

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

Appellant:

Mr N Bassford

Application reference number and date:

RW/2016/0466 dated 8 April 2016

Decision Notice date:

26 May 2016

Site address:

9 Parade Road, St. Helier JE2 3PL

The development:

The replacement of two single-glazed timber French windows in the south-west elevation of the house with double-glazed uPVC French windows.

Inspector's site visit date:

7 September 2016

Hearing date:

8 September 2016

Procedural matters

1. On 27 July 2016, the Judicial Greffe notified the appellant of the arrangements made for the site visit and the hearing.
2. The appellant was not present when I arrived, as notified, for the site visit and no-one answered the door of the house. As I could see

everything I needed to see from the pavement, I asked the Department of the Environment's representatives to leave and I conducted the site visit unaccompanied by anyone. As well as looking at the windows the subject of the appeal, I looked from the pavement at other properties in the vicinity that the appellant had drawn to my attention.

3. The Judicial Greffe contacted the appellant by telephone on the morning of the following day. The appellant indicated that he had decided not to attend either the site visit or the hearing.
4. I opened the hearing in the afternoon that day, as notified. The only persons to attend were two representatives of the Department. I heard the Department's case and questioned their representatives about it. I put the appellant's case to the Department's representatives and they responded. I then closed the hearing.
5. I am satisfied that the appeal process has been conducted fairly and in accordance with the 2002 Law (as amended), and that I have all the information I need to make this report.

Introduction

6. This is an appeal by the applicant against the decision of the Department of the Environment to refuse planning permission for the development described above. The development has already been carried out.
7. 9 Parade Road is a mid-19th century semi-detached house on the northern side of the road, where there is a row of similar pairs. It was a "Potential Listed Building" when the development was carried out and the decision to refuse planning permission was issued. Parts of its architectural and historic interest were the two ground-floor French windows facing the road that have since been replaced by the double-glazed uPVC French windows the subject of this appeal. Planning permission was required for these works, because the permitted development right that generally exists to replace windows in a house is specifically excluded where the house is a "Potential Listed Building".
8. The reason given for the refusal of planning permission is as follows: -

"Policies SP4, HE1 and HE2 of The Adopted Island Plan, 2011 (Revised 2014) place an emphasis upon preserving the historic fabric of protected buildings and preventing insensitive and unsuitable alterations. In the first instance a clear justification must be provided to demonstrate that repair is not possible. No such justification to support the removal of the two historic french windows has been provided. It is considered that the loss of these integral historic features fails to preserve the special interest of this protected building. Moreover, by virtue of their proportions and heavy visual weight the replacement upvc window units fail to replicate the historic timber units and serve to further erode the character of the building. The proposals are therefore

contrary to policies SP4, HE1, HE2 and GD1 of The Adopted Island Plan, 2011 (Revised 2014) and Supplementary Planning Guidance, Planning Policy Note 2, Windows and Doors in Historic Buildings (2008).”

The case for the appellant

9. The appellant states that the French windows he replaced were not originals, they were warped, the wood was rotten and had been painted over to mask the damage, and every time it rained heavily both windows would leak at the bottom resulting in pools of water in the lounge. Also, energy costs were very high due to draughts.
10. The appellant maintains that several other properties in the vicinity have windows in a state of disrepair and visibly rotten and that there are five identical properties in Parade Road that have at least one uPVC window or door, including the recently refurbished Monaco Hotel. He has supplied photographs in support of this claim.
11. The appellant apologises for carrying out the works without planning permission, which he indicates was due to his misunderstanding about the implications of the designation “Potential Listed Building”. He thought this meant that, if the house became listed in the future, permission might be required and believes he should have been provided with more information when he bought the house. He states that he is not in a financial position to replace the new French windows with wooden ones.

The case for the Department of the Environment

12. The Department state that Policy HE 2 of the Island Plan specifically seeks to protect windows and doors in historic buildings and aims to retain and repair them wherever possible. They indicate that this objective is explained in more detail in Supplementary Planning Guidance Note 2 *Windows and Doors in Historic Buildings (their repair and replacement)* (June 2008) and in Supplementary Planning Guidance Advice Note 6 *Managing change in historic buildings* (also June 2008).
13. The Department state that the building's significance is that it is a good example of a mid-19th century villa, with many original external features, and forming one of a pair. They indicate that it contributes to the street scene as one of many similar pairs in Parade Road.
14. The Department maintain that the works have resulted in the loss of two historic French windows with margin lights and elegant thin timber frames, and their replacement with bulky plastic frames. They state that this has altered the proportions and the appearance of the French windows significantly, to the detriment of the character and integrity of the house and its setting in the streetscape.
15. The Department indicate that the Guidance seeks to protect heritage assets from insensitive and unsuitable alterations and calls for a clear

justification before historic windows are replaced. They point out that a detailed report from a competent joiner or surveyor is required, along with evidence that the windows could not be repaired, and that no such information has been provided in this instance.

16. The Department indicate that there are acceptable means of repairing or replacing French windows of this kind, which provide thermal efficiency and security as well as meeting the policy criteria. They acknowledge that costs are higher and offer to inspect properties and discuss acceptable options with the owners.

Other representations

17. The National Trust for Jersey have commented that the new windows are not in keeping with the building and could have an impact on neighbouring properties and the streetscape.

The planning policy framework

18. Paragraph 3.9 of the Island Plan indicates that the identification of a heritage asset as a "Potential Listed Building" is intended to signify its contribution to the heritage and amenity of Jersey and that the planning policy framework ensures that the impact of development on such an asset is a material consideration in the planning process.
19. Policy SP 4 states that a high priority will be given to the protection of the Island's historic environment and that the protection of the Island's historic buildings, which contribute to and define its unique character and identity, will be key material considerations in the determination of planning applications.
20. Policy HE 2 deals specifically with historic windows and doors. It states that all existing historic windows and doors in historic buildings should be repaired, wherever possible, using materials and details to match the existing. It adds that, where repair is impracticable or where previous replacements are being replaced again, replacements that do not carefully replicate or restore the historic windows or doors in terms of materials, method of opening, proportions, dimensions, visual weight, decorative details and finish, will not be approved.
21. Although Policy HE 2 states that replacements will not be approved in certain circumstances, the development the subject of this appeal must nevertheless be considered on its planning merits. All material planning considerations must be taken into account, including relevant published guidelines, and planning permission may be granted notwithstanding the wording of the policy if there is sufficient justification to do so.
22. Supplementary Planning Guidance Note 2 points out that historic windows and doors are an integral part of buildings and add to their special character, and that a change to their style or appearance can disrupt the overall appearance and harmony of the building and detract

from the character of a street. It indicates that it is often the fine detail that is important, such as the thickness of glazing bars, the dimensions of frames and the materials used.

23. Supplementary Planning Guidance Note 6 indicates that, as a rule, windows in historic buildings should be repaired or, if beyond repair, should be replaced "like for like".

Inspector's assessments and conclusions

24. The windows replaced were historic eight-pane French windows with margin lights and thin timber frames, with the exception of the top-hung opening panes above the doors, which were later additions. (I have drawn this conclusion from the "before" photograph supplied and the evidence provided by the Department, and by looking at the adjoining semi-detached house, which has French windows in the same positions that have not been altered.)
25. The replacement French windows have wider frames; the glass is set within broad surrounds; the margin lights have not been replicated; and the material used for the frames and surrounds is uPVC. The main attribute of the previous windows was their elegance; the dominant characteristic of the replacement windows is the frames and surrounds.
26. At my site visit I looked from the pavement at other properties in Parade Road and at the properties to which the appellant has drawn attention. There are windows in houses that have a similar style to the appellant's where the historic interest has been retained and others where modern replacement windows have been installed. Some of the historic windows clearly require repainting or repair work and possibly replacement. The Department state that the Monaco Hotel works did not involve new windows affecting its listed status. The BBC property has modern windows, but they look like part of a substantial building conversion scheme. Fig Tree House has a recessed modern link section between historic frontages.
27. All planning proposals are considered on their individual merits, having regard to the specific circumstances and policies applying at the time of the application. I am not aware of any inconsistencies in the way proposals have been dealt with in Parade Road.
28. I appreciate that the appellant undertook the works without realising that he needed planning permission, although information about the status of the house and permitted development rights was publicly available at the time and could have been obtained by making a routine enquiry. I have also taken into account the appellant's financial position and the drawbacks with the previous windows he has referred to. These drawbacks are not visible in the "before" photograph, which was taken from the road; I assume they would have been on closer inspection.

29. The works have caused harm to the historic character and appearance of the house and the historic matching character and appearance of the pair of houses. They have resulted in a reduction in the quality of the streetscape as a whole. The works are in conflict with Policies SP 4 and HE 2 and the guidance in Supplementary Guidance Notes 2 and 6 to which I have referred. After taking into account all the appellant's representations and all other material considerations that have arisen, I have concluded that there is insufficient justification to grant a planning permission that would be inconsistent with the policies.

Inspector's recommendation

30. For the above reasons, I recommend that, in exercise of the power contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended), the appeal should be dismissed. It has not been suggested that any planning conditions should be imposed if the Minister does not accept this recommendation and decides to grant planning permission, and I do not consider that any are required.

Dated 24 October 2016

D.A.Hainsworth

Inspector