

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

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

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Ross Young

Site address: Land formerly known as 'The Firs', Le Mont Sohier, St. Brelade

Application reference number: P/2023/0222

Proposal: 'Demolish existing outbuildings. Construct 1 no. 3 bed residential unit with associated parking and amenity space. Alter vehicular access onto La Route de la Baie.'

Decision notice date: 29 June 2023

Procedure: Hearing held on 6 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 planning appeal made by Mr Ross Young (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to refuse to grant planning permission for a proposed new dwelling on a site at Le Mont Sohier in St Brelade.

Procedural matters

2. The description stated in the Decision Notice contains a typographical error (repeat of the word 'bed'), which I have corrected in the description used above.
3. Article 114(1) of the Law states that planning appeals against decisions to refuse planning permission are to be considered by way of written representations. However, Article 114(3) allows me discretion to hold a Hearing if I consider it appropriate, subject to consultation with the parties. In this case, there are 5 reasons for refusal, covering a wide range of matters, and 3 of those reasons allege that 'insufficient' information has been provided on technical matters. Given this complexity, I considered that a Hearing was the most efficient and effective procedure to conduct this appeal. The parties raised no objection to the Hearing procedure.

4. The application was made by Mr Young, but the appeal form stated that the appeal is being made by Mr Young and Ms Habin, who I understand is the site owner, and the written submissions refer to 'appellants' (plural). However, Article 108(3) defines the aggrieved person in such appeals as 'the applicant'. Accordingly, Mr Young is the appellant in this case and I have treated the appeal as being made in his name only.

The appeal site, the appeal proposal and the application determination

The appeal site

5. The appeal site comprises a corner plot of land situated at the junction of Le Mont Sohier/La Route de la Baie and La Rue de la Valeuse, in the heart of St Brelade. Most of the site comprises a surface car park associated with the Pizza Express restaurant which is directly opposite and fronting the bay. Whilst the car park is not marked out, a submitted 'current use site plan'¹ indicates a total of 15 spaces. The vehicular access is in the eastern part of the site from La Route de la Baie and includes a height limit barrier. There are some low-rise sheds/outbuildings and bin stores in this part of the site.
6. The site sits between the larger public car parks which serve the resort, with Tam's car park immediately to the east and Woodford car park to the west. To the north of the site there is a dwelling house, *Tamarind*, set well back on its large plot.

The appeal proposal

7. The proposal seeks permission to clear the outbuildings and construct a house with garden and parking on the eastern part of the site, whilst retaining the balance of the site for a smaller car park. The proposed house would be located in the north-east corner of the site, with a garden to its front facing La Route de la Baie, contained behind a 900mm high wall, with hedge and tree planting inside the garden area.
8. The dwelling would include 2 levels of accommodation, but would be set into the ground such that it would have a 1.5 storey height appearance when viewed from the street. The lower level would contain 3 bedrooms, with windows facing a sunken garden. The upper level would contain the main living space comprising an open plan lounge/dining/kitchen area, with extensive glazing opening onto a south facing balcony. The design is of a simple contemporary style, with composite cladding walls and a flat sedum green roof, with photovoltaic panels.
9. A new access is proposed a short distance to the west of the existing access (which would become part of the proposed dwelling's garden). The layout shows 12 parking spaces, 3 of which would serve the dwelling, with access controlled by automatic bollards, with the other 9 spaces to serve the restaurant use. One of the parking spaces would include EV charging facilities. In the western part of the site, the scheme also includes an

¹ Drawing No 314-02

enclosed bin store and cycle parking, with a new short length of footpath to access these facilities.

The application determination

10. The application was determined by the Planning Committee at its 29 June 2023 meeting. The Committee refused to grant planning permission for the following 5 reasons:
 1. *Insufficient information has been submitted to demonstrate the permanent loss of commercial land would not cause harm by way of meeting the Island's future employment needs and is therefore contrary to Policy SP6 of the Bridging Island Plan 2022.*
 2. *The proposed development by virtue of its siting, design and size would not contribute positively to the distinctiveness of the built environment, with the large expanse of flat roof, disproportionate fenestration ratio to rendered elevations that would be visually prominent in the street scene resulting in harm to the character of the area and is therefore contrary Policies SP3, SP4, PL3, GD6 and GD8 of the Bridging Island Plan 2022.*
 3. *The proposed development provides no external storage and therefore the development fails to satisfy the requirements of the Minimum Specification for New Housing Developments that would be harmful to the living conditions of future occupiers of the residential units and is contrary to Policies SP3, PL3, GD6, H1, H2 and H4 of the Bridging Island Plan 2022.*
 4. *Insufficient information has been submitted to understand the impact of external lighting from the dwelling would have on protected species and is therefore contrary to Policy SP5 and NE1 of the Bridging Island Plan 2022.*
 5. *Insufficient information has been submitted to demonstrate that the proposals would not cause harm by way of flooding from rainwater, and therefore it is contrary to Policy WERE of the Bridging Island Plan 2022.*
11. The appellant's appeal is made against this decision.

Summary of the appellant's grounds of appeal and the planning authority's response

12. The appellant's case is set out in the appeal form and expanded upon in a Statement of Case with appendices and a second Statement. The grounds stated in the appeal form are labelled A – G and are set out below:
 - A. *The Appellants disagree with Reason 1 on the decision notice and are of the opinion that sufficient information has been submitted to demonstrate the permanent loss of 3 No. private car parking spaces would not cause unreasonable harm by way of meeting the Island's future employment needs and are of the opinion that the application is not contrary to Policy SP6 of the Bridging Island Plan 2022.*

- B. *The Appellants disagree with Reason 2 on the decision notice and are of the opinion that the development by virtue of its siting, design and size would contribute positively to the distinctiveness of the built environment and would not be visually prominent in the street scene, nor result in harm to the character of the area and are of the opinion that the application is not contrary to Policies SP3, SP4, PL3, GD6 and GD8 of the Bridging Island Plan 2022.*
 - C. *The Appellants disagree with Reason 3 on the decision notice and are of the opinion that the proposed development does provide sufficient external storage and does satisfy the requirements of the Minimum Specification for New Housing Developments and would not be harmful to the living conditions of future occupiers of the residential unit and are of the opinion that the application is not contrary to Policies SP3, PL3, GD6, H1, H2 and H4 of the bridging Island plan 2022.*
 - D. *The Appellants disagree with Reason 4 on the decision notice and are of the opinion that sufficient information has been submitted to understand the impact of external lighting from the dwelling would have on protected species and are of the opinion that the application is not contrary to Policy SP5 and NE1 of the Bridging Island Plan 2022.*
 - E. *The Appellants disagree with Reason 5 on the decision notice and are of the opinion that sufficient information has been submitted to demonstrate that the proposals would not cause harm by way of flooding from rainwater and are of the opinion that the application is not contrary to Policy WER6 of the Bridging Island plan 2022.*
 - F. *The Appellants are of the opinion that the determination by the Planning Committee included reference by Officers of the Planning Department to incorrect material, which was potentially misleading and meant that the decision was unsound.*
 - G. *The Appellants are of the opinion that in accordance with Article 19 of the Planning and Building (Jersey) Law 2002, together with the Introduction (Vol 1) of the Bridging Island Plan 2022, that when taking account of the island Plan as a whole and all other material considerations, then planning permission should be granted.*
13. At the Hearing, the appellant's case was made by Mr Pickup (agent), with contributions from Mr Young and Ms Habin.
14. The planning authority's case is set out in its detailed report to the June 2023 planning committee, a Response document and Second Response document. These submissions provide rebuttals to the appellant's grounds and, in essence, maintain that the decision to refuse planning permission was soundly based and justified for the reasons set out in the decision notice. I include appropriate references in my assessment below. At the Hearing, the planning authority's case was presented by the case officer, Ms Vasselin.

Inspector's assessment

15. At the outset, it is worth noting some high-level policy matters. First, the site is previously developed land located within the Built-Up Area (BUA), as defined on the Bridging Island Plan (2022) (BIP) Proposals Map 'Part A'. Second, the BIP strategic policies (policies SP1 and SP2) direct new development to such BUA locations. Third, policy H3 says that proposals for residential development will be supported in the BUA, to provide the new homes planned for in the BIP plan period. Fourth, the site also falls within the Local Centre designation, where policy PL3 supports new development, including new housing, that contributes to local sustainable communities. Fifth, the site is within the Green Backdrop Zone (GBZ), where policy GD8 sets specific landscape-based requirements for new development. Taking these high-level policy matters together, there is much 'in principle' support for new housing development in this location, subject to policy GD8 and other detailed and technical policy considerations.

Ground A – employment needs

16. There is no dispute that most of the site has a history of use in connection with nearby commercial operations on the bayfront. The planning authority claims that the car park was formerly used in association with the Buccaneer Café, which was operated by Ms Habin, but this is disputed.
17. There were also differences of views about the commercial/residential status of some of the stores built on the site, and the land use of the eastern part of the site, with references to various planning applications in the late 1990s, and the absence of a clear plan showing the red lined application boundaries and blue lined land ownership. Whilst I have noted these matters, there is no dispute that, for more than 20 years, most of the site has been occupied by the Pizza Express business under the terms of a lease. This 'commercial' use, has seemingly been for staff and customer parking, and for bin storage.
18. The planning authority's objection (reason 1) is that the permanent loss of 'commercial land' has not been justified and this may harm employment needs and is therefore contrary to policy SP6. It also draws attention to a similar objection to an earlier scheme² and the appellant's failure to provide marketing evidence to justify the loss. However, policy SP6 does not make reference to 'commercial land' but more specifically provides 'support' for '*the protection and maintenance of existing employment land and floorspace for employment-related uses*'. Employment land is not defined in policy SP6, the policy's supporting narrative, or the BIP glossary. The relevant Supplementary Planning Guidance (SPG)³ states that '*the protection of employment land will be generally applied to all land and buildings in employment use*' and it also refers to land '*in use for employment-related activities*.'

² P/2022/0209 – Reason for Refusal No 4

³ Protection of Employment Land – Supplementary Planning Guidance (June 2012)

19. There is no evidence of the site itself containing any direct employment, i.e., jobs, and that begs the question of whether it should be deemed 'employment land' and thereby engage policy SP6.
20. On my site inspection, I noted that there was no obvious sign that the car park was of critical importance to the operation of the Pizza Express restaurant. The signage indicating its use for customer parking is small and easily missed and, when I looked on the restaurant's website, there is no mention of a customer parking facility. I also noted that there are plenty of other outlets in the vicinity that operate without dedicated parking facilities. It is highly likely that Pizza Express diners, and patrons of other establishments, arriving by car will use the larger, more formalised, and signposted public car parks in the immediate vicinity. There was no suggestion at the Hearing that there are any capacity issues with these car parks, even during the peak tourist season.
21. This picture is reinforced by evidence from Pizza Express itself, which has issued a letter⁴ stating that reducing the car park size would not adversely affect the business, that most customers use the public car parks nearby, and that there are problems with unauthorised parking and fly tipping on the appeal site, which it considers will reduce with a residential property in place.
22. The appellant has drawn my attention to decisions in other cases, including another Inspector's assessment⁵ involving car park space losses to facilitate development. I have reviewed these cases and, whilst each case is different, the findings broadly support my view that areas of surface car parking associated with employment uses should not automatically be deemed 'employment land' for planning policy purposes. Indeed, elsewhere in the BIP, policy TT4 states that '*to encourage the more efficient use of land and to enhance environmental quality, the redevelopment of off-street parking provision in the built-up area will be encouraged and supported*'.
23. To my mind, the key test is whether the car parking/servicing function of the land is so integral to the operation of the employment use that its loss, in whole or in part, would threaten the operation and sustainable future of the employment use that policy SP6 may be seeking to protect. There is no evidence in this case to suggest that the economics of the restaurant use would be harmed in any way by the modest reduction in parking spaces available to support its operations. Indeed, it would maintain its own dedicated car park and a refuse storage facility, which other businesses in the area seem to manage without. I therefore do not consider that the proposal would result in harm to the policy SP6 objective of creating and maintaining a sustainable, productive and diverse economy.
24. As I have found no conflict with SP6, there is no need for the applicant to demonstrate redundancy of the site through marketing evidence in line with the SPG. I conclude that Ground A should succeed.

⁴ Letter dated 26 January 2023 from Pizza Express Estates Director.

⁵ Wayside Café P/2017/0574

Ground B – character and appearance

25. The planning authority's second reason for refusal is essentially an objection to the design of the dwelling, and its alleged harm to the character and appearance of the area. The planning authority draws specific attention to 'the large expanse of flat roof', and 'disproportionate fenestration ratio to rendered elevations that would be visually prominent in the street scene'.
26. However, I disagree with the planning authority's assessment for a number of reasons.
27. First, the proposal would replace a collection of low-quality structures which have a negative impact on the character of the area. Indeed, it is a rather scruffy site in a highly prominent location in St Brelade's main resort area.
28. Second, there is no strong defining local architectural character. The immediate site context is created by a large 2 storey house to the north, open car park uses to the east and west, and the restaurant to the south, which is set at a lower level, such that its green flat roof structure is visible from the street.
29. Third, the proposed dwelling is of a relatively modest footprint and limited height, being part set in to the ground, and its siting, in the north-east corner of the application area, well back from the road, combine to ensure that it would sit comfortably in its context and not be unduly prominent in the streetscene when viewed from key public vantage points.
30. Fourth, the flat roof is an appropriate design response to the site context within the GBZ and, in any event, it will not be unduly visible from most public views.
31. Fifth, I am not aware of any prescribed fenestration ratio, and the appellant has drawn attention to numerous other examples of approved designs involving large areas of glazing, to maximise light and views for future occupiers.
32. Whilst I recognise the inevitable subjectivity in assessing what constitutes good design, my professional view is that this is an acceptable scheme that respects, and will enhance, its context; it is of an acceptable architectural design quality; and it meets the requirements for development within the GBZ, as it will not result in the loss of green infrastructure (it will actually create some) and will not adversely affect landscape character.
33. As a result, I conclude that the development would not harm, and would contribute positively to, the character and appearance of the area. It would therefore accord with the requirements of BIP policies SP3, SP4, PL3, GD6 and GD8. Ground B should succeed.

Ground C – adequacy of external storage for future residents

34. The planning authority's third reason for refusal alleges that the development would lack the external storage space requirements for future residents. At the time of the planning decision, the relevant adopted

document was Planning Policy Note No 6 titled '*Minimum Specification for New Housing Developments*'. However, that has now been replaced with a new SPG document titled '*Residential Space Standards*' (RSS), which was adopted in October 2023. I have focused my assessment on the recently adopted RSS.

35. The RSS sets out design standards and specifications for new homes to ensure that new residential accommodation provides good quality homes. There is no dispute that the proposal would meet, and indeed exceed, the requirements for internal spaces and garden size. However, the submitted plans do not detail any specifically allocated external storage space. The RSS says that a minimum of 2.5 square metres of external storage space should be provided for houses with gardens for up to 4 people (or 3 square metres for houses with 5 or more people), and it says that this should be in addition to cycle storage space.
36. Given that the garden area is indicated on the submitted plans as being 142 square metres, and there would be further external storage space on the north side of the proposed house, it would seem to be a straightforward matter to allocate sufficient space for external storage purposes. This could be achieved by a planning condition, as set out in section 3.3 of the adopted RSS. As such a planning condition would secure compliance with the SPG, there would, consequently, be no tension with the policies cited by the planning authority (BIP policies SP3, PL3, GD6, H1, H2 and H4). At the Hearing, the planning authority agreed that, were it not for its 'in principle' objection, the matter could have been addressed, either through seeking amended plans or by imposing a planning condition.
37. I assess that Ground C should succeed.

Ground D – external lighting

38. The planning authority's fourth reason says that insufficient information has been submitted to understand the impact of any external lighting on protected species.
39. However, there is no evidence before me to indicate the presence of protected species on the appeal site. Moreover, the consultation response from the Land Resource Management service (dated 28 April 2023), whilst raising some concerns about the lack of ecological survey information, simply required details of external lighting to be approved prior to its installation. The response did not raise an 'in principle' objection that would lead to a refusal reason in its own right and, given the BUA location and multiple other external light sources in the vicinity, the details of external lighting could be readily secured and controlled by a simple planning condition. An informative on a Decision Notice could also remind the developer of the legal obligations concerning any protected species encountered on the site.
40. Subject to the imposition of a planning condition requiring external lighting details, I find no conflict with BIP policies SP5 and NE1, and consider that Ground D should succeed.

Ground E – flood risk and drainage

41. The planning authority's fifth reason for refusal states that insufficient information has been submitted to demonstrate that the proposal would not cause harm by way of flooding from rainwater.
42. I share the appellant's view that this objection is unsubstantiated. Indeed, the site is not in an area identified as being at risk of flooding on the BIP flood risk map. Moreover, the consultation response from Operational Services (dated 4 May 2023) is headed 'no objection' and specifically references that the proposal will use a sustainable drainage system.
43. As a result, any detailed engineering design matters can be addressed by planning conditions and Building byelaw requirements. Subject to such a planning condition, I find no conflict with BIP policy WER6. Ground E should therefore succeed.

Ground F – accuracy of information relied on by the planning committee

44. The appellant has drawn attention to a range of alleged inaccuracies in the officer drafted documentation, some of which relate to matters raised under other grounds of appeal. Given my findings on the substantive policy matters, I do not consider it necessary to examine these matters further.

Ground G – Article 19 planning balance

45. See conclusions and recommendations section below.

Planning conditions

46. Should the Minister be minded to accept my recommendation and grant planning permission, a range of planning conditions would be necessary and reasonable. These would include requirements in respect of external materials; foul and surface water drainage; revised parking details; external lighting; details of external storage; access provision; and landscaping details.
47. The need for some minor revision to the parking layout arises primarily from the SPG Residential Parking Standards (adopted October 2023), which has been adopted since the appeal was lodged. This includes a requirement for slightly larger parking spaces to those shown on the submitted plans (5 metres x 2.5 metres, rather than 4.8 metres x 2.4 metres). Should this requirement result in a slight reduction in achievable parking space numbers, this would not change my findings on the substantive planning merits of the scheme.
48. The planning authority also suggested a condition to remove 'permitted development' rights, but I do not consider that to be necessary or reasonable in this case.

Conclusions and recommendation

49. For the reasons stated above, I conclude that this is an acceptable development proposal that accords with the relevant policies contained within the BIP.
50. I recommend that the Minister **ALLOWS** this appeal and **GRANTS** planning permission for the proposal submitted under application reference P/2023/0222, subject to the imposition of a range of planning conditions, which are set out in Schedule A to this report. I also suggest that an informative be added to the Decision Notice, to remind the developer of its legal obligations, should any presence of protected species on the site become apparent.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Attached: Schedule A – Draft Planning Conditions

SCHEDULE A

Draft Planning Conditions

Draft planning conditions

- A. The development shall commence within three years of the decision date.

Reason: The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.

- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

1. Prior to their first use on site, details of all external materials to be used, including any hard landscaping materials, shall be submitted to and approved in writing by the Development Control section of the Infrastructure and Environment (I&E) Department. The approved materials shall be implemented in full and thereafter retained and maintained as such.

Reason: In the interests of visual amenity, and to comply with policy GD6 of the Bridging Island Plan (adopted March 2022).

2. Prior to the commencement of development, precise details of foul and surface water drainage arrangement shall be submitted to and approved in writing by the Development Control section of the I&E Department. Such details as may be approved shall be implemented in full prior to the occupation of the dwelling hereby approved and retained and maintained as such thereafter.

Reason: In order to ensure that suitable foul and surface water drainage arrangements are put in place in accordance with policies WER2 and WER6 of the Bridging Island Plan 2022.

3. Notwithstanding the parking layout details shown on drawing no 314-05, revised parking details, which shall include car parking spaces with a minimum size of 5 metres x 2.5 metres, electric vehicle (EV) charging point facilities, and cycle parking facilities, shall be submitted to and approved in writing by the Development Control section of the I&E Department. Such details as may be approved shall be implemented in full prior to the occupation of the dwelling hereby approved and retained and maintained as such thereafter.

Reason: To ensure the provision of satisfactory parking, EV charging and cycle parking facilities, in line with the adopted Supplementary Planning Guidance Residential Parking Standards (adopted October 2023).

4. Precise details of all external lighting shall be submitted to and approved in writing by the Development Control section of the I&E Department prior to its installation. The dwelling shall not be occupied until the approved external lighting scheme has been implemented and it shall be retained and maintained as such thereafter, with no additional external lighting units added without the Department's prior written consent.

Reason: To prevent unnecessary light pollution and to protect biodiversity in line with policy NE1 of the Bridging Island Plan (adopted March 2022).

5. Precise details of a dedicated external storage space to serve the dwelling shall be submitted to and approved in writing by the Development Control section of the I&E Department. Such external storage space details as may be approved shall be provided prior to the occupation of the dwelling hereby approved and shall be retained and maintained as such thereafter.

Reason: To ensure the provision of satisfactory external storage space in line with the adopted Supplementary Planning Guidance Residential Space Standards (adopted October 2023).

6. No part of the development hereby approved shall be occupied or brought into use until the means of vehicular access as indicated on the approved plan has been wholly constructed in accordance with the approved plans and shall thereafter be retained and maintained as such.

Reason: To ensure that appropriate and safe access arrangements are put in place to serve the development.

7. Prior to commencement of the development hereby approved, a scheme of landscaping shall be submitted to and approved in writing by the Development Control section of the I&E Department. The scheme of landscaping shall provide details of the following; i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site; ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing, and the means to be used to support and protect them; iii) other landscape treatments to be carried out, including any excavation works, surfacing treatments, or means of enclosure; iv) the measures to be taken to protect existing trees and shrubs; v) the presence of any invasive plant species on site, and if present, a detailed method statement for the removal and long-term management/eradication of the species; and, vi) a landscape management plan for the maintenance of the landscaped areas. Once agreed, the approved scheme shall be implemented in full no later than the first planting season after the occupation of the dwelling hereby approved, and thereafter retained and maintained as such.

Reason: In the interest of the amenity of the area and the natural environment and in accordance with the requirements of policies NE1, NE2, NE3, SP4 and SP5 of the Bridging Island Plan (2022).