

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: Ms. C. Watson

AGAINST: Refusal to grant retrospective planning permission to '*Install flue to South elevation.*' Decision dated 19 May 2016.

LOCATION: Le Coin Farmhouse, La Route de St. Jean, St Lawrence, JE3 1ND.

REFERENCE: P/2016/0299

APPEAL PROCEDURE: Written Representations

SITE VISIT: 8 July 2016

DATE: 10 August 2016

Introduction

1. This report contains my assessment of the appeal made by Ms. C. Watson against the decision of the Department of the Environment to refuse to grant retrospective planning permission for an external flue on the front (south) elevation of her home at Le Coin Farmhouse in St Lawrence.
2. The Appellant's home is the main part of a Victorian former farmhouse. There are adjoining wings either side (The Cottage and Beau Coin) which are now separately occupied as dwellings i.e. the original farmhouse is now one large house and two smaller adjoining dwellings. There are other dwellings to the north, west and east. The setting is distinctly rural and these dwellings, which number about a dozen, sit as a cluster within the surrounding agricultural fields.
3. The former farmhouse is Grade 4 Listed. The Statement of Significance set out in the Listing Schedule identifies *"a mid C19 farm house retaining original exterior features."* The accompanying detailed description includes the following key features: *"former 5 bay, 2 storey farm house...with single-storey wings on either side...pitched slate roofs....central 5-bays with crested ridge tiles and pair of rendered chimneys with moulded cornice.....front (south) elevation: walls rendered with rusticated quoins, inset panel to upper floor of west wing. Windows mostly 12 pane (6/6)...."*
4. For ease of reference, I have reproduced the photograph from the Listing Schedule below, which captures many of the features of note. Parts of the dwellings either side are also visible (these also fall within the Listing). The flue extract is at ground floor level on the right hand side, effectively within the top of the hedge in the photograph.



Planning History and the Appeal Proposal

5. I have not been appraised of the Planning history concerning the subdivision of the farmhouse itself or the development of the dwellings to the rear. However, these developments appear to have occurred some time ago.
6. With regard to the appeal proposal, I understand that a previous occupier installed a new central heating boiler and an associated flue, which runs through a hole cut in the kitchen wall. The flue emerges externally on the principal (south) elevation of the house, close to its eastern stone quoin (the right hand corner when viewed from the front). There was no application for planning permission and the works were unauthorised.
7. The photograph below (taken on my recent site inspection) shows the unauthorised works. The flue emerges about 2 metres above ground level and about 0.5 metres from the corner of the building, beyond which is the neighbour's conservatory.



8. There have been two separate applications seeking to regularise these unauthorised works.
9. The first application, P/2015/0977, was refused on 7th August 2015 for the following reasons:

1. The flue is positioned at a low level and on the principal elevation of a Potential Listed Building, thereby detrimentally affecting both the historic fabric and appearance of the property. The installation of the flue in this position does not preserve or enhance the property and is contrary to Policies SP4, HE1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).

2. The position of the flue is in close proximity to the neighbouring property on the eastern side of the site leading to concerns of fumes, gases and odours affecting the neighbouring property and causing unreasonable harm to the occupiers thereof, contrary to Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

10. An informative was added to the decision, which stated "*the applicant and owner are advised to remove the unauthorized flue, block the hole and to make good the area to match the finish and colour of the adjacent wall.*"
11. The second, application was submitted in March 2016 under P/2016/0299. To all intents and purposes it was identical to the earlier application (some technical information about the boiler installation and servicing had been added). The Department refused the application for similar, but not identical, reasons as the earlier application. Reason 1 remained the same but, in Reason 2, 'noise' was added to the list of concerns affecting the neighbouring property. The current appeal is lodged against this refusal.

The Appellant's grounds of appeal

12. The Appellant's grounds of appeal are straightforward. She contends that a previous owner installed the flue and, when the house was acquired, the Planning department did not raise any issues in response to lawyers checks and questions. She further contends that the States' Heritage officers have raised no objection and that there are no health effects arising from the flue. Accordingly, she requests that the decision be reconsidered.

The Department's Response

13. The Department rebuts the Appellant's grounds of appeal. It says that a Legal Search would only disclose known Planning applications and known breaches and it was unaware of the unauthorised works at the time.
14. It contends that the decision to refuse permission, due to the effect on the historic fabric of the Listed Building and amenity impacts on the neighbouring property, was justified. It further explains that the issues and concerns were brought to the attention of the Applicant and a number of opportunities were given to consider the submission of amendments to address the concerns.

The neighbour's views

15. The immediate neighbour to the east (The Cottage) objects to the development and considers that it causes a nuisance in terms of noise, fumes and vapour. The noise is said to be low frequency and 'approximately 72 decibels' and quite audible in the courtyard garden and from rooms within the cottage. The neighbour says there are occasional vapour plumes emitted which pass the conservatory and that fumes can be smelled and that these will include harmful gases and substances. The neighbour also raises matters concerning site boundaries and the site history.

The main issues and assessment against Island Plan 2011 (Revised 2014) policies

16. There are two main Planning issues arising from the installed flue. These are i) the impact of the flue on the Listed Building and ii) the impact on the amenities of the neighbouring property. However, before I address these issues, some comment is necessary on the background and matters of responsibility, as these do feature in the grounds of appeal and some of the responses from other parties.

Responsibility for the flue and the Planning implications arising

17. I do not doubt that the installation of the central heating boiler and the associated flue pre-dated the Appellant's occupancy. I do also recognise that it was an inherited and unexpected problem. However, when the house was purchased the Department was not at fault for not identifying a breach of Planning control, as it simply had no knowledge of the works. The issues of liability are not matters for this appeal and will no doubt fall to be resolved between the current owner, the former owner and the heating contractor.

Impact on the Listed Building

18. Grade 4 is the lowest non statutory grade under Jersey's Listing system. It protects the exterior features of the building. Le Coin Farmhouse is, without doubt, a handsome mid-nineteenth century property and its largely intact and unaltered principal elevation is one of the main features justifying its protection.
19. That statutory protection through the Listing status is supported by the Island Plan's policies. The strategic Policy SP 4 provides a high level of protection of the Island's historic environment, including heritage assets. Policy HE 1 states that there will be a presumption in favour of preserving and enhancing the special interest of Listed buildings and places, and their settings. It states that proposals that do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved.
20. Given the building's protection and these policies, it is clearly unfortunate that a large hole (approximately 250 mm in diameter) was drilled through the historic fabric and the flue installed without planning permission. However, there are a number of mitigating factors and pragmatic issues

that need to be considered. First, the long term condition and security of Listed buildings is best ensured by active use and, for dwellings, they need to be 'liveable' and that will necessitate the accommodation of a modern heating system (and its associated paraphernalia). Second, given the location of the kitchen and the fact that the original chimney is in use (for an Aga cooker) it would be difficult to vent the boiler in a different direction. Third, the subdivision of the original farmhouse compounds this practical difficulty, as it prevents a more discreet extraction path to the east (as that would impinge directly into the neighbour's property). Fourth, the location of the flue is screened by the hedge and is not readily discernible when viewed from the front boundary of the property.

21. Overall, in terms of heritage impact, I share the view of the Historic Environment Team that, whilst not ideal, the flue is not visually disruptive to the whole facade. There is clearly some harm but it is less than substantial and, in these particular circumstances, I do not consider that a refusal based primarily on Policy HE 1, would be justified. Accordingly, I consider that the appeal against Reason 1 should succeed.

Impact on the neighbour's amenity

22. Whilst the siting of the flue may be seen as the 'least worst' from a heritage perspective, its low height and very close proximity to the neighbour's boundary does create amenity considerations.
23. The Island Plan's Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, protection of the historic environment, impact on the amenities of neighbouring uses and occupiers, economic impact, reducing dependence on the car and design quality.
24. With regard to amenity impacts, Policy GD 1 states (under 3.c) that developments must:

"...not adversely affect the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions"
25. I am guided here by the expert technical opinions of officers that have assessed the flue from a nuisance perspective. Although the Statutory Nuisance¹ criteria and assessment is separate from a strict Planning assessment, it is nonetheless a useful yardstick. That is to say, if a development were predicted to lead to a statutory nuisance arising from one of the sources listed in GD 1, it is unlikely to be acceptable in Planning terms (under Policy GD 1 at least).
26. Environmental Health officers have serious concerns about the flue. Although it appears that, if properly maintained, enforcement against fumes or gases would not be likely, there remain concerns about noise and odours. With regard to noise, an Environmental Health officer carried out an

¹ As defined under The Statutory Nuisance (Jersey) Law 1999

assessment against the British Standard (BS4142) to support his professional opinion. He found that *'the noise from the flue failed that assessment by a considerable margin'*² and Environmental Health officers consider the likelihood of complaints concerning noise and odours to be high.

27. Environmental Health officers also point out that, even if permission were granted, the nuisance legislation would still apply and, ultimately, enforcement action could require abatement measures that, in themselves, would require planning permission.
28. Based on the evidence, the appeal proposal fails the Policy GD 1 amenity tests and the appeal in this respect (Reason 2) should be dismissed.

Finding a solution

29. It is unfortunate that opportunities to consider amendments to the scheme have not been progressed to date. From my review of the paperwork in this case, it does appear that the Planning case officer did her utmost to make the Applicant aware of the issues and present opportunities to seek solutions.
30. In my view, there needs to be a proper exploration of technical options to adapt and alter the flue to address the concerns identified, whilst, at the same time, ensuring that any visual disruption to the appearance of the Listed building is kept to a minimum. This is far preferable to a more draconian option of relocating the boiler to another location within the house.
31. It may well be the case that there is a need to fit silencers and / or some ducting to create a higher point of extract. If that is so, the heritage impact will be increased. A careful balance needs to be struck.
32. It is not my role to design a solution but, should the Minister endorse my recommendation, I would urge the Appellant to engage a specialist engineer and seek to negotiate an acceptable technical solution with officers. This can then become the basis of a further, and hopefully final, retrospective application. Failure to do so in a timely manner will leave the Department with little option but to consider Planning enforcement proceedings.

Conclusion and recommendations

33. This unfortunate case illustrates the problems that can arise when development is undertaken without the required Planning Permission. I do appreciate that the Appellant may feel a sense of injustice, having inherited the consequences of the actions of others. However, my assessment must be based on strict Planning considerations.
34. With regard to heritage matters, I am satisfied that, in this particular case, it would be unreasonable to withhold planning permission based on Policy HE 1 considerations. However, I consider the amenity implications arising to

² Mr Brown's (Environmental Health Officer) email of 4 May 2016

be unacceptable and I recommend that the appeal should be dismissed on this basis. My formal recommendation is set out below:

Recommendation: That the decision on Planning application P/2016/0299 be varied to delete reason 1 but that reason 2 be maintained and the appeal be **dismissed** on this basis.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI