 July 2022).
22. In its response of 5 August 2022, the **Department for Infrastructure - Operational Services - Drainage** stated “No Objection” to the proposals. It included a number of observations and requirements for the scheme.

23. The response from the **Parish of St Ouen** (13 September 2022) commented there had been three letters of complaint from the previous year. It noted that the applicant was running a restaurant on three-nights of the week, although planning permission had been refused. The parish was not aware of any certificates issued by the Fire & Rescue Service, Environmental Health or any other relevant authority required to run a restaurant and that the applicant had been trading without a Liquor Licence. It also noted that there had been no request to use the car park at St Ouen's Parish Hall for a park and ride scheme.

Representations

24. The Officer Assessment Report records 34 letters of support and 1 objection letter. The objection raises concerns about the lack of parking.
25. Thirty-seven representations were submitted at the appeal stage. All but three of these were from individuals who had not commented at the application stage. All but one of the comments were in support of the proposal.

Key Issues

26. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states "In general planning permission shall be granted if the development proposed in the application is accordance with the Island Plan." The current Island plan is the Bridging Island Plan, dated March 2022 ('Island plan').
27. Having regard to the provisions of the Island plan and other material considerations, I consider that the key issues in this appeal relate to:
- traffic, access to the site and parking;
 - effects of the proposal on neighbouring amenity and landscapes;
 - provision for sewage and wastewater;
 - planning history, planning context and principle of development.

Traffic, access to the site and parking

28. During my site inspection I saw that the appeal site lies towards the end of a narrow lane known as La Verte Rue, which leaves Rue de la Bonne Femme on a sharp corner. There are limited options for passing other vehicles or parking along La Verte Rue. Just before the appeal site, the road splits. The north-western fork appears little used and heavily overgrown. Again, there are few opportunities for parking or turning. The southern fork passes directly past the appeal site. Beyond that, it becomes less well-maintained, supports vegetation and grades into a cart track for access to fields. At the time of my site inspection the applicant's vehicle was parked on this track, preventing vehicle access to the land beyond.
29. The courtyard in front of the applicant's home, which lies adjacent to the cider barn is relatively small. I understand that the proposal is that this area would be used for customers to enjoy pre-dinner drinks. Even if it were used for parking, it would not be sufficiently large to allow parking for many cars.

30. The applicants are well aware of the access constraints to their property. At the hearing, the applicants highlighted measures they have taken previously and which they would take to encourage customers to avoid accessing the site by private car. I understand that customers are informed at time of booking that there is no parking available. They are encouraged to cycle or walk to the site. Alternatively, they would be asked to use the proposed park and ride scheme or to use a taxi. Many of these measures are included within the 'Traffic & Site Access Assessment', which was produced to support the application. This document also sets out a proposed vehicle strategy for the site. Implementation of the measures in the Traffic & Site Access Assessment was a condition to the permission that was granted.
31. Policy TT1 - integrated safe and inclusive travel of the Island plan states that "the contribution to safe and integrated travel will be a consideration in all development proposals." Proposals will be supported where the development is safe, inclusive and accessible to all users and modes of transport. The policy includes four criteria of factors that need to be considered, including the amount and type of traffic generation and the capacity of the local network to accommodate it. In addition, the policy requires that where development has the potential to generate significant amounts of movement, it must be supported by a transport assessment and a travel plan, as appropriate.
32. The circumstances when a travel plan would be required and guidance on its content are set out in the introductory text to policy TT1, although I understand that further guidance on the content of a travel plan is in preparation. The Island plan states that travel plans are generally required for residential development with five or more units of accommodation; other developments which would generate significant amounts of travel, including office and retail use and new and expanded school and healthcare or health facilities. Such plans should have measurable outputs and should set out the arrangements for monitoring the progress of the plan, as well as arrangements for enforcement. In addition, the scope should be proportionate to the anticipated impact of the development. Whilst the proposal is not for housing or office or retail use, it would generate new trips to the area. When assessed against what are likely to be low background levels of vehicle movements, additional trips would represent a significant increase. Thus, I conclude that a travel plan would be appropriate.
33. I have reviewed the submitted Traffic & Site Access Assessment including vehicle strategy, but am not persuaded that it provides the required level of detail or reassurance that the site would be accessed in a safe manner, or demonstrates that the amount and type of traffic generated by the proposals can be accommodated within the local road network. The document does not include any estimates of the number, type or timing of vehicle (including cycle) movements associated with the proposals or how these relate to existing levels of movement. There is no quantification of the number and timing of trips associated with restaurant staff or deliveries. It sets no targets for transport using particular methods and there are no provisions for monitoring against targets or modifying the plan, if required.
34. It was suggested to me at the hearing that a number of previous customers have chosen to cycle to the site, but I was presented with no objective information to clarify transport choices of customers in previous years. Likewise, I was not provided with any estimates of the number of customers who may chose to use the proposed park and ride service or taxis.

35. In addition, the proposed pick-up point for the park and ride service that is set out in the Traffic & Site Access Assessment is different to that highlighted to me at the hearing. There also appears to be a lack of clarity about where taxis would drop off or collect customers (two different possible locations were initially suggested to me at the hearing). During the site inspection, I was shown the likely location, at a property on La Bonne Femme, where staff may park their cars and then continue to the restaurant on foot. But, there is no indication of this within the Traffic & Access Assessment.
36. I have not been provided with objective information to support the applicants' view that vehicle movements can be accommodated. This is particularly the case along La Vert Rue where potentially, there may be a park and ride vehicle, cyclists and walkers all using the same narrow space at a similar time to access the proposed restaurant. IHE Transport did not object, but this was on the basis that advice should be sought from the Parish about the suitability or not of the roads. No response from the Parish on this matter appears to have been supplied.
37. The submitted Traffic & Site Access Assessment does not include any measurable outputs or explain how progress of the plan would be monitored, as set out in the text supporting policy TT1. Whilst it was suggested to me that a condition could be added to this effect, I am not persuaded by this approach as it pre-supposes that traffic levels could be accommodated.
38. In conclusion, whilst I accept the strong commitment of the applicant to the principal of minimising vehicle movements to the site, I am not convinced that the measures proposed are sufficiently detailed in terms of demonstrating that they would be effective in ensuring that the site could be accessed in a safe manner, as required by policy TT1 of the Island plan. The Traffic & Site Access Assessment was identified as an approved document, but it fails to set out all relevant matters, including clarity about parking for staff and pick-up points. It does not include the necessary targets or provision for monitoring. In addition, the document fails to set out whether the proposed levels of vehicle movements and arrangements, including provision for taxi drop off/pick up and parking by staff could be accommodated safely and in line with the requirements of policy TT1 of the Island Plan. Consequently, I conclude that the proposals do not demonstrate that the site can be accessed safely as supported by a satisfactory Travel Plan. I therefore find that it fails to satisfy policy TT1 of the Island plan.

The effects of the proposal on neighbouring amenity and landscapes

39. Neighbouring amenity is protected in the Island plan mainly through the provisions of policy GD1 - managing the health and wellbeing impact of new development. It requires that development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. Development should not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy. Nor should it 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.
40. In terms of privacy, whilst the appellant owns land within 50 m of the proposed development, I saw that his private amenity space is located around 150 m to the north-east of the proposal site and is shielded from the development by a tall wall. In addition, his dwelling is located in the order of 200 m away. Access to the

appellant's property is via a gated drive, preventing accidental use by vehicles seeking La Petite Robeline. The test established by policy GD1 relates effects on privacy to levels that owners and occupiers might expect to enjoy. The appellant's property lies in a relatively remote rural area. As such, a high degree of privacy would be expected. Nevertheless, the arrangements described above lead me to conclude that there would not be unreasonable effects on the level of privacy of the appellant.

41. The properties to the north and north-west of La Petite Robeline lie closer to the proposal than the appellant's dwelling. Whilst it may be possible to view, particularly the northern-most property when travelling along La Verte Route, given the distances involved, I do not consider that any effects on privacy would meet the tests set by policy GD1. The property to the north lies adjacent to a field that is accessed from close to the junction between La Bonne Femme and La Verte Route. I understand that some of the concerns are linked to historical use of this field for parking. As parking does not form part of the current application, I am content that the proposals would not have an adverse effect on privacy.
42. Policy GD1 sets a less stringent test for noise and light impacts. I understand that the applicants do not permit music to be played at the restaurant. Therefore, the main potential sources of noise would arise during arrival/departure from the venue (whether by vehicle or on foot/cycling) and as a consequence of having 40 - 50 people socialising. In that regard, I would anticipate that noise levels would be loudest during pre-dinner drinks in the courtyard, but noise levels may be tempered to a degree when people are seated inside the cider barn.
43. Given the rural location, background noise levels are likely to be low, other than from agricultural machinery. I accept that increases in vehicle movements and human chatter would introduce a different source of noise, particularly as the proposed use of the restaurant is during the summer months, when the neighbouring properties would be most likely to use their external amenity spaces. The potential for the proposal to generate adverse noise impacts is acknowledged in the response from the Environmental Health Team. A number of recommended conditions are included in its advice, which are designed to mitigate adverse effects of noise to acceptable levels. These include preventing the playing of music, preventing external parts of the site being used for dining; limiting dining hours; restricting hours for when clearing up must be completed; and limiting numbers on the site. I agree that these measures could be conditions of any permission that were granted and would reduce any effects of noise to acceptable levels. In addition, I understand that a sound management plan was submitted with the previous application. The production of such a plan could also be required by a condition to any permission that were granted.
44. The proposals do not appear to include for any particular additional lighting. Given the distances involved and the fact that the appeal site sits lower in the landscape and is partially obscured from neighbouring properties by topography, I do not consider that there will be adverse effects on neighbouring amenity from light.
45. I acknowledge the experiences of disturbance that some neighbours have reported as a result of the operation of the restaurant in previous years. A number of these issues appear to have been linked to use of a particular field for parking. As noted, this proposal does not seek permission for parking.

46. The appellant is also concerned that unauthorised vehicle parking would be harmful to the character of the area, contrary to policy NE3 - landscape and seascape character. Whilst I acknowledge the appellant's concerns, this proposal does not seek nor would the permission allow for any parking in fields.

Provision for sewage and wastewater

47. The appellant has raised concerns about the drainage for the proposals including the capacity of the septic tank and whether it could accommodate the increased volumes of waste water arising from the proposals.
48. I note that a foul water discharge survey was submitted as part of the previous application. This was not re-submitted with the current application. Nevertheless, I note that the Drainage department did not object to the proposals previously. I am content that the foul water discharge survey could be required by a condition to any permission that were granted.

Planning history and principle of development

49. The Officer Assessment Report for the previous application (P/2022/017) identified a number of aspects where the proposals did not satisfy the policies of the Island plan. Nevertheless, the Planning Committee refused the scheme only in respect of its provision for access and parking. Consequently, the Department has focussed its assessment of the current proposal only on this reason for refusal. This is on the understanding that the Planning Committee had found all other aspects of the proposal acceptable.
50. It is entirely reasonable for the Planning Committee to take a different view on the application of particular policies than the Department. Having done so, it is reasonable for the Department, in considering the re-submitted proposal, to have focused on the single policy that the Planning Committee felt had not been adequately addressed by the original proposal.
51. Now that the proposal has been appealed, it is for the Minister to determine whether or not the proposal is in accordance with the Island plan. That requires a review of the proposal as a whole and not just those element(s) that the Planning Committee felt were not satisfied.
52. The proposal is located in the countryside in the Protected Coastal Area where policy PL5 - countryside, coast and marine environment applies. Development proposals here should protect or improve the character and distinctiveness of the area. The policy also states "Economic development that supports the maintenance and diversification [stet] the rural and island economy will be enabled here, where the location of development is justified and appropriate; or where it involves the reuse or redevelopment of already developed land and buildings, where it is appropriate to do so."
53. Policy NE3 - landscape and seascape character sets similar requirements in that proposals are required to demonstrate that they will not harm the distinctive character, quality and sensitivity of the landscape. In addition, policy SP3 - placemaking requires all development to reflect and enhance the unique character and function of the place where it is located.

54. The restaurant would provide diversification, however, there is no particular justification for a countryside location. Whilst the proposals would use an existing building, I note the very particular planning history of that building and that its use is restricted to that of cider production through a POA. I therefore find that there is a tension between the current proposals and policy PL5. I accept that cider production is seasonal. However, during my site inspection I saw that the barn held a number of items, which presumably are associated with cider production. Thus, whilst the shed did not appear to be required for active production of cider, it was fulfilling a role in storing items associated with that activity. That is, I do not consider the current proposals as representing a 'reuse' or 'redevelopment' of already developed land and buildings as the original use is still required. Indeed, the terms of the POA are such that if the barn were no longer needed for cider production it would be required to be removed.
55. In terms of the proposal protecting or improving the character and distinctiveness of the area, the development would require extensions, to a 'temporary' building in a rural, agricultural area. The proposed construction of this extension (blockwork) would appear more permanent in nature than the existing cider barn. The proposed chimney flue would not be typical in an agricultural setting.
56. Thus, I find that the proposals would fail to satisfy the requirements of policy PL5 and SP3 and would gain little support from policy NE3 of the Island plan.
57. The proposal gains some support from policy, Policy SP1 - responding to climate change, in that it promotes a further use for an existing building and also makes provision for bike parking. However, its location, which is not served by public transport, means that it would also promote use of the car - at least as far as the park and ride location. Thus, whilst it aims to promote sustainable forms of transport, I do not consider that it has been situated to limit carbon emissions.
58. La Petite Robeline is a Grade 4 listed building, subject to the requirements of policies SP4 - protecting and promoting island identity and HE1 - protecting listed buildings and places, and their settings. The proposals would not involve any changes to the structure of the listed building and I note that the Historic Environment team have not objected to the proposals.
59. Policy SP6 - sustainable island economy, gives a high priority to the creation and maintenance of a sustainable, productive and diverse economy. Whilst the policy allows for the provision of sufficient land for new employment uses, this is subject to that land being in the right places. I understand the history that has led to the development of the restaurant and I accept that the proposals represent a diversification for the applicant. Whilst policy ERE2 - diversification of the rural economy provides support for proposals relating to the diversification of the rural economy outside the built-up area where they will complement and support an existing business, the current proposals would utilise a shed that has limited consent for a specific purpose. Notwithstanding the support for the proposal from the Rural Economy team and the Jersey Hospitality Association, I have not seen any evidence to demonstrate that there is a need for the business to diversify in this manner to maintain it as a viable proposition, as required by policy ER4 - daytime and evening economy uses.
60. In summary, based on my assessment, there are various aspects of the proposal that I find are inconsistent with the requirements of the Island plan. The spatial strategy and Policy SP2 clearly directs all development to the built-up area. Locating

developments in built-up areas helps to reduce travel by private car. Whilst provision is made for some development outside the built-up area, this generally needs to be justified by a clear locational need and the development has to be appropriate in its setting.

61. I am not persuaded that the proposed use of the cider shed as a restaurant reflects the character and function of the rural area in which it is based as required by policy PL3 or SP3 and it gains little support from policy NE3. I have not seen any evidence as to why the proposals would be required to support the existing business in line with the requirements of policies ERE2 and ER4. Nor do I find that the location, with its lack of public transport and poor vehicle access and parking is an appropriate location to use as a restaurant, which attracts moderate numbers of people on a regular basis.

Other matters

Clarity of description

62. I have considered the appellant's concerns that there is a lack of clarity about what activities would be consented by the current proposals and how these would relate to other activities at the proposal site. As noted above, I find the use of the word 'temporary' in the description to be unhelpful. The proposals are clearly for an activity that would take place annually, albeit for part of each year. Should the appeal fail and planning permission be granted, then the description should be amended to reflect the ongoing, seasonal, nature of the proposals.
63. I find the nature of the proposals is clear, in terms of use of the barn as a restaurant and provision of a lean-to cooking kitchen and use of a further shed for preparation purposes. I accept that there is some ambiguity about the role of the courtyard, but I believe this could be clarified through the use of conditions in relation to noise, should the appeal fail. I have already identified that a condition could be used to clarify the times of operation of the proposed restaurant.

Planning Obligation Agreement and Conditions

64. A Planning Obligation Agreement was made to accompany the permission. This modifies the existing POA for the cider barn, through the addition of a new clause. This states "Should the Cider Shed cease to be used for the production and processing of cider then the use permitted by Planning Permit P/2022/0679 shall cease and development authorised by Planning Permit P/2022/0679 shall be removed forthwith from the site." I accept that this is required to avoid the situation where the barn would require to be removed, but the kitchen could remain.
65. The Decision Notice for P/2022/0679 included standard conditions relating to the commencement of the development and the carrying out of the development in accordance with the approved details. It also included a further condition relating to the implementation of the sustainable transport measures set out in the submitted Traffic and Site Access Assessment. Whilst I do not doubt that the applicants would endeavour to implement the measures set out in that document, as I have already set out, I am not persuaded that those measures would be enforceable or sufficient to avoid adverse effects arising from traffic and travel.
66. At the hearing there was a discussion as to whether the condition could be modified, perhaps through an annual review process. However, for the reasons set out above,

I am not satisfied that there is a clear understanding of the proposed levels of traffic and travel associated with the proposal, the effects of these and appropriate mitigation (if required). This, together with an absence of baseline figures or measurable targets within the Traffic and Site Access Statement means that it is not possible to determine the nature of any condition necessary to make this aspect of the development acceptable.

67. There was also a discussion of the conditions proposed by the Environmental Health Team. For the reasons set out above, I agree that it would be appropriate to append a condition preventing music from being played as part of the proposal and also to prevent external parts of the site being used for dining. I also accept that it would be appropriate to specify the time by when dining should cease and staff should have left the site.
68. The Traffic and Site Access statement does include times of operation of the premises. However, given that this may be subject to future change, I consider it is appropriate to include a condition on this matter.
69. I have considered the contrasting requirements of the applicants and neighbours. Given that the applicants state that they only hold a single sitting each day, it is in their power to adjust the timetable to allow ample time for eating prior to clearance of the site. I therefore accept the proposed times suggested by Environmental Health that dining should end at 22:00, diners should leave the site by 22:30 and staff by 23:00.
70. I have considered whether a limit should be placed on the number of patrons present at the site. However, I am content that these numbers are already specified as part of the Fire Safety Certificates and that there is no need to duplicate these. Given the applicants stated intention to only hold a single sitting each day and the proposed condition to prevent outside dining, I do not see the need to specify the number of events and external gatherings. However, I consider it appropriate to formalise this arrangement by setting a condition for no more than one sitting per day.
71. The proposals do not allow for parking at the site and hence the suggested condition in relation to this is not necessary.
72. Environmental Health also suggested a condition in relation to noise generated by plant or machinery. I am persuaded that there are a limited number of machines that could generate noise and that there are other mechanisms for addressing any public nuisance that could potentially arise from noise.
73. As noted above, the drainage report that was submitted with the refused application P/2022/0170 was not re-submitted as part of this proposal. Should the appeal fail, then a condition requiring submission and approval of the drainage arrangements should be appended to the permission.
74. I note the concern expressed by neighbours that they would be required to 'police' implementation of these conditions. Nevertheless, it is common practice to rely on complaints to identify instances of non-compliance with conditions.

Conclusions

75. The previous application was refused by the Planning Committee for a single reason, related to car parking and access and the Department has focussed its assessment of the current application on this matter. For the reasons set out above, I find that the Traffic and Site Access Statement provided with the application is inadequate in its scope. It does not provide the required information to demonstrate that the site can be accessed safely. I therefore find that the proposal is not consistent with the requirements of policy TT1 of the Island plan.
76. I have also assessed the proposals more broadly against the provisions of the Island plan. As highlighted above, there are a number of areas, where I find the current proposals fail to satisfy the requirements of the Island plan, principally in terms of how the development relates to its setting. However, it gains some support from policies promoting economic development and diversification.
77. The introductory text to the Island plan (p3) states: “when considering whether a development proposal is in accordance with the plan, it is important to have regard to the plan as a whole and not to treat a policy or proposal in isolation.” It acknowledges that policies relevant to a particular proposal may appear to pull in different directions, but that this is a product of a complex and wide-ranging plan and a reflection of the tensions that arise from seeking to meet the community’s economic, social and environmental objectives. It continues “it is for the decision maker to carefully balance the planning merits of a development proposal with the policy requirements of the plan” and “where policy conflicts do arise, a reasoned judgement must be made as to whether the wider benefits of a proposal outweigh any policy considerations provided by the Island Plan.”
78. I am conscious that the proposals do represent a diversification and provide some contribution to the rural economy and the applicant has also stated that the restaurant provides an additional source of income. The detailed considerations of the Planning Committee are not available to me. However, I surmise that it must have placed a high importance on these elements and it may be that they had additional material to support that position. Nevertheless, I have not been provided with any evidence of the need for the applicant to diversify their business, the economic benefits of the proposal or the particular need for a restaurant at this location. In the absence of this objective information, I conclude that the proposals would not be consistent with the Island plan.

Recommendations

79. For the reasons set out above, I recommend that the appeal should be allowed and that Planning Permission should not be granted. Should the Minister not accord with my view then the permission should be amended through the appending of the additional conditions that I set out in paragraphs 64 - 74 above.

Sue Bell

Inspector 03/07/2023