

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

**Appeal under Article 108 against a decision made under Article 19 to  
refuse planning permission**

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

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**Appellants:**

Mr A Bullock & Mrs R McMicking

**Application reference number and date:**

P/2015/1682 dated 5 November 2015

**Decision Notice date:**

21 April 2016

**Site address:**

La Moye Point, Le Chemin des Signaux, St. Brelade JE3 8LQ

**Development proposed:**

"Demolish existing dwelling and construct 1 No. five bed dwelling with integral one bed staff unit. Construct three car garage, swimming pool, pergolas, various terracing and associated landscaping." The development proposed also includes ecological works within the landholding.

**Inspector's inspection dates:**

9 August 2016 (on site) and 12 August 2016 (from out to sea)

**Hearing date:**

10 August 2016

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**Introduction**

1. This is an appeal by the applicants against the refusal by the Planning Applications Committee to grant planning permission for the development described above. The Department of the Environment had recommended approval subject to standard conditions and further conditions relating to landscaping, ecological protection and external appearance.

2. One reason was given for the refusal of planning permission, as follows: -

“The overall size and scale of the proposed dwelling would significantly exceed that of the existing dwelling to be replaced and, together with the proposed relocation of the dwelling closer to the headland, this would result in additional harm within the Coastal National Park. Notwithstanding the other benefits of the proposed development – including an improvement in design quality, some reductions in visual impact and a programme for the removal of the invasive Hottentot Fig species – the increase and relocation are not considered to be justified. Accordingly, the application fails to satisfy the requirements of Policy NE 6 of the 2011 Island Plan (revised 2014).”

### **Description of the site and its surroundings**

3. The house is a substantial part two-storey, part single-storey, property with white rendered walls and a pitched roof. It is in an elevated coastal position and enjoys a wide-ranging outlook over a headland and out to sea. The appellants' total landholding here is extensive; as well as the house and its curtilage, it includes a large area of the headland and it takes in part of a site of special ecological interest and an Occupation observation post and searchlight shelter.
4. The house is not visible from any land to which the public have access. It is, however, prominent when observed from out to sea and can be viewed from passenger ferries going to and from St. Helier.
5. Access to the house is by way of a private road leading from Le Chemin des Signaux. This road is also used by another dwelling, Echo des Vagues, which is surrounded by land in the appellants' landholding.

### **Details of the proposed development**

6. The house would be demolished and replaced by a U-shaped, predominantly two-storey, dwelling that would have a floor area about 30% larger than the existing house. The bulk of the new dwelling would be located where the existing house stands, but the 'limbs' of the U-shape would extend a few metres closer to the headland, although they would still be within the confines of the existing domestic curtilage between the house and the headland.
7. The new dwelling would be finished in stone to blend in with the headland and the 'limbs' would have flat, 'green' roofs. Trees forming a backdrop to the house would be retained and there would be new landscaping. The proposed ecological works include the removal of a significant proportion of the invasive Hottentot fig plant that has colonised part of the headland.
8. The proposals are supported by a detailed set of drawings and visuals and the following documents - Planning and Design Statement; Design Description; Landscape Plan and Method Statement; Visual Landscape Impact Appraisal; Initial Ecological Assessment; Hottentot Management Plan; and Occupation Structure Condition Survey.

### **Summary of the appellants' case**

9. The appellants maintain that the visual impact of the new dwelling would be less than that of the existing house and that there would be substantial

environmental improvements. In their opinion there is sufficient justification to make an exception to Policy NE 6. They maintain that the Committee attributed too much weight to the increase in floor area; that the new dwelling will blend into the landscape when viewed from out to sea; and that it will not be significantly closer to the headland.

10. The appellants add that the existing house is in a poor state of repair, has poor quality extensions and a poor carbon footprint; the new dwelling would be built to current standards and would have a significant lower carbon footprint. They state that the Jersey Architecture Commission have endorsed the design approach of the new dwelling as being exemplary.
11. Furthermore, the appellants maintain that the decision to refuse permission for the new dwelling is inconsistent with two other recent permissions, which have been granted for replacement dwellings in the Coastal National Park after taking into account Policy NE 6 (as revised in 2014). The first of these is at Petit Saut, La Route de la Côte, St. Martin (P/2014/0724), where they state that a replacement dwelling 30% larger than the existing dwelling has been approved by the Minister in a location open to public view, on the ground that there would be a reduction in visual impact. The second is at Mudros, La Rue Voisin, St. Brelade (P/2016/0144) where they state that a replacement dwelling more than 30% larger than the existing dwelling has been approved by the Committee in a location on the side of a hill fronting the beach, on the grounds that there would be landscape improvements and improvements in the design of the dwelling.

### **Summary of the Department of the Environment's case**

12. The Department state that their recommendation was finely balanced and that it was not at all unreasonable for the Committee to take a different view, in view of the high protection afforded to the Coastal National Park. The Committee fully understood the various factors involved in the appellants' case, but having weighed these in the balance they came to a different view and concluded that the provisions of Policy NE 6 would not be satisfied.
13. As to decisions made elsewhere, the Department consider that the focus must be on the application site and the circumstances that arise here, which are considered to be materially different to the other sites.

### **Summary of representations made by others**

14. At the application stage, four letters of objection and five letters of support were received. Amongst other matters, the objectors maintained that the design of the new dwelling was unsuitable, the existing house was not beyond repair and the increase in scale was not acceptable. The supporters referred to the prominence of the existing house and to the visual improvement that the new dwelling would bring about.
15. Two of the objectors and one of the supporters made contributions during the appeal process. The objectors focused on the importance of Policy NE 6 and the increase in the size of the new dwelling compared to the existing house; they maintained that the other decisions were not relevant. The supporter focused on the visual improvement which he considered would occur if the proposals were approved.

## **The main issue in the appeal**

16. In my opinion, the main issue in the appeal is the effect the proposed development would have on this part of the Coastal National Park. In order to reach a conclusion on this issue, I have set out below relevant extracts from the reasoned justification in the Island Plan for Policy NE 6 and from the policy itself. I have then assessed the proposed development against these extracts and reached a conclusion on the balancing exercise required in this instance. The weight to be attached to the various considerations that arise is, in the final analysis, a matter for the Minister to determine as the decision-maker.

## **The Coastal National Park: Policy NE 6 and the reasoned justification for it**

17. (Island Plan, paragraph 2.55). The Coastal National Park “embraces all those parts of the Island of highly sensitive and valuable landscape quality, vulnerable to change and damage, which warrant the highest level of protection against development”. The part containing the appeal site is specifically mentioned as follows: “the south-western headlands with their spectacular coastal scenery and sense of wilderness, geological and geomorphological features, birdlife and exceptional habitats, archaeological sites, common land, modern fortifications and high recreational value”.
18. (Paragraphs 2.56 & 2.57). One of the primary purposes of the Coastal National Park is “the conservation and enhancement of [its] natural beauty, wildlife and cultural heritage.” “The purpose of planning policy in the Coastal National Park is to provide the highest level of protection against development” in order to support this primary purpose.
19. (Paragraph 2.58). “Whilst there is the strongest presumption against new uses or buildings that would detract from its landscape character, there may be opportunity to secure the repair and restoration of natural beauty, wildlife and cultural heritage through exceptions where the development of existing buildings or land uses provide opportunities to repair or reduce their existing harm to landscape character.”
20. (Paragraphs 2.59 & 2.60). “There is also a need to provide for the reasonable expectation of residents to improve their homes ... having regard to the capacity of the landscape to accommodate development without harm. Accordingly, Policy NE6 sets a strong presumption but not an absolute moratorium against development within the Park: the key test is the capacity of the site and its context to accommodate development without harm to landscape character. This is the starting point for the consideration of development proposals. The following categories may, exceptionally, be considered though not all cases will be acceptable.” The Plan then identifies certain forms of residential development: the following extracts are relevant to the appeal.
21. (Residential 2.61 & 2.66 to 2.68). “It would be unreasonable to resist all forms of development to improve people’s homes. The following forms of development related to residential land use and buildings may be permitted as exceptions to the strong presumption against development here, but only where it does not cause harm to landscape character”. One of these is the redevelopment of existing dwellings: “The principle of demolition and replacement of existing dwellings is supported only where demonstrable environmental gains can be delivered. Comprehensive proposals of this type

can offer the possibility of repairing and restoring landscape character which might be achieved by environmental gains including some or all of: reduced visual scale, mass and volume of a building; more sensitive and sympathetic siting and design; materials, colours and finishes more sensitive to the character area [*sic*]. In all cases, replacement buildings should not be larger than that being replaced in terms of any of gross floorspace, building footprint or visual impact, and should not facilitate a significant increase in occupancy."

22. (Policy NE 6). The policy states that one of the primary purposes of the Coastal National Park is "the conservation and enhancement of [its] natural beauty, wildlife and cultural heritage". It states that the Coastal National Park "will be given the highest level of protection from development and this will normally be given priority over all other planning considerations". It adds, "there will be the strongest presumption against all forms of development, including but not limited to" a list that includes "the development of a new dwelling (other than as a replacement under 2 ... below".

"2" is as follows: -

- "2. the redevelopment of an existing dwelling and/or an existing ancillary residential building and/or structure, involving demolition and replacement, but only where the proposal would:
- a. not be larger in terms of any gross floorspace, building footprint or visual impact than the building being replaced;
  - b. not facilitate a significant increase in occupancy; and
  - c. give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character".

### **Inspector's assessments**

23. Consistency is important in planning decisions, but I do not consider that the decision to refuse planning permission in this appeal and the decisions to approve applications P/2014/0724 and P/2016/0144 are inconsistent. All three decisions are consistent in that they take into account the word "normally" in Policy NE 6 and weigh up the provisions of Policy NE 6 holistically; they then reach a balanced conclusion on the planning merits, based on the particular proposals put forward and the particular circumstances of the application site and its surroundings. I have adopted the same approach in this report.

24. My assessment of the proposed development against the extracts from the Island Plan set out in paragraphs 17 to 22 above is as follows: -

(Paragraph 2.55). The description is one that is apt to describe the appeal site and its surroundings, with the exception that there are two houses already here, which arguably detract from the landscape quality.

(Paragraph 2.56 & 2.57). The existing house is a very obvious feature in the landscape, particularly when viewed from out to sea. The design and appearance of the new dwelling would be far superior so far as its visual impact on the Coastal National Park is concerned. To this extent it would support the primary purpose.

(Paragraph 2.58). The opportunity arises in this appeal to approve development that includes landscape improvements and the eradication

of some of the invasive Hottentot fig, which is damaging to the natural plant life of this part of the Coastal National Park.

(Paragraphs 2.59 & 2.60). The key test would be satisfied because the landscape character would be improved. The fact that parts of the new dwelling would extend further towards the headland (see paragraph 6 above) would not in my view have a noticeable effect on the landscape, since it would take place within the existing domestic curtilage.

(Residential 2.61 and 2.66 to 2.68). Demonstrable environmental gains will be delivered in this instance. These include reduced visual impact, more sensitive and sympathetic design, and the use of materials more sensitive to the character of the area. The new dwelling would however be 30% larger than the existing house in terms of gross floor space, although it would not be as high overall and it would not facilitate a significant increase in occupancy. The building's footprint would also be larger, but this would not be obvious in view of the radically-different design and layout of the new dwelling compared to the existing house.

(Policy NE 6). The Committee took the view that the benefits of the proposed development would not outweigh the harm to the Coastal National Park, which they considered would arise from the overall size and scale of the new dwelling and its location closer to the headland. For the reason given above, I attach little weight to its siting closer to the headland. It seems to me that, applying the approach I have spelt out in paragraph 23 above and having regard to the assessments I have made above, the proposed development would in fact improve the appearance of the Coastal National Park and taken as a whole should be supported as being, on balance, within the provisions of Policy NE 6.

### **Inspector's conclusion**

25. For the above reasons, I have concluded that the appeal should be allowed and that planning permission should be granted.

### **Planning conditions**

26. Should the Minister be minded to allow the appeal and grant planning permission, it has been agreed by the parties that the planning conditions recommended by the Department in their report to the Committee should be imposed, together with three additional conditions that were drawn up and agreed following discussions at the hearing. All these conditions are required, in my view, for the reasons given in my recommendation. I have made some minor drafting changes to the agreed conditions.

### **Inspector's recommendation**

27. I recommend that in exercise of the powers contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended): -

(i) the appeal be allowed in full; and

(ii) planning permission be granted for development at La Moye Point, Le Chemin des Signaux, St. Brelade JE3 8LQ consisting of the demolition of the existing house and the construction of a five-bedroom dwelling with an

integral one-bedroom staff unit, a three-car garage, a swimming pool, pergolas, terracing, associated landscaping, and ecological works within the landholding, in accordance with the application reference P/2015/1682 dated 5 November 2015 and the plans submitted therewith, subject to the following conditions: -

1. The development shall commence within 5 years of the decision date.

Reason: Standard time limit to facilitate reconsideration of the development in the light of any material change in circumstances.

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

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

3. Prior to commencement of the development hereby approved, a scheme of landscaping shall be submitted to and approved in writing by the Department of the Environment. The scheme of landscaping shall provide details of the following; a) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site; b) the position of all new trees and/or shrubs (this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them); c) other landscape treatments to be carried out, including any excavation works, surfacing treatments, or means of enclosure; d) the measures to be taken to protect existing trees and shrubs; e) the presence of any invasive plant species on site, and if present, a detailed method statement for the removal and long-term management/eradication of the species; and f) a landscape management plan for the maintenance of the landscaped areas. Once agreed in writing, the approved scheme shall be implemented in full and thereafter retained and maintained as such.

Reason: To safeguard the character and appearance of the area in accordance with Policies GD 1, NE 1, NE 2 and NE 4 of the Island Plan 2011 (Revised 2014).

4. All of the findings and required mitigation measures outlined in the Ecological Assessment and Hottentot Fig Management Plan shall be undertaken prior to the commencement of the development hereby approved, continued throughout the phases of development (where applicable), and thereafter retained and maintained as such. In addition, the further measures required by the Natural Environment Team of the Department of the Environment, as set out within its consultation response dated 12/11/15, shall be adhered to. Any variations that may be required as a result of findings on site are to be agreed in writing by the Department of the Environment prior to works being undertaken.

Reason: To ensure the protection of all protected species in accordance with Policies NE 1, NE 2 and NE 4 of the Island Plan 2011 (Revised 2014).

5. Prior to the commencement of the development hereby permitted, samples of all of the external materials to be used shall be submitted to, and approved in writing by, the Department of the Environment. High quality photographic evidence may be sufficient for some items. In addition, prior to the commencement of the construction of the external granite walls, a sample panel, measuring not less than 1m x 2m, shall be constructed on the site and made available for inspection. Thereafter, the approved details shall be implemented in full and thereafter retained and maintained as such.

Reason: To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD 1 and GD 7 of the Island Plan 2011 (Revised 2014).

6. The unit of staff accommodation shown on the approved drawings shall only be occupied by staff employed on the site for the maintenance of the property or the care of the occupiers of the main house on the site, or by guests of the occupiers of that main house, and shall not be occupied as a separate independent unit. No separate garden or parking facilities shall be created for the unit.

Reason: The creation of a second, independent unit of accommodation would be in conflict with the strong presumption against development in the Coastal National Park and the subdivision of the site could have a damaging impact on the setting of the main house, the quality of the approved development, and character and appearance of the Coastal National Park within which the site lies, and so fail to comply with the provisions of Policies GD 1, GD 7 and NE 6 of the 2011 Island Plan (Revised 2014).

7. The authorised residential curtilage is the area outlined in red on the approved drawing MSP-2013-PL05 (Proposed Site Plan), and not the entire area in the applicants' ownership outlined in red on the submitted Location Plan.

Reason: For the avoidance of doubt and to ensure that no domestic development is undertaken upon, nor any domestic use made of, the area outside the authorised residential curtilage, such as would be likely to be damaging to the character of the area and the Coastal National Park, and thereby conflict with the provisions of Policies GD 1 and NE 6 of the 2011 Island Plan (Revised 2014).

8. Notwithstanding the provisions of the Planning and Building (General Development (Jersey) Order 2011, or any amendment to or replacement of that Order, no works involving the construction of an extension or outbuilding shall be constructed without the submission and approval of a planning application for such.

Reason: Permission has been granted for development that has an increase in floor area and footprint, compared to the existing house, after taking into account the development's high-quality design and the landscape improvements that would take place. The construction of extensions and outbuildings could have an unacceptable impact on the character and appearance of the area and the Coastal National



Park, contrary to Policies GD 1, GD 7 and NE 6 of the 2011 Island Plan  
(Revised 2014).

Dated 1 October 2016

*D.A.Hainsworth*  
Inspector