

Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Deputy Chief Minister

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

1st February 2016

Appeal

by

Mr Nigel Fryer & Mrs Kim Fryer

Jersey Gas Company site, Tunnell Street, St Helier

Hearing held on 10th & 11th November 2015 at the Employment Tribunal Offices, Bath Street, St Helier, followed by an accompanied visit to the Appeal site and surroundings.

Department of the Environment Reference: PP/2014/1125

Jersey Gas Company site, Tunnell Street, St Helier JE2 4LU.

- The appeal is made under Article 108 of the Law against a decision to grant outline planning permission under Article 19(3).
- The appeal is made by Mr Nigel Fryer and Mrs Kim Fryer.
- The application Ref PP/2014/1125, dated 8th July 2014, was permitted by notice dated 9th March 2015, subject to conditions.
- The development is the demolition of existing gas works and associated office, showroom and staff accommodation and construction of new residential development comprising 285 one-, two- and 3- bedroom dwellings together with associated residents' facilities; commercial units; semi basement parking; ancillary areas; landscaping amenities and public realm improvements. All matters reserved excluding siting and massing.

Summary of Recommendations

1. I recommend that the appeal should be allowed in full.
2. However, should the Deputy Chief Minister disagree with my first recommendation, I recommend that the planning permission dated 9th March 2015 should be varied by the substitution of the revised conditions set out in the Annex to this report for those originally imposed.

Introduction

3. This is an appeal by a third party against the grant of outline planning permission. Mr and Mrs Fryer are residents of Tunnell Street, which forms the southern boundary of the site.

The scope of the report

4. The application was considered by the Minister for Planning and the Environment and outline permission granted, subject to 22 conditions on 9th March 2015. Under Article 117(1) & (2) of the Law, the decision remains in effect, but the development may not take place until determination of the appeal.
5. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as the Minister may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.
6. The purpose of this report is to provide the Deputy Chief Minister with

sufficient information to enable him to determine the appeal. It focuses principally on the matters raised in the appellants' grounds of appeal. However, other matters are also addressed where these are material to the determination, including in relation to the imposition of conditions, and in order to provide wider context.

7. As submitted, the application was in outline with all matters reserved for subsequent approval with the exception of siting, design, means of access and landscaping. Following discussions with officers of the Planning & Environment Department (the Department), this was amended in agreement with the applicant so that all matters were reserved with the exception of siting and massing - that is, the location of the proposed buildings together with their dimensions. Consequently, this report concerns itself solely with issues related to siting and massing. The architectural and other details shown on the submitted plans are for illustrative purposes only.

Procedural matters and clarifications

8. The appeal form states that the appeal is made by "residents of Tunnell Street (c/o Kim Fryer)", and it was signed by 5 people: Mrs Fryer, her husband, and 3 others resident in Tunnell Street. However, there is no provision in the Law for groups to bring appeals, and so the appeal is progressing solely in the name of Mr & Mrs Fryer.
9. During consideration of the application and in response to concerns raised by and through the Department, a number of amendments were made to the proposals, notably by reducing the height of some of the buildings and their degree of set-back from surrounding roads in order to reduce the impact on the amenity of nearby residents. The elevation facing the park was also modified to improve both its appearance and pedestrian permeability through the site. The application was decided having regard to these modified plans. This report concerns itself with the revised scheme. In view of the fact that the proposal is in outline, it was agreed at the Hearing that the description should be expressed as "up to" 285 units, rather than specifying a precise figure.
10. The planning application was accompanied by an Environmental Impact Statement (EIA).
11. A Planning Obligation Agreement made under Article 25 of the Law has been entered into by the Minister for Planning and Environment and the Jersey Gas Company Limited. Its principal provisions relate to the management of public car parking to be provided as part of the scheme, together with the making of contributions to a bus shelter and to a pedestrian link from the development to Belmont Road, to be established by the Parish of St Helier. The latter has already been provided. These are material considerations.
12. Following the Hearing, the Department and the appellants together drew up a Statement of Common Ground and a time-line relating to the stages of preparation, consultation and adoption of the Masterplan for the site. This was requested in order to inform my consideration of my first issue.

The grounds of appeal

13. The appellants' grounds of appeal, as set out on the appeal form, are as follows:

- (1) There will be significant loss of light from our properties.
- (2) There will be a loss of privacy due to the proximity and height of the development.
- (3) The height of the development will be overbearing.
- (4) The new development is too close to our properties: less than 10 metres.
- (5) There will be a very large increase in traffic for a single lane road not to mention the surrounding roads which grind to a standstill during rush hour.
- (6) The safety of people trying to get to Millennium Park, especially children.
- (7) No extra public car parking.
- (8) The new development is not in keeping with the area or the surrounding buildings which are mainly houses.
- (9) Flawed North of St Helier Masterplan.

Description of proposals

14. The site comprises land bounded by L'Avenue Et Dolmen du Pre des Lumieres and Rue Le Masurier to the north; St Saviour's Road to the east; Tunnell Street to the south; and the new Town Park to the west. The greater part of it is presently occupied by a large disused gas holder, gas company offices, staff housing (2-10 Thomas Edge Place) and a vehicle parking area. The remainder, fronting St Saviour's Road includes Nos 1-4 Le Faux Bie Cottages. All of the existing buildings and structures are proposed to be demolished and the land, which is likely to include contamination, remediated prior to redevelopment.

15. The proposed development comprises 3 blocks of accommodation which, for illustrative purposes, the plans show occupied by a total of 285 units of accommodation, mostly a mixture of 1- and 2- bedroom apartments, with a few 3-bed apartments and 8 town houses. The precise mix of types and their distribution within the development is a matter that would be settled at the reserved matters stage.

Block A/B

16. This block would front the southern side of L'Avenue Et Dolmen du Pre des Lumieres, with short extensions on the corners to partially enclose a substantial public open area. The new Town Park would be to the west, while the eastern side would face a broad north-south pedestrian link and Block D. The remaining (southern) elevation would look towards the open area and Block C. The whole of the block would rise 6.5 storeys above ground level (comprising 6 storeys plus a semi basement). The top floor would be set back a short distance from the main facades of the floors below. The plans illustratively show that the whole of the block would be

occupied by apartments other than the north-eastern corner of the ground floor, which is shown for commercial development.

Block C

17. In plan, this block broadly mirrors that of Block A/B. It would face Tunnell Street to the south, with short extensions northwards partially enclosing the area of open space. The greater part of the block would be 4.5 storeys high, some of which is shown illustratively as accommodating shared roof terraces. At the eastern end, there would be 2 additional storeys, set back from the floors below. The plans illustratively show that the whole of the block would be occupied by apartments.
18. The outline permission granted includes a condition (No 22) which, notwithstanding what is shown on the submitted plans, requires the top floor of Block C to be set back by 4 metres from the Tunnell Street façade, involving the removal of 8 apartments from the scheme.

Block D

19. This block takes the form of a hollow square set around a small area of open space at the eastern, narrower end of the site, separated from blocks A/B and D by the pedestrian route. It would have frontages to Rue Masurier, St Saviour's Road and Tunnell Street. The central sections to Rue Masurier and to Tunnell Street would be 3.5 storey, shown illustratively on the plans as town houses. The remainder, apart from the north-western corner of the ground floor which is shown for commercial development, would be for apartments. The western end would be 6.5 storeys high, consistent with that part of Block C to the other side of the pedestrian way, and the eastern end would be 4.5 storeys in height. The 2 top floors of the former would be set back from Tunnell Street by between about 8.4 and 12 metres, with a shared roof terrace laid out on the lower roof. The top floor of the latter would be set back a short way on all 3 road frontages.
20. Taking account of Condition 22, the various set-backs of the upper floors would mean that no element of the façade to Tunnell Street would exceed 4 storeys plus the semi-basement.
21. Blocks A/B and C, together with the larger area of open space would be underlain by a large semi-basement, shown illustratively for car parking, cycle parking, cycle storage and services. A similar smaller semi-basement is shown under block D. The plans show 185 parking spaces in the larger and 45 in the smaller, together with accommodation for 214 bicycle spaces in total. Access to the former is indicated by means of a ramp from L'Avenue Et Dolmen du Pre des Lumieres, while the latter would be accessed from Tunnell Street.

Main Issues

22. From my assessment of the papers submitted by the appellant, the Department and the applicant, and from what was given in evidence during

the Hearing and seen and noted during the site visit, I consider that the main issues are:

- a. *whether the North of Town Masterplan is flawed (ground 9);*
- b. *the effect of the proposed development on the living conditions of local residents in the vicinity by reason of proximity; overbearing impact; loss of privacy; and reduction in light (grounds 1, 2, 3, 4);*
- c. *the effect of the proposed development on the safety and convenience of road users, with particular regard to the volume of traffic created; pedestrian safety; and the adequacy of parking provision (grounds 5, 6 7); and*
- d. *the effect of the proposed development on the character & appearance of the area (ground 8).*

Main Policies and Guidance

23. The main documents that provide planning policy and guidelines include the Island Plan and Supplementary Planning Guidance (SPG). In general, planning permission must be granted if the development proposed in a planning application is in accordance with the Island Plan. SPG is prepared under the provisions of Article 6 of the Law, which allows the Minister to publish guidelines and policies amongst other things in respect of the development of any area of land or the development of a specified site. When considering an application for permission to develop land, the Minister shall take into account the extent to which the proposed development complies with any relevant guidelines and policies which have been published.

The Island Plan

24. The Island Plan was adopted 2011 and revised in 2014. Its Spatial Strategy focuses development on the Island's built-up areas, particularly St Helier, while respecting its character. Opportunities for the regeneration of the urban environment and the realisation of the aspirations for the Town will be driven, amongst other things, by taking advantage of key development sites that already exist. In particular, the Plan says that it is imperative that to create an acceptable urban living environment, adequate provision of good quality and accessible public open space must be planned for and made.
25. The development and regeneration of St Helier is described as a major task which will require a high level of integration and management to secure effective development outcomes that serve to meet the Island's needs whilst protecting and enhancing the character and quality of the Town, of benefit to its existing and new residents, workers and visitors.
26. Six key areas of change in St Helier have been identified in the Plan as Regeneration Zones, amongst which is "North of Town", in which the appeal site lies. Proposal 14 of the Plan indicates that the Minister for Planning and

Environment will develop, in consultation with stakeholders and the local community, masterplans and development briefs for these areas and sites within them. I consider these in more detail below.

27. The Plan makes the assumption that a yield of 1500 new homes might occur in St Helier over the Plan period, taking account of the likely take-up of sites and development at an appropriate density. In that context, the present proposals would represent a significant contribution both to the provision of housing and to regeneration. In order to seek optimum use of developable land, development at higher densities is promoted – though not at the expense of reduced internal space standards or amenity space – and with regard being had to the issues of design, character and impact on the amenity of neighbouring uses and users.
28. The updated report of the Environment Department on the application lists a substantial number of policies in the Island Plan considered relevant to its determination. Not all are of significance to this appeal. Those of particular relevance are referenced under the individual issue headings and in relation to the conditions and planning obligation agreement.

The North St Helier Masterplan 2011

29. The Masterplan has the status of SPG. It is principally concerned with opportunities for intervention in the north part of Town, with respect to sites owned by the states and the private sector, together with improvements to the public realm, including car parking and cycle and pedestrian movement.
30. Nine intervention sites are identified including the Jersey Gas site which is the subject of this appeal. The Masterplan states that it is suitable for a significant new residential development should it become surplus to the gas company's requirements. It proposes 24,000 square metres of housing development (approximately 300 dwellings), enclosing public open space, with underground car parking for residents and commuters. Community or commercial uses could also be included. Any new buildings should be predominantly 5.5 storeys (including a lower ground floor), which should be sympathetic to the scale of the surrounding buildings. 180 residential parking spaces would be provided, together with 138 spaces for long-stay public use. Pedestrian routes to St Saviour's Road and to Belmont Road were envisaged, and remediation in the context of a thorough archaeological assessment.
31. The Masterplan seeks to provide a high-density approach to housing with associated generous public open space. The intention is to build on the heritage and architectural language of early nineteenth century terraced housing in St Helier, but at greater height.

The Jersey Gas Site Development Brief (Revision A)

32. The Development Brief was adopted as SPG in September 2013. It is specifically intended to provide the framework for the assessment and determination of any subsequent planning application. It refers to the

preferred uses for the site identified in the Masterplan.

33. Nine overriding aims for the development of the site are identified, as follows:

- to secure a positive environmental and social improvement for the Town Park area by the removal of (a) potentially hazardous uses from the Jersey Gas site in Tunnell Street, and create the potential for the relocation of LPG storage site at Les Ruettes, St John, to more appropriate locations;
- to assist in the regeneration of the area and breathe new life into the town;
- to provide a predominantly residential development that contributes to the provision of affordable homes;
- to incorporate some limited small-scale commercial, retail use / or a community use to serve local needs;
- to secure a contribution towards the provision of alternative public and residents' car parking and to contribute towards the enhancement of the public realm in the immediate locality and also the North of Town area;
- to create a design that makes a positive contribution and improvement to the physical context of the neighbourhood and which provides a focal point, enclosure and physical connection with the new Town Park;
- to deliver a form of development that responds to the heritage value of the site and its context;
- to provide well-designed development that is efficient in terms of space and energy consumption, making best use of the site and its context; and
- to provide the people who live there with the best level of amenity, in all its aspects, given the site's location on the town ring road and proximity to the new Town Park.

34. The Brief addresses key principles, constraints and factors affecting the development and other more detailed matters. Amongst these are that the density should be the highest consistent with maintaining reasonable standards of design, space about buildings and privacy, appropriate to the type of accommodation provided and the general surroundings. It says that there is potential for a scheme ranging from six storeys along the northern boundary of the site to up to four storeys along the southern boundary, adding that "*the southern side should respect the existing street context and that care must be taken to ensure that residential amenity (of) the existing dwellings along Tunnell Street is not compromised in terms of outlook and privacy, and specific attention is given to ... overbearing impact on the street*". The safeguarding of amenity is identified as constraint or a factor affecting the development.

35. Compared to the Masterplan, the Brief takes a different approach to the provision of public car parking. Following the outcome of the St Helier Parking Needs Study (June 2013), it recommends that, for reasons of cost-effectiveness, rather than making provision on site, a commuted sum would

be sought to contribute to off-site parking.

St Helier Urban Character Appraisal 2005

36. This document does not constitute SPG but nonetheless was specifically drawn up in the context of the former Island Plan. It was commissioned amongst other things as an aid to guiding policy formulation and the assessment of planning applications. It provides useful analysis of the urban character of the Town, albeit that the research on which it was based is now over 10 years old.

Reasons

37. The main issues raised by the appellant are addressed in turn.

Issue (a) The Masterplan

38. The main points made by the appellants are:

- *No consultation took place with the residents of Tunnel Street either on the North of Town Masterplan or by the architects of the present Jersey Gas proposals.*
- *Public expectations – based on the 2009 North St Helier Masterplan – was that the Town Park would be extended to St Saviours Road to provide more green space for this heavily populated area in the event that the gasholder were to be removed.*
- *The Masterplan is flawed because it is out of date, in that many of the recommendations regarding parking, scale and character of the area have not been brought into effect; and that it does not take into account the additional developments that are taking place in the area. The Play.com site (La Rue la Masurier / L’Avenue Et Dolmen du Pre des Lumieres) which would add a further 183 residential and 4 commercial units, is given as an example.*

39. Separately from the question of the adequacy of the consultation process, I do not agree that the content of the Masterplan is flawed. Together with the Development Brief that builds upon its principles, it reflects the general aspirations for St Helier contained in the Island Plan and addresses many of the matters raised in the grounds of appeal, including promoting appropriate scale and design and the protection of amenity in Tunnell Street.

40. Moreover, I do not believe the Masterplan to be out of date. Some development envisaged by it has taken place and some has not. But it is less than 5 years old and the precise timing and order in which development comes forward cannot always be determined. Consideration of individual planning applications should take account of the circumstances pertaining at the time as well as the aspirations of the Masterplan. This must include up-to date information, for example, concerning the approach to parking provision. I understand that the application for the development described as “Play.com” by the appellants is presently under consideration.

41. It is the question of the involvement of the public in the development of the

Masterplan that is of more concern to me. At the Hearing there was considerable discussion about its gestation and the nature and degree of public consultation undertaken. At my request, following the Hearing, the appellants and the Department together drew up a Statement of Common Ground (SOCG), which provides greater clarity about the process.

42. The SOCG says that two principal streams of public consultation were used and quoted in subsequent versions. The first took place around the initial preparation of the Masterplan when steps were taken to build the knowledge base and ideas and assumptions that would ground the Plan. The details of the consultation were enclosed within the first draft dated 21st August 2009. This is described as the stakeholder consultation summary. The consultants engaged to prepare the Masterplan, accompanied from time to time by officers from the Planning Department, held a series of meetings with specific stakeholders.
43. The second and longer consultation stage took place as part of the second draft of the Masterplan dated 8th October, 2009. It lasted between 26th September 2009 and 5th January 2010. It entailed:
 - Presentations to stakeholders and States Members by the consultants over the 25th- 26th September 2009.
 - A nine day manned exhibition in St James Centre, St Helier from the 5th – 14th 2009. In total 83 comments were received.
 - Static exhibitions in the Public Library and at Highlands College.
 - The creation of a website illustrating the proposed Masterplan with the opportunity for online comments as part of a questionnaire. A total of 136 individuals contributed their comments.
 - A "Picnic in the Park" organised by the Millennium Town Park Support Group in the new park who collected comments in relation to the proposed Masterplan. A total of 221 people commented on the proposals.
44. A total of 450 responses were received to the consultation process as a whole. No comparable public consultation exercise, solely focusing on the Masterplan, took place subsequently.
45. Over the succeeding years, a number of iterations of the draft Masterplan were produced. In May 2010, a Report and Propositions (R&P) were made to the States Assembly. Further drafts of the Masterplan were produced in May and July; and in July and December, 2 further R&Ps were made to the States. A fifth and final iteration of the draft Masterplan was produced in May 2011 and was subject to the fourth R&P to the States at the same time.
46. The sequence of Reports and Propositions to the States Assembly drew press coverage and significant public interest but the public consultation exercise, completed in 2009, was not repeated. As part of the process of finalising the Masterplan, the States, during a number of debates, considered comments obtained during the public consultation phase. The Masterplan was endorsed by the States at the end of June 2011.

47. The draft Masterplan that was subject to public consultation showed the gas company site as an extension to the Millennium Park; and it may be expected that any responses relating to the future use of the land would have been on that basis. It is very disappointing to note that, despite the later iterations of the draft incorporating a major built form of development on the appeal site, it was not considered necessary for the views of the public to be sought again. From what I learned at the Hearing, a number of local residents, including the appellant and others most likely to be directly affected by the development of the site were still unaware of the relevant provisions of the adopted Masterplan when the planning application which is the subject of this appeal was submitted.
48. Both the 2011 Island Plan and the revised 2014 version included the statement that masterplans would be developed, amongst other things, in consultation with the local community. However, other than the general provisions under Article 6 of the Law which require the Minister to consult any Minister or statutory consultee with an interest in the development before publishing any guidance or policies, I understand that there is no formal or usual process for the preparation of SPG, nor for carrying out publicity or public consultation concerning its contents. As a consequence, even if the public consultation process in this case was not as comprehensive as it might reasonably have been, there has been no identifiable procedural failure in legal terms. So there is no basis on which to conclude that the process was flawed in any formal sense. In the event, the Masterplan was endorsed at the highest level – the States – and must be accorded the status of SPG and weight appropriate to that status. As an adopted SPG, the extent to which the development complies with it must be taken into account by the Minister.
49. I conclude on this issue that the Masterplan itself is not a flawed document and that the unsatisfactory approach to the matter of public consultation does not in itself render it flawed. However, as a general comment, I would urge the Minister for Planning and Environment to review and formalise the procedures for the preparation of SPG with a view to ensuring that the opinions of the public are appropriately sought and addressed prior to adoption. The present situation is not satisfactory and may result in the disaffection of the public – including those who may be most directly affected by development – from the planning process.

Issue (b) Living conditions

50. The main points made by the appellants are:

- *The height of the proposed development, which would be four and a half stories high and very close to the dwellings on the other side of Tunnell Street would result in a significant loss of light to their occupiers, when compared to the present buildings.*
- *The Island Plan 2011 states that developments which exceed the height of the buildings in the immediate vicinity will not be approved. The gas tank does not count as it is not residential.*

- *The present gas tank, though tall, is not a residential use and does not impact on the privacy of residents.*
- *The relationship of the development to existing buildings is not representative of the situation elsewhere in this part of the town.*
- *The decision to permit is inconsistent with other developments which have been refused because of their proximity to boundaries, despite being much smaller.*

51. Amongst the general development objectives (Objective GD 1) of the Island Plan is to protect the amenity of the public. Policy GD 1(3) goes on to say that development proposals will not be permitted unless (amongst other matters), they do not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents. In particular, it should not unreasonably affect the level of privacy or the level of light to buildings and land that owners and occupiers might expect to enjoy.
52. The potential for the proposed development to impact on the amenity of those living in the vicinity of the site covers a number of matters, but they are for the most part related to the relationship of the development to existing dwellings, especially those in Tunnell Street. In Jersey there are no formally adopted standards with respect to the acceptability of relationships between buildings. Each case must therefore be taken on its merits, having regard to a range of factors such as the use of the buildings, proximity, height, bulk, aspect and intervisibility. This is not an unreasonable approach, as the application of standards or rules can be inflexible and can inhibit innovative design. The alternative, however, requires the sensitive exercise of judgment.
53. I have been referred by the appellants to other planning decisions in the vicinity where it is alleged that a strict approach has been taken to the question of the impact of development on amenity. However, as I do not have sufficient detail of those developments or the context in which they were considered, I do not believe they set any firm precedent in relation to the present case, which I consider on its individual merits.
54. Tunnell Street is a very narrow road. The carriageway measures just 4 metres in width and the pavement on the southern side is inadequate, particularly outside the appellants' house and neighbouring property to the east. Although the pavement on the northern side is intended to be widened, there are no proposals to alter either the width of the road or the southern pavement. As described above, the proposed development would front the northern side of the street, with the height of the façades being 4.5 storeys (13.94 metres) other than the run of town houses in Block D, which would be one storey lower. Directly opposite the appellants' property "Maida Vale" and its neighbour to the east, the façade of Block D would be some 8.29 metres distant.
55. The higher elements of the scheme (up to around 19.64 metres) would be set back from the façade, and at the closest would be about 18.29 metres away from the appellant's property. I consider the issue of height in urban design terms under the fourth issue. But so far as the effect on residential

amenity is concerned, I am satisfied that the proposed set-back of these upper floors at the western end of Block D, would overcome concerns about their possible impact on residents. Indeed, in direct views from the appellant's property, it is unlikely that they would be visible.

56. Nonetheless, principally owing to the narrowness of the street, I take the view that, even at an effective 4.5 storeys, what is proposed would have an uncomfortable relationship with the modest buildings opposite and that this would be perceived by the occupiers as oppressive or overbearing, both in visual and physical terms.
57. Added to this discomfort would be the potential, or at the very least the perception of the potential for intervisibility between windows in the proposed development and the existing buildings across the street. In my opinion, it does not matter whether the main living part of the appellants' house is at the rear and therefore not affected. That is not the case with all of the frontage properties nearby. The fact remains that *Maida Vale* and some of the other dwellings have bedrooms at the front which would face directly towards windows or balconies in the proposed development at very close range. In my experience, few people welcome the idea of another person being able to look directly into or towards their private space at a distance of little more than 8 metres (when measured from the indicated balconies) or about 11 metres (when measured from the windows). And, in this case, the potential for overlooking would be from at least 3 units of accommodation on 3 floors, and possibly a roof terrace.
58. Whether there would be balconies or a roof terrace is a matter that would be addressed in the event that the development were to proceed. The applicants say that the potential would exist for screens to be fitted in order to prevent overlooking, but to my mind that simply acknowledges the unsatisfactory nature of the relationship between the proposed and existing buildings.
59. In my opinion, whether there were to be balconies or not, the potential for overlooking and actual or perceived loss of privacy is substantial.
60. The fronts of the existing properties face roughly north or a little west of north. Having seen a photograph of sunlight striking the front of *Maida Vale*, I accept that it does presently have that benefit. However, I would estimate that very little direct sunlight reaches that side of the houses for any prolonged period of time. It therefore seems to me unlikely that the proposed development would deprive the occupants of sunlight to any significant extent. But that is not to say that it would not reduce the amount of daylight (ie indirect light) experienced. The developers have undertaken a survey which shows that the reduction in light would not be significant, bearing in mind that, even taking into account the large gasholder, the residents presently benefit from good levels of daylight. To my mind, the loss of light would not in itself be sufficient reason to oppose the development. But it is an additional factor, to be taken into account in combination with the other effects on the living conditions of residents.
61. The number of occupiers of properties in Tunnell Street that would be

affected by the potential for overlooking or loss of privacy, and by the overbearing effect of the development would be few; and even fewer would be affected to the degree likely to be experienced by the appellants. But that does not diminish the loss of amenity that those few people would experience.

62. I conclude on this issue that, owing to the height and bulk of the proposed development facing Tunnell Street, and of its proximity to dwellings on opposite side, together with the potential opportunities for overlooking from windows, balconies and roof terraces, the proposed development would unreasonably harm the amenities of a number of residents of the street. This would be contrary to Policy GD 1(3) of the Island Plan, the objectives that plan and of the Masterplan and the Development Brief, all of which identify the need to protect living conditions of existing occupiers, especially in Tunnell Street. I would draw particular attention to the Brief, which explicitly draws attention to the need to respect the street context and to avoid prejudice to the amenities enjoyed by the neighbouring properties.

Issue (c) Highways matters

63. The main points made by the appellants are:

- *The roads surrounding the site, including those that form the main routes to schools are already extremely busy, especially at peak times. It is unrealistic to expect people will use public transport.*
- *Tunnell Street is not wide enough in places for 2 vehicles to pass. Additional traffic from the development will cause problems for existing businesses and residents at peak time.*
- *The amount of car parking to be provided is inconsistent with the standard generally used on the island. Provision of 30 on-site parking spaces (for non-residents) will be insufficient. If it is to be provided off-site, where would that be situated?*

64. The appellants also say that children from the development will not be able to get to their catchment schools, as these are full. However, the ground of appeal do not relate to the inadequacy of educational provision, but to the traffic and road safety implications.

65. Policy GD 1 of the Island Plan amongst other things says that development proposals will not be permitted unless they contribute, where appropriate, to reducing dependence on the car and in particular: would be accessible to pedestrians, cyclists and public transport users; would not lead to unacceptable problems of traffic generation, safety or parking; and provide satisfactory means of access, manoeuvring space within the site and adequate space for parking.

66. Policy SP 6 has similar aims and amongst other things requires a proposal to demonstrate that:

- it is immediately accessible to existing or proposed pedestrian, cycle and

- public transport networks;
 - it does not give rise to unacceptable increase in vehicular traffic, air pollution or parking on the public highway;
 - it is well related to the primary road network; and
 - appropriate provision is made for car and cycle parking.
67. While local residents may understandably be concerned that a development of the size proposed may give rise to increased traffic on Tunnell Street – a road clearly not suited in width to cater for it, and with an inadequate pavement on the southern side – it has been established through the Transport Assessment that this would not in fact be the case. The Jersey Gas operation, which has some 93 car parking spaces on the site, presently generates a significant amount of movement from both commercial traffic and employees vehicles. Moreover, by far the greater proportion of the traffic serving the proposed development would use an access from L’Avenue Et Dolmen du Pre des Lumieres. While access is a matter reserved for later approval, the indicative scheme shows the smaller of the two semi basement car parking areas, with a capacity of just 45 vehicles, taking access from Tunnell Street. It is possible that some of the vehicles might arrive and depart more frequently and at different times compared to the present commercial usage of the site, but overall I am satisfied that the number of vehicle movements on the street would be likely to reduce as a result of the development.
68. At present it is just possible for 2 normal sized cars to pass each other on Tunnell Street with care. But larger vehicles including, for example, a refuse vehicle, would not be able to pass a car coming in the opposite direction without driving on the pavement. Refuse vehicles presently have to use the street, but with the greater number of people who would live on the site, and the likelihood of a proportion of the servicing taking place from the southern side of the development, it is possible that these vehicles may have to spend longer in the street and longer stationary. It would be essential, therefore, for provision to be made for off-street parking for refuse vehicles in the detailed design for the arrangements for servicing. It is not clear from the illustrative plans that this could be accommodated satisfactorily, though it is something that could be addressed at the reserved matters stage. The redevelopment of the appeal site has presented an opportunity for Tunnell Street and the southern pavement to be widened in order to reduce the potential for congestion and hazard for pedestrians, but regrettably this has not been incorporated into the design.
69. I understand that the capacity of the junction of Tunnell Street with St Saviour’s Road has spare capacity and should therefore be capable of accommodating the predicted level of traffic. The Traffic Assessment shows that the net effect on traffic generation compared to the present situation would be insignificant. St Saviour’s Road forms part of the ring road to St Helier; and so the development would be well placed in relation to access to the main road network consistent with policy.
70. 230 parking spaces are intended to be provided, of which 30 would be made available for the public. The remainder, to serve the future occupiers of the development, represents a ratio of 0.7 spaces per unit of accommodation

and would almost certainly be insufficient to provide for potential demand. I understand, however, that 30% of households in St Helier do not have a car; and so the level of provision would be broadly enough to meet the general level of need. Moreover, it compares favourably with the guidance of the Masterplan which envisaged 180 spaces for up to 300 dwelling units (a ratio of 0.6).

71. I recognise that although individuals need to use their cars for purposes other than going to work and shopping, (eg taking children to school) the site is very sustainably located close to the town centre, where use of a car is largely unnecessary. The provision of parking has itself the potential to increase demand for it. On the other hand, limiting it would be consistent with the aims of Policies GD 1 and SP 6 to reduce dependence on the car in the interests of sustainability. The plans show storage for 214 bicycles, which is a further sustainable aspect of the development
72. With respect to public parking, Policy TT 10 of the Island Plan indicates that (subject to the outcome of the proposals for North St Helier Masterplan and traffic impact assessments) the provision of up to 450 public car parking spaces would be made at 3 key development sites, including "Jersey Gas". The Masterplan then envisaged the provision of 138 spaces on this site. However, the St Helier Parking Needs Study of June 2013 reported that insistence on these sites providing parking has created a burden on the developers that has rendered the sites unviable, and does not bring forward parking in the most cost-effective or suitable format for public use. It recommended that a commuted payment, set at a viable level, should be used to provide nearby parking in a more cost effective way. I was told at the Hearing that an assessment of viability data has shown that the present site cannot practically support the number of spaces anticipated.
73. Against that background, earlier in the consideration of the application, the intention was for the developers to pay a commuted sum, sufficient to provide 27 spaces elsewhere in the Town. But no such site has been identified. In the circumstances, I find it reasonable that a pragmatic view should be taken by seeking a limited amount of parking to be provided on site insofar as it is able to accommodate them and financially support that level of provision. The quantity of provision is not unreasonable in the circumstances.
74. I conclude that there is no basis on which to object to the development on traffic grounds or by reference to the level of parking that would be provided. The approach is in general accordance with the relevant policies of the Island Plan.

Issue (d) Character and appearance

75. The main points made by the appellants are:

- *The proposed plans do not take into consideration the buildings around the site in terms of scale, density, height and the use of balconies. There is no architectural merit in the development, which is unsympathetic to existing buildings, most of which are either Victorian style town houses or cottages, none with balconies.*

Newer buildings are similar, and are not high rise.

76. Policy GD 1 of the Island Plan says, amongst other things, that a development proposal will not be permitted unless it is of a high quality of design, in accordance with Policies SP 7 and GD 7, such that it maintains and enhances the character and appearance of the Island and that, where appropriate, makes provision for hard and soft infrastructure that may be required as a result of the development.
77. Policy GD 3 indicates that the highest reasonable density will be required for all developments. However, it is important to note that this should be commensurate with good design, adequate amenity space and parking, and without unreasonable impact on adjoining properties.
78. Policy SP 7 requires the assessment of various components of development in order to ensure that it makes a positive contribution to a number of urban design objectives, of which the following are of particular relevance:
- Layout and form;
 - Density and mix; and
 - Scale, height and massing.

The objectives are:

- Local character and sense of place;
 - Continuity and enclosure;
 - Quality of the public realm;
 - Ease of movement and permeability;
 - Legibility;
 - Adaptability;
 - Diversity; and
 - Safety by design.
79. Policy GD 7 similarly seeks high quality design in all development that respects, conserves and contributes positively to the diversity and distinctiveness of the built context. It should respond appropriately to a number of criteria, of which the following are particularly relevant:
- the scale, form, massing, orientation, siting and density of the development and inward and outward views;
 - the relationship to existing buildings, and settlement form and character; and
 - the design of safe pedestrian routes, vehicle access and parking.
80. The appeal site is principally in commercial / industrial use, but also includes small-scale housing and parking. It does not form a coherent whole in land use or townscape terms and to a substantial degree detracts from the quality of its immediate and wider surroundings. It lies to the south of an area of the town that, though it includes housing, also contains a significant proportion of commercial development. Some, for example the Co-op Grande Marche, is of substantial scale. To the south, in Tunnell Street, the local character is also mixed, including both dwellings and commercial uses,

but of a much smaller scale and with no consistency of design. To the east, and in the area beyond Tunnell Street, development is predominantly residential in character and also mostly small scale. A further critical aspect of the setting of the site is the new Town Park, an attractive landscaped area and an important informal recreational resource. It has an open character, and is of considerable scale. In general terms, the site together with its surroundings including Tunnell Street present something of an area of transition in terms of both use and scale.

81. Having regard to that varied context, the Masterplan and the Development Brief recognise that the redevelopment of the site should seek not only to take advantage of the opportunity to remove an incoherent and largely unattractive group of buildings and to replace them with something better, but also to enhance its surroundings. In order to do so, it must have careful regard to the surrounding uses and their scale. I acknowledge that the task of integrating a major development into this diverse setting is by no means easy, and some compromise may be inevitable.
82. The Brief sets out a number of objectives to which any scheme should respond:
 - to comprise appropriately proportioned buildings and places using features, materials and colours which enhance the character of the locality;
 - to enhance the public realm through the contribution of the entire development, including buildings, spaces and landscaping elements, to the local townscape. This should be related to the design guidance provided in the North of Town Masterplan;
 - to enhance legibility of the area by ensuring that the new design respects the site context; and
 - to provide a safe and secure environment, where the access and internal circulation promotes a sense of neighbourliness, intimacy and human scale, and where the external spaces, including access routes, and the activities in them can be overseen by residents to promote a feeling of security. A crime impact assessment is likely to be required, in accord with Policy GD 1.
83. Further design guidance is provided. The plot and street widths of the surrounding streetscape should be respected where possible; and the development must provide an important focal point to the east of the new Town Park, with which it should "interface". The Masterplan development concept envisages a mix of terraced town houses and apartments with basement car parking; and the encouragement of pedestrian permeability around the perimeter of the site and through a series of private quadrangles, connecting the Town Park with St Saviour's Road. Enhancement of the local pedestrian infrastructure – for example pavement widths – is seen as part of this approach.
84. The Brief considers there to be potential for a scheme ranging from 6 storeys along the northern boundary of the site to up to 4 storeys along the southern boundary. This is a refinement of the "predominantly 5.5 storeys" set out in the Masterplan and, as is clear from the "possible height envelope"

plan, envisages the development stepping down progressively from north to south, broadly reflecting, or at least having regard to the heights of the surrounding buildings. The southern side should respect the existing street context and care must be taken to ensure that residential amenity of the existing dwellings along Tunnell Street is not compromised in terms of outlook and privacy. The effect of the development on amenity is addressed elsewhere in this report, but it is clear that the Brief here is drawing attention to the connection between good design and the impact on those living in the vicinity of the site: good design is not only about appearance – it also relates to the integration of a development into its surroundings in the broadest sense.

85. The Brief acknowledges that the presence of the existing gas-holder may bring an opportunity for a higher element within the development, which may help create a significant area of public amenity space at ground level and a focal landmark for any scheme. Specific attention should be given to how the development, and care must be taken to how the development “turns the corners” to avoid any unduly large blank gables and overbearing impact on the street. Care should be taken to ensure that the internal parts of the scheme are not constantly in shadow and that a good level of sunlight can penetrate the development.
86. The Urban Character Appraisal provides useful background with respect to the scale of buildings, stating in relation to massing that *“modern buildings can easily clash with older neighbours either through being overscale or underscale relative to the wider context. The scale of buildings affects the scale of streets and spaces and is a strong determinant of urban character. Much of St Helier is of a markedly human scale, comprising a general matrix of buildings between 2.5 and 3.5 storeys in height. This is interspersed with discrete clusters of buildings up to 6 storeys in height and the very occasional high rise. Cues should be taken from the immediate context to determine the appropriate height and massing of new development”*.
87. The planning application was in outline, with the detail of the design of the buildings reserved for later approval. Therefore, so far as the present proposals are concerned, it is solely the siting and massing which is under consideration. Detailed elevations of the proposed development were submitted with the planning application, but these are for illustrative purposes only. It is likely that they would provide the basis for the submission of reserved matters in the event that this appeal is unsuccessful, but the final design would be a matter for the Minister to agree. For example, the question of whether balconies would be appropriate on certain elevations is a detailed matter that would be addressed at that later stage.
88. In considering any such submission, the Minister would be obliged to take appropriate account of relevant policies in the Island Plan, notably those set out at the beginning of this section of the report and to the design guidance provided by the Masterplan and the Development Brief. The latter states that the Minister believes that the location of the site relative to the new Town Park is so important that it warrants the highest quality architecture, which should be achieved through an architectural competition following the granting of outline permission. I understand that there are no plans in place

to have such a competition, but this does not necessarily limit the opportunity for achieving a high quality design. In general, though the proposed buildings would be large, one may be reasonably confident that, with care, it would be possible to achieve acceptable architectural detailing.

89. The submitted scheme clearly accords with several elements of the guidance contained in the Masterplan and the Brief. In terms of the broader design objectives of the latter, it would enhance the character of the locality insofar as it would replace the gas holder - a disused and damaged piece of industrial equipment that, though a prominent and established feature, can hardly be said to be visually appealing.
90. An unattractive vehicle park and a very ordinary office building would also be removed. Similarly, subject to the approval of the reserved matters, the development would in many respects enhance the "public realm", including the setting of the Town Park. The development would include other areas of open space that would add to and connect with the park. These would be obvious and major benefits.
91. The development would contain approximately the 300 units of accommodation envisaged and, as shown in the illustrative plans, could include apartments and town houses and a small amount of commercial development. The density of the development is not inappropriate to an urban location and would be in accordance with the intention of Policy GD 3 that the highest reasonable density will be required for all developments.
92. The raised ground floors and the use of a semi-basement (also providing opportunities for vehicle parking), echo the use of these features in older and modern buildings characteristic of the Town. So far as the height of the structures is concerned, the 6.5 storeys of Block A/B on the northern frontage is also broadly in line. I am satisfied that a block of that height would not appear out of place or unduly dominating, in view of the width of the adjacent road, its commercial character and the scale of the buildings opposite.
93. The development, as modified during the course of its consideration, would present a bold, appropriately large-scale focal point to the east of the Town Park consistent with the supporting text to Policy BE 5. And equally the park would provide a suitable and attractive setting for the development of that size. The eye would be drawn to it in views from the park and, provided the landscaping were to be well designed, pedestrians would equally be drawn through the gap between Blocks A/B and C towards the enclosed public open space beyond. Though it would not be possible to reach St Saviour's Road through the development, the remainder of the site would be highly permeable to pedestrians in both the north-south and west-east axes.
94. Policy BE 5 states that tall buildings, defined as those either above approximately 18 metres in height or rising more than 7 metres above their neighbours will only be permitted where their exceptional height can be justified including in design terms. Development which exceeds the height of buildings in the immediate vicinity will not be approved. The supporting text adds that the more successful new developments are those which

respect the scale of the historic streetscape. It acknowledges, however, that there may be instances where a relatively tall building could add visual interest to the skyline; and at certain gateways to the Town, including fronting large open spaces, taller buildings could provide new focal buildings or landmarks.

95. The tallest parts of the development at over 6 storeys would be a little over 18 metres in height. But I do not believe that this would breach the "approximately 18 metres" maximum set out in the policy, particularly as these elements would add visual interest and focus when viewed from the park. With respect to the requirement for buildings to rise no more than 7 metres above their neighbours, there is no definition of what should be regarded as a "neighbour". The tallest parts of the development in Blocks C and D would be more than 7 metres above the buildings on the southern side of Tunnell Street, but owing to their substantial set back from the road frontage I do not believe that they should be so regarded.
96. As for development which exceeds the height of buildings in the immediate vicinity, to my mind this approach must be applied in the broader context of the policies that seek to promote good design. In my view, the important consideration is not so much that neighbouring buildings should be of similar height, but that new development should respect and integrate satisfactorily with its surroundings. This may mean exceeding the height of other buildings in the immediate vicinity. There are, for instance, many examples in the Town of established streetscapes harmoniously incorporating buildings of different heights. The proposed development is not, in my opinion, contrary to the provisions of Policy BE 5.
97. On the other hand, with the exception of the town houses in Block D, all of the immediate frontage to Tunnell Street, would be 4.5 storeys, a little taller than compared to the "up to 4 storeys" considered appropriate in the Brief. The immediate context is a very narrow street with the opposing buildings being of a much smaller scale, mostly being of just 2 storeys. I recognise that these existing buildings generally do not possess any great architectural merit. They are at best ordinary, and some are distinctly utilitarian. It would not be appropriate to use them as models for new development. But they do provide the context for the southern side of the development, particularly with regard to scale, and are deserving of appropriate respect in line with Policies GD 1, GD 7 and SP 7.
98. In an attempt to reduce its visual dominance and impact, the frontage of the proposed development to Tunnell Street would be placed somewhat further away from the highway compared to the present boundary of the gasworks; and the upper floors would be set back substantially more. This would increase the degree of separation from the buildings opposite and provide an opportunity to create a broader pavement and possibly some planting. But, as I concluded with respect to my second issue, other than with respect to the lowest part – the town houses – I consider that the proposed frontage to Tunnell Street would still dominate in terms of height, bulk and proximity when seen in the context of the modest buildings immediately opposite and particularly the width of the street.

99. In my judgment, other than with respect to the town houses, the scale and massing of this side of the development would not respect the street context or integrate well with it. In short, it would be unsympathetic and not fully in accordance with the Brief. Similarly, having regard to the advice of the Urban Character Appraisal, it does not take cues from the immediate context to determine the appropriate height and massing of the development.
100. I conclude on this issue that the proposed development would adversely affect the character and appearance of the locality, contrary to Policies GD 1 GD 7 and SP 7 of the Island Plan.
101. In reaching this conclusion I have had regard to what I was told at the Hearing and what I saw on my site visit, where I took note of the character of both traditional and modern buildings in the locality. Although some are taller, the height of buildings to the south, for example in Belmont Street, Simon Place and St Saviour's Road generally does not exceed 3.5 or 4 storeys, and many are lower. This is not an area of tall buildings. My attention was drawn to a number of other recent developments within walking distance. Many incorporated similar design characteristics to what is presently proposed, for example raised ground floors and semi basements. But none that I saw were of comparable scale.

Other Matters

102. In this report I have concentrated on the matters raised by the appellants. I do not address all other matters which are not in dispute or which were not discussed in any depth at the Hearing. The following are recorded by way of information.
103. The Development Brief says that any new residential development on this site will be encouraged to provide affordable housing, but Island Plan Policy H 3, which seeks a percentage yield of affordable homes, is not operational. In the event, no provision is made within the proposal and the Planning Obligation Agreement does not address the issue. The Brief also indicates that proposals should provide an appropriate mix of dwelling types that are needed by the community. In assessing the dwelling mix, the Minister should have regard to Policy H 4 and the latest assessment of housing needs (the Jersey Housing Needs Assessment 2013-15) and any current socio-economic data that may be provided by the developer in justifying the mix of housing units". I was told at the Hearing that the proposed mix approximately represents the requirement, but without any verifiable evidence, I am unable to conclude on the matter. The mix of dwelling types is a matter that could be addressed at reserved matters stage.
104. A Petition, signed by 252 individuals, opposing the development, was submitted to the Greffe on 24th September 2014
105. A number of other representations were made concerning the planning application.

Planning Obligation Agreement

106. The Planning Obligation Agreement commits Jersey Gas to a number of matters, briefly:

- to pay financial contributions to the Minister for the purposes of providing a bus shelter and making improvements to pedestrian access to the site; and not to commence the development until such contributions have been made;
- to give 7 days notice of the intention to commence development;
- not to commence development until a scheme for the provision, management, operation and use of the public car parking spaces has been submitted to and approved by the Minister; to carry out the development in accordance with the approved scheme; and not to occupy the development until the spaces have been constructed and are available to the public. The spaces shall be kept available for use in perpetuity and not prevent their use by the public other than for maintenance. The revenue shall be retained by Jersey Gas.

107. I agree that all these matters are reasonably necessary in the interests of securing an appropriate form of development.

Conclusions

108. As the reports from the Planning Department to the Minister of the Environment indicate, the benefits and disadvantages of this development are finely balanced.

109. The development would, in many respects, be in accordance with the provisions of the Island Plan and the guidance of the Masterplan and the Development Brief. The principle of residential development is entirely acceptable. Importantly, it would achieve the removal of an unsightly and potentially hazardous industrial use that presently detracts from the area and makes inefficient use of urban land. The setting of the new Town Park would be very significantly improved; a substantial number of housing units would be provided in a sustainable location; and progress would be made towards regeneration of the wider North Town area of St Helier. The development has much to commend it.

110. With respect to the main issues, the Masterplan is not fundamentally flawed or out of date; and the fact that the consultation process during its preparation was less than ideal does not invalidate its guidance. The effect of the development on highway safety and congestion is unlikely to be significant; and the parking provision would be sustainable, in that it would discourage unnecessary car journeys and encourage travel by other means.

111. However, for the reasons I give earlier, I believe that the submitted proposal would not integrate well into its surroundings, particularly with respect to Tunnell Street. In my view, insufficient consideration has been given to the need to reflect the modest scale of existing development in that street and the area to the south, or to the reasonable expectations of local residents to enjoy acceptable living conditions. In reaching this conclusion, I

appreciate that the removal of the present buildings and uses from the site would in itself bring some environmental benefit, but my concern is that what would replace them would also be unacceptable, albeit for different reasons. It is not sufficient for any replacement development simply to be better than what is there now – that would be to set the bar of acceptability unreasonably low.

112. The Island Plan refers to the findings of the *Urban Character Appraisal*, which identified that the integrity of St Helier' historic built environment has been slowly eroded since the end of the Occupation through the urban renewal programmes of the 1960s and 1970s, and through incremental change. Though this is not directly relevant to the appeal site and its surroundings, which are generally not of historic importance, nonetheless the passage emphasises the importance of introducing change carefully, with an eye to achieving development of lasting quality. To my mind, this is even more important when it comes to the introduction of major change, such as presently proposed.
113. I appreciate that to allow the appeal and to refuse planning permission would, at best, delay the development of the site and the early achievement of the undoubted benefits that would flow from it. I also acknowledge that the relocation of Jersey Gas from this site and its other facilities would be dependent upon the creation of sufficient commercial value from the development. But, given the importance of the site to the regeneration of the North Town area and the very considerable local impact that it would make for the foreseeable future, I am of the view that what is proposed would not result in the highest quality form of development that the Development Brief clearly envisages.
114. Having considered all of the evidence put to me at the Hearing and in writing, on balance I take the view that the benefits of the proposed development would be outweighed by the lack of integration with its surroundings – both the local built environment and the living conditions of existing residents. I do not believe that the relevant policies, aspirations and objectives of the Island Plan or of the Masterplan and Development Brief would be a fully met, thereby prejudicing the achievement of a satisfactory development of this important site.

Conditions

115. In the event that my recommendation to allow the appeal is not accepted, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately.
116. The planning permission issued on 9th March 2015 includes 22 conditions. These were discussed at length at the Hearing on a without prejudice basis. The Department agreed that some were unnecessary and many of the others were in various ways flawed, for example because they were insufficiently precise or clear as to their requirements, unenforceable or otherwise unreasonable. Modified conditions were agreed in principle, and these are attached in the Annex to this report. I have also made a few additional alterations of a minor nature.

117. At the Hearing it was put to me that the appeal process should not seek to revisit the conditions attached to the planning permission, as it has already been granted and in legal terms has been effectively only in suspension until the appeal has been determined. I disagree. First, Article 116 of the Law says that the Minister may allow the appeal in full or in part; and may reverse or vary any part of the decision-maker's decision. It seems clear that the Minister has, amongst other things, the power to vary any condition of the permission. Second, even if that were not so, it would be quite wrong for the Minister to determine an appeal subject to conditions that could not be enforced or were otherwise ineffective or unreasonable. This is not least because if a development is considered acceptable only if it is subject to conditions (and in this connection a condition should not be imposed unless it is necessary to ensure an acceptable development), then it is important that the conditions should achieve what they are intended to achieve. On that basis, I have a number of recommendations concerning the conditions in the event that the appeal is dismissed.

118. The condition numbers below are those used in the permission of 9th March 2015. A revised numbering will be required in the event that they are imposed. I consider each in turn briefly:

Conditions 1 A, B & C. commencement & reserved matters.

These conditions are standard for all outline planning permissions, setting the timescales for commencement and submission of reserved matters. They are necessary in the interests of certainty and so that unimplemented permissions should not compromise the ability of the Minister to reconsider the planning of an area. 1A and 1B refer to the date of the permission. This could be interpreted as being 9th March 2015 (the date of the decision the effect of which has been suspended pending this appeal) or the date on which the appeal is determined. In my view, fairness suggests that it should be the latter, as otherwise a developer would be disadvantaged by the appeal process because he would have a shorter time in which to commence the development and submit reserved matters.

Under 1C I have deleted reference to "exploring the option of opening up the town brook on the application site to public view or a water feature in the town brook location", as this does not require the developer to do anything other than "consider". It is unnecessary imprecise and unenforceable. The Department will be able to consider what reserved matters are submitted and decide whether they should be approved having regard to the town brook or any other matter. Moreover, there is no implementation clause in 1C, requiring the development to be carried out as approved. I have revised the wording to address these matters. Some of the matters covered in "C" are also addressed by other conditions but, provided there is no inconsistency, that is acceptable.

Condition 2. Phasing Plan

A condition requiring a phasing plan to be submitted is necessary so that the development can proceed in a logical manner, not least having regard to protecting local amenity. However, as drafted, it is imprecise, as the meaning of "delivery" of the blocks is open to interpretation. I also regard the requirement for a timetable, with the implication that elements of the

development must be finished by a certain time, would be unreasonable, as a developer would be highly unlikely to be able to provide that degree of detail prior to commencement. It is the order in which the development is carried out that is important, rather than the timing. I have revised the wording to reflect those concerns. In the interests of completeness, I have also added ground preparation works to the matters to be included in the phasing plan, as they will comprise a significant element of the development.

Condition 3. Percentage for Art (PFA)

The making of a contribution for artwork is in accordance with Policy GD8 of the Island Plan. As written, the condition does not specifically require a PFA statement to be submitted and approved: it is only implied. Moreover, the requirement for the approved work of art to be installed prior to first occupation is unreasonable, given that occupation is likely to be phased. To address this, I have revised the wording to require the PFA statement to require submission of the details of the timing of the installation by reference to the Phasing Plan.

Condition 4. Demolition / Construction Environmental Protection Plan

An Environmental Protection Plan is necessary in the interests of protecting the amenity of the locality from the effects of the development while it is in the course of construction. As drafted, the condition requires a mixture of mitigation measures and procedures, and is unclear with respect to implementation. For example, it requires the details of the Plan to be implemented in full prior to first occupation – which would be a practical impossibility if occupation of the blocks were to be phased, and retained in perpetuity thereafter – which is unreasonable as the condition is intended only to address the period of construction. I have revised the condition to overcome these errors. The requirements are in some cases imprecise – for example the requirement to demonstrate best practice in relation to noise, vibration, dust and emissions. I have also addressed these matters.

Condition 5. Car and cycle parking allocation

It is reasonable to seek to ensure that the residents' parking provision is not used by non-residents, for example commuters. However, it is not reasonable to require that the parking shall not be let or re-assigned to non-residents, as that could be achieved only by means of a legal obligation, which a planning condition cannot require. I propose to delete that part of the condition but include a requirement for the scheme setting out the allocation of the spaces to individual units of accommodation to include details of the means whereby their use may be restricted. Enforcement of the requirement that the parking spaces shall be used only by residents or persons visiting them would be difficult to enforce in practice, but not entirely impossible, and so I retain that element of the condition.

Condition 6. Public Parking

The requirement for 30 public parking spaces to be provided is necessary and reasonable, but the condition as drafted does not set out the number of residents' spaces. I consider this equally important in the interests of certainty, as this is not specified in the description of development or in any of the other conditions, I have amended the condition accordingly.

Condition 7. Green Travel Plan

The requirement to submit a Green Travel Plan is necessary and reasonable in the interests of sustainability, and in accordance with Policy of the Island Plan. However, as drafted, it is flawed in a number of ways. First, there is no reason for it to be submitted and approved prior to commencement of development, since it would relate only to the period following occupation. Its approval should therefore be linked to first occupation. Second, it requires approval of the Plan twice. Third, the matters to be included in the Plan (managing demand for car trips and car parking) appear to be unreasonably limited, as they make no reference to public transport. The precise content should be a matter of discussion between the developer and the Department, with the Minister having the power to refuse to approve anything unsatisfactory. Although there is a requirement for the details of a Travel Plan co-ordinator to be forwarded to the Minister, there is no provision for the details of any successors to be notified. Finally the requirement for the Plan to be retained "in perpetuity" is unreasonable, not least because the condition says it shall be for at least 10 years. I propose a revised condition to address these matters.

Condition 8. Service Infrastructure

This condition covers a requirement for a scheme to be submitted and approved relating to the provision of service infrastructure. It is necessary principally in the interests of sustainability, but once again it is poorly drafted. I propose a revised form of words which makes its meaning clearer. I also add reference to the implementation of the scheme by reference to the Phasing Plan, as it is unreasonable for the scheme to be "maintained in perpetuity". Maintenance is not generally a planning matter and a perpetual condition is unreasonable. I substitute "retained for the lifetime of the development". The requirements of Condition 9 (relating to external lighting) and Condition 16 (other environmental enhancements partly overlapping with those itemised in Condition 8) could also reasonably be incorporated into this condition. I have done so.

Condition 10. Ecological report

It was agreed by the Department at the Hearing that, as the Environmental Statement has already demonstrated that the site has little or no ecological interest, it would be unreasonable to require any further report to be prepared. The condition is therefore unnecessary and unreasonable.

Condition 11. Waste Management Plan

As the development includes demolition and a substantial amount of excavation, it is reasonable that the management of waste should be controlled in the interests of sustainability and local amenity through a Waste Management Plan, and the outcome reported. In the interests of effective monitoring, I additionally recommend that reporting on the progress of the Plan should be no less frequently than every 6 months from commencement of work on the site.

Condition 12. Contamination

The site is contaminated owing to its previous use. It is therefore necessary to have in place procedures for dealing with contamination encountered. However, the condition as drafted deals only with unexpected contamination, whereas properly it should also consider that which is already known to

exist. I have revised the condition to address this matter. I have also added reference to matters originally included in condition 21, as being more appropriate to the preparation of scheme(s) rather than the completion certificate, which is the subject of that condition.

Condition 13. Landscaping Scheme

Landscaping is one of the reserved matters identified under condition 1C; and phasing of its implementation is addressed under the provisions of Condition 2. This condition is therefore unnecessary; and I do not recommend it.

Condition 14. Archaeology

The archaeological site known as *Le Dolmen du Pre des Lumieres*, situated partly within the appeal site and partly under the avenue of the same name, has been designated as being of special archaeological and historic interest. Based on knowledge gained from excavations in the nineteenth and twentieth centuries, the EIA says that the site has a high potential for the survival of archaeological, palaeoenvironmental and geoarchaeological prehistoric remains, which are likely to occur between 3.4-5.7m below ground level. The excavation of the semi basements would be unlikely to be deep enough to truncate underlying prehistoric layers, but may expose the top of prehistoric remains in areas of gravel highs. Any archaeological deposits within the footprint of each pile would be removed. It concludes that the development could result in the loss of some archaeological remains. However, it may lead to the identification of currently unknown archaeology which could be preserved by record. The effect is categorised as "minor adverse".

The condition requires an archaeological watching brief to be submitted for approval, with provision to record significant remains and post evaluation reporting. In the event that any significant unexpected finds are encountered during the remediation or other ground works, work shall cease to allow for their proper evaluation. This is broadly in line with Policy HE5 of the Island Plan. However, the process for dealing with unexpected finds is unclear. I propose a number of changes to the wording of the condition in order to give it greater clarity and to render it effective and enforceable. Although Policy HE 5 of the Island Plan says that the cost of excavation and recording of the archaeological resource should be borne by the developer, I see no reason for this to be included in the condition. It is sufficient that the developer is obliged to comply with the condition, in the same way as with any other.

Condition 15. Foul & surface water drainage

This condition, requiring details of foul and surface-water drainage to be approved and implemented, is reasonable. However, I have altered the requirement for it to be maintained in perpetuity by "retention for the duration of the development". It is not reasonable for a condition to require maintenance, and "perpetuity" could in principle place an obligation on future owners beyond the life of the development.

Condition 16. Environmental enhancements

This condition requires the submission of a "package of environmental

enhancements”, mostly in the interests of sustainability. Several overlap with matters already included in Condition 8. I see no reason why the 2 conditions should not be combined; and I have done so.

Condition 17. Landscape scheme to integrate Town Park

This condition repeats the requirement set out in Condition 1C for a landscape scheme to be submitted which integrates the development with the Town Park, and to that extent it is strictly unnecessary. However, it includes greater detail. In the interests of consistency and comprehensibility, I propose to refer to Condition 1C and delete the duplicated requirement for submission. I also propose to delete reference to the works being implemented in full prior to first occupation, as the phasing of the implementation is already addressed by the provisions of Condition 2.

Condition 18. Pedestrian permeability & access

This condition also effectively repeats a requirement of Condition 1C for details of footpaths to be submitted, but again in greater detail, to include reference to permeability and access. I propose to delete reference to the details being implemented in full prior to first occupation, as that may not fit with the phasing of the development. The Phasing Plan required to be approved under Condition 2 refers to the public realm, of which footpaths would form a part. I therefore substitute reference to that Plan.

Condition 19. Management of the landscaped areas

This condition requires a report to be submitted setting out the arrangements for the management of landscaped areas, but unfortunately fails to require its implementation. I propose to make the appropriate modifications to correct the omission.

Condition 20. The aquatic environment

This policy requires the submission, approval and implementation of a Method Statement designed to minimise risks to the aquatic environment of the Town Brook. In principle I consider it to be reasonably necessary, but I have modified the wording to limit its application to the period of demolition and construction (rather than in perpetuity), and removed the unfeasible requirement that it should be implemented in full prior to commencement of development.

Condition 21. Completion report

This condition requires the submission of a completion report in relation to remediation of contamination and therefore relates to Condition 12 (condition 10 in the revised schedule of recommended conditions). For the avoidance of doubt I recommend the addition of specific reference to the scheme(s) submitted and approved under that condition. As originally drafted, the condition required the completion report to include arrangements for longer-term monitoring of pollutant linkages, and for contingency action and the reporting of this to the Minister for Planning and Environment. In my view, such additional matters should not be in a completion report, but should be addressed by the scheme(s) themselves. I have therefore made reference to these matters under my recommended condition 10.

Condition 22. Set back of Block C

In order to reduce the impact of the development on Tunnell Street, the developers are prepared to further set back the fourth storey level of Block C from that indicated on the illustrative submitted plans. For clarity I have simplified the wording without altering its meaning.

Overall Conclusion

119. For the reasons given above, I **recommend** that the appeal should be allowed in full.

120. However, should the Deputy Chief Minister disagree with this recommendation, I **recommend** that the planning permission be varied to substitute the conditions set out in the Annex for those originally imposed
121.

Jonathan G King

Inspector

ANNEX

CONDITIONS THAT MAY BE IMPOSED ON THE PLANNING PERMISSION IN THE EVENT THAT THE APPEAL IS DISMISSED

Informative

All references in these conditions to "the Minister" are to the Minister for Planning and Environment or to his successors.

1A. If the development hereby permitted has not been commenced within five years of the decision date, this permission shall cease to be valid.

1B. Application for reserved matters as detailed in Condition 1C shall be made before the expiration of three years from the date of this decision.

1C. Approval of the details of the elevations, design (including the siting of any balconies and / or terraces), landscaping and open space (including the interface between the Town Park and the development site), footpaths, public art, vehicular access on to the Highway (including details of visibility), number of residents' car parking spaces, the car park layout, servicing, loading bays and refuse servicing details – hereinafter called the Reserved Matters – shall be obtained by application to the Minister prior to any development commencing. The development shall be carried out as approved.

2. The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Minister a Phasing Plan which shall include details of the order in which the principal elements of the development are proposed to be carried out. These shall include ground preparation works, construction of the Blocks A-D, vehicular access, car parking, the public realm and landscape works. The development shall thereafter be implemented only in accordance with the approved Phasing Plan.

3. Prior to commencement of development, a Percentage for Art Statement shall be submitted to and approved in writing by the Minister. The Statement must include details of a scheme for the provision of a work of art and the timing of its implementation by reference to the matters addressed in the approved Phasing Plan. The approved work of art shall be installed in accordance with the approved scheme.

4. The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Minister a Demolition / Construction Environmental Management Plan designed to identify and mitigate the environmental and amenity effects of the development while it is in the course of construction. The matters to be addressed in the Plan shall include, but shall not be limited to the following:

- (a) the control of noise, vibration, dust and other emissions;
- (b) hours of working, by reference to days of the week, Bank and Public

- Holidays and specified activities, including noisy activities such as piling;
- (c) crushing, sorting and management of waste material, including excavated material, on the site;
 - (d) vehicle wheel cleaning;
 - (e) management of traffic and pedestrians;
 - (f) the detection and management of any asbestos encountered during works; and
 - (g) details of a complaints procedure, including office hours and out-of hours contact telephone numbers.

The Demolition / Construction Environmental Management Plan shall be implemented as approved.

5. Notwithstanding the information submitted with the planning application, the development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Minister a scheme setting out the allocation of the car parking spaces and cycle storage spaces to individual dwellings and the manner in which their use may be controlled. The parking spaces shall not be used by persons other than residents or visitors to residents or other than in accordance with the approved scheme.

6. Notwithstanding the information on the submitted plans, no fewer than two hundred parking spaces shall be provided for the use of residents in accordance with the provisions of condition 5. Thirty public parking spaces shall be provided for the use of non-residents of the approved development.

7. Notwithstanding the information submitted with the planning application, the development hereby permitted shall not be occupied until a Green Travel Plan to cover not less than 10 years from the date of first occupation has been submitted to and approved in writing by the Minister. No accommodation shall be occupied until a Green Travel co-ordinator has been appointed and their details forwarded to the Minister. The details of any subsequent appointees shall also be forwarded without undue delay. The approved Green Travel Plan shall be implemented in full over the period covered.

8. The development hereby permitted shall not be commenced until a scheme of service infrastructure has been submitted to and approved in writing by the Minister. The scheme shall include details of:

- (a) communal waste facilities, including provision for the separation of wastes for recycling, to include, but not be limited to food compost, glass and cardboard;

- (b) arrangements for the collection of waste;

(c) communications infrastructure, including but not limited to any communal satellite television reception system;

(d) the location and number of electric car charging points;

(e) a system of sustainable urban drainage and rainwater harvesting for the irrigation and watering of landscaped areas;

(f) external lighting;

(g) smart meters for water and electricity consumption visible within every residential unit; and

(h) phasing of the implementation of the foregoing by reference to the matters addressed in the approved Phasing Plan.

The detailed matters shall be implemented as approved and retained for the lifetime of the development.

9. Notwithstanding the information submitted with the planning application, the development hereby permitted shall not commence until there has been submitted to and approved in writing by the Minister a revised Waste Management Plan to include monitoring and reporting arrangements for the actual waste streams arising from excavation and demolition of existing structures. Reporting on progress to the Minister shall be undertaken no less frequently than every 6 months commencing with the first act of demolition or excavation. Prior to first occupation of the development a Waste Management Completion Report to demonstrate compliance with the Waste Management Plan shall be submitted to the Minister.

10. Prior to the commencement of any works of excavation or demolition on the site, a scheme for the management of contaminated material and for the remediation of contaminated land identified in the Phase 1 Desktop Study; for arrangements for longer-term monitoring of pollutant linkages; and for contingency action and the reporting, shall be submitted to and approved in writing by the Minister. The scheme shall be implemented as approved. In the event that additional contamination is encountered on the site during the course of development, work shall cease and the Department of the Environment notified immediately. The levels of potential contaminants shall be investigated and any risks to human health or the wider environment assessed and mitigation measures proposed in a scheme which shall be submitted to and approved in writing by the Minister. The scheme shall thereafter be implemented as approved and in accordance with the requirements of the Supplementary Planning Guidance Planning Advice Note 2 *Development of Potentially Contaminated Land*.

11. The details of landscaping required to be submitted and approved under Condition 1C shall include details of the phasing of implementation by reference to the matters addressed in the approved Phasing Plan. The landscaping shall be carried out in compliance with the approved details.

12. Prior to the commencement of any development on site, a Project Design shall be submitted to and approved in writing by the Minister. The Project Design shall include, but not be limited to, an archaeological watching brief for the duration of the works hereby approved, together with the evaluation and recording of significant archaeological, palaeoenvironmental and geoarchaeological remains and post-evaluation reporting of such remains. The development shall be carried out in accordance with the approved Project Design. Should any unexpected significant finds be encountered during the course of the development, work shall cease on the site and the Minister shall be notified without delay. Work likely to be prejudicial to the integrity of the archaeology shall not recommence without the permission of the Minister having been granted and until the finds have been evaluated and provision made for recording in accordance with the Project Brief.

13. Notwithstanding the information on the submitted plans, prior to the commencement of the development of the above-basement superstructure for any of the residential Blocks hereby permitted, details of the proposed foul and surface water drainage shall be submitted to and approved in writing by the Minister in consultation with TTS Drainage, to be thereafter implemented in full prior to first occupation of the relevant Blocks and retained for the lifetime of the development.

14. Notwithstanding the information submitted with the planning application, the landscape scheme required to be submitted under Condition 1C shall include details of the integration of the development hereby permitted with the Town Park. The scheme shall include the re-landscaping of the eastern part of the park (that part to the east of the existing timber pergola and water fountains within the red line of the application site shown on the approved plans) into the approved development. It shall be implemented in accordance with the phasing of matters relating to landscaping in the Phasing Plan approved under Condition 2.

15. Notwithstanding the information submitted with the planning application, the details of all footpaths required to be submitted under Condition 1C shall include details of proposed pedestrian permeability and access into and through the development hereby permitted. The details shall be carried out in accordance with the phasing of matters relating to the public realm in the Phasing Plan approved under Condition 2.

16. Prior to the commencement of the development hereby permitted, a report setting out the arrangements for the management of the landscaped areas shall be submitted to and approved in writing by the Minister. The Report shall be implemented as approved. If, during the first 5 years from the date of planting, any tree or shrub planted in accordance with the approved landscape scheme dies, is removed or becomes seriously damaged or diseased, it shall be replaced in the next planting season by a similar tree or shrub, unless the Minister gives written consent for a variation of the scheme.

17. The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Minister, a Method Statement to demonstrate how any risks to the aquatic environment will be minimised

during the construction of the culvert for the Town Brook on the development site. The provisions of the Method Statement shall be complied with for the duration of demolition and construction works on the site.

18. Prior to the occupation of any part of the development hereby approved, a completion report and contaminated land completion certificate demonstrating completion of the works and the effectiveness of any remediation undertaken within the context of the scheme(s) approved under Condition 10 shall be submitted to and approved in writing by the Minister.

19. The fourth storey level of Block "C" of the development shall be set back by 4 metres from the front face of the building as shown on the submitted plans along its full length facing Tunnell Street. For the avoidance of doubt this set-back would affect apartments numbered 66-73 as shown on the '3rd floor plan drawing No 104 P2'.

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