

STATES OF JERSEY
PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)
APPEAL OF A DECISION UNDER ARTICLE 108
REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT
by Mr Philip Staddon BSc, Dip, MBA, MRTPI
an Inspector appointed under Article 107

APPEAL BY: Michael and Sue Cornish

AGAINST: Refusal to grant planning permission for a proposal to '*construct extension to south east elevation of summer house within Plot No. 1.*' Decision dated 17 March 2016

LOCATION: Plot 1 Windward House, La Route des Genets, St Brelade, JE3 8LE

REFERENCE: P/2015/1838

APPEAL PROCEDURE: Written Representations

SITE VISIT: 7 June 2016

DATE: 30 June 2016

Introduction

1. This report contains my assessment of the appeal made by Michael and Sue Cornish. The appeal is made against the decision of the Department of the Environment to refuse to grant planning permission for the erection of an extension to a previously approved summerhouse within the plot of a new house currently under construction.

The site and its Planning history

2. Plot 1 is one of three large classically inspired houses currently being built on a wooded headland site south of Le Mont Sohier. I understand the development was approved in 2010 under reference P/2008/2711 and involved the demolition of three existing dwellings and their replacement with three new dwellings.
3. The new dwelling is extremely large and has a ground floor internal area of 291 square metres on a plot extending to just over 3 acres. Most of the plot, including the footprint of the new house (and its summerhouse), lies within the designated Coastal National Park (CNP). Only a small part of the site, to the north, lies beyond the National Park, and falls within the Green Zone.
4. In 2014, Planning Permission was granted for a freestanding unit of staff accommodation in the front (Green Zone) part of Plot 1 (P/2014/1804). This is now built.
5. In 2015, Planning Permission was granted (P/2015/0490) for a circular summer house located just to the south of the main house and linked to it by a terrace area. As approved, it would have a diameter of about 7 metres and an internal area of about 37 square metres. It would be faced in painted render with full height glazing panels and a conical rolled lead roof. Its height would be just under 5 metres.

The appeal proposal and the Department's decision

6. The appeal proposal (P/2015/1838) sought to add an extension to the south-east side of the (now built) summerhouse, giving an additional 19 square metres of additional internal floorspace. The extension would accommodate 2 no. WCs and a store.
7. The extension would be flat roofed and would sit below the eaves of the conical roof. It would be faced in painted render on two walls and in granite on its curved rear wall. In addition to the extension, some revisions to the previously approved roof form and eaves height of the summerhouse itself are proposed. These would reduce its bulk and reflect its 'as built' form.
8. The application was refused on 8th February 2016 and that decision was confirmed following a review by the Planning Applications Committee on 17 March 2016. The reason for refusal stated:

The site lies within the Coastal National Park, wherein there is the strongest presumption against all forms of new development. Exceptions can be made for small scale development when it is well sited and designed having regard to the relationship with existing buildings, landscape context, size, material, colour and form; it is of a temporary nature; and, it does not cause harm to landscape character. In this particular case, the proposed extension to the ancillary structure is considered to fail each test for an exception to the presumption against development as it is not well sited and designed, it is not temporary in nature and will cause harm to the landscape character. Consequently, the proposal fails to meet the requirements of Policies SP1, GD1, GD7, BE6 and NE6 of the Adopted Island Plan (2011) (Revised 2014).

The Island Plan 2011 (Revised 2014) – policy considerations

9. The Island Plan has primacy in decision making on planning applications. There is a general legal presumption that development in accordance with the plan will be permitted and that development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'¹ for overriding its provisions.
10. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. The Plan's spatial strategy (Policy SP 1) is to concentrate development in the built-up area and restrict it elsewhere. Outside the defined built up area, parts of the Island are designated as the CNP, within which development is very strictly controlled. The countryside outside the CNP is defined as the 'Green Zone' and is afforded a high level of protection from development. The appeal site lies within the CNP and as noted earlier, only the very front part of the plot lies within the Green Zone.
11. Central to this appeal is Policy NE 6, which establishes a strict regime to control, indeed to predominantly prevent, new building development in the CNP. Policy NE 6 states that in the CNP '*there will be the strongest presumption against all forms of development*'. It specifies certain types of development that will not be permitted and this includes '*the development of ancillary buildings (other than temporary domestic buildings under 9b below)*'. Exception 9 states:
 9. *Development small in scale and incidental to the primary use of land and buildings, but only where:*
 - a. *it is well sited and designed, having regard to the relationship with existing buildings, landscape context, size, material, colour and form; and*
 - b. *for an ancillary residential building, it is also of a temporary nature; and*
 - c. *it does not cause harm to landscape character*

¹ Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

12. Other policies cited in the reason for refusal are GD 1, GD 7 and BE 6. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality. Policy GD 7 requires a high quality of design. Policy BE 6 sets a list of criteria for building extensions. There is a degree of duplication in the content of GD 1, GD 7 and BE 6 but all three policies are mutually consistent.

The Appellant's Case

13. The Appellant's grounds of appeal are set out as a rebuttal under each of the individual policy headings (cited in the refusal reason). Under NE 6 the Appellant contends that the development would be 'very minor' in size, inconsequential in mass and not visible outside the site.
14. In response to SP 1, the Appellant argues that the development would be diminutive in scale and appropriate to its countryside setting. The Appellant further contends that the proposal meets the relevant criteria set out in GD 1 (general development considerations), GD 7 (design quality) and BE 6 (alterations and extensions) in terms of its lack of impact on the character of the coast and countryside and the high quality and complementary design employed.

Discussion and assessment

The relevance of the Planning history

15. The history of this site has some contextual relevance to my assessment. Put simply, three very large houses are being built in the CNP (under P/2008/2711). I have not been apprised of the circumstances and details concerning the granting of that Planning permission. However, I understand that it predated the current Island Plan policy regime and its associated 'strongest' presumption against all forms of development. Nonetheless, it is an extant permission and it is at the advanced stages of implementation.
16. Perhaps inevitably, such substantial dwellings would generate consequential proposals for ancillary buildings to serve them. Indeed, this is evidenced by the Planning history of the Plot 1 proposals for the staff accommodation (in the Green Zone part of the site) and the summerhouse (in the CNP).
17. With regard to the summerhouse permission (P/2015/0490), this was granted quite recently and, unlike P/2008/2711, fell under the full remit of the current Island Plan policy regime (including the 2014 amendments). However, it appears to me that the decision was reached without a full assessment under 'Exception 9' of Policy NE 6.
18. Although the officer assessment considers many elements that fall under the policy's criteria, it omits to assess the permanence of the building (criterion b). Criterion b) requires any ancillary residential building to be 'of a temporary nature'. This requirement is amplified in the supporting

narrative at paragraph 2.107 of the Plan, which gives examples of 'garden sheds and greenhouses' which, it explains, may be permissible if well sited, designed and not harmful to the CNP.

19. However, it is inconceivable that the summerhouse permitted under P/2015/0490 could ever be described as 'of a temporary nature'. It is clearly a permanent structure, which has been designed, engineered and built to a lasting standard. There is nothing to suggest it will be any less permanent than the house itself.
20. This is a seemingly unfortunate omission because the policy is framed in such a way that all criteria must be fulfilled to satisfy the exception provision. They were not all fulfilled and the permission granted, whilst legally extant, appears to create a tension with the (very clearly) stated policy, which only allows for temporary ancillary garden buildings.
21. To my mind, this factor looms large in the genesis of this appeal and the differing views adopted by the parties. Indeed, I can understand an Appellant viewpoint that, having secured the permission for a permanent summerhouse, a modest and subservient extension to it, may be similarly favourably treated. I turn now to the 'Exception 9' assessment of the appeal proposal itself.

Policy NE 6 'Exception 9' assessment of the appeal proposal

22. There are, in effect, four requirements that must all be met to satisfy 'exception 9'. I have disaggregated these and set out my assessment below.

Development small in scale and incidental to the primary use of land and buildings

23. This first part of the exception wording defines the type of development that may be permitted. It is clear to me that the summerhouse extension would be incidental to the primary use i.e. the dwelling.
24. The Plan contains no indicative dimensions of what 'small in scale' means. The Appellant contends that, as the extended summerhouse would be 'only 4.9% of the overall built development' it must be small. However, I do not consider that a building with an internal floor area (as extended) of circa 56 square metres could be described as 'small in scale'. Indeed, the policy narrative reference to 'garden sheds and greenhouses' suggests substantially smaller structures under 'Exception 9'. In my view, the resultant extended summerhouse would not be 'small in scale' as implied by the policy.

a. it is well sited and designed, having regard to the relationship with existing buildings, landscape context, size, material, colour and form;

25. The siting of the summerhouse has been previously agreed and it relates well to the new house. The summerhouse and its extension effectively sit in the immediate zone around the new house. It does not unduly intrude into

the wider landscape setting. I have dealt with 'size' above. With regard to the design of the extension, the approach is not poor but I do think that, in visual terms, it appears as something of an architectural afterthought and reduces the simplicity and crispness of the approved rotunda design. That said, the extension would not be in direct public view.

b. for an ancillary residential building, it is also of a temporary nature

26. The extension is not of a temporary nature – it is a permanent development. The Appellant appears to accept that the building is not temporary but argues that criterion b) should not be 'determinative' in this case and that the compliance with other elements of NE 6 should prevail. I consider that view to be erroneous – there is no discretion allowed by the policy – each requirement must be met to qualify for the exception.

c. it does not cause harm to landscape character

27. I agree with the Appellant that the extension is well screened and would not be discernible from public viewpoints. Whilst the upper parts of the new house may be visible from nearby bays, the summerhouse will not, as it will be screened by existing trees. Any 'harm' associated with the extension is limited to the loss of the footprint of the site from its protected open nature. In that sense, given the Plan's protection of the CNP from built development there is some implicit harm but, in isolation, it is less than substantial.

Other Policies

28. The other policies referred to in the reason for refusal largely duplicate the NE 6 matters discussed above and I do not consider it necessary to rehearse these further.

Conclusions

29. This appeal may appear to some as something of a storm in a teacup. However, it has raised some complex issues about policy interpretation and application for 'minor developments' in the CNP and the Appellant has presented a full and well-argued case.
30. The key issue is that this site lies within the CNP and the Island Plan, which has been through a very rigorous and open plan making and adoption process, has clearly established a very strict regime. Policy NE 6 is not an absolute ban on development, but it is not far from it. Development is only permitted by a limited number of clearly stated exceptions, and development must comply with set criteria to be favourably treated.
31. The appeal proposal does not meet the tests and criteria set out in Policy NE 6 Exception 9. It is not 'small in scale' for an ancillary residential building. It is not a temporary structure but it is, without question, a permanent development. These are fundamental failings in terms of the NE 6 exception.

32. With regard to other NE 6 matters, whilst its design quality is not poor, it is not high either and it would undermine the design simplicity of the already approved rotunda. It would not be readily discernible from outside the site. It would not cause substantial harm to the landscape but it would result in the permanent loss of a small part of the CNP (that policy presumes would not be built on).
33. For all of the above reasons, the proposal does not comply with Policy NE 6 and it raises associated tensions with the other policies cited in the refusal reason. There are no exceptional reasons that would provide sufficient justification for departing from Policy NE 6. Accordingly, the Minister is recommended to dismiss this appeal and uphold the decision made by the Department of the Environment dated 17 March 2016 (Reference P/2015/1838).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI