

Appeal Decision Notice

Accompanied Planning Tribunal Site Visit held on 12th July 2012

Members: Mr. Stuart Fell (Presiding), Miss. Julia White, and Mr. Nigel Burnard

Appeal Site:	Builder's Store, off Hougues Magues Lane, St Sampson
Property Reference:	B01333A000-P02
Planning Application Reference:	FULL/2011/3270
Planning Application Valid Date:	19th October 2011
Appeal Case Reference:	PAP/008/2012

- The Appeal is made under the provisions of Part VI and Section 70 of The Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is made by Mr. M Maubec against the decision of the Environment Department dated 16th December 2011 to refuse planning permission on a part retrospective application to replace windows and doors, widen existing vehicular access and extend existing hardstanding.

Decision

1. The appeal is allowed, subject to the limitations detailed in paragraph 22 below.

Preliminary Matters

2. The appeal was intended to be determined by way of a public Hearing scheduled to take place on 12th July 2012. When the appellant's representatives sought a postponement of the Hearing, the Tribunal decided to make an accompanied site visit on the appointed date, with a view to familiarising itself with site factors, and determining whether a Hearing would be necessary. Having visited the site, the Tribunal canvassed the parties on its interim conclusion that a decision could be properly reached without the need for a Hearing, and without disadvantage to either party. Having received no fundamental objection to this proposal, the Tribunal has accordingly made its decision on the basis of the written submissions made by the parties, and what was seen on the accompanied site visit.

Background

3. The appeal building lies adjacent to the southern boundary of a small open field situated to the east of Hougues Magues Lane, with vehicular access provided from the west via a roadway which runs through the centre of a small clos of nine houses. The site is located within an Area of High Landscape Quality.
4. Mr. Maubec, who runs a building company, bought the site in 1988 and used it regularly over the following ten years. After a subsequent period of disuse during which time the site and building became neglected, he decided to restore the property and bring it back into beneficial use. In September 2009, he applied for planning permission for an extension to the store (Ref. FULL/2009/3388).
5. At the same time, Mr. Maubec commenced the resurfacing of the driveway and the other areas of hardstanding, resulting in a complaint from a neighbour. As these works constitute a form of development that requires permission, the Department requested that the application referred to above be amended to include these resurfacing works, and the Department also sought clarification as to the need for the extension. Mr. Maubec set out his intentions in some detail in a letter dated 15 November 2012, and explained that the reason for the extension was to accommodate some office space and toilets so that his contracting business could be operated from these premises, rather than from his home.
6. The application was refused in January 2010 on the basis that the development had not been justified in relation to relevant policy objectives, and because of concerns that the enlargement of the building and the resurfacing works could lead to an intensification of use, to the detriment of the character of the surroundings and the amenity of neighbouring houses.
7. A further application was submitted in December 2010 (Ref. FULL/2010/4198), which was similar in most respects to the earlier application, but incorporated amenity landscaping along the western boundary of the site next to the clos of houses. The Department sought further clarification from the applicant on a number of points arising from the submission and in the absence of a reply it refused the application in March 2011.

8. Following the refusal of these two earlier applications the appellant made the subject application in which the proposed extension was omitted. The works were shown to comprise the replacement of door and windows, the replacement and enlargement of areas of hard surfacing along the driveway and around the building, and the provision of amenity planting on the western site boundary. The work had already been carried out, save for the planting. It is the subsequent refusal of this application that has resulted in this appeal.
9. The Department has indicated that it has no objection to the replacement door and windows that have been installed, an assessment with which the Tribunal concurs. The only contentious aspect of this appeal relates to the impact of the resurfacing works that have been carried out, and the Tribunal's focus of attention has therefore been on this matter.

Main Issues

10. From its assessment of the papers submitted by the appellant and the Department, and from what was seen and noted during the site visit, the Tribunal considers that there are three main issues in this case. The first is whether the resurfacing of the access drive and the areas of hardstanding can properly be regarded as incidental and essential to the authorised use of the site, bearing in mind the relevant provisions of Policy RE7 of the adopted Rural Area Plan which seeks to control industrial development. The second issue is whether the development can be said to resolve any conflicting amenity issues arising in relation to the neighbouring dwellings in Hougues Magues Clos, given the underlying objective of Policies RE7 and RGEN11, which is to protect residential amenity. The third is whether the development would cause unacceptable harm to the open and undeveloped character of the rural area, or to the visual quality or landscape character of the surroundings, which are protected under the provisions of Policy RCE1 and REC3.

Planning History

11. The planning history of the site has a direct bearing on the way in which the Tribunal has approached this appeal. The basis on which the original permission for a builder's store was granted is considered to be of particular importance. The nature of the original approval is set out in a minute of the Island Development Committee meeting of 6th July 1964, where it is stated:

"The Secretary reminded the members that when permission had been given for the erection of the two blocks of terraced houses already erected on part of the site the Committee had decided to preserve the rear portion of it by virtue of the provisions of Sections 3 and 10 of the Natural Beauty and Land Control (Implementation) Ordinance 1959 which relate to the control of Agricultural Land and preservation of Natural Beauty respectively. Since then the Committee had given permission for the erection of a builder's store on that part of the site which had originally been preserved".

12. The nature of the authorised use was further clarified in a letter dated 3 June 1986 from the then President of the IDC in response to a query about the building. The letter includes the following relevant statements:

“The building is currently classified by the Committee as a Builder’s Store, falling within Use Group N of Schedule 2 of Detailed Development Plan No 1. I should make it quite clear, however, that its use as a workshop has been specifically precluded by the Committee”.

“I should also make it quite clear that this building stands on a site which has previously been determined by the Committee as agricultural land. Consequently, I must advise you that car parking, other than for the occupier’s vehicle servicing the store is precluded, as is the use of the land around the building for additional storage”

13. The fact that the scope of the permission is set out in the form of a letter rather than the now familiar formal notice with attached conditions, does not in the Tribunal’s mind diminish the status of that original permission. The Tribunal notes that the terms of the earlier permission have not been challenged by the appellant or his advisors.
14. Another key matter in this appeal relates to the vehicular right of way to the site that runs over the roadway in Hougues Magues Clos. The appellant has made cogent submissions to the effect that there are no legal restrictions either on the frequency of vehicular movements to and from the site or in respect of the type of vehicles employed. The Department has not disputed the veracity of these submissions and the Tribunal can find no reason to do so.

First Issue – Are the Works Incidental and Essential to the Authorised Use?

15. The Tribunal first considered whether there are any controls in place over the intensity of use of the builder’s store, as this matter is central to the Department’s concerns about the development. The Tribunal can find no explicit restrictions within the terms of the original grant of permission, or in subsequent correspondence from the former IDC. Having reviewed this matter, the Tribunal takes the view that the intensity of use of the site will be self limiting, being a function of four key factors. The first is the size of the building, which is fixed. The second is the nature of the materials and equipment that can be conveniently and economically stored there, and the third is the capacity of individual building sites to securely accommodate materials and equipment during the course of building works. The final factor is the explicit planning restrictions that limit the use of the land surrounding the building. The Tribunal’s view is that the appellant is entitled to use the store for the authorised purpose on a more or less intensive basis, according to his needs or desires, provided the terms of the original permission are adhered to.

16. Part (a)(i) of Policy RE7 of the Rural Area Plan, which deals with industrial development, states that proposals for extensions, alterations, rebuilding or other works at an existing industrial site will normally be permitted where they are incidental and essential to the use of the site as an existing industrial reserve.
17. The Tribunal saw during its site visit that the resurfacing works that have been undertaken include the access track and the areas of hardstanding adjoining each of the 3 exposed faces of the building, that is to the west, north, and east. The Department had conceded that these works are acceptable in principle, presumably because they replace some areas of pre-existing surfacing, and because such surfaces are self-evidently necessary to allow the building to be accessed and used. The Department argues, however, that a width of 2.5m is all that is required for the access track and the aprons adjacent to the building, with the implication that any surfaced areas in excess of this cannot be regarded as incidental and essential to the building use.
18. The scaled plan submitted with the application, Ref: 026-PA-03, shows that the width of the access track is dimensioned at 3.8m. The widths of the surfaced aprons to the west and north sides of the building can be scaled from the plan - these measurements are also indicated as 3.8m from the respective building faces. To the east of the building, a more extensive area between the building face and the eastern boundary has been surfaced.
19. During the Tribunal site visit, which was undertaken in inclement weather, a limited number of measurements were obtained and agreed by the parties. The width of the opening between the stone gate pillars at the site entrance was confirmed at 3.8m. The access track itself varied in width between 4.0m and 4.1m, and its northern edge was seen to run parallel to the north face of the building, maintaining a similar width of surfacing as the driveway. The width of the surfacing to the west of the building was not measured. Following the conclusion of the accompanied visit within the site, the Tribunal noted that the width of the roadway through Hougues Magues Clos, measured between the kerbs, was also 3.8m.
20. The Tribunal has given careful consideration to the extent of surfacing that might be considered incidental and essential to the proper running of the builder's store, and whether the dimension of 2.5m proposed by the Department for the access way and building aprons would be adequate for the necessary functions. In reviewing this matter, the Tribunal has had regard to the nature and size of commercial vehicles that would be likely to use a builder's store of this scale and layout. It has assessed the size and disposition of surfaced areas required to facilitate safe and convenient loading and unloading, and to enable the turning and manoeuvring of vehicles. In respect of this latter point, the Tribunal takes the view that such vehicle movements should ideally take place on a firm constructed surface rather than on the natural ground surface, as the natural surface would be prone to damage, and could also bog down laden vehicles. As the external storage of materials is precluded by the original grant of permission, and was not sought as part of the application the subject of this

appeal, the need to accommodate such activity has been discounted in the Tribunal's deliberations.

21. In respect of the access driveway, the Tribunal considers a width of 2.5m to be inadequate, as anyone exiting the vehicle cab to open or close the entrance gate would be obliged to step out onto the natural ground surface, which in wet weather is undesirable. More important, a width of 2.5m for the aprons to the west and north of the building, where all the loading and unloading would be expected to take place, would provide insufficient space to safely accommodate these activities, as operatives would potentially be working over a mixture of artificial and natural ground surfaces. Moreover, aprons with a width of 2.5m are considered by the Tribunal to provide inadequate space for a commercial vehicle to turn without driving over the grassed surfaces. The Tribunal's conclusion is that the proposed width of 3.8m for these surfaced areas is a not unreasonable dimension, as this would allow the safe and convenient use of the builder's store without the need for operatives to walk or drive over the natural ground surface, which would be inconvenient and potentially hazardous in poor weather conditions.
22. The Tribunal has formed the view that different considerations apply in relation to the area of surfacing to the east of the building. There are no doors on this face of the structure through which loading or unloading might take place, and the external storage of materials is precluded. In this case the Tribunal concludes that a strip of surfacing 3m in width, measured from the east face of the building, would be quite adequate, as this would allow for the temporary stationing of a car or small commercial vehicle should the other aprons be occupied by a truck loading, unloading, or turning.
23. The Tribunal can find no cogent argument in the appellant's submissions that the enlargement of this area of surfacing up to the site boundary is incidental and essential to the use of the building as a builder's store, and is accordingly unable to support this aspect of the development.
24. In conclusion on this issue, the Tribunal is satisfied that with the exception of the surfacing on the east side of the building, where a width of 3m from the east face of the building is considered adequate, the width of 3.8m which was sought by Mr. Maubec in respect of the access track and the west and north building aprons is acceptable, and such surfacing can be regarded as incidental and essential to the authorised use of the building, thereby satisfying Part a)(i) of Policy RE7.

Second issue – The Effect on Residential Amenity

25. The Tribunal next turned its attention to the Department's claim that the enlargement of the surfaced areas to the extent proposed would be likely to intensify the use of the site, to the detriment of the amenity of neighbouring residents. The Tribunal can find no evidence in support of this argument. The storage capacity of the building would remain unaltered, and as external storage is precluded by the terms of the original permission, there is no reason to believe that the enlargement

and renewal of the surfaced areas, in themselves, would directly give rise to an intensification of the use of the building. It is the Tribunal's view that such intensification could take place in any event, without breaching the terms of the original permission, and resurfacing of the driveway and the building aprons would merely enable such activities to be carried out in a more safe and convenient manner.

26. Part (a)(ii) of Policy RE7 states that proposals for extensions, alterations, rebuilding or other works at an existing industrial site will normally be permitted where they resolve any conflicting amenity issues of operations considered to be incompatible with neighbouring land uses. Policy RGEN11, which deals with the effect of development on adjoining properties, states:

"... in considering proposals for development the Department will take into account any significant impact on the reasonable enjoyment of adjoining properties, particularly in relation to overshadowing, overlooking, emissions, noise and disturbance."

27. The Tribunal has already concluded that the resurfacing works would not in themselves lead directly to an intensification of use of the builder's store, and it has no reason to refute the statement made on behalf of the appellant that there are unrestricted rights of access over the roadway in Hougues Magues Clos. It cannot be denied, however, that because the common boundary between the Clos and the appeal site is open and unscreened, any activity within the site has the potential to impinge on the amenity enjoyed by the occupants of the neighbouring houses. With this in mind, the appellant has offered to provide screen planting along the western boundary, and amenity planting is indicated on the application plan.
28. The Tribunal has reached the conclusion that if a dense screen of indigenous planting is provided along the western boundary, then this should satisfactorily resolve any conflicting amenity issues arising from operations carried out within the site. The nature of the screen planting is a matter that could readily be resolved by agreement between the parties.

Third issue – The Effect on Open and Undeveloped Character of the Rural Area, or to the Visual Quality or Landscape Character of the Surroundings

29. Policy RCE1 makes a presumption against the unacceptable loss of open and undeveloped land. The relevant part of the Policy is paragraph (b), which states, in effect, that development will only be permitted where the scale, location and design of the development would not detract from the openness of the countryside or result in the unacceptable irreversible loss of agricultural land, or have an adverse effect on the viability of an agricultural holding.
30. The Tribunal notes that although the land around the building retains its agricultural land use designation, it has not been in active agricultural use for many years, as the aerial photographs submitted by the Department testify. From the assessment made

during its site visit, the Tribunal formed the view that the areas of surfacing that have been laid within the site have no impact on the wider countryside, and can be regarded as a form of reversible development, and accordingly concluded that no conflict with the aims of Policy RCE1 has arisen.

31. Finally, the Tribunal has considered the effect of the development in the context of Policy RCE3, given that the site is located within an Area of High landscape Quality. Part a) of the Policy is relevant here, which states that in Areas of High landscape Quality, development will only be permitted where it would not have a significant adverse effect on the visual quality or landscape character of the area.
32. The Tribunal saw that the site is enclosed by dense boundary planting on its eastern side, and there is some perception of open countryside through the hedgerows along the northern and southern boundaries. The two-storey residential development in Hougues Magues Clos dominates the outlook to the west. The Tribunal reached the conclusion that as the subject development involves areas of hard surfacing at natural ground level which would be virtually invisible from outside the site, its effect on the visual quality and landscape character of the wider area would be neutral. The objectives of Policy RCE3 would therefore be satisfied.
33. In the light of the Tribunal's favourable conclusions in respect of the three main issues arising in this case it has decided to allow the appeal, subject to the limitations described in paragraph 22 above. The conditions suggested by the Department, in the event of the appeal being allowed, have been carefully considered by the Tribunal and imposed as appropriate.

Other Matters

34. The Tribunal notes that the actual dimensions of the new surfacing are in some areas greater than the dimensions indicated on the drawing Ref 026-PA-03 submitted with the planning application. It will be for the Department to consider whether these anomalies are so significant as to necessitate the carrying out of remedial work.
35. The Tribunal saw during its site inspection that there were materials stored externally on the east side of the building, and that the building itself was not fully occupied by stored materials and equipment, there being some impression of workshop activity. These matters have no direct bearing on the Tribunal's decision in this case, and it will be for the Department to determine whether any action is required in this regard.

Conclusion

36. The Tribunal has considered all other matters raised in the written submissions and seen during its site visit, but these do not affect its conclusions under the provisions of Part V1 Section 69 of The Land Planning and Development (Guernsey) Law, 2005, that the appeal is allowed subject to the conditions set out below. For the avoidance

of doubt, the surfacing that has been carried out on the east side of the building beyond the 3m limit described in paragraph 22 will remain unauthorised.

37. Accordingly, planning permission is hereby granted on the following terms:

PROPOSALS: Replace windows and doors, widen existing vehicular access and extend existing hardstanding
LOCATION: Hougues Magues Lane, St. Sampson
APPLICANT: Mr. M Maubec.=

This permission is granted under the terms of Sections 68 and 69 of the Land Planning and Development (Guernsey) Law, 2005.

This permission refers solely to the proposals referred to above and as described in the planning application validated by the Department on 19/10/2011, Ref: FULL/2011/3270, and indicated on drawing, Ref: 026-PA-03.

This permission is subject to the following conditions:

1. The development hereby permitted and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of the Building Regulations, 1992, (as amended) as are applicable to them, and no operation to which such a requirement applies may be commenced or continued unless (i) plans relating to that operation have been approved by the Environment Department and (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Environment Department when approving those plans, for the purpose of securing that the Building Regulations are complied with.

Reason – Any planning permission granted under the Law is subject to this condition as stated in section 17(2) of the Land Planning and Development (Guernsey) Law, 2005.

2. Notwithstanding any indications on the submitted plan, the width of the surfacing on the east side of the building, measured at right angles to the east building face, is hereby approved at no more than 3m.

Reason – To limit the extent of development to that considered incidental and essential to the authorised use of the building.

3. Within two months of this appeal decision, a comprehensive scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land and details of the type, number and size of new trees and plants at the time of planting, shall be submitted to and agreed in writing by the Department.

Reason – To help assimilate the approved development into its rural surroundings and provide visual screening between the site and the adjoining dwellings in Hougues Magues Clos.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the final agreement of the landscaping scheme. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Environment Department gives written approval to any variation.

Reason – To help assimilate the approved development into its rural surroundings and provide visual screening between the site and the adjoining dwellings in Hougues Magues Clos.

**Stuart Fell DipArch RIBA IHBC
Presiding Member**

Date: 8th August 2012