

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

Appellants:

Ports of Jersey Ltd

Application reference number and date:

P/2016/0032 dated 11 January 2016

Decision Notice date:

19 May 2016

Site address:

Crane 13, West of depot on New North Quay, St. Helier Harbour, St. Helier.

Development proposed:

The demolition and removal of Crane 13.

Inspector's site visit date:

7 September 2016

Hearing date:

8 September 2016

Introduction

1. Crane 13 stands on the New North Quay, St. Helier Harbour, which is in public ownership. The Harbour is leased to the appellants, who are a States of Jersey wholly-owned company incorporated under law with the role of controlling and operating the Island's air and sea ports.

2. The crane is a 7-ton, rail-mounted crane with a level-luffing lifting mechanism. It has been out of operational service for some 20 years and was decommissioned around 2008. It was subsequently moved to its current position and the tracks it ran on have, for the most part, been removed or covered over.
3. The crane was listed as a Listed Building on 28 March 2008 (Historic Site Reference HE1833: Maritime structure). The listing particulars contain the following details: -

"Statement of significance

The oldest surviving crane in St Helier harbour, manufactured in 1949.

Historic interest

The oldest surviving crane in St Helier harbour. The original 19th century harbour cranes were steam driven, running on fairly narrow gauge. In the late 1920s they were re-powered by electric motors. During the Occupation, the Germans replaced them with larger cranes imported from France that ran on double rails of wider gauge - these cranes were returned to France after the war. The 7-ton rail-mounted level-luffing crane was manufactured in 1949 by renowned crane-makers Stothert & Pitt Ltd of Bath and installed at the harbour. It has moved from its original position as it currently sits at the pier head of New North Quay, which was widened in 1975."

4. The application to demolish and remove the crane was refused planning permission on 19 May 2016, in accordance with the recommendation of the Department of the Environment and after a review. Before the review took place, a request was made to the Minister for him to become involved but, making reference to the provisions of the 2002 Law as amended, he decided that the existing process should run its course.
5. The reason given for the refusal of planning permission is as follows: -

"By reference to the existence of other available options for the future of the crane, the application has failed to justify its demolition as a departure from the strong position of both policies SP4 and HE1 of the 2011 Jersey Island Plan (Amended 2014) which seeks to ensure that the special or particular interest of Listed buildings is to be preserved or enhanced, and also sets out that planning permission will not be granted for the demolition of a Listed building."

Island Plan Policies SP 4 and HE 1 and Supplementary Planning Guidance Advice Note 6

6. The parts of Policies SP 4 and HE 1 of relevance to this appeal are as follows: -

"Policy SP 4

Protecting the ... historic environment

A high priority will be given to the protection of the Island's ... historic environment. The protection of ... the Island's heritage assets – its ... historic buildings, structures and places – which contribute to and define its unique character and identity will be key material considerations in the determination of planning applications"

"Policy HE 1

Protecting Listed buildings and places

There will be a presumption in favour of the preservation of the architectural and historic character and integrity of Listed buildings and places, and their settings. Proposals which do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved.

Permission will not be granted for:

1. the total or partial demolition of a Listed building;
2. the removal of historic fabric ...;
3. ...;
4. extensions, alterations and changes which would adversely affect the architectural or historic interest or character of a Listed building or place, and its setting.

In those exceptional cases where there is a loss of the historic fabric of a Listed building or place, the Minister will ensure that the recording of that fabric to be lost is undertaken, as appropriate.

Applications for proposals affecting Listed buildings and places which do not provide sufficient information and detail to enable the likely impact of proposals to be considered, understood and evaluated, will be refused."

7. Although Policy HE 1 states that permission will not be granted for the demolition of a listed building, the application to demolish and remove the crane 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.

8. The Minister has published relevant guidelines. These are in Supplementary Planning Guidance Advice Note 6 *Managing Change in historic buildings*, which was published in 2008. Significant advice about demolition is on pages 3, 4, 10 and 11 of the Guidance. These parts have been written primarily with conventional buildings in mind, but the principles are relevant to structures such as the crane as well. They are as follows: -

“There should be a general presumption in favour of the preservation of the character and integrity of protected buildings and sites, except where a convincing case can be made for alteration or demolition. While the protection of a building or site should not be seen as a bar to all future change, the starting point for the exercise of control is the requirement to have regard to the desirability of preserving the building, site or its setting or any features of particular architectural, archaeological or historic interest which it possesses. This reflects the great importance to society of protecting the historic built environment from unnecessary demolition and from unsuitable and insensitive alteration and should be the prime consideration for all those considering works to protected buildings and sites.”

“While it is an objective of Ministerial policy to secure the preservation of historic buildings, there will very occasionally be cases where demolition is unavoidable. Planning controls ensure that proposals for demolition are fully scrutinised before any decision is reached. These controls have been successful in keeping the number of total demolitions very low in recent years. The destruction of historic buildings is in fact very seldom necessary for reasons of good planning; more often it is the result of neglect, or of failure to make imaginative efforts to find new uses for them or to incorporate them into new development.

There are many outstanding buildings for which it is in practice almost inconceivable that consent for demolition would ever be granted. The demolition of any protected buildings should be wholly exceptional and should require the strongest justification. Indeed, the Minister would not expect consent to be given for the total or substantial demolition of any protected building without clear and convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed; that preservation in some form of charitable or community ownership is not possible or suitable; or that redevelopment would produce substantial benefits for the community which would excessively outweigh the loss resulting from demolition. The Minister would not expect consent for demolition to be given simply because

redevelopment is economically more attractive to the developer than repair and re-use of a historic building, or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the existing historic building.

Where proposed works would result in the total or substantial demolition of the protected building, or any significant part of it, the Minister would expect that, in addition to the general considerations set out, that the following considerations be addressed:

- 1 The condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use. Any such assessment should be based on consistent and long-term assumptions. Less favourable levels of rents and yields cannot automatically be assumed for historic building. Also, they may offer proven technical performance, physical attractiveness and functional spaces that, in an age of rapid change, may outlast the short-lived and inflexible technical specifications that have sometimes shaped new development. In the rare cases, where it is clear that a building has been deliberately neglected in the hope of obtaining consent for demolition, less weight should be given to the costs of repair.
- 2 The adequacy of efforts made to retain the building in use. The Minister would not expect consent to be granted for demolition unless he is satisfied that real efforts have been made without success to continue the present use or to find compatible alternative uses for the building. This should include the offer of the unrestricted freehold of the building at a realistic price reflecting the building's condition (the offer of a lease only, or the imposition of restrictive covenants, would normally reduce the chances of finding a new use for the building);
- 3 The merits of alternative proposals for the site. Whilst these are a material consideration, the Minister takes the view that subjective claims for the architectural merits of proposed replacement buildings should not in themselves be held to justify the demolition of any protected building. There may, very exceptionally, be cases where the proposed works would bring substantial benefits for the community which have to be weighted against the arguments in favour of preservation. Even here it will often be feasible to incorporate protected buildings within new development, and this option should be carefully considered; the challenge presented by retaining protected buildings can be a stimulus to imaginative new design to accommodate them."

The case for the Department of the Environment

9. The Department, in reliance on Policies SP 4 and HE 1 and the advice in the Guidance, state that the policy position is strongly against permitting the demolition of the crane. They maintain that to deviate from such a clear position, the decision-maker has to be satisfied that a policy exception can be justified, based on extraordinary circumstances.
10. The Department accept that the crane is in a poor condition and that it is a health and safety hazard, but they do not accept that the evidence supplied by the appellants shows that its immediate demolition is required. They state that there are available alternatives to demolition, namely making the crane safe where it is or relocating it elsewhere.

Representations made by others

11. Representations have been made by the National Trust for Jersey and by the stevedores who hold the Ports of Jersey Stevedoring licence.
12. The National Trust state that they have been advised that this type of crane is now very rare. They suggest that it could be restored and retained "perhaps as a percentage for Art".
13. The stevedores support the appeal and request that the crane be either removed to a less sensitive working area or scrapped, as soon as possible. They state that in its present position the crane brings pedestrians and vehicles into conflict and that high winds may cause damage to the crane and its surroundings if it is not correctly and regularly maintained.

The case for the appellants

14. The appellants maintain that there is no justifiable basis to refuse permission to demolish the crane. Their grounds of appeal state: -

"The Crane is obsolete and occupies operational space on a busy commercial quay. It is structurally unsound and poses serious health and safety issues. For the Crane to be made safe requires its complete dismantlement in situ and reconstruction from scratch with new components. The result would be a replica crane with no intrinsic historical value or public importance, and thus possessing no basis for it to be a listed building. The dismantlement and reconstruction will incur significant expense for which the Applicant has no available funds. The Crane occupies valuable work space within a finite work space resource available to the Applicant. There are no other viable locations for it within the Applicant's control and both Jersey Heritage and The National Trust have declined invitations to take the Crane into their possession."
15. The appellants point out that as a matter of law they must ensure that the crane is safe, but they maintain that they are prevented from

fulfilling this duty because any repair of the damaged parts requires permission. They claim that permission will not be granted because it will result in the loss of the crane's historic fabric.

16. The appellants point out that, although the reason for refusal refers to "the existence of other available options for the future of the crane", they have not put forward any, and they maintain that there are none. In their view, the Department have no evidence as to the availability or viability of either of the Department's claimed alternatives to demolition (making the crane safe where it is or relocating it elsewhere).
17. The appeal is accompanied by four reports commissioned by the appellants. They are "The Ramboll Report", "The RSA Report", "The NAS Report" and "The Hartigan Report". The conclusions drawn in these reports, summarised, are as follows: -

The Ramboll Report (January 2014)

This report was commissioned from consulting engineers to assess the options for the future of the crane. It notes that the crane has been out of service for some years and that it is certain that it will never be required for port operations in the future. The report concludes that the crane "will soon require considerable work to stop it quickly deteriorating. It makes sense to remove the crane before it becomes a danger. The crane is currently parked in a very congested area and the space that will be freed if the crane is removed will help operationally". The report recommends that the crane be removed from the quay. It notes "The most cost effective option would be to dismantle and scrap the crane ... If this is not an acceptable option due to the listed status or historical interest in the crane we would still recommend moving the crane to a less logistically sensitive part of the quay or preferably off the quay to a location where it can be viewed as a feature of historical interest..."

The RSA Report (April 2015)

This is a visual structural survey, which was commissioned from the States' insurers for the purpose of ascertaining "the current integrity of the structural components of the crane and to provide recommendations on what remedial action needs to be carried out to ensure confidence in the prolonged life of the structure". The survey recommends that "If it is deemed that the crane is not to be dismantled and taken out of service" a list of works should be carried out as a minimum. The survey concludes: -

"Due to the location and condition of the crane and its components we would recommend that the machine is dismantled and removed from the dock side at the soonest point. Any high winds or storms could cause further structural damage to the item. It is noted that there are a number of pleasure craft docked in close proximity to

the item which could be in danger of being subjected to falling objects.”

The NAS Report (December 2015)

This is an Asbestos Survey Report commissioned from NAS Laboratories, who are a UK-accredited asbestos consultancy and inspection body. The report states that materials containing asbestos were found in various parts of the crane that were surveyed. It contains a list of recommendations relating to the steps that should be taken prior to demolition work.

The Hartigan Report (April 2016)

This report was made available during the appeal process. It was commissioned in order to assess the condition of the crane and to consider any requirement for exclusion zones around it. Hartigan are a firm of consulting civil, structural, mechanical and electrical engineers.

The report notes, “Although surface corrosion was identified to several areas of the crane structure ... the visible deterioration did not appear to be structurally significant, and the main structure of the crane was not considered to be at risk of collapse”.

The report concludes as follows: -

“At this point in time, it is not considered likely that the primary structure of the crane will collapse under its own weight or as a result of wind loading. Secondary structural elements such as timber boarding and glazing to the cab are likely to have fixings that are deteriorating, and as a result could become dislodged during high winds. Due to their light-weight [*sic*], if these elements were to become dislodged, they could be blown a significant distance from the crane making the definition of an exclusion zone impractical. A more sensible approach would be to remove any redundant ancillary items such as search lights and weather vanes which may have inadequate fixings. The glazing and boarding could be sheathed with plywood fixed back to the primary structure to encapsulate the existing “loose” fabric of the cab. The plywood sheathing could in turn be covered in a non-perishable cladding.”

Inspector's assessments

18. An acceptable alternative site for the crane has not been identified at the present time and the proposal, if approved, would therefore result in the complete loss of the crane and its disposal as scrap material. The Guidance indicates that a convincing case should be demonstrated in these circumstances before applications are approved.
19. I do not find the appellants' case to be convincing, because: -

- The Ramboll Report and the Hartigan Report do not conclude that demolition is necessary for safety reasons. These reports are from independent consulting engineers and I attach more weight to them than I do to the RSA Report, which being from the States' insurers is, understandably, precautionary.
- The Hartigan Report suggests that certain measures could be taken to secure the safety of parts of the crane. These measures would not require the crane to be dismantled or reconstructed. Permission would probably be required, but no evidence has been produced in support of the appellants' assertion that it would not be granted.
- If the crane is removed from its present position, the site that it occupies will probably be used as an additional parking space for a lorry trailer. In its present position, I consider the crane to be an inconvenience to the appellants' undertaking, but in my opinion it does not interfere substantially with the operation of the Quay or bring vehicles and pedestrians into significant conflict.
- As I pointed out in paragraph 8 above, the Guidance has been written primarily with conventional buildings in mind, but the principles are relevant to structures such as the crane as well. In the case of the crane, an important consideration is its relocation, as an alternative to its demolition. In my opinion, the appellants should have thoroughly researched the possibility of relocating the crane before submitting their application to demolish it and should have produced detailed information in support of their assertion that relocation is not an option. The information presented is not adequate for this purpose.

Inspector's conclusion

20. There is insufficient justification to depart from the principles set out in Policies SP 4 and HE 1 of the Island Plan and in the Supplementary Planning Guidance Advice Note 6 *Managing Change in historic buildings*.

Inspector's recommendation

21. 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.

Planning conditions

22. If the Minister does not accept this recommendation and decides to grant planning permission, the following conditions should be imposed in addition to the standard conditions: -

Recording

Condition

Prior to the commencement of the development, a Project Design for a Standing Structure Assessment to record the existing structure to be demolished and to ensure an archive record exists in the public domain shall be submitted to and approved in writing by the Department of the Environment at the applicants' expense. Works shall be phased to allow full recording.

Reason

To ensure that special regard is paid to the interests of protecting the architectural and historical interest, character and integrity of the structure under the provisions of Policies SP 4 and HE 1 of the Island Plan.

Salvage

Condition

Prior to the commencement of the development, a scheme of Architectural Salvage shall be submitted to and approved in writing by the Department of the Environment at the applicants' expense. The development shall be undertaken in full accordance with the approved scheme.

Reason

To ensure that special regard is paid to the interests of protecting the architectural and historical interest, character and integrity of the structure under the provisions of Policies SP 4 and HE 1 of the Island Plan.

Dated 22 October 2016

D.A.Hainsworth

Inspector