

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 M. Thérin (third Party Appellants)

Site address: Pine Grove, Le Vieux Mont Cochon, St. Helier, JE2 3JQ

Appeal against: Decision of the Department of the Environment to Grant Planning Permission to "Demolish dwelling and construct 1 No. five bed dwelling with associated parking and landscaping"

Decision date: 23 February 2017

Reference: P/2016/1593

Appeal procedure: Hearing – 4 May 2017

Site visit: 4 May 2017

DATE: 31 May 2017

Introduction and procedural matters

1. This report contains my assessment of the appeal made by Mr and Mrs Thérin against the decision of the Department of the Environment to grant planning permission for the demolition of an existing house, *Pine Grove*, and its replacement with a new five-bedroom contemporary design dwelling. The proposed development is adjacent to the Appellants' home, *Les Champs House*, which is a potentially Listed Building at Le Vieux Mont Cochon in St Helier.
2. I conducted a Hearing on 4 May 2017 and undertook accompanied and unaccompanied site inspections on that same day. At the site, the outline of the proposal was helpfully set out with scaffolding profiles, which has assisted my assessment.
3. A matter that has featured in the appeal is disputed photomontages. The Appellants claim the Applicants' images were inadequate to judge the impact and the Applicants' agents objected to images created and submitted by the Appellants, which they regard as inaccurate and misleading.
4. One of the Appellants also suggested that, without a full suite of photomontages, I would not have sufficient information to make a decision. I disagree with that view for a number of reasons. First, I had before me a full set of accurate plans. Second, I had the benefit of the scaffold profiles. Third, I spent time at the site with the parties and allowed them to draw my attention to any matters they wished. Fourth, I viewed the site from a range of near and distant vantage points. Fifth, I am well aware of the benefits, limitations and pitfalls of using photomontage and computer generated imagery. Sixth, I am well experienced at making Planning assessments both with and without the benefit of photomontages.
5. Another procedural matter arose following the Hearing. The Judicial Greffe made me aware of various email exchanges by a number of the appeal parties concerning a matter that arose during the Hearing. As I had already closed the Hearing and had not made any requests for further submissions, I declined to accept the material. In any event, I consider that the matter in question, concerning a consultee's advice at the application stage, was sufficiently explored at the Hearing.

The site and its surroundings

6. *Pine Grove* is an extended mid-twentieth century detached house set on a sizeable (3,504 square metre) elevated plot with views across St Aubin's Bay. It is accessed via a private drive from Le Vieux Mont Cochon.
7. The house itself is situated in the north-eastern part of the site. It is of a split level design due to the slope of the site. The northern elevation, which includes a garage block, is single storey with rendered walls and pitched tiled roofs. The southern elevation is two storey and includes an array of large windows (enjoying views of St Aubin's Bay) and it adjoins a terrace and swimming pool. It appears that the house has had a number of extensions, additions and alterations since it was first built. The footprint of the house today is 314 square metres.

8. To the west of the house and pool is a large, mainly grassed, garden that slopes down from north to south. The southern section of the plot is demarcated by a fence and is very steeply sloping, falling away to the Hillgrove Estate development below.
9. To the north of the site, beyond a wall and planting, are the large gardens of *Les Champs House*, the Appellants' home. The house itself is about 65 metres from the appeal site boundary. To the east of the site is the road and open Green Zone land beyond (Field 1511). There are residential properties to the south and west, although they are not clearly discernible from the site due to the topography and hedging, trees and vegetation.

Planning history

10. In September 2016, a planning application for a proposal to "*demolish dwelling and construct 1 No. five bed dwelling with associated parking and landscaping*" (P/2016/0595) was refused. The reason for refusal stated:

By virtue of its overall scale, design and use of materials, the proposed dwelling would be unduly prominent in the landscape and would be harmful to the green and open character of this part of the Green Backdrop Zone. For this reason, the application fails to satisfy the requirements of the Policies GD 1 & BE 3 of the 2011 Jersey Island Plan (revised 2014).

The application proposal under reference P/2016/1593 and its consideration

11. The current application sought to overcome the reason for refusal of the earlier (larger) scheme.
12. The proposal involves the demolition of the existing dwelling and its replacement with a five bedroom replacement house. The dwelling would be sited in a broadly similar position to the existing house but it would extend about 18 metres further to the west and include two south facing wings, one of which would extend about 10 metres to the south of the existing house and the other would extend just over 5 metres. The footprint of the dwelling would be 431 square metres.
13. It is intended to level and remodel the site to facilitate the construction of the two storey house and to provide a more level garden area. Internally, the ground floor would include a games room / study, lounge, kitchen / dining area, garage and gym. The first floor would accommodate the five bedrooms, three of which would have terraces.
14. The design is contemporary and includes flat roofs and extensive glazing on the southern elevation. The design is focused on its southerly aspect, with the northern elevation including, at first floor level, high level windows and opening to serve a corridor and ancillary accommodation. External materials would include grey granite panels and white render. On the southern elevation, the walls would be predominantly faced with granite.
15. In terms of height, most of the proposed building would be set at the same height as the ridge of the existing roof over the garage, which is marginally higher than the roof ridge over the main house. A central, largely glazed

section, would rise 1.36 metres above this level. As the dwelling extends westward (beyond the current footprint), it would be two storey for most of its length but the last 5 metres or so would drop down to single storey (over the pool room and part of the study / games room).

16. The Planning Committee approved the application at its 23 February 2017 meeting. I understand that the Committee members had undertaken a site inspection, although I was advised that this did not include viewing the site from the private grounds of *Les Champs House*. At the meeting itself, the committee heard representations both for and against the proposal.

The Appellants' grounds of appeal

17. The Appellants' grounds of appeal are very wide ranging. Their case was set out in a number of different documents and submissions. The appeal form stated two brief grounds of appeal:

i) *The development breaches Policies BE 3, SP 2, SP 4, SP 7, GD 1, NE 1, NE 2, NE 3, HE 1, and GD 7.*

ii) *Inadequate consideration has been given to GD 5.*

18. The further submissions supporting these grounds included earlier representations made in respect of the planning applications, from June 2016, December 2016 and February 2017 and three bound documents entitled 'Documents and Judgements', 'Attachments' and 'Second Response'. I only received the latter document the day before Hearing, but I did read it in full before the Hearing opened.

19. The Appellants' conclusion from their main statement of case provides a useful summary of their concerns. It reads:

"From the outset, this application has been pursued with a casual disregard for important, indeed mandatory provisions of the Island Plan.

The first application made no mention of the proposed development being within the Green Backdrop Zone. Neither the first nor the second application make mention of the potentially listed status of the neighbouring property, Les Champs House.

It is not open to the applicant to ignore the requirements of the Island Plan.

The total disregard for the aspects of the Island plan protecting the Green Backdrop and heritage assets like Les Champs House has resulted in a proposed development that is overly prominent in its local and general setting.

In addition to a manifest disregard for the Island Plan, the applicant has made this application with an air of assumptive entitlement: the applicant has assumed matters will be acceptable without due consideration and explanation.

- a) *The applicant assumed that the demolition and disposal of the existing Pine Grove would be permitted.*

- b) *The applicant assumed that re-modelling was not appropriate.*
- c) *The applicant assumed that a completely new structure was required.*
- d) *The applicant assumed that he would be able to build higher than the existing building.*
- e) *The applicant has assumed that providing an ecological report adequately addresses wildlife considerations.*
- f) *The applicant has assumed that the Minister will not seek to "repair" the view of Les Champs House.*
- g) *No regard has been taken of the Royal Court's interpretation of the Island Plan in the "Herold" decisions.*

The process to date has ignored relevant factors and taken into account irrelevant factors such that the decision to approve this development was seriously flawed.

We urge that the opportunity to "repair" the view of Les Champs House through the development control process provided for under Policy GD5 be seized, for the benefit of the public now, and for future generations."

The Department's response

20. The Department contends that the Committee decision was sound and properly arrived at. It states that the site lies within the defined Built-up Area, where the SP 1 spatial strategy seeks to concentrate new development and Policy H 6 presumes in favour of residential development. It contends that the Green Backdrop Zone Policy BE 3 does not presume against development, and that the proposal is judged to accord with it. It considers that there will not be any undue harm to views, vistas or the skyline when judged against Policy GD 5.
21. With regard to heritage matters, it points out that the Heritage Environment Team was consulted and it considered any impact on the setting (of *Les Champs*) would be positive. It also considers that ecological matters have been properly assessed and that the Applicants' proposed Species Protection Plan was appropriate.

The views of the Applicants

22. The Applicants provide a rebuttal to the grounds of appeal and their key points can be summarised:
 - Matters concerning assessments of development often involve subjective judgements and the Minister has certain "margins of appreciation". The Applicants support the Department's assessment but this is simply a case where the Appellants disagree.
 - Certain photographs and photomontages produced by the Appellants are inaccurate or misleading and tend to exaggerate the impact of the proposal.

- The earlier proposal was only 'marginally refused'.
 - Compared to the refused scheme, the current proposal includes reductions in the western extent of the proposal scale and reductions in the southern parts of the building. It also includes more muted materials and new planting and trees.
23. The Applicants provide a detailed response against each of the cited Island Plan policies. It broadly accords with the Department's assessment. The Applicants consider that the proposal has been properly assessed and that it conforms to the Island Plan policies, including its encouragement of modern architectural design. They contend that the appeal should be dismissed.

Main issues and the Inspector's assessment

24. Although the Appellants' grounds of appeal are very wide ranging, they did agree at the Hearing that their two principal objections relates to their concerns about impacts on heritage (their potentially Listed home) and the Green Backdrop Zone. However, their related concerns and objections include matters relating to skyline, views and vistas (Policy GD 5); amenity / privacy (Policy GD 1); Design (Policy SP 7 and GD 7); the natural environment (Policies NE 1, NE 2 and NE 3) and whether the proposal represents an efficient use of resources (Policy SP 2).
25. For clarity, I will assess the broad principle and the two principal issues (heritage and green backdrop zone first). I will then assess the other issues raised.

Broad Planning principle

26. The Island Plan's overarching spatial strategy is set out in Policy SP 1. It seeks to concentrate new development within the Island's 'Built-up Area', which is clearly defined on the Plan's proposals map. Policy H 6 makes a positive presumption for new housing development within the Built-up Area.
27. As the appeal site lies within the defined Built-up Area, the principle of a residential development in this location is broadly supported by these high level policies.

Green Backdrop Zone

28. Whilst the appeal site is located within the defined Built-up Area, it is also within the defined Green Backdrop Zone. Policy BE 3 recognises the landscape importance of the backdrops to the main built areas. The policy only permits development where landscape remains the dominant element, existing trees and features are retained, and satisfactory new planting proposals are introduced.
29. There can be scope for some misunderstanding about the interplay between the Plan's spatial strategy of concentrating development in the Built-up Area (Policy SP 1 and the supporting housing Policy H6) and the additional restrictions imposed by Policy BE 3 in the Green Backdrop zone. On the face of it, they could be seen to be pulling in different directions. However, there is no inherent conflict between the two policies, but they need to be read

and assessed together. The ultimate effect is that development is not prevented *per se* and remains acceptable in principle, but the Plan's objective of maximising development (in the Built-up Area) is tempered and mediated by the overriding landscape considerations in these defined areas. This is sophisticated good Planning.

30. *Pine Grove* is situated in a tongue of designated Green Backdrop Zone, which extends northwards from St Aubin's Road and is contained by Millbrook Lane to the west, Landscape Grove to the north and Le Vieux Mont Cochon¹ to the east. It contains a substantial amount of built development and, indeed, most of it comprises residential properties and their associated gardens.
31. Within the northern part of this tongue of Green Backdrop Zone, *Pine Grove* and *Les Champs House* contrast with the surrounding higher density built form. Their large plots and gardens mean that, when viewed individually and together, they present a large swathe of green mature garden space, which includes trees and vegetation.
32. When viewed from the coast, the two dwellings and the surrounding greenery can be seen. In this glimpsed view, the backdrop greenery is either side (east and west) of the two buildings and behind (north) of *Les Champs House* (which appears above *Pine Grove* in the view). The wider view is distinctly mixed, being interspersed with built development, some of which forms the skyline from certain vantage points. At the Appellants' request, I also viewed the site from the more distant St. Aubin's Harbour.
33. In their submissions on the Green Backdrop Zone, the Appellants' state: *"The scale of the proposed development is both visually prominent and obtrusive. The height and scale of the proposed development are out of keeping with the area. Its mass and intensity is too large in its context."*
34. The proposed building is certainly bigger and wider than the existing *Pine Grove*. The building footprint would expand from 314 to 431 square metres (a 37% increase). It would also be a much wider building, its south facing elevation being about 43.5 metres in total (compared to about 25.5 metres), albeit that last 5 metres would be single storey. There would also be more bulk introduced through the south facing wings. In terms of height, it is broadly comparable with the roof ridge heights of *Pine Grove* but the central element does rise up a little above this level.
35. However, the fact that the proposal constitutes a large luxury house and that the building is larger than the existing dwelling is not the test of Policy BE 3. There are three specific criteria to assess.
36. The first test requires that *"the landscape remains the dominant element in the scene and where the proposed development is not visually prominent or obtrusive in the landscape setting."* This inevitably involves a judgement and I do note the Department's observation that there are no set ratios or formulae that determine the acceptable quantum of development on a Green Backdrop Zone site.

¹ Also notated as 'Mont Cochon' and 'Old Mont Cochon' on some plans and records.

37. When viewed from the south, the bigger building will involve the reduction of a limited area of green backdrop. However, it is a limited area (relating to the circa 18 metres expansion to the west of the existing house). There will also be some greater south facing bulk, although this will not be particularly discernible from a distance.
38. Offsetting the greater size would be the flat roof design and muted materials, notably the use of grey granite on much of the south facing walls. In my opinion, the existing *Pine Grove*, whilst smaller, with its light painted render and terracotta tiled pitched roofs, is quite prominent in the landscape.
39. Although the proposed building is bigger, its presence would not unduly diminish the landscape character of the Green Backdrop Zone. The green landscape to the east, west and north would prevail and the building would appear in that context. That context would include other built form in the area, including *Les Champs House*, which is set at a higher level and would sit above it when viewed from the south.
40. The second and third tests can be dealt with together. The second test requires that existing trees and landscape features are retained and the third test requires satisfactory landscaping proposals. Beyond a small loss of garden space to accommodate the larger footprint, the majority of the site would remain open and 'green'. The landscape proposals are of a good standard and well thought through; they include additional screen planting and reinforcements to the northern boundary, the south steep sloping cotil and the new bank which will be formed to the south of the lawn and pool.
41. Overall, I am satisfied that the three BE 3 tests are passed.

Heritage impact

42. Policy HE 1 sets 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. This policy is supported by the provisions of Policy GD 1 (3) and Policy SP 4, which similarly seek to protect the historic environment.
43. *Les Champs House* is a Potentially Listed (Grade 3) building. The published statement of significance records "*a distinctive c1920s house of unusual design, which retains its character and integrity*". The external description reads "*Rural villa in 'Hollywood-style'. Asymmetric composition with long 2 storey buildings and 3-storey tower, sitting on extensive terraces. Hipped green pantile roofs with overhanging eaves, and tall rendered chimneystacks. Rendered walls. Arched windows to ground floor and multi-pane above. Tower has arcade of arched windows on upper level.*" There is no published internal description.
44. The Appellants consider that the proposal will neither preserve or enhance the setting of *Les Champs House* and that it falls foul of Policy HE 1 and should be refused. Their case makes reference to case law² including in

² Herold v Minister [2014] JRC012 and Herold v Minister [2015] JRC111

terms of the application of Policy HE 1 to potentially Listed buildings, the interpretation of setting and the application of the 'preserve or enhance' test.

45. *Les Champs House* is the only heritage asset in the vicinity. The statement of significance and the external description attached to the potential listing relates to the house itself. There is no reference to the extensive gardens or the history of its former curtilage. I understand that the house once enjoyed much more extensive grounds than today and much of the housing that surrounds it (including *Pine Grove*) is built on its former grounds. Nonetheless, it still enjoys a very substantial landscaped plot. I am not aware that there is a map that defines the extent of the potentially protected site, but I have assumed it to be the present day garden curtilage.
46. The 'setting' of a Listed Building can be a slippery matter to define. It is certainly not simply the present day curtilage, although that clearly comprises its immediate setting. It does extend to include the area around the curtilage and its wider context. Notwithstanding the fact that the proposed new house would be a considerable distance (about 70 metres) from *Les Champs House*, I am satisfied that the proposal does fall within its wider setting. Moreover, *Pine Grove* itself forms part of that wider setting. Accordingly, the Policy HE 1 'preserve or enhance' assessment is therefore mandatory.
47. Some comment is appropriate here on the Department's approach. The Committee report did not identify Policy HE 1 or address the 'preserve or enhance' test in the main body of its report. However, it did report the Historic Environment Team's (HET) 'no objection' and included the following quote from it:

"the change from a traditional duo-pitch roof to a more rectilinear form in more neutral materials will not have a detrimental impact. The change in architectural style from an unremarkable traditionally-built house, to a new contemporary building, sitting in the landscape will not preserve the setting of the Listed Building, but on balance if the architecture meets of the quality set out in the Design Statement it should improve the setting in views to and from the two buildings. A good landscape shelter belt could be used to edit out the new dwelling in views from the terrace to a large degree".

48. However, this is just the last part of the final paragraph of the HET consultation response. The preceding content included the following:

"In views south from Les Champs House the only building seen is Pine Grove, as a result any new development will have an impact on setting. The key will be to ensure that the new dwelling is set no higher than the existing ridges, that the massing is carefully managed to have no greater impact. Having said that, the relationship between the two properties is separated by landscaped gardens, with Pine Grove at a much lower level such that the main built form currently seen is the roofscape and gables

At present both properties sit within the green back drop as singular and prominent properties given their garden settings. Any new development should ensure ridge lines are set within the landscape, materials are

recessive and scale proportionate to the site in the longer views of modern buildings in a landscape setting.”

49. The Appellants felt that the HET support for the proposal had been overstated and that it was actually seeking to define maximum height parameters in stating that the proposal should not exceed the existing ridge height of Pine Grove (which the current proposal does in part).
50. I probed these issues through the Hearing. It seems to me that there is a degree of confusion arising from these comments. I was advised that the HET was consulted on the full detailed planning application as submitted. However, that is not apparent from the response which, in part, supports the Appellants' view that the HET proposed height limitations for any new development. Ideally, rather than stating that the massing should be '*carefully managed to have no greater impact*', the response should have assessed whether the submitted proposal did (or did not) achieve this. However, all of this, whilst a little unfortunate in hindsight, has limited relevance to my own independent assessment.
51. I turn now to the application of the 'preserve or enhance test'.
52. The proposal does not preserve the setting of the potentially Listed Building. Indeed, for new building proposals in the vicinity of heritage assets the 'preserve' test can be simply unattainable. New buildings inevitably deliver a degree of change and cannot therefore 'preserve' a setting.
53. In terms of the 'enhance' test, the key setting focus relates to views of *Les Champs House* from the south and views to and from the proposed new building. The existing Pine Grove is set at a much lower level than *Les Champs House* and is separated by extensive garden space. Whilst the proposal would also be set at a lower level, the building would be wider and a little higher; this additional mass does weigh against any enhancement, albeit that the substantial spatial separation would be maintained.
54. However, weighing in its favour, the proposed building would replace some unremarkable and rather dated architecture with a high quality contemporary design in suitably muted materials. It would also remove the mass of the garage block, the proposed house being set about 7 metres further back from the gable wall of the garage (which is visible from the grounds of *Les Champs House*). The landscaping proposals will also serve to enhance the interface between the site and the gardens of the potentially Listed building and enhance the wider setting.
55. Overall, although I consider that the issues to be finely balanced, I conclude that there will be a net enhancement of the wider setting and that the proposal would therefore accord with Policy HE 1.

Skyline, views and vistas

56. The Policy GD 5 seeks to protect 'skyline, views and vistas' and states that development that has a 'seriously detrimental impact' will not be permitted. The policy includes specific reference to impacts on landmark and Listed buildings.

57. There is clearly a degree of overlap here with the assessment against other policies set out above. Given my findings in respect of the Green Backdrop Zone and Heritage considerations, it follows that I do not consider that there would be any 'seriously detrimental impact' on the skyline, views or vistas.

Amenity / privacy implications

58. In my assessment, the significant spatial separation, south facing design and proposed landscaping all combine to avoid any undue privacy / overlooking impacts on *Les Champs House*. I do not consider that any objection under Policy GD 1 could be reasonably sustained.

Design

59. Strategic Policy SP 7 requires that all development must be of a high design quality that maintains and enhances the area. This is reinforced in Policy GD 7, which deals in more detail with design quality issues. The quality design theme is also covered under Policy GD 1 (6).
60. The Appellants oppose the design. At the Hearing they described it out of keeping, insensitive, bland, lacking in character, sterile, devoid of charm and unduly prominent. The Department and Applicants disagree and consider it to be a successful contemporary design.
61. More so than any other element of Planning decision making, the field of design is the most subjective and can divide opinion. However, what is clear from the preamble to Policy SP 7, is a desire to raise the standard of design in Jersey generally, and to encourage traditional and modern approaches.
62. In my view, the proposed design represents a contemporary building of some quality and that it is well executed. Architecturally, it is certainly vastly superior to the building it is intended to replace.
63. I consider the design to be acceptable in Planning terms.

Natural environment impacts

64. The Island Plan seeks to conserve and enhance biological diversity, protect legally identified species and protect wildlife corridors (Policies NE 1, NE 2 and NE 3 respectively). The Appellants argue that inadequate consideration has been given to these matters and, in particular, to the impact on legally protected species.
65. Where there is the possibility that protected species may be present on a site, it is usual for Planning decision makers to require Applicants to support their proposals with suitable evidence. It is also usual for such evidence to be assessed by qualified experts. That happened in this case with the submission of an Ecological Survey Report and its assessment by the Department's Natural Environment Team (NET).
66. NET Officers were satisfied with the report, which included a detailed Species Protection Plan. This report and the associated Species Protection Plan are listed as an approved document in the Department's Decision Notice. In any event, the legal controls in respect of protected species are

separate from Planning legislation, being enforceable under The Conservation of Wildlife (Jersey) Law 2000.

67. I do not consider that there are any natural environment matters that could reasonably justify the withholding of planning permission for the proposal.

Efficient use of resources

68. The Appellants question whether the proposal accords with strategic Policy SP 2, which requires new development to be resource efficient in terms of re-using existing land and buildings. They consider that Pine Grove could be renovated and remodelled.
69. That may be the case but, following the deletion of Policy GD 2 (which presumed against demolition of existing buildings), I do not consider that Policy SP 2 stifles appropriate replacement dwelling proposals. *Pine Grove* is described, fairly in my view, as an 'unremarkable' building. Its replacement with a contemporary more energy efficient home does offer some support to the underlying SP 2 objective and, perhaps just as relevant, the Island Plan's objective of raising the standard of design, set out under Policy SP 7.

Conclusions and recommendation

70. The redevelopment of *Pine Grove* to provide a larger replacement dwelling is acceptable in principle, given that the site lies within the Built-up Area where the Island Plan strategy (SP1) seeks to direct new development and Policy H 6 makes a positive presumption for such proposals.
71. The key tests relate to whether the specific impacts of the development are acceptable when judged against other policies. The impact on the Green Backdrop Zone will be very limited, most of the site remaining undeveloped and the more muted materials and flat roof design, combined with landscaping, reducing any impact of the somewhat larger proposed building. The proposal does not preserve the setting of the potentially Listed building to the north but, on balance, I find it provides some net enhancement. I do not consider that there are any other Planning objections that would justify withholding planning permission in this case.
72. Accordingly, for the reasons set out above, I recommend that this appeal be DISMISSED and that the Planning Permission P/2016/1593 be confirmed, subject to the conditions set out in the Department's decision notice dated 23 February 2017.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI