

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

Appellants: Mr and Mrs Labesse

Site address: Belle Vue, La Route du Mont Mado, St. John, JE3 4DN

Appeal against: Refusal to grant planning permission for a proposal to '*Demolish ancillary buildings and construct detached garage, office and plant enclosure to East of site*'

Decision date: 23 February 2017

Reference: P/2016/1866

Appeal procedure: Written representations

Site visit: 2 May 2017

DATE: 31 May 2017

Introduction

1. This report contains my assessment of the appeal made by Mr and Mrs Labesse. The appeal is made against the decision of the Department of the Environment to refuse to grant planning permission for a proposed development at their home, described in the Decision Notice as '*Demolish ancillary buildings and construct detached garage, office and plant enclosure to East of site*'.
2. This appeal has been dealt with by the Written Representations procedure. I undertook a site inspection on 2 May 2017.

The site and its surroundings

3. *Belle Vue* is a substantial detached dwelling situated in the Green Zone on a large corner plot at the junction of La Rue Militaire with La Route du Mont Mado. The main house is situated in the southern part of the site and comprises the original 5 bay dwelling, with later extensions to the east and west. There is a lawned front garden set behind a granite wall / hedge.
4. Vehicular access is gained via a driveway from La Route du Mont Mado, which leads to a courtyard parking area to the rear of the house. Adjacent to this courtyard area is a granite faced outbuilding, which is notated as a 'garage / office' on the submitted plans. It includes an exterior staircase giving access to an upper level ('office') which is lit by four skylights in the pitched roof (two on each roof plane). The office was in use when I visited and an employee was present and working.
5. Beyond the courtyard, the northern part of the plot includes a garden area, a shed and, at the far (northern) end of the plot, a swimming pool and poolhouse.

Planning history

6. There have been a number Planning applications and approvals at this property. These are summarised below.

PB/2000/1197 - Demolish existing single storey dower wing and build new two-storey dower wing. Alterations to internal layouts. Approved.

P/2002/0883 - Reduce existing vehicular access to form pedestrian access. Form new vehicular access with hard landscaping. Approved.

P/2004/2551 - Proposed landscaping to north garden & erection of summer house. Approved.

P/2009/1870 - Construct additional garden walls with new parking area. Approved.

P/2013/1408 - Construct ground floor and first floor extensions to existing north-west wing. Approved.

P/2015/0087 - Construct outbuilding to the north of the property. Approved.

The appeal proposal and the Department's decision

7. The appeal proposal relates to the erection of two freestanding outbuildings.
8. The first element would involve the demolition of the existing granite faced 'garage / office' and its replacement with a new building which would be for office use. It would be of a comparable, 1.5 storey, height and a similar width (about 5.5 metres) to the existing structure. However, it would extend about 2 metres further to the west, giving an overall length of about 9 metres. Internally, the ground floor would comprise a 45 square metre office with WC and store, whilst the upper floor would comprise a smaller, 28.6 square metre office space. The external walls would be finished in timber boarding and the pitched roof would include an apex fixed rooflight feature, to maximise light into the upper floor. The drawings also detail associated works involving the relocation of an oil tank and water attenuator.
9. The second element would comprise a garage and attached bike store proposed just to the north of the courtyard. The garage element would measure some 6.3 metres wide by 7.7 metres long, with a pitched roof to a height of 5.6 metres. The plans indicate that a 'stacker' system would be installed, enabling up to four cars to be stored. Attached to the proposed garage, on its west side, would be a lower, flat roofed, bike store. The bike store element would necessitate the removal of existing vegetation alongside the boundary with the adjacent field, which is within the Appellants' ownership.
10. The application was refused on 23 February 2017. The Decision Notice cited three reasons for refusal:

Reason 1: The site is situated within the Green Zone, wherein there is a strong presumption against all form of development. Whilst the built form of the replacement office structure is acceptable, the proposed sole use as an office building is not considered an appropriate and sustainable pattern of development within this zone, contrary to GD 1 and NE 7 of the Adopted Island Plan 2011 (Revised 2014).

Reason 2: *The proposed garage, by virtue of its size and scale is not considered modest and proportionate to the other buildings on site. In addition, it is not well sited, as it is set apart from the main building group on the south of the site, and would appear visually prominent when viewed from the west. For these reasons, it would seriously harm the landscape character of the area, contrary to Policy GD 7 and NE 7 of the Adopted Island Plan 2011 (Revised 2014).*

Reason 3: *The proposed development of the garage/bike store at the centre of the site would result in some loss of trees and boundary hedges on the eastern boundary of the property, contrary to Policy NE 4 of the Adopted Island Plan 2011 (Revised 2014). In particular, the new bike store would protrude further from the boundary hedge, suggesting an extension of the domestic curtilage of the property into Field 943, contrary to Policy NE 7 of the Adopted Island Plan 2011 (Revised 2014).*

The Appellants' case

11. The Appellant's grounds of appeal are summarised in an 'executive summary' included in its statement of case. This states:

Belle Vue consists of a substantial site which is characterised by a large prominently sited main house, flanked by lower wings to the East and West. This building marks the South of the domestic curtilage, while an external swimming pool pavilion locates the northern boundary. The applicants also own the field, No 943, to the East. Both these parcels of land are located in the Green Zone. The proposal structures are concentrated to the centre of the site, the garden/car parking area, and involve the demolition and replacement of the existing two storey granite-faced office/garage building and the construction of a new garage block between this building and the swimming pool pavilion.

The applicants have run a property surveying business from the premises since moving into Belle Vue in 1999. Prior to this date, the previous owners ran an architectural practice from the first floor office suite. The proposals are not looking to intensify the office usage - the same number of people will be working from the proposed enlarged office area.

In so far as the garaging is concerned, the Applicants have relatively recently inherited a collection of vehicles which are being stored on site and elsewhere. The proposals seek to protect these under a single roof on the grounds of the property. The proposed new structure also seeks to complete the architectural composition, which has informed all the recent building projects to Belle Vue.

Given that the dwelling is located within significant grounds, and that the Applicants also own Field No 943, there is sufficient space to ensure that the proposals would not need to be constructed by compromising the landscaping or ecological assets of the property.

The recent development programme has seen Belle Vue develop into a very well proportioned and desirable property. It is currently compromised by the Office, Garaging and Service Area provision, which do not match the expectation of the property as a whole.

Assessment – the proposed ‘office’ building and the Department’s Reason 1

12. I share the Department’s assessment that, as a physical outbuilding structure, this proposal is acceptable. It is of a neat and well mannered design, modest in scale and only a little larger than the building it would replace. It is well sited and the proposed materials are appropriate. Were the proposal to be judged under the Green Zone Policy NE 7 criteria for an ancillary domestic building, it would be considered acceptable in my view.
13. However, the assessment of the proposal is complicated by matters concerning its intended use. The Department claims that the existing first floor office space was purely ancillary to the residential use of Belle Vue House. It considers that the proposed larger office space (on two floors) would exceed that which could reasonably be regarded as ancillary (to the occupation of the dwelling house).
14. The Department states that the proposal would amount to a *‘separate commercial / employment building or use which would require planning permission.’* It contends that such a development would be contrary to Policy GD 1 (in terms of sustainability) and Policy NE 7 in terms of the restrictions on development in the Green Zone.
15. The Appellants state that the office use, focused in the existing outbuilding, has been operational at the premises for many years. It involves one of the Appellants, his sister and a part time assistant. They explain that the office base serves a building surveying practice, which has been operational at the address since 1999 and that clients do not generally come to the address.
16. The Appellants states that no change is proposed to the business operations, other than that the new building would provide more space for its personnel and allow for archive records (currently stored in the house) to be centralised in one place. The Appellants consider that, given the longstanding employment use, the proposal is acceptable under NE 7 exception 5 (which allows for certain employment developments).

17. It seems to me that the existing business use is more than 'ancillary' to occupation of the dwellinghouse, given that it involves two employees attending and working at the site, even if one is a relative and the other is part time. It is also claimed that it has operated in this manner for a considerable period of time. This may have the effect that the use has become lawful in Planning terms. This could be the case if it were demonstrated that the use had operated continuously in the manner described for more than eight years¹.
18. Based on the limited information before me, it does not appear that the legal Planning status of the existing office use can be established with certainty. In England, there is a formal system where such situations can be resolved by the submission of an application for a Lawful Development Certificate (LDC). An application seeking the grant of a LDC would normally be supported by detailed business records and, perhaps, sworn affidavits to demonstrate that the use has persisted for the required period to render it 'lawful'. Jersey does not operate this system but the same principles are applicable. It is imperative that the status of the existing use is clarified, prior to making a decision on the proposal.
19. If it had been demonstrated that the business use at the premises had become lawful, this would be material to any decision making on the proposal. Indeed, in such circumstances, I would be minded to agree with the Appellants that Policy NE 7 Exception 5 applied and that this element of the application proposal complied with it. However, I simply do not have sufficient compelling information before me to establish the legal Planning status of the business use at the property to reach that conclusion. Accordingly, I am unable to make an informed recommendation on this element of the proposal.
20. This rather muddled situation is a matter that needs to be directly addressed by the Appellants and the Department outside of this appeal and, if necessary, through the submission of a fresh Planning application, to be determined on its individual merits.

Assessment – the proposed garage / bike store building and the Department's Reasons 2 and 3

21. The relevant NE 7 provision is Exception 2, which allows for the development of an ancillary building within a residential curtilage, subject to three criteria. These are:

¹ Article 40 of the Planning and Building (Jersey) Law 2002 has the effect that breaches of Planning control that occurred more than eight years ago become immune from enforcement action.

- a) it is modest and is proportionate to other buildings on the site;
 - b) it is well sited and designed, relative to other buildings, the context, size, material, colour and form; and
 - c) it does not seriously harm landscape character.
22. Although part of the same proposed building, it is helpful here to distinguish between the garage and the bike store elements.

The proposed garage

23. I consider the garage to be modest and proportionate to other buildings on the site. Indeed, it is very much a subservient structure that would not look out of place, being adjacent to the courtyard and set within a large garden plot. I do not consider that it would be particularly prominent when viewed from the west. It will be sited well back from the road and seen within its courtyard and mature garden setting. The design and materials are acceptable.
24. Whilst, I do recognise that there have been a number of additions and outbuildings at this property over recent years, the actual build coverage remains low. Indeed, the majority of this large plot remains open and much of it is green, mature and attractive. I do not consider that the garage building will result in any serious harm to the landscape.

The proposed bike store

25. The bike store element is unacceptable. It will punch through a length of hedgerow / vegetation and result in built form visually intruding into the adjacent open land. This will harm the landscape character and it conflicts with Policy NE 7. I am mindful that the Appellants own the adjacent field and there is potential scope for some landscaping to reduce the impact. However, this is not part of the proposal before me and, in any event, would involve works beyond the red lined application area, which raises issues about the enforceability of any conditioned landscaping works.

Conclusion and recommendation

26. The proposed 'office' building could be acceptable under the provisions of Policy NE 7. However, the confusion over the Planning status of the business use at the *Belle Vue* premises site needs to be resolved, in order that a clear judgement can be reached against the relevant Policy NE 7 exceptions.

27. Whilst I consider that the garage element is acceptable, its physically attached bike store element is not. It would harm the landscape character of the Green Zone.
28. Accordingly, for the reasons stated above I recommend that the appeal be DISMISSED. However, should the Minister accept my analysis, it will be open to the Appellants to revisit the proposals through an appropriately revised and evidence supported fresh application.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI