

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: Steven Wolberink

Planning Permission Reference Number: P/2023/0531

Decision notice date: 18 August 2023

Location: Car Park, La Route de Plemont, St Ouen

Description of Development: Extend existing car park and lay hardstanding

Appeal Procedure and Date: hearing, 5 December 2023

Site Visit procedure and Date: unaccompanied, 4 December 2023

Date of Report: 6 February 2024

Introduction

1. This is a third-party appeal by Mr Steven Wolberink against a decision to grant planning permission for an extension to an existing car park.
2. The application was determined by the Infrastructure and Environment Department (the Department) using delegated powers on 18 August 2023.
3. 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.

The appeal site, planning history and proposed development

4. The appeal site is an existing car park (approx. capacity 65 vehicles) located on sloping land above the beach at Plemont. It is described by the Department as an 'informal car park', as there are no defined parking bays, no charges are made for parking and the site is not controlled or marshalled. The parking area is irregular in shape, with some 'headlands' of natural vegetation which extend into the parking area, reducing opportunities for efficient parking. The main access point is from Rue de Petit Plemont, although there is also an access from Rue de Plemont to allow buses to pass through the site at its south-eastern end. Most of the car park comprises hoggin, although there is a strip of tarmac marked as bus parking at the south-eastern end.
5. The proposal seeks to increase the capacity of the existing car park through removal of the 'headlands' of vegetation and a small extension northward. This would

regularise the footprint of the car park. Recycled aggregates, to match the existing surface, would be laid in these areas. According to plans provided with the application (22025-100-003), the area of the car park would be extended by 254.5 square metres, which would provide for up to an additional 26 parking spaces, although the applicant's statement of case suggests that up to 20 additional spaces would be provided.

6. The application documents state that the proposed works are required to compensate for loss of parking spaces resulting from the introduction of yellow lines on Route de Plemont and to improve the amenity of the carpark with more convenient and safe parking. However, it was confirmed at the hearing that these yellow lines have already been installed, would be subject to a different consenting process and do not form part of this application.

Case for the appellant

7. The appellant has raised the following points:
 - The proposal is not necessary to guarantee safe access for emergency services. Any obstructions have been caused by ad hoc parking on the road. The introduction of the yellow lines has not resulted in loss of any delineated parking bays/spaces.
 - Formalising parking may result in increased traffic further up Route de Plemont towards Route de Vinchelez, which could restrict access for emergency vehicles.
 - Formalising parking would go against both the letter and spirit of the Island Plan for preserving the Protected Coastal Area and Coastal National Park.
 - The proposal would result in the loss of 254.5 square metres of nature and creation of parking for an additional 26 cars. This would result in increased traffic and noise emission.
 - Encouraging car use goes directly against working towards a net zero future for the island and is not in line with the letter or spirit of existing policies. The proposals would not improve the area allocated for buses.
 - Danger to archaeological site.

Case for the Department

8. Points raised in the Department's report and response to the grounds of appeal are:
 - The need for safe access by emergency services combined with the offset in loss of street parking is noted, the proposals can therefore be deemed adequately justified as necessary.
 - Development in the Coastal National Park and Protected Coastal Area can be supported where works protect or improve the landscape and seascape character and are necessary to meet an overriding public need. The proposals are considered necessary, regarding safe access for emergency services vehicles with the offset in public on-road parking deemed essential to facilitate this access.
 - The top parking area is proposed to be the same appearance and materials as existing and this is not considered to be 'formal'.
 - The proposed development would protect the landscape and seascape character.
 - The proposal is considered to satisfy Policies CI9, NE1, NE3, SP5 and GD6 of the Bridging Island Plan 2022.

Case for the Applicant

9. The key points raised by the applicant are:
 - Removal of parking on the road will improve safety for pedestrians and clear access for emergency vehicles. Removal of parked vehicles on the highway has the potential to improve landscape character.
 - The applicant has considered potential to harm any archaeology and is happy to undertake the development in line with a condition to maintain a watching brief.
 - Assessment of development proposals requires a holistic consideration of all policies. Although a proposal to extend a public car park in the Protected Coastal Area might present tension with carbon neutral objectives, there are a number of material considerations that enable a favourable decision.

Consultation responses

10. Two responses from **IHE Transport** are listed on the Planning website (18 July 2023 and 8 September 2023). These are identical and make no objection to the proposals.
11. There were also two responses from **Environmental Land Control** (4 July 2023 and 11 September 2023). Both stated no comment.
12. The response from the **Natural Environment Team** (undated but shown in the Department's report as 9 July 2023 and on the Planning website as 11 July 2023) made no objection, but requested a condition be added that the approved mitigation measures outlined in the letter dated 21st March 2023 should be fully adhered to. It also requested an informative relating to the possible presence of protected species.
13. The **Historic Environment Team's** response (14 August 2023) highlighted:
 - The car park is adjacent to the Grade 2 listed Plemont Flint Scatter Area archaeological site.
 - The removal of natural areas to replace with hard standing has a negative impact on the amenity value of the landscape.
 - With no existing parking management in the existing area such as marked bays, it is questioned whether efficient use is being made of the existing car park.
 - Should permission be granted then an archaeological monitoring condition should be appended.

Representations

14. Two representations were received, one of which was from the appellant. Key points raised are:
 - Application form has not been properly completed.
 - To claim the proposal will not affect a protected area or any protected species is clearly nonsense.
 - The proposal will have a significant negative impact on the character of the area.
 - The formalisation by extension and addition of hardstanding will encourage an increase in the volume of traffic which is at odds with the island plan for preserving the green zone.

- Facilitating and encouraging the use of cars goes against the island working towards a net zero future.
 - There is no loss of parking further down the road as the yellow line is in place to prevent parking where it is not possible without blocking access for emergency services.
 - The single file Route de Plemont will remain a bottleneck.
 - Potential further increase in traffic will greatly impact the many people who like to walk and cycle here.
15. A further representation, in support of the proposal, was received during the appeal.

Key Issues

16. 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 in accordance with the Island Plan.” The current Island Plan is the Bridging Island Plan, dated March 2022 (‘Island Plan’).
17. Having regard to the provisions of the Island Plan and other material considerations, I consider that the key issues in this appeal relate to:
- The effect of the proposals on the Protected Coastal Area and Coastal National Park.
 - The effect of the proposal on the historic and natural environment.
 - The effect of the proposal on road access and safety.

The effect of the proposals on the Protected Coastal Area and Coastal National Park

18. Multiple policies within the Bridging Island Plan provide a high level of protection to the Protected Coastal Area and the Coastal National Park. Policy SP2 - Spatial Strategy of the Bridging Island Plan establishes that development around the coast will only be supported where a coast or countryside location is justified, appropriate and necessary in its location. In addition, development in the Protected Coastal Area will be very limited to protect its outstanding landscape and seascape character. Policy PL5 - Countryside, coast and marine environment seeks to ensure that development in the countryside, around the coast and in the marine environment should protect or improve its character and distinctiveness. Proposals in the Coastal National Park should protect or improve its special landscape and seascape character and special qualities of the Coastal National Park and its setting and be compatible with the purposes of the park. Policy SP4 - Protecting and promoting Island identity requires development to respect the landscape and seascape area in which it is located and Policy SP5 - Protecting and improving the natural environment also gives a high priority to the protection of landscapes, the coastline and seascapes.
19. Further protection is afforded by Policy NE3 - Landscape and seascape character. This policy provides the highest level of protection to the Coastal National Park and its setting. Again, development must protect or improve the special qualities of the Coastal National Park and should be compatible with the purposes of the park, which are defined as:
- “the conservation and enhancement of natural beauty, wildlife and cultural heritage of the park; and
 - the public understanding and enjoyment of its special qualities.”

20. The same policy requires applicants to demonstrate that a proposal will neither directly nor indirectly, singularly or cumulatively, cause harm to Jersey's landscape and seascape character and that it will protect or improve the distinctive character, quality, and sensitivity of the landscape and seascape area or coastal unit as identified in the Integrated Landscape and Seascape Assessment. Proposals that could affect the island's landscape and seascape character, but which do not protect or improve it, will not be supported unless criteria are met. The changes should be necessary to meet an overriding public policy objective or need; there should be no reasonably practical alternative to delivering those proposals without harm to landscape and seascape character; the harm should be avoided, mitigated and reduced as far as reasonably practicable; and the predicted public benefit should outweigh the harm to the landscape and seascape character.
21. In addition to this raft of policies which provide strong protection for the Coastal National Park, the Department has referred me to Policy CI9 - Countryside access and awareness. This provides support for proposals that encourage and enhance public access to the coast and countryside, where these will not otherwise be to the detriment of the coast and countryside or lead to unacceptable impacts on biodiversity. Policy SP7 - Planning for community needs of the Bridging Island Plan also has some relevance. This policy requires that development must be able to demonstrate that it is helping to meet the identified needs of the community. Any development that could affect a designated or protected site or area of biodiversity value, will need to protect or improve the site or area, in accordance with its significance and that development must be located and designed to avoid environmental risks and where necessary demonstrate how impacts from these risks have been minimised or mitigated.
22. The existing car park provides parking for those wishing to access the coast at Plemont. Efficient use of the space is hampered by the irregular boundary of the site and the headlands of vegetation that extend into it. The proposals would rationalise the boundary through removal of these headlands and removal of a small amount of vegetation at its northern end. The proposals would support the aims of the Coastal National Park in helping to facilitate access to the coast and hence public enjoyment of the special qualities of the Coastal National Park. Their location is necessary and justified in terms of works to an existing car park. Subject to effects on landscape and seascape character and the special qualities of the National Park, the proposals gain support from Policies NE3, CI9 and SP7.
23. The proposals would result in increased capacity and surface area of the car park but would not necessitate a significant incursion into the surrounding vegetation. The proposed materials and finishes would match those already present. I saw that the car park is set below the ridge and is contained in the landscape. When viewed in the context of the existing car park, I do not consider that the proposals would result in an appreciable change in either the special landscape and seascape character or the character or distinctiveness of the Protected Coastal Area or the Coastal National Park. Consequently, I conclude that it would satisfy the requirements of Policies SP2, SP4, PL5, NE3 and GD6 of the Bridging Island Plan.

Effects of the proposal on the historic and natural environment

24. Policy HE1 - Protecting listed buildings and places, and their settings provides protection of the special interest of listed buildings and their settings, whilst Policy HE5 - Conservation of archaeological heritage requires development proposals to

conserve archaeological heritage and its setting. Policy SP4 - Protecting and promoting Island identity also requires development to protect or enhance the historic environment.

25. The proposal site lies adjacent to the Flint Scatter Area, which is a Listed building Grade 2. The listing schedule describes the site as “Prehistoric flint scatter area. The distribution of flint scatters over the landscape indicates areas of prehistoric activity and might represent areas of prehistoric settlement.” Its significance is described as “A site of importance to the archaeological heritage of Jersey”. The map accompanying the schedule shows the limit of the site as lying to the north and east of the proposal site. However, no archaeological investigations were carried out in support of the application and given the nature of the Flint Scatter Area, it is possible that the archaeological interest may extend into the proposal site. The proposals would require some limited removal of vegetation and soil. Therefore, I agree with the suggestion from the Historic Environment Team that a condition requiring a watching brief should be appended to any permission that is granted. With the addition of such a condition, I am content that the proposals would satisfy the requirements of Policy HE1, HE5 and SP4.
26. Policy NE1 - Protection and improvement of biodiversity and geodiversity requires development must protect or improve biodiversity and geodiversity and that the importance of habitats, designated sites and species is taken into account. The application was supported by a short summary of the habitats and vegetation species present in the areas of vegetation to be removed, which had been prepared following a meeting on site with Tim Liddiard. I also note that the Natural Environment Team did not object to the proposals. They have, however, requested a condition to implement the agreed mitigation measures set out in the biodiversity statement and have highlighted the potential presence of protected species. I am therefore content that the proposals would be consistent with the requirements of Policy NE1.
27. The applicant has provided additional biodiversity information during the appeal process. This has been prepared by a different organisation to that submitted with the application and has not been subject to scrutiny or comment from the Natural Environment Team. There are some differences between the reports in terms of the species listed, but there is no difference in the conclusions in relation to biodiversity.

The effect of the proposal on road access and safety

28. The existing car park is located part way along Route de Plemont, close to its junction with Rue de Petit Plemont. Both roads are dead ends. Route de Plemont continues past the car park to terminate adjacent to the café above Plemont Beach, where there are a limited number of mainly disabled parking spaces and a turning area. I saw that these roads are narrow, being little more than single track in places and that there are limited opportunities for vehicles to pass each other.
29. I understand that there is a history of cars being parked along the margins of the road between the car park and Plemont Beach. This has raised concerns about access along the road by emergency vehicles. To control this unregulated parking, yellow lines have been introduced to the narrower sections. The applicant states that the proposals are intended to provide additional spaces for those vehicles displaced by the introduction of the yellow lines. However, as the road did not have any defined parking previously, I am not persuaded by this justification. In addition, I have not been provided with any information as to the frequency or times when the existing

car park reaches capacity or estimates as to how the proposed additional spaces would address any perceived shortfall in capacity.

30. I have been provided with photographic evidence of parking along the road at a time when it appears that there was ample free parking space within the car park. I saw that parking on the road would reduce the distances to be walked and avoid use of the steep steps linking the car park to the café and beach. This suggests that parking on the road may be unrelated to the capacity of the current car park but be prompted by ease of access to the beach and café.
31. Notwithstanding my comments above, I accept that there are occasions when the current car park reaches capacity. At the hearing, there appeared to be broad agreement that demand for parking was greatest during good weather, school holidays and weekends and when tide conditions allowed access to the beach. These factors would not be affected by the proposals and the transport assessment concluded that the proposals would not, in themselves, generate additional trips. However, additional spaces would help to meet peak demand for parking.
32. I do not doubt that there are difficulties with vehicle access along the roads leading to the car park and beach, which could delay passage of emergency vehicles. These difficulties appear to be related to the road width and volume of traffic. As noted above, I am satisfied that the proposals would not generate additional vehicle movements and hence would not have adverse effects on road access or road safety.

Other matters

33. The appellant has referred to the Island's intention to work towards a net zero future. Policy SP1 - Responding to climate change of the Bridging Island Plan seeks to promote and achieve a meaningful and long-term reduction in carbon emissions and to mitigate against and adapt to the impact of climate change. One way to achieve this is to direct growth to areas of previously developed land or locations which minimise the need to travel by private vehicle. I accept that the proposals present some tension with this policy. However, the proposals would maintain the existing parking for public transport.
34. I note the comments received from the café owners in response to the appeal. These concerns appear to relate to whether potential customers can easily access the café. As noted above, installation of yellow lines and displacement of parking does not form part of this proposal and I have no evidence that the current capacity of the car park is inadequate to meet demand.

Conditions

35. The Decision Notice for the proposed scheme 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 three conditions.
36. The first of these conditions relates to the need to submit and receive approval of a Project Design for a phased programme of archaeological oversight. This condition addresses the points raised in the response from the Historic Environment Team and would ensure that any archaeological impacts are mitigated. I accept that this condition is appropriate and necessary.

37. The second condition requires that materials to be used in the external finishes should match the existing car park floor. I agree that such a condition is necessary to protect the landscape character of the Coastal National Park.
38. The third condition relates to implementation of measures identified in the Biodiversity Statement dated 21st March 2023. It addresses the advice of the Natural Environment Team and hence I consider it appropriate and necessary.
39. Additional biodiversity information, including proposed mitigation, was provided to me during the appeal process. This differs in some respects from that included in the biodiversity statement. As this additional information has not been subject to consultation with the Natural Heritage Team, I have not recommended that it be included as a condition to any permission that is granted. The condition, as originally worded, allows for the applicant to seek changes to the mitigation measures, subject to prior approval by the Chief Officer.

Conclusions

40. In general, proposals that are in accordance with the Bridging Island Plan shall be granted planning permission, unless there are material considerations otherwise. The preamble to the plan notes that in determining whether a development is in accordance with the plan, it is important to have regard to the plan as a whole and not to treat any policy in isolation. Where policy conflicts exist, a reasoned judgement must be made as to whether the wider benefits of a proposal outweigh any policy considerations in the plan.
41. There is no evidence that the proposals would affect numbers of vehicle movements or demand for parking. However, they would allow more efficient use of an existing car park, which provides for those wishing to access the Coastal National Park. They would hence satisfy the requirements of Policies CI9 and NE3 of the Bridging Island Plan in terms of enhancing public access to the coast and countryside and meeting the objectives of the Coastal National Park. The nature and scale of the proposals would protect the landscape and seascape character and the special qualities of the Coastal National Park in line with the requirements of Policies SP2, PL5, NE3 of the Bridging Island Plan. The proposed conditions would safeguard biodiversity, listed buildings and their settings and archaeological features. There would be some tension with Policy SP1 as the proposals provide facilities for private vehicles, rather than public transport. However, when considered in the round, I conclude that the benefits of the proposals in terms of more efficient use of the existing car park and providing for public access to the coast and countryside outweigh these concerns and hence the proposals would accord with the Bridging Island Plan.

Recommendations

42. For the reasons set out above, I recommend that the appeal should be dismissed, and that Planning Permission be granted, subject to the three conditions appended to the original permission. The proposed conditions are included at the end of this report. It should be noted that the reasons for these conditions have been updated from those included with the original permission, so that they refer to the current Bridging Island Plan.

Sue Bell

Inspector 06/02/2024

Conditions

In addition to the two standard conditions relating to timescales for development and compliance with the agreed plans, the following conditions should be added:

1. No part of the development hereby permitted shall be begun until a Project Design for a phased programme of archaeological oversight has been submitted to and approved in writing by the Chief Officer. The Project Design once approved, shall be implemented at the applicant's expense. In the event that any significant archaeological finds are made, work shall cease and the Chief Officer shall be notified immediately to allow for proper evaluation of such finds and further mitigation.
2. The materials to be used in the external finishes of the development hereby approved shall be to match that of the existing car park floor covering.
3. The measures outlined in the approved Biodiversity Statement dated 21st March 2023 (Engineer, Government of Jersey) shall be implemented prior to commencement of the development, continued throughout (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Chief Officer prior to works being undertaken.

Reason(s)

1. To ensure that special regard is paid to the interests of protecting the architectural and historical interest, character and integrity of the building or place in accordance with Policies SP4, HE1 and HE5 of the Bridging Island Plan.
2. To promote good design and to protect the landscape and seascape character of the Protected Coastal Area and the special qualities of the Coastal National Park in accordance with Policies SP2, SP4, SP5, PL5, NE3 and GD6 of the Bridging Island Plan.
3. To ensure the protection and improvement of biodiversity and protected species in accordance with Policy NE1 of the Bridging Island Plan.