

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

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

SUPPLEMENTARY REPORT TO THE ASSISTANT MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: LMN Jersey Investments Ltd

Site address: 31 – 41 Broad Street and, 19 – 29 Commercial Street, Commercial Street, St. Helier, JE2 3RU

Application reference number: P/2022/0388

Proposal: 'Demolish existing buildings at 31-41 Broad Street and 19-29 Commercial Street. Construct 137 no. 1 bed, 96 no. 2 bed and 5 no. 3 bed residential units. Construct 103 room Aparthotel with ground floor restaurant, cafes and shops with associated car parking, landscaped public courtyard and pedestrian access link. Restore facades to 35-37 Broad Street. 3D Model available.'

Decision notice date: 8 December 2022

Procedure: Hearing held on 5 April 2023

Inspector's site visits: 2/3 April and 17 May 2023

Inspector's supplementary report: 21 September 2023

Introduction and background

1. In April 2023 I held a Hearing to consider the planning appeal made by LMN Jersey Investments Ltd against the refusal of planning permission for a major mixed use redevelopment scheme, named by the appellant as *Les Sablons*, on a site at Broad Street and Commercial Street in St Helier town centre.
2. My main report was issued to the Minister on 7 July and included my recommendation that the appeal should be allowed and planning permission granted, subject to the applicant entering a planning obligation agreement (POA) and the imposition of planning conditions. The POA 'heads of terms' and the draft list of planning conditions, appear as Schedule A and B respectively attached to my main report.
3. My July report included some commentary on the matter of affordable housing. The relevant paragraphs stated:

101. Policy H6 requires development proposals involving 50 or more dwellings to include at least 15% of properties available for sale or occupation by Islanders eligible for assisted purchase housing. The policy states that it will be in effect from January 2023 following the development and publication of appropriate assisted purchase products and eligibility criteria, as relevant to the application of this policy.

102. Whilst the scheme would exceed the 50 threshold and it is now after January 2023, I understand that there is yet to be a publication of products and criteria. The SCG records that the main parties consider that as a result of the delayed publication, 'this policy is not yet in effect'. Should this position change prior to the Minister's decision, this matter would need to be revisited.

4. On 30 July 2023, the Minister published and adopted a Supplementary Planning Guidance (SPG) document titled 'Making more homes affordable'. On adoption, this meant that the relevant Bridging Island Plan (BIP) policy H6 came into effect. In the light of this change, the Assistant Minister decided¹ to:

1. Refer the appeal back to the independent planning inspector for an objective assessment to be made in respect of the requirement for the provision of affordable homes within the proposed development, in accordance with Policy H6 of the Bridging Island Plan – Making homes more affordable, and the adopted supplementary planning guidance – Making homes more affordable (July 2023)

2. Request the Inspector to prepare a supplementary report and recommendation, in response to (1) above, as soon as practicable.

3. Defer the determination of the appeal until such time that the Inspector's supplementary report and recommendation are produced, submitted to, and considered by the Assistant Minister.

5. This supplementary report responds to points 1 and 2.

Consultation with the main parties

6. In the light of the change arising through the publication of the SPG and the engagement of policy H6, I considered it appropriate to consult the main parties. Appended to this report are the written submissions of the planning authority (APPENDIX A) and the appellant (APPENDIX B).

Discussion and assessment

7. Whilst the appellant has made submissions that the SPG was adopted without a public consultation stage, there is no dispute that the policy is engaged. The planning authority shares this view. It is therefore a matter of fact that the publication of the SPG has the effect of engaging policy H6.

¹ MD-ENV-2023-554 dated 10 August 2023

8. The appeal proposal is above the unit size threshold and the policy requirement is therefore that at least 15% of the proposed apartments must be available for sale or occupation by Islanders eligible for assisted purchase housing. Applying that proportion to the total of 238 proposed units, and applying some commonsense numerical rounding, would mean that at least 36² of the 238 apartments should be eligible for assisted purchase.
9. Whilst there have been some comments made about viability considerations, both through the Hearing process and I noted in the local media, it appears that the appellant is now minded to agree a policy H6 compliant arrangement.
10. The appellant's written submission (APPENDIX B) confirms that, having met with the Housing Minister, this *'gave the appellant the confidence that there is sufficient flexibility in the application of Policy H6 and the approach to the delivery of assisted purchase housing to enable the appellant to determine a solution and reach an agreement with him'*. The planning authority's submission has similarly drawn attention to the degree of flexibility in meeting the requirements of policy H6.

Conclusion and update to recommendation

11. In the light of the above, my requested objective assessment is that it is now a BIP policy H6 requirement that at least 15% of the apartments should be available for sale or occupation by Islanders eligible for assisted purchase housing.
12. Based on the submissions of the main parties, there is sufficient confidence that detailed delivery arrangements for the assisted purchase housing can be agreed. Subject to those details being agreed, these matters would need to be legally secured through the POA, in line with the SPG Guidance 3.2.
13. The provision of this proportion of assisted purchase housing, being compliant with policy H6, would provide a further planning benefit that attracts moderate positive weight in favour of allowing this appeal and granting planning permission, as I have previously recommended.
14. As a result, I recommend that the POA heads of terms set out in my 7 July 2023 recommendation, be updated to include the assisted purchase housing. A revised Schedule A is attached.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Attached: Schedule A (Revised and Updated September 2023)

Appendices (separate documents)

A. Response of the planning authority

B. Response of the applicant

² 15% of 238 is 35.7 units

SCHEDULE A (Revised and Updated September 2023)

Draft Heads of Terms for a Planning Obligations Agreement

Public realm/walking/cycle improvements, which is calculated by:

Residential: 238 units x £1724 = £410,312

Non-residential floor area: 3576 sqm x £23/sqm = £82,248

Total requirement= **£492,560**

Parish requirement for open space/children's play provision = **£50,000**

New Item A legal mechanism to ensure that at least 15% of the proposed apartments shall be made available for sale or occupation by Islanders eligible for assisted purchase housing.

**Infrastructure and Environment Department
Regulation section**

05/09/2023

Application Number P/2022/0388

Mrs Nensen Whelan
Planning Tribunal
1st floor
International House
41 The Parade
St Helier
JE2 3QQ

Dear Mrs Nensen Whelan

Planning appeal P/2022/0388 – 31-41 Broad Street & 19-29 Commercial Street

Further to your email dated 23 August 2023 and the Assistant Minister's request to respond on the above planning application and the issue of affordable housing provision in light of the adopted SPG, the department respond as follows.

Policy H6 states that: 'Development proposals involving the creation of 50 or more new dwellings will only be supported where at least 15% of the development is made available for sale or occupation by Islanders eligible for assisted purchase housing'. The planning application is for 238 new dwellings which is above the 50-dwelling threshold of the policy and the department is strongly of the opinion that Policy H6 is now a material factor, and the policy should be applied to any decision-making related to this proposal. (my emphasis)

In such circumstances, the Assistant Minister should refer to the detail of the adopted supplementary planning guidance – Making Homes More Affordable (SPG), adopted on 30 July 2023, which sets out the matters to be considered.

As the SPG states, the Minister for Housing and Communities will provide advice as to whether a proposed scheme is deemed sufficient and appropriate under the terms of Policy H6.

The department do not accept the appellant's initial conclusion that the affordable housing policy requirement would be unviable. The appellant would have expected this policy to be in force from January 2023, and will have known this since the Bridging Island Plan was approved in March 2022 and this affordable housing requirement should have been incorporated into the financial appraisal for the site.

There is a good degree of flexibility as to how at least 15% of the residential development yield from the site should deliver more affordable assisted purchase homes, in the event that the current application is supported on appeal. There is a clear expectation that the developer will engage with the Minister for Housing and Communities to explore what form this might take and how this might be delivered on specific schemes. (my emphasis)

In any event, as stated in the guidance, planning obligation agreements (POA) must be used to ensure that assisted purchase homes are delivered. A POA should be used to specify and agree the terms that must be met in order to deliver these homes, making the development acceptable in planning terms, relative to the requirements of Policy H6.

LTR

These terms should, at least, include the specific location, number, size and type of assisted purchase homes to be delivered; the phasing of their delivery; and the regulation of their occupation.

As the supplementary planning guidance sets out, the affordable housing scheme could be anything from a shared equity scheme to shorter-term financial assistance, like support with meeting the cost of a deposit. The viability of a given option will be variably predicated on the structuring of development finance. For example, a shared equity scheme will be a long-term commitment but is likely to return an overall increased profit/return to the developer – this option will however only work if the developer has the financial capacity to not recover their upfront investment for a number of years.

Conversely, a scheme that helps a purchaser with the cost of a deposit may be a shorter-term financial commitment and could manifest as a deferred (or, delayed) payment of a deposit. If the developer is pursuing off-plan sales (which I expect they will), this could be a scheme that offers favourable terms for securing a property off-plan together with a phased payment arrangement for the deposit over a set period. This would be one of the lowest outlay options that could work for the developer, although acceptability would of course be subject to the detail and how effective the proposed approach would be in assisting people into home ownership, as the ultimate policy objective.

The above is just two examples, and there will be many more options and combinations that we would be encouraging the appellant to consider, in accordance with the overarching principles established by the Policy and SPG. The SPG essentially invites a degree of creativity for the developer to arrive at a proposal which works. There should be a requirement that they justify the approach ultimately suggested, such viability arguments should be tested in the manner set out in the SPG.

Lastly, the department would like to point out that the provision of affordable housing for this planning application is a requirement of the Bridging Island Plan and the SPG and in the department's view is not an exceptional circumstance that makes a planning application acceptable that was otherwise to be refused.

Yours sincerely

Jonathan Gladwin

Senior Planner, Appeals.

Mrs H Whelan
Planning Tribunal
Judicial Greffe
1st Floor
International House
41 The Parade
St Helier
JE2 3QQ

3031_01_8.1

1st September 2023

Dear Mrs Whelan,

P/2022/0388 31-41 Broad Street & 19-29 Commercial Street

I write further to your email dated 23rd August 2023 seeking the Appellant's response to the Minister's referral of the appeal back to the Inspector to consider the adoption on 30 July 2023 of Supplementary Planning Guidance (SPG) – Making Homes More Affordable.

We recognise and accept that Policy H6 (Making More Homes Affordable) is now engaged. However, we would point out that there was no public consultation prior to the SPG's adoption despite our reasonable legitimate procedural expectations of such consultation. The Appellant, however, wishes to move on.

The Appellant's initial reaction was that the application of Policy H6 would make the development unviable. However, following a very positive and constructive meeting with the Housing Minister and his officer on 31st August 2023, we consider that the aspiration of Policy H6 may be deliverable in the context of the above planning application, consent for which remains the subject of the appeal.

In our meeting, the Housing Minister gave the Appellant the confidence that there is sufficient flexibility in the application of Policy H6 and the approach to the delivery of assisted purchase housing to enable the Appellant to determine a solution and reach an agreement with him.

Moreover, the Housing Minister has agreed to keep an open dialogue with the Appellant over the coming days and weeks so that a mutually agreeable solution may be achieved. The Appellant will therefore endeavour to provide a solution that will meet the provisions of the Policy and, therefore, the urgent needs of the island.

However, given that Policy H6 has only just been adopted, this process will take longer than the Inspector's deadline of 6th September 2023. Therefore, the Appellant would like to propose that early consideration is given to the optimum route-map to securing consent for the above planning application to enable the aspirations of Policy H6 to be achieved whilst at the same time enabling the momentum of the project to be maintained. However, we trust these discussions can be concluded without the need for an additional Hearing.

Finally, the Appellant notes the pertinent point which the SPG states *"the Minister for Housing and Communities will provide advice as to whether a proposed approach to assisted purchase is deemed sufficient and appropriate under the terms of Policy H6"* – it therefore being implicit that the Minister for the Environment will align to this advice.

I trust this is satisfactory for your information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Stein', followed by a long horizontal line.

Michael Stein (BA Hons) MRTPI
Director
Tel: 869425
Email: m.stein@mspanning.co.uk