

PLANNING AND BUILDING (JERSEY) LAW 2002

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

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Roy Bedlow

Application reference number and date:

P/2023/0565 dated 14 July 2023

Decision Notice date:

12 October 2023

Site address:

Silver Birches, Le Chemin du Moulin, St. Ouen JE3 2FL

Proposed development:

The removal of part of the eastern wing of the house and the construction of extensions to the North and East elevations. Various external alterations including alterations to garden levels and the installation of an inground swimming pool.

Inspector's site visit date:

1 February 2024

Introduction

1. This is an appeal against the decision to refuse planning permission for the proposed development. The original decision made by the Chief Officer was maintained on review by the Planning Committee with the exception of the reason for refusal based on Policy GD6 (Design quality), after all members of the Committee had "commended the high quality design approach" of the proposed development. The revised reasons given for the decision are:-
 - "1. The proposed extensions to the north and east elevations represent a disproportionate and excessive increase in scale and massing to the host dwelling, Silver Birches, causing visual harm to the distinctive character, quality and sensitivity of the Coastal National Park contrary to Policies SPL2; NE1; NE3 & H9 of the Bridging Island Plan 2022. The application also

fails on H9 grounds under supplementary planning guidance for housing outside the built-up area, and the JILSCA.

2. The proposed swimming pool is considered excessively large for the site and is considered to erode the character of the rural countryside setting, contrary to Policy NE3 of the Bridging Island Plan 2022. The application also fails on H9 grounds under supplementary planning guidance for housing outside the built-up area, and the JILSCA."

The house and the proposed development

2. Silver Birches is a three-bedroom split-level house with sizeable gardens, situated on rising ground at the foot of the escarpment that forms the backdrop to the coastal plain of St Ouen's Bay. The existing gross internal floor area of the house is 283m² and its existing building footprint is 165m².
3. The overall setting of the house is rural and exposed and includes areas of landscape character, woodland and scattered housing. The area as a whole is within the Protected Coastal Area and the Coastal National Park.
4. The house extension would include a larger entrance/lobby area, a larger kitchen/dining space, a games room and a library. Additional internal alterations would take place and the access arrangements would be improved. The heating system, which is oil-powered, would be replaced by air source heat pumps supplemented by solar thermal and PV panels.
5. The swimming pool would be built into the lawned garden area above the house. It would have low-level retaining walls where necessary and some earth around it would be shaped into a ha-ha.
6. A Biodiversity Enhancement & Management Plan has been submitted, the objective of which is to restore, manage and improve the landscape character and biodiversity of land in the appellant's ownership beyond the formal domesticated area.

Planning policies and guidance referred to in the decision

7. "SPL2" in the decision should be SP2 (Spatial strategy). This policy states that development will only be supported within the countryside and around the coast in certain circumstances, one of which is where it involves the extension of existing buildings. The policy adds: "Development in the Protected Coastal Area will be very limited to protect its outstanding landscape and seascape character." The Protected Coastal Area is identified on Figure PL6 on page 76 of the Plan; the Area includes the Coastal National Park, where development should in addition be compatible with the purposes of the Park and not undermine the Park's special qualities. Page 122 of the Plan states: "the purpose of the Park which seeks to ensure the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the park is always the primary consideration".
8. Policy NE1 (Protection and improvement of biodiversity and geodiversity) states: "Development must protect or improve biodiversity and geodiversity. All development must ensure that the importance of habitats, designated sites and species is taken into account and should seek to improve biodiversity and geodiversity value and, where possible, to deliver biodiversity net gain."

9. Policy NE3 (Landscape and seascape character) states:

“Development must protect or improve landscape and seascape character.

The highest level of protection will be given to the Protected Coastal Area, and its setting.

The highest level of protection will also be given to the Coastal National Park, and its setting, and additionally development within it should protect or improve its special qualities and be compatible with the purposes of the park ...

Applicants will need to demonstrate that a proposal will neither directly nor indirectly, singularly or cumulatively, cause harm to Jersey's landscape and seascape character and will protect or improve the distinctive character, quality, and sensitivity of the landscape and seascape character area or coastal unit as identified in the Integrated Landscape and Seascape Assessment.”.

10. Policy H9 (Housing outside the built-up area) states that proposals for new residential development outside the built-up area will not be supported except in certain circumstances, one of which is where “in the case of an extension to an existing dwelling it remains, individually and cumulatively, having regard to the planning history of the site, subservient to the existing dwelling and does not disproportionately increase the size of the dwelling in terms of gross floorspace, building footprint or visual impact”.
11. Dealing generally with housing outside the built-up area, the supporting text to Policy H9 acknowledges on page 212 “that there are limited circumstances where residential development in the ... Protected Coastal Area may be supported, but only where it does not cause harm to coastal or landscape character. The highest levels of protection will be given in the Protected Coastal Area”.
12. Dealing with home extensions in particular, the supporting text to Policy H9 states on page 212: “It would be unreasonable to resist all forms of development to improve people's homes where they lie outside the built-up area; and where there is the potential to optimise the use of existing dwellings”.
13. The supplementary planning guidance (SPG) *Housing outside the built-up area* was published in July 2023. The SPG states that it will help to ensure the consistent interpretation and application of Policy H9 and it repeats the provisions of Policy H9 and its supporting text quoted above in paragraphs 11 and 12.
14. Guidance 5.3 of the SPG is as follows:

“The extension of an existing home outside the built-up area, which would provide a total internal floor area of or above 279 sqm, should remain subservient to the existing dwelling, and should not disproportionately increase its size in terms of gross floorspace, building footprint or visual impact.”
15. The preceding text in paragraph 5.2 of the SPG explains:

“The acceptability of an extension to a dwelling outside the built-up area which would result in a total gross internal floor area at or above [279m²] will be determined by consideration of its scale, design, impact on local character and the capacity of the site to accommodate further development relative to the requirements for the provision of private open space and parking. Any extension should not disproportionately increase the size of residential accommodation to be provided and should always be smaller, in terms of gross floor area, building footprint and visual impact, than the principal dwelling. All of these factors are material and need to be taken in to account.”

16. “JILSCA” refers to the Jersey Integrated Landscape and Seascape Character Assessment (2020), which was absorbed into the supplementary planning guidance *Landscape and seascape character guidance* published in July 2023. This SPG provides the basis for an integrated and practical assessment of the design aspects of planning applications affecting the countryside and the coast. Its purpose is to help maintain and enhance the quality and character of Jersey’s distinctive and varied landscape and seascape character. The SPG places Silver Birches in Character Type B6: St Ouen’s Bay Coastal Plain (on a finger of land that extends B6 on to the rising ground at the foot of the escarpment) and also within the larger Coastal Unit 1: St Ouen’s Bay, which includes the escarpment. The SPG indicates that the overall strategy for B6 should be to protect the remaining undeveloped areas in order to retain their coastal and rural character and their sense of naturalness.

Other applicable planning policy

17. In addition, Policy PL5 (Countryside, coast and marine environment) applies. This indicates that development proposals should protect or improve the character and distinctiveness of the countryside and the coast, the special landscape character of the Protected Coastal Area and the special landscape character and special qualities of the Coastal National Park and its setting, and also be compatible with the purposes of the Park.

The appellant’s representations

18. The appellant wishes to extend the house to provide additional family accommodation and to make improvements to those areas of the house that do not function well for the family. The alterations would create better protection against the prevailing westerly wind. In addition, the layout of the extension would improve the flow between the inside and the outside of the living accommodation. The swimming pool would be sensitively located within the site’s topography by forming a ha-ha to reduce its visibility.
19. The appellant maintains that the proposed development would comply with the Bridging Island Plan, on the basis of a balanced assessment of the relevant policies. Policy H9 is the primary policy and its tests would be complied with.
20. The ‘subservience’ test to be applied is whether the extension would disproportionately increase the size of the house in terms of gross floorspace, building footprint or visual impact. The existing gross floor area of the house is 283m²: the floor area of the extensions would be less than the existing floor area, at 197m² (a 60% increase). The building footprint of the existing house is 165m²: the building footprint of the extension would be less than the existing footprint of the house, at 146m².

21. As to the visual impact, the Committee accepted that the proposed development had been well-designed. The visual impact would be limited, because the extensions would be wrapped around the eastern and northern elevations, which are not visible from public vantage points, and because the extensions would be partly to the rear of the house and partly below ground level. The existing external materials of the house are wood cladding with a zinc roof, which assimilates the building into its natural backdrop: the proposed external materials would match the existing: the impact on landscape character would be minimal.
22. The swimming pool would be within the domestic curtilage previously approved. It is considered that it would be permitted development but it has been included in the application for the purposes of clarity. It would not harm landscape character.
23. The proposals include significant on-site and off-site environmental and ecological enhancements, which represent a significant biodiversity net gain and landscape character improvement associated with the proposed development.
24. The refusal of the application is inconsistent with the decision taken to approve application P/2023/0241 for extensions and other alterations at La Blinerie, La Rue de la Blinerie, St. Clement.

The Infrastructure and Environment Department's representations

25. The Department stand by the two reasons for refusal set out in paragraph 1 above. They add that the extension of dwellings will typically be supported where such development would, individually and cumulatively, and having regard to the planning history of the site, be subservient to the existing dwelling and would not disproportionately increase the size of the dwelling in terms of gross floorspace, building footprint or visual impact. They agree that the design of the extensions is of a high quality, but maintain that the significant increase in floor area, estimated at around 60%, would not be a modest or subservient size within the context of the existing dwelling and would therefore be contrary to Policy H9 and the SPG *Housing outside the built-up area*.
26. Whilst the appellant states that the extensions would be located to the rear of the house and hidden from public view, the whole of the house is within the Coastal Plain Character Type and the impact of the proposed development should be assessed from all vantage points.
27. The swimming pool would not be permitted development, because it would be in a part of the site where the right to erect buildings has been withdrawn by a planning condition. The pool would be approximately 20m long and together with the hardstanding area would cover a significant portion of the hitherto undeveloped garden. A pool of this size would be a highly inappropriate structure in this sensitive location and would erode the character of the Coastal National Park, contrary to Policy NE3.
28. The refusal of the application is not inconsistent with the decision taken to approve application P/2023/0241, since La Blinerie is not in the Coastal National Park or in the Protected Coastal Area where Policy NE3 gives the highest level of protection.

29. The Department's Natural Environment Team have no objection to the proposed development provided a planning condition is imposed, if permission is granted, relating to the implementation of the submitted Species Protection and Biodiversity and Enhancement Plans.

Other representations

30. No other representations were received either at the application stage or the appeal stage.

Inspector's assessments and conclusions

31. I have assessed the house extensions in paragraphs 32 to 34 below in relation to the provisions of Policy H9 (Housing outside the built-up area) and its supporting text on page 212 relating to home extensions, together with Guidance 5.3 in the SPG *Housing outside the built-up area* and the text in paragraph 5.2 of this SPG. The particular circumstances of the swimming pool are considered in paragraphs 35 to 38. Finally, matters relating to landscape character, the Protected Coastal Area and the Coastal National Park are considered in relation to both the house extensions and the swimming pool in paragraphs 39 to 43, taking into account Policies SP2 (Spatial strategy), NE3 (Landscape and seascape character) and PL5 (Countryside, coast and marine environment), the SPG *Landscape and seascape character guidance* and the submitted Biodiversity Enhancement & Management Plan.

The house extensions

32. The extensions would be an improvement to a family home "where there is a potential to optimise the use", in the sense that there is ample space around the house for extensions and the site has the capacity to accommodate further development whilst retaining more than adequate private open space and parking facilities. The issue of cumulative extensions does not arise, since the planning history of the house indicates that it has not been extended before; the extensions would be smaller in terms of gross floor area and building footprint than the house itself; and it has been accepted that the design of the extensions has a high quality.
33. It does not necessarily follow, however, that the extensions would be "subservient to the existing dwelling" or that the increase in the size of the house would not be disproportionate. Subservience is a matter to be considered on a case-by-case basis: the SPG does not specify a percentage allowance for increases in size, simply advising that extensions "should always be smaller" than the principal dwelling. It is possible for an extension to be well-designed in itself and to have a style and materials that match the existing dwelling, but still to be a disproportionate increase in size in policy terms because of its external dimensions or its visual impact in its context.
34. The magnitude of the changes that would be made to the external dimensions of the house is evident when the drawings showing the existing and proposed elevation plans are compared. The large amount of additional roof works that would be formed by the extensive prolongation of existing roofs at the same ridge levels, together with the addition of a second south-facing gable at the same height as the first, demonstrate in my opinion that the extensions would not be subservient to the existing house. The visual impact of the extensions would not be a significant factor in views of the house from further to the

west, but the extensions would have a damaging effect on the visual amenity of the locality when they were viewed at closer proximity from Les Charrières à Sablon and from higher ground. I have concluded therefore that the extensions are not supported by Policy H9, because the criteria in the policy relating to extensions to existing dwellings would not be met.

The swimming pool

35. The area of land within which the swimming pool would be installed was added to the garden of Silver Birches pursuant to planning permission Registration No. 9818/B dated 17 December 1992. Condition 4 of this permission states:

“4. Notwithstanding the provisions of the Island Planning (Jersey) Law, 1964, no buildings, fences, walls or means of enclosure (other than those shown on the approved drawings) shall be placed or erected on site.”

36. The interpretation of this condition is ultimately a matter for the courts, but in my view:

- i) Condition 4 is still in force and it has the effect of withdrawing permitted development rights for the placing or erection of buildings on this part of the garden of Silver Birches.
- ii) The Island Planning (Jersey) Law, 1964 defined “building” to include “any structure or erection of whatsoever material or in whatsoever manner constructed”. Its successor, the current Planning and Building (Jersey) Law 2002 as amended, defines “building” to include “a structure or erection of any material and constructed in any manner”. The current Planning and Building (General Development) (Jersey) Order 2011 as amended defines “building” to include “any structure or erection” apart from plant or machinery.
- iii) The planning permission granted by the 2011 Order authorises the “erection, construction or placing ... within the curtilage of a dwelling-house of ... a structure required for a purpose (other than human habitation) incidental to the enjoyment of the dwelling-house as such”. This permission would have authorised the installation of the swimming pool (provided it is accepted that its siting would be within the curtilage of Silver Birches and that its purpose would be incidental to the enjoyment of the house), but whether or not this would be the case the permission granted by the Order has in any event been withdrawn by Condition 4 since the term “buildings” used in the condition includes “structures” and a swimming pool is a structure.

37. No reasons were recorded in the decision notice for the imposition of Condition 4 (the current practice of giving reasons was not in force in 1992). However, the application was for the change of use of the land from “vacant scrubland to domestic garden” and it is apparent from the wording of the condition itself that its purpose is to preserve the undeveloped appearance of this part of the garden.

38. Although this purpose dates from 1992, it is still relevant in the light of the planning policies that apply to this land today. The installation of the swimming pool and the placing around it of the paraphernalia that would

normally be associated with a swimming pool would radically change the undeveloped appearance of this part of the garden. The proposed ha-ha would mask the pool itself in views from the west but would in all other respects be ineffective as a means of screening.

Landscape character, the Protected Coastal Area and the Coastal National Park

39. Policy SP2 lends support generally to the extension of existing buildings within the countryside and around the coast, but in the case of residential extensions I interpret this support as being subject to compliance with the criteria in Policy H9.
40. The Protected Coastal Area and the Coastal National Park and their settings are recognised in the Plan as having outstanding landscape character meriting the highest levels of protection; development in the Protected Coastal Area “will be very limited”; development in the Coastal National Park should protect its special qualities and be compatible with its purposes, one of which is to conserve and enhance its natural beauty.
41. Applicants are expected to demonstrate that a proposal will not cause harm to landscape character and that it will protect or improve the distinctive character, quality and sensitivity of the site’s designated landscape character area. The overall strategy of that designation here is to protect the remaining undeveloped areas in order to retain their coastal and rural character and their sense of naturalness.
42. The appellant has submitted a Biodiversity Enhancement & Management Plan, the objective of which is to restore, manage and improve the landscape character and biodiversity of the land described in it. This plan has been accepted by the Department’s Natural Environment Team as contributing to the long-term protection and improvement of biodiversity in accordance with the natural environment policies in the Plan. The enhancement measures proposed in the plan would be carried out on land owned by the appellant that lies to the north and to the south of Silver Birches, beyond the boundaries of the application site where the proposed development would take place.
43. I do not consider that the proposed development would protect landscape character when the extensions would have an adverse impact on visual amenities and the swimming pool would damage the undeveloped appearance of this part of the garden. The highest levels of protection apply to the site, due to its inclusion within the Protected Coastal Area and the Coastal National Park and the sensitivity of the landscape character area, but the proposed development would reduce the attractiveness of the landscape here. The biodiversity enhancement measures would be welcome as a contribution to the protection and improvement of areas adjoining the site, but they are independent of the proposed development and would not manage or mitigate its adverse impacts.

Other matters

44. In reaching my conclusions I have taken into account the decision taken to approve application P/2023/0241 at La Blinerie and also the developments approved in recent years to the south-east of Silver Birches at Gulfstream and Willorn. None of these approvals is inconsistent with my conclusions. La Blinerie is not in the Coastal National Park or in the Protected Coastal Area,

where there is the highest level of protection. Different policies and planning histories applied at Gulfstream, which concerned a replacement dwelling, and at Willorn, which combined two residential units into one.

Overall conclusion

45. For the above reasons, I have concluded that the proposed development would be in conflict with the Bridging Island Plan and that there are insufficient reasons for departing from its provisions.

Inspector's recommendation

46. I recommend that the appeal is dismissed.

Dated 21 March 2024

D.A.Hainsworth
Inspector