

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: Mr M Channing (Third Party Appellant)

Site address: Field O1111, La Rue des Hougues, St Ouen

Application reference number: P/2022/1724

Proposal: *'Change of use from Class D - Agriculture to dog care business. Construct shed to South of site. AMENDED DESCRIPTION: RETROSPECTIVE: Change of use from Class D - Agriculture to dog care business. Construct shed to South of site.'*

Decision notice date: 29 June 2023

Procedure: Hearing held on 7 November 2023

Inspector's site visit: 6 November 2023

Inspector's report date: 20 December 2023

Introduction

1. This report contains my assessment of the third party appeal made by Mr M Channing (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to grant planning permission for the use of a field in St Ouen parish for a dog day care business, along with an associated shed structure.

Procedural matters

2. In the course of the application, the development description was amended to reflect the retrospective nature of the application, i.e., the use had already commenced and the operational development (the shed) was in place.
3. This is a case where the planning committee decided to grant permission against a clear officer recommendation to refuse permission for 4 reasons stated in the committee report. The planning committee is not bound by its officer advice and is entitled to reach a different planning judgment. However, in circumstances where the difference of view on policy matters is stark, as in this case, it can create some procedural complications at the appeal stage. This is because planning officers are bound by their

professional code¹ which, in essence, precludes them from subscribing to and promoting a case that is at odds with their own professional judgement. The planning authority's case was presented by Mr Gibbins, who was the case officer who authored the committee report and drafted the 4 reasons for refusal. No member of the planning committee attended the Hearing to explain its decision.

4. At the Hearing, I reminded Mr Gibbins of the professional code and he explained that his role would be to relay his understanding of the planning committee's consideration, and its weighting of policies. Mr Gibbins performed that task with some skill and dexterity, but it is a less than ideal situation. Towards the end of the Hearing, it led to the inevitable awkward unanswered question from the appellant's agent, as to whether Mr Gibbins still stood by his report and his published professional assessment and recommendation.
5. In future appeal cases, where there is a significant difference of view on policy matters between officers and the committee, the Minister may wish to consider introducing a protocol that would require the planning committee chair, or an appointed spokesperson, to attend appeal Hearings to explain the committee's reasoning. That would make for a fuller understanding and exploration of the main planning issues, and avoid potential, or perceived, professional conflicts for planning case officers.
6. Both the appellant and the applicant submitted video/audio evidence to support their respective cases, with regard to noise and amenity impacts. Whilst I viewed and listened to this material, all of these recordings are snapshots and unsupported by any detailed technical calibration to determine background noise levels, and the levels of noise associated with particular noise sources, such as dogs barking. As a result, this limits the weight that can be applied, but I have nonetheless considered this evidence and weighted it accordingly.

Background

7. Field O1111 is a broadly rectangular parcel of agricultural land situated in a rural location, roughly 2 kilometres to the west of the village of St Ouen. The field is approximately 115 metres lengthways and about 35 metres wide. It sits within a patchwork of fields which surround it on its northern, eastern and southern sides, with the curtilage of the appellant's dwelling being to the west of the field, and the dwelling itself, *La Saline*, being just to the north-west of the field, and set down on lower ground. The site is situated within the Protected Coastal Area (PCA) as defined on the Bridging Island Plan's (BIP) (adopted March 2022) Proposals Map 'Part A'.
8. Access to the appeal site is gained from Rue de Hougues to the north, via a rough track which runs broadly southwards through Field O1110 to reach the site. There are 2 dwellings near to the point where the track meets the road, these being *La Vigie*, which was the home of Ms D Hardy Marshall, a

¹ Royal Town Planning Institute Code of Professional Conduct (as amended February 2023) – notably paragraphs 11, 12 and 13.

now deceased objector to the appeal proposal, and *Les Hougues*, the home of Mr and Mrs Rault, also objectors.

9. There is some dispute between the main parties on the precise background circumstances, but it is not disputed that the use of Field O1111 for a dog care business commenced without planning permission, seemingly at some point in 2022. It is also not disputed that the shed structure associated with the use was constructed without planning permission. The shed measures about 13 metres by 3 metres², and has a mono-pitched roof rising in height from 2.1 metres to a maximum of 2.4 metres.
10. The planning application, seeking permission for the use of the field for dog care purposes and the erection of an associated shed structure, was submitted and validated on 2 February 2023. Its description was later amended to reflect its retrospective nature, which became apparent at the case officer's site inspection.
11. The application was reported to the 8 June 2023 meeting of the planning committee. The officer report explained the proposals, consultations undertaken, and representations received, which at that time included 23 expressions of support and 13 objections. The report then set out the officer analysis and his recommendation that the application should be refused for 4 reasons. The 4 reasons related to the site's unsustainable location, being contrary to BIP policies SP1, SP2, SP3 and PL5; the failure of the proposal to protect or enhance the PCA, contrary to policies GD6 and NE3; the loss of agricultural land, contrary to policy ERE3; and the unreasonable harm to the amenities of neighbouring uses by way of noise pollution, contrary to policy GD1.
12. The committee did not agree with the officer's recommendation and resolved to grant planning permission, subject to conditions. Being contrary to the officer recommendation, the 'cool off' procedure was engaged, with the committee considering the item again at its 29 June 2023 meeting.
13. At the 29 June meeting, the committee confirmed its decision and granted planning permission, subject to conditions. In addition to the standard time limit and plans compliance conditions, 8 further conditions were imposed. These included landscaping requirements (condition 2); removal of structures and paraphernalia should the use cease (conditions 3 and 4); limits on operating hours to 10:00 – 14:00 Monday – Friday (condition 5); all dogs to be brought to the site by employees of the business and no public attendance at the site (conditions 6 and 7); and no more than 30 dogs to be on the site at any time (condition 8).
14. Mr Channing's appeal is made against this decision. For clarity, under the Law³ the decision to grant permission remains in effect, but the development cannot be implemented until this appeal has been decided. Following the lodging of the appeal, the use that had been operating at the

² The plan detailing the shed is quite basic, but does notate the height and width dimensions. The length has been assumed to be 4 x 3 metre wide bays (12 metres) plus a 1 metre end bay = 13 metres in total.

³ Article 117(1) and (2) – Planning and Building (Jersey) Law 2002 (as amended)

site was suspended and, the applicant informed me at the Hearing, is being operated from a temporary location.

Summary of the appellant's grounds of appeal

15. The appellant's case is set out in the appeal form and attachments, a more detailed Appeal Grounds statement, a final comments document, and some video/audio recordings. The 5 stated grounds of appeal set out in the form are:
 - *The proposal fails to meet the requirements of various Bridging Island Plan (2022) (BIP) policies, including SP1, SP2, SP3, PL5, GD6 and NE3.*
 - *There was no consultation with the agriculture department and the proposal is against policy ERE1 of the BIP.*
 - *Unreasonable noise pollution to neighbours.*
 - *Unreasonable harm to traffic flow.*
 - *All reasons given in the appellant's letter of 13 February 2023.*
16. At the Hearing, the appellant's case was presented, in the main, by his agent, Mr Osmand, with some contributions from Mr Channing himself. Mr Osmand also read out a statement from the now deceased former resident of *La Vigie*.

The planning authority's case

17. The planning authority's case is set out in a Response document, with appendices which include the officer report to the 8 June planning committee meeting; the 'cool off' report to the 29 June committee meeting; the Environmental Health consultation comment; the Decision Notice; and the committee minutes.
18. The Decision Notice includes a useful summary statement which explains the committee's planning judgement. It reads:

Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with all other material considerations, including the consultations and representations received. Moreover, following a consideration by the Planning Committee, it has been judged that, in accordance with policies SP1, SP2, SP3, SP5, SP6, GD1 and NE3, the proposal neither directly or indirectly causes harm to the Island's landscape character, nor does it unreasonably harm the amenities of neighbouring uses, rather, it supports the diversification of the Island's economy.

The applicant should note that Planning permission does not defend them from potential nuisance action. If nuisance complaints are received in the future, the matter may be investigated and considered under the Statutory Nuisances (Jersey) Law 1999 and further mitigation measures may then be required.

The Natural Environment Team recommends that the applicant consider the recommendations of the 'Jersey Hedgerow Forum' when selecting native species that are in keeping with the local landscape.

19. As noted above (paragraph 3), at the Hearing, the planning authority's case was explained by the case officer, Mr Gibbins, with additional contributions from Ms Venter.

The applicant's case

20. The case for the applicant, Ms Orlandini, is set out in her Response document dated 5 September 2023, an undated letter that accompanied video evidence, a letter dated 31 October 2023 and various video/audio recordings, including CCTV security footage. I have also had regard to the original application documents and the applicant's planning committee contributions.
21. In essence, the applicant supports and agrees with the planning committee's findings and judgement. She explains that she has sought to establish a business for which there is a need, and it is based on a deep commitment to the health and wellbeing of animals under its care.
22. The applicant submits that with regard to policy SP1, the use of staff vehicles avoids the needs for up to 30 clients per day to drive to the field and that they only use solar power at the site. The applicant considers that the use would be difficult to operate in a Built-up Area (BUA) location and a countryside location is justified in line with policy SP2.
23. With regard to policies SP3, SP5, SP6, PL5, NE3 and GD6, the applicant submits that landscape harm is minimal, and akin to equine development, and that they are keen to follow native species planting advice as part of the landscaping proposals. The applicant further submits that the use and structure blends with its surroundings.
24. With regard to ERE1, the applicant states that there is no desire to use the field for agricultural purposes, and that other nearby fields are also not in use due to flooding, stoney ground, or the owners choosing not to cultivate them.
25. Concerning policy GD1 and noise impacts, the applicant states that she understands concerns and has taken steps to minimise any impacts on neighbours. She says that noise effects arising from kennels, as cited by the appellant, are not comparable with the day care use and its limited hours (4 hours per weekday) and careful management limit any noise effects. The applicant also submitted that traffic effects were minimal and that there was no intention to expand the business beyond the consented level.
26. At the Hearing, Ms Orlandini made her case to me, with supporting contributions from Mr Syvret, the landowner.

Views of interested parties

27. I have taken into account the views of both supporters and objectors who have made submissions at the application and appeal stages. I have also noted the views of interested parties that made contributions at the Hearing, and considered these in my assessment.

Inspector's assessment

The development

28. Before assessing the appellant's specific grounds of appeal, it is important to provide some commentary on the appeal 'development'. There was some suggestion, notably from Mr Syvret the land owner, that officers had led him to believe that the dog care use would not require planning permission. This appeared to relate to conversations with an officer from the Land Controls service. However, there is no convincing written evidence before me to confirm this suggestion and it would seem unusual for a Land Controls officer to offer advice on planning law matters.
29. There is no doubt in my mind that the appeal proposal involves a material change of use from agricultural land, which falls within Class D as defined in the Order⁴. This is because the pet dog day care use is clearly not 'agriculture', nor could it be regarded as incidental to an agricultural use. As a dog day care use is not specified in any other use class defined in the Order, the change is to a *sui generis* use ('in a class by itself'). There is also no doubt that the shed structure constitutes operational development, requiring planning permission, as there are no permitted development provisions in the Order pertaining to buildings for *sui generis* uses.
30. The applicant has clearly accepted this position, hence the submission of the application and amended description to reflect its retrospective nature. What may or may not have been said by another government officer, and how that may or may not have been interpreted, has no direct bearing on my consideration of this appeal.

Ground 1 – The proposal fails to meet the requirements of various BIP policies, including SP1, SP2, SP3, PL5, GD6 and NE3

31. The appellant's first ground of appeal effectively combines the draft recommended refusal reasons 1 and 2, that appeared in Mr Gibbins' officer report to the 8 June 2023 committee. These cover two main issues relating to i) the suitability of the location for the use proposed and ii) the effect of the proposal on the character and appearance of the area. Although there is some overlap between these issues, it is helpful to separate them for assessment purposes.

⁴ Schedule 2 – Planning and Building (General Development) (Jersey) Order 2011 (as amended)

Location (BIP policies SP1, SP2, SP3, PL5)

32. The site is in a remote rural location in the north-west corner of the island. It falls within the PCA and is not close to any settlement boundary as defined on the BIP Proposals Map. It is a considerable distance from the main BUA population centre focused around St Helier and about 11 kilometres, as the crow flies, from the town centre. Access to the site is by single track rural lanes.
33. The suite of locational policies referenced under this ground reflect the BIP's concentrated development strategy, which seeks to respond to climate change and promote sustainable patterns of development.
34. SP1 addresses 'responding to climate change' and states that 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, the BIP will, amongst other matters, direct growth to areas of previously developed land, or locations which minimise the need to travel by private vehicle.
35. SP2 sets out the BIP spatial strategy and states that development will be concentrated within the island's BUA, as defined on the Proposals Map and that, in particular, development will be focused within the island's primary main urban centre of 'Town', which will accommodate much of the island's development needs. Outside of the defined BUA, within the countryside, around the coast and in the island's marine environment, development will only be supported where a coast or countryside location is *justified, appropriate and necessary* in its location.
36. SP3 addresses 'placemaking'. It says that all development must reflect and enhance the unique character and function of the place where it is located, and that it must contribute to the creation of aesthetically pleasing, safe and durable places that positively influence community health and wellbeing outcomes. It continues by setting out that proposals will be supported where they meet stated criteria. These include, amongst other matters, being responsive to their context and sense of place; being environmentally responsible and sustainable; providing green infrastructure; achieving a high standard of accessible and inclusive design; and making provision for all modes of travel, and supporting active travel choices.
37. PL5 covers 'countryside, coast and marine environment' and states that development proposals should protect or improve its character and distinctiveness. It states that proposals should protect or improve the special landscape and seascape character of the PCA. It further states that, where a coast or countryside location is justified, and where any impact will be limited, the provision or enhancement of sports, leisure and cultural facilities that supports the health, wellbeing and enjoyment of islanders and visitors will be supported. It continues by stating that agricultural land will be protected, and that economic development that supports the maintenance and diversification of the rural and island economy will be enabled here, where the location of development is justified and appropriate.

38. It will be clear from my summary of these policies that one of the key assessment tests is whether the use is justified, appropriate and necessary in this countryside/PCA location.
39. At the Hearing, the applicant provided some helpful information on the background to the business, and the operational nature and characteristics of the use at the appeal site. She explained she had been searching for a suitable site since 2018 and had undertaken a lot of research. Initially she had looked at warehouse type buildings, which are used for this type of use in other countries. The applicant said that she had sought advice from the planning and environmental health services between 2018 – 2021, but says that she did not receive a substantial response.
40. The applicant explained that her customers are spread 'right across the Island' and 5 vehicles are used to pick up dogs, with a maximum combined total of 28 – 30 dogs per weekday. The dogs are walked and exercised in other locations, such as the dunes and woods, and Field O1111 is only used for 4 hours each weekday. Due to the crossover of activities, there may be perhaps 10 – 15 dogs at the field in these operational hours. She further explained that excitement and barking is controlled by 'decompression', i.e. taking an excited dog into the shelter to calm down, and that persistent noisy dogs are screened out, and day care declined.
41. Whilst I have not been provided with any detailed geographical information on the origin points of the dogs, beyond 'right across the Island', it is not unreasonable to assume that, being pet dogs, the pattern will have an approximate relationship with the spread of human population in the Island. Therefore, most pet dogs are likely to be drawn from locations where most people live, and that is the defined BUA comprised of the settlements, large and small, identified on the BIP proposals map. It is also likely that, due to the rural nature and limited population in the north-west part of the Island, only a limited number of dogs will be drawn from the immediate locality. I do appreciate that my assessments here are broad brush, but in the absence of any contrary empirical evidence, I consider them to be reasonable.
42. I have noted the applicant's submission that using the business's 5 vehicles to undertake pickups and dropoffs of pet dogs would involve fewer trips than up to 30 owners driving to the site. However, running a fleet of 5 petrol/diesel vehicles each weekday to drive around dispersed locations across Jersey to collect up to 30 pet dogs, deliver them to the site in a remote rural location in the north-west corner of the island, and then repeat the exercise on the return leg, hardly strikes me as a particularly sustainable practice. It is also a location where most members of staff are unlikely to be able to utilise more sustainable modes of travel, such as walking and cycling, to get to and from work.
43. I am mindful here of broader government policy, including the Sustainable Transport Policy adopted by the States Assembly in March 2020, which is referenced in the BIP's 'travel and transport' chapter. It formally established the principle of a demand management approach, recognising that *fewer motor vehicle journeys will be good for Jersey*. Applying those principles to

dog day care would suggest to me that the most sustainable location for such a use would be closest to the main concentration of the pet dogs, i.e., within, or at least close to, the BUA and, more specifically, St Helier, rather than taxiing dogs some distances from disparate locations to and from the remote appeal site.

44. I do appreciate the applicant's submissions concerning the difficulty of finding a suitable site, but that is not a challenge that is unique to this particular business in Jersey. I also noted the appellant's agent's questioning of whether there was actually a justification for the business at all, given the number of dog walking and care service businesses in Jersey, but I am also mindful that the applicant appears to be running a successful business, that I can only assume to be meeting the needs of her paying customers.
45. On the main issue of location, I find the site to be unsustainable and I do not consider that the specific use applied for meets the test of being justified, appropriate and necessary, in this remote countryside location within the PCA. This raises direct conflicts with policies SP1, SP2, SP3 and PL5, which seek to direct new development to the most sustainable locations, which minimise the need to travel by private vehicles, and seek to protect the countryside and the PCA from inappropriate development. These policy conflicts are significant and weigh against the proposal.

Character and appearance (BIP policies GD6 and NE3)

46. The use was not operational when I visited the site. However, I inspected the shed structure which is of a very rudimentary design, comprising timber sheeted walls and a profiled metal sheet roof. The eastern end is enclosed to form a room, the remainder an open sided shelter which includes a team board and some stored equipment. I also noted the paraphernalia associated with the use, which comprised a collection of tyres, some of which are large, wooden pallets and timber planks. The area where dogs are kept does not cover the entire field, but is defined by a post and wire fence. During operational hours there could be up to 5 vehicles at the site.
47. Policy GD6 addresses 'design quality'. It states that 'a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting will be sought in all developments, in accord with the principles of good design'. It then sets out a list of key principles, which include the relationship to the existing character and form of the area; the use of materials; impacts on neighbouring uses; integration with the existing area; designing out crime; protection and enhancement of green infrastructure; operational usability; and the sustainable use of resources.
48. Policy NE3 requires new development to protect or improve landscape and seascape character. It states that 'the highest level of protection will be given to the PCA, and its setting'. It further states that proposals that do not protect or improve landscape and seascape character will not be supported, unless they meet a range of criteria including being demonstrably necessary; there being no reasonable alternative; that harm

has been avoided, mitigated and reduced as far as reasonably practicable; and that the public benefit of the proposal outweighs the harm to the landscape and seascape character, and where the nature of that benefit to the public is clear, direct, and evidenced.

49. The starting point here is that Field O1111 was, until recently, an open field with a natural rural appearance and containing no built structures. As such it contributed to the attractive open rural landscape of the area, which is part of the 'interior agricultural plateau' as defined in the Jersey Integrated Landscape and Seascape Character Assessment (May 2020) (JILSCA) which formed part of the BIP evidence base. The JILSCA identifies this part of the plateau as area E1 'western coasts and headlands farmland' which it says is distinguished by 'its sense of openness and exposure, and relative lack of trees'⁵.
50. The development has imposed a fairly large and crudely constructed shed into the otherwise open PCA landscape, along with a range of man-made paraphernalia, and, when operational, the presence of parked vehicles (up to 5). All of this is quite visible and the combined effect is harmful to the landscape character of the PCA. It creates a cluttered, rather scruffy and 'urban fringe' type appearance, at odds with the character features and qualities identified in the JILSCA.
51. I do not agree with the planning committee's assessment that the '*proposal neither directly or indirectly causes harm to the Island's landscape character*'. There is clear and evidenced harm to the PCA. I have also considered carefully the arguments made that the shed would be akin to equine type development, but the proposal is not for equine purposes that may be more justifiable in a countryside location. Moreover, the JILSCA⁶ specifically identifies that in this character area, '*livery infrastructure can increase the amount of clutter in the landscape, such as fencing, surfacing and isolated buildings, which can adversely affect the rural character, and introduce an 'urban fringe' feel*'. I consider that the effect of the development is very much the undesirable 'urban fringe feel' that the JILSCA identifies as a matter to be controlled.
52. Given the highest level of protection afforded to the PCA by policy NE3 there is a significant policy conflict, as the proposal does not meet the requirement to protect or improve landscape character. Whilst some hedge planting and landscaping may offer some softening and mitigation, the case for allowing harmful development under policy NE3 provisions is not made, as I do not consider the development to be demonstrably necessary, or the public benefits to be sufficient to outweigh the harm. There is also a related conflict with policy GD6, because the development fails to contribute positively to the distinctiveness of the landscape and the site's wider setting.

⁵ Page 100 – Jersey Integrated Landscape and Seascape Character Assessment (May 2020)

⁶ Table on page 105 – Jersey Integrated Landscape and Seascape Character Assessment (May 2020)

Ground 2 – There was no consultation with the agriculture department and the proposal is against policy ERE1 of the BIP

53. The planning authority confirmed that both Land Controls (Agriculture) and the Economic Development Rural and Marine services were consulted on the application, but neither service issued a response.
54. Policy ERE1 resists the loss of agricultural land. It does allow for loss under 'exceptional circumstances', subject to complying with 2 criteria. The first is where the proposal will not lead to the loss of high-quality agricultural land, having regard to a number of factors. The second is where 'the nature of the proposed use genuinely necessitates and is appropriate to its proposed location.'
55. Given my findings under ground 1 above, the second criteria is not met. With regard to the first criteria, I acknowledge that the field is not currently cultivated and I note Mr Syvret's views on the difficulty of using modern agricultural equipment on this relatively small field. I have also taken into account Mr Osmand's contrary views that the field is good quality south-west facing land, suitable for future use for polythene free farming, which is being increasingly encouraged.
56. The proposal would clearly take the field out of future potential agricultural use, for as long as the dog care use persisted. I note that the committee felt that the use was reversible and imposed a condition (No 4) that required that, should the dog care use cease, the field would be restored. However, there is no reason to suggest that the use would not persist for a considerable period of time, thereby removing any agricultural potential. In any event, reversibility is not a stated exception provision allowable under ERE1, and the policy's supporting narrative emphasises the precautionary approach to the protection of agricultural land, by seeking to resist its loss and sustaining a viable rural economy.
57. Overall, I do find a tension with policy ERE1 and consider that exceptional circumstances to justify the loss of agricultural land have not been demonstrated. This policy conflict weighs against the proposal.

Ground 3 – Unreasonable noise pollution to neighbours

58. The most contested main issue in this appeal relates to the effects of noise, principally from barking dogs, on the living conditions of occupants of nearby residential properties. There have been hotly contested accounts of noise effects, disputed video and audio recordings, and claims and counter claims about background noise, and other noise sources in the vicinity.
59. The most relevant BIP policy is GD1, which covers 'managing the health and wellbeing impact of new development', and it requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must '*not unreasonably harm*' the amenities of occupants and neighbouring uses, including those of nearby residents. It cites some particular matters that developments must avoid, which include adversely affecting 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. Clearly the issue of noise is the most relevant consideration in this case. Policy GD6 is also relevant; it relates to 'design quality' and its stated 'key principles' include the relationship of the development to existing buildings (GD6(1)), as well as the impact on neighbouring uses (GD6(3)).

60. The site has very few near residential neighbours, but those that are nearby engage the GD1 policy protection from being 'unreasonably harmed'. There are 3 homes in close proximity to the site, and a few others lower down Mont Vibert to the south-west, and in the wider area to the east and to the south. I focus my analysis on the three closest properties.
61. The first is *La Vigie*, which is a chalet style dwelling located adjacent to the access point from Rue des Hougues, which was the home of the now deceased Ms Hardy Marshall. The second dwelling is *Les Hougues*, the home of Mr and Mrs Rault, which is a single storey bungalow immediately to the north of *La Vigie*. The third is the appellant's home, *La Saline*, which shares a boundary with Field O1111.
62. Having considered all of the evidence, including the written submissions and video/audio clips, I have very significant concerns about the amenity effects of the proposal on the living conditions of occupants of these three properties.
63. The most severe effects will be on the living conditions for occupiers of *La Vigie*. In addition to being immediately adjacent to the access point, and all of the associated vehicle movements the use would generate, there is a clear line of sight and sound from this property, across Field O1110, to the appeal site. The fenced dog area can be seen from the garden, windows and a first-floor balcony area at this property. The distance from the garden boundary to the fenced dog area is the width of Field O1110, which is about 40 metres. Whilst noting submissions about background noise, I encountered very little on my inspection, and found the location to be tranquil, the main audible sounds being the elements of the wind and the sea.
64. The limited separation distance, and the absence of any intervening barrier, will mean that any dog barking will be audible and extremely intrusive at the property's amenity space and balcony, and likely to be audible within the property, especially if windows and doors are left open, as would be expected in the warmer months. Dog bark sounds are typically loud, intermittent and piercing, and can carry for long distances. Multiple dogs barking will clearly exacerbate the noise effects and, when experienced repeatedly, can be anxiety inducing and irritating. Moreover, the wind will also be a factor and, given that the prevailing wind in Jersey comes from the south-west, it will tend to carry noise from the fenced dog area, directly towards *La Vigie*. These noise effects on this property would surpass the 'unreasonable' threshold by some margin, in my view.
65. I have similar concerns about the likely noise impacts on *Les Hougues*, but the effects here are a little less severe, because the physical presence of

La Vigie on its south side will act as a noise barrier. Nonetheless, I do consider that barking noise at *Les Hougues'* garden and within the bungalow with windows open will be audible and is likely to be annoying for occupants. Indeed, Mr Rault submitted that, on hot summer days, they had felt forced to shut windows and doors to keep the noise out. Given the existing tranquil context enjoyed by residents of this property, I consider that the likely change arising from the development would be significant and unreasonable.

66. With regard to the appellant's property, *La Saline*, the active fenced dog area is about 30 metres from the boundary. The appellant's home is actually about 50 metres to the north-west of the fenced dog area, and it is set down on a lower level, such that when viewed from the appeal site, only the roof and dormer windows are clearly visible. This means that, for the most part, the bank of land will act as a buffer to noise emanating from the appeal site. However, due to the short distances involved, it will not prevent occupants hearing, and likely being irritated by, dog barking. Occupants in the dormer roof accommodation of the property, which rises above the top of the bank, providing a direct line of sound to the fenced dog area, would likely experience unreasonable noise effects, especially with windows open in the warmer months.
67. In reaching these assessments, I have considered carefully the applicant's measures to manage barking, and her submission that staff do not want to have barking dogs, and routinely use techniques to calm them. However, it is quite apparent to me that corralling a large number of dogs in a small field, even with the most skilled dog caring professionals, is inevitably going to lead to bursts of barking and this is likely to be a regular occurrence. Whilst I have applied quite limited weight to the video/audio evidence, one clip did record an incident of loud barking and raised voices, aimed at bringing the overexcited dogs under control. I also noted that Mr Gibbins experienced loud barking when he visited, but I do recognise that this may have been a 'watchdog' type response to a stranger entering the area. I have also taken into account the limited operational hours, secured by a planning condition, and that the use would only take place on weekdays. However, this does not persuade me that the likely amenity effects are acceptable, as the operational hours extend over the middle part of the day, when people have a reasonable expectation to be able to enjoy their homes and gardens undisturbed.
68. On this matter, my overall assessment is that the proposal is highly likely to generate unreasonable harm to the amenities of neighbouring occupants, by virtue of noise. This creates a direct conflict with policy GD1.

Ground 4 – Unreasonable harm to traffic flow

69. I have noted the appellant's submissions regarding traffic concerns, including the narrowness of the country lanes, the number of agricultural vehicles using the lanes, and the view that a traffic study should have been undertaken. However, notwithstanding my finding under ground 1 that the proposal would be in an unsustainable location with regard to travel, there is no evidence to suggest that it would result in highway dangers or

highway capacity issues on the rural road network. I therefore conclude that this ground of appeal should not succeed.

Ground 5 – All reasons given in the appellant’s letter of 13 February 2023

70. At the Hearing, Mr Osmand agreed that the discussion under the other grounds had covered all relevant matters. I therefore do not need to comment further on this ground.

Other matters

71. I have considered carefully the economic dimensions of this proposal, including its direct employment effects (a team of 4 dog walkers/carers plus the applicant) and the claimed rural diversification arguments made by the applicant, and the land owner, Mr Syvret. Based on Mr Gibbins’ explanations, it also appears that the committee attached considerable weight to these matters and assessed BIP policy SP6 (Sustainable Island Economy) as being weighty.
72. However, whilst SP6 gives a high priority to the creation and maintenance of a sustainable, productive and diverse economy, that priority and support is caveated, and does not in itself override other important policy considerations. Indeed, the SP6(5) support for development which can help to maintain and enhance a sustainable rural economy, is qualified by these being *‘...where a rural or coastal location is justified, and where it protects the character of the landscape and seascape, and high-quality agricultural land.’* I have found that the rural location is not justified in this case, that there is harm to the PCA landscape which attracts the highest policy protection, and there is a loss of agricultural land. Therefore, the proposal does not find support from policy SP6. Moreover, there is no evidence before me to suggest that the economic benefits of this business could not be provided from a site, or sites, that are better located, without incurring the planning harm that I have identified.
73. At the Hearing, some references were made to other dog business related planning applications on other sites. Whilst I have noted these, each case is different and I have been provided with scant details on the circumstances of these other cases (they were not included in the written appeal submissions). In any event, I must make my assessment on the basis of the facts before me in this particular case.

Planning conditions

74. At the Hearing, there was a brief discussion covering conditions imposed by the planning committee and whether additional, or different, planning conditions might address some of the concerns identified by the appellant.
75. From my review of the conditions imposed, I do understand the committee’s attempt to restrict the use to that applied for in terms of hours, dog numbers, transport to and from the site, and a ban on customer visits. However, for reasons explained above, I remain deeply unconvinced that these conditions will mitigate the identified harm to render the development acceptable in planning terms.

76. To illustrate my concern with one example, condition 8 limits the use of the site to no more than 30 dogs, and the reason for imposing the condition is stated as *'to protect the amenities of neighbouring properties in accordance with policy GD1 of the Bridging Island Plan 2022'*. However, the dog limit number appears to simply be the number quoted by the applicant; there is no evidential basis to support the committee's implied view that 30 dogs at the site would not cause any unreasonable loss of amenity, whereas adding 'dog 31' would. I actually have deep concerns about the amenity implications of the 10 – 15 number of dogs indicated as being typical at the site in operational hours at any one time.

Conclusions and recommendation

77. On ground 1, I conclude that the location of the appeal site is unsuitable for the development proposed and it would conflict with BIP policies SP1, SP2, SP3 and PL5, which seek to direct new development to the most sustainable locations, which minimise the need to travel by private vehicles, and seek to protect the countryside and the PCA from inappropriate development. I also find that the development would be harmful to the character and appearance of the PCA, to which the BIP affords the highest level of protection, and this conflicts with BIP policies NE3 and GD6.
78. With regard to ground 2, I conclude that the proposal would result in a loss of agricultural land that has not been justified and this conflicts with policy ERE1.
79. On ground 3, the evidence leads me to conclude that the operation of the use would lead to severe and unreasonable loss of amenity effects to nearby occupants of residential properties, primarily from the likelihood of dog barking in close proximity to homes and gardens. These effects conflict seriously with policies GD1 and GD6, which seek to protect existing users from unreasonable loss of amenity.
80. On ground 4, I have assessed that whilst the proposal would be in an unsustainable location with regard to travel, there is no evidence to suggest that it would result in highway dangers or highway capacity issues on the rural road network.
81. The ground 5 matters were substantially addressed by the exploration of grounds 1 – 4 and 'other matters' above.
82. Overall, I conclude that the appeal on grounds 1, 2 and 3 should substantially succeed, as the proposal raises serious policy conflicts with the BIP. I do not consider that there are any other material considerations, including the limited employment associated with the use and its service provided to users, that would outweigh the legal presumption that the application should be determined in accordance with the BIP.
83. I recommend that the appeal should be ALLOWED and that permission be REFUSED for application reference P/2022/1724, for the following reasons:
- Reason 1: The application site is located in a remote rural location, a considerable distance from the Built-up Area, and is an unsustainable

location for the use proposed, which would be reliant upon using a fleet of private vehicles to transport pet dogs to and from the site each weekday. This conflicts with Bridging Island Plan (adopted March 2022) policies SP1, SP2, SP3 and PL5, which seek to direct new development to the most sustainable locations, which minimise the need to travel by private vehicles, and seek to protect the countryside and the Protected Coastal Area from inappropriate development.

Reason 2: The proposal includes a prominent and crudely constructed shed, along with a range of manmade paraphernalia and parked vehicles during operational hours. This would be harmful to the character and appearance of the Protected Coastal Area, which is afforded the highest level of protection under the Bridging Island Plan (adopted March 2022) and would be contrary to its policies GD6 and NE3.

Reason 3: The proposal would result in the loss of agricultural land, which has not been adequately justified. This would be contrary to policy ERE3 of the Bridging Island Plan (adopted March 2022) which seeks to protect and retain agricultural land for agricultural purposes.

Reason 4: The operation of the use is likely to result in serious and unreasonable harm to the amenities of neighbouring uses by way of noise pollution from barking dogs. It is considered that these effects could not ever be adequately mitigated, given the scale of the operation (up to 30 dogs), the close proximity of neighbouring residential properties, and the site characteristics being in a tranquil open countryside setting. These effects are contrary to policies GD1 and GD6 of the Bridging Island Plan (adopted March 2022), which seek to protect existing uses from unreasonable loss of amenity.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI