Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Minister for the Environment

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Antler Property (C.I) Limited.

Samuel Le Riche House, Plat Douet Road, St Saviour

Hearing held on 9th and 21st June 2017 and at the Tribunal Offices, Bath Street, St Helier

An accompanied visit to the Appeal site and surroundings was held on 20th June 2017.

Department of the Environment Reference: P/2016/0946

Samuel Le Riche House, Plat Douet Road, St Saviour

- The appeal is made under Article 108 of the Law against a decision of the Environment Department to refuse planning permission under Article 19.
- The appeal is made by Antler Property (C.I) Limited.
- The application Ref P/2016/0946, dated 29th June 2016, was refused by notice dated 3rd March 2017.
- The development is described as to demolish office building and construct 17 one-bedroom and 20 two-bedroom units with associated parking and landscaping.

Summary of Recommendations

1. I **recommend** that the appeal should be dismissed.

2. Should the Minister disagree and decide to allow the appeal and grant permission for the development, **I recommend in the alternative** that any such permission should be subject to: (1) the prior signing on behalf of the Minister of the Planning Obligation Agreements listed in Annex A to this report; and (2) issued subject to conditions addressing the matters set out in Annex B to this report.

3. Should the Minister disagree and decide to allow the appeal and grant permission for the development as amended under the "revised iteration" scheme, **I recommend in the alternative** that any such permission should be subject to: (1) the prior signing on behalf of the Minister of the Planning Obligation Agreements listed in Annex A to this report; and (2) issued subject to conditions addressing the matters set out in Annex B to this report, as amended to specify the plans relating to the revised iteration of the scheme.

Introduction

4. This is an appeal against the refusal of planning permission.

5. Samuel Le Riche House is a disused 3 storey-office building beneath a pitched roof, situated fronting the eastern side of Plat Douet Road. As submitted, the planning application proposes its demolition and replacement by a 5 storey block of 37 apartments, with the top floor partly set back beneath a flat roof, and having a semi-basement providing parking spaces for cars and cycles, together with storage and waste bins, and additional parking spaces outside to the rear and along its northern side.

6. Plat Douet Road is mostly residential in character but, behind the offices, are a car park, a number of disused warehouses and a Waitrose supermarket, all of which gain access by means of private roadways either side of the offices. Public access to the shop and its customer car park is from Rue des Pres.

Procedural and Legal Matters

Scope of the report

7. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as he may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.

8. The purpose of this report is to provide the Minister with sufficient information to enable him to determine the appeal. It focuses principally on the matters raised in the appellants' grounds of appeal. However, other matters are also addressed where these are material to the determination, including in relation to Planning Obligation Agreements; the imposition of conditions; and in order to provide wider context.

Statement of Common Ground

9. A Statement of Common Ground (SoCG) was drawn up between the appellant and the Department prior to the second day of the Hearing, covering a number of agreed and disagreed matters. Amongst the latter are the materiality of Supplementary Planning Guidance Planning Note 3 *Parking Guidelines* and the weight attributable to different parts of Planning Note 6 *A Minimum Specification for New Housing Developments.*

Additional information and submissions

10. Following discussions with the Department, in December 2016 the appellant submitted revised proposals for the development, which in broad terms reduced the proposed extent of the top floor, leading to a loss of 2 apartments. The appellant describes this as a *revised iteration*. In the following discussion of the status of this submission I generally use this expression.

11. Following the second day of the Hearing, proceedings were adjourned to enable further documents to be produced and, if possible, agreed between the parties. The documents submitted on 31st July did not comprise a second Statement of Common Ground but emerged as "Final Submissions" on behalf of the appellant, to which the Department has responded. Amongst other things, the appellant submitted signed versions of a number of Planning Obligation Agreements.

The status of the "revised iteration"

12. Article 108 (1) & (2) of the Law enshrines the right of an aggrieved person to appeal against a refusal to grant planning permission. The appeal is explicitly against the refusal. In my opinion, a refusal can logically have meaning only by reference to the development which has been refused. The questions arise therefore, as to which of the iterations was refused; and consequently, what status should be accorded to the other iteration and the weight it should carry in the decision-making process. In view of the importance of these questions, not least to the approach to be taken to other appeals in the future when revised plans are submitted, on 8th August 2017 I requested both main parties to make submissions on the matter. These were received on 18th August.

13. At the Hearing, the Department's officers explained that the consideration of amended plans is by no means unusual under the Jersey planning system. Although there is no specific power to do so, it may be implied by the provisions of Article 6 of the Planning & Building (Application Publication) (Jersey) Order 2006, which says that, where there is a change to a planning application, and that change is advised to the applicant by the Department as being minor, further publicity is not required. On that basis, the Department says that it was possible for it to accept an amended scheme; and that it was not essential for it to be advertised. It does not object to me considering the revised iteration of the scheme in this report, but has not clarified the basis on which any such consideration should be made.

14. In that context, I conclude first that the Department has the power to consider a change to a planning application, as it is implicit in the Order relating to publicity for dealing with them.

15. However, despite having the power to consider a changed application, there is some doubt in my mind as to whether the revised iteration was actually accepted by the Department as such, as envisaged under the Order. If the revised iteration amounted to no more than a minor change to the planning application, then one might reasonably expect by reference to the Order that the appellant would have been advised that the change was so minor that it did not need to be publicised. But I am not aware that this happened.

16. The SoCG refers to the revisions as a *"revised iteration of the scheme"*, which the appellant contends is *"an alternative scheme under this appeal"*. The Department disagrees, but is *"content for the Inspector to consider this revised iteration in determining this appeal to the extent he wishes and feels is appropriate"*. I appreciate that the Department is happy to leave the matter in my hands, but I suggest that the approach to be taken should not be on the basis of my wishes or what I consider appropriate, but what is correct under the Law. I therefore propose to consider the matter in some detail.

17. The covering letter from the appellant's representatives to what was then described a "revised proposal" to the Department (21/12/2016) stated that it was for "consideration" – presumably by the Department or by Mr de Gresley, the Director to whom the letter was addressed. It did not state explicitly that the proposal was to either supersede the original proposals or be considered alongside them, as an alternative, or indeed whether the submission was formal.

18. In contradiction to the position set out in the SoCG, the appellant's latest submission says that the *"amended iteration is not* (my emphasis) *an alternative to the application"*. Rather *"both are in substance and nature the same development"*. This suggests that the appellant is either confused about the nature of the revised iteration, or there has been a change of mind. The appellant's rationale behind the latter view is that it may be inferred from the wider reasoning of the officer's report that its consideration of the originally submitted application applied equally to the amended iteration and did not need repeating.

19. It is agreed by the parties that the Department did not in practice determine the application by reference to the revised iteration. The Department's response to the appeal states explicitly that the application was decided on the basis of the original 37-unit scheme. I agree that this was the case. In the officer's report on the application, the description of the proposed development in the heading is that relating to the original application, referring to a total of 37 residential units. This is also the description set out in the decision notice. The report sets out as "final drawings" (my emphasis) the plans submitted with the original application. There is no comparable schedule of the revised plans, which the report might reasonably have listed in substitution for, or as alternatives to the original plans. Indeed, the use of the word "final" in the heading suggests strongly that no later plans were under consideration. There is no explicit indication or even an implication that any other proposal – of whatever status – was under consideration.

20. The SoCG states that the Department agreed to consider the revised iteration of the development and did so in its officer's report prior to issuing its decision notice. Although it is clear from the correspondence I have seen between the main parties that officer consideration had been given to the revised iteration, the report does not include any consideration of it other than to note under the heading of "Other material considerations" that the appellant had *"issued a set of plans for consideration which showed an amended scheme"*, concluding without any analysis that it *"did not go nearly far enough in addressing the wide ranging concerns that* (the Department) *had with the scheme"*.

21. The appellant has described the inclusion of reference to the revised iteration under "Other material considerations" as a matter of convenience within the context of a proforma report and was not a determination of the legal status of the revised iteration. I agree that

nothing in the report can be regarded as determinative of legal status but, had it been the intention of the Department to elevate it above the status of a material consideration, there were plenty of opportunities to do so. It was not a matter of convenience or accident. In my view, it was placed under "Other material considerations" because that was the status the Department considered it to have.

22. Apart from that brief reference to the revised iteration in the report, there is no indication that it was ever formally considered, either alone or alongside the originally submitted plans. The report contains no evidence that it was fully assessed; and it makes no recommendation with respect to it. The decision notice makes no reference to it; and there is no advisory note to the appellant setting out the Department's position. In short, there is no documentary evidence to show that the revised iteration was considered to represent the development applied for; a substitution for it; an alternative form of the development; or, even if it were, that permission for it had been refused.

23. To sum up, the report, the decision notice and the agreed position of the main parties provides a conclusive indication that the subject of the refusal was the original 37-unit scheme. The revised iteration was not, in practice, considered as a minor change to the original proposal; the application was not considered on that basis; and the refusal does not reflect that. It would follow logically that the appeal may be considered only by reference to that original proposal. If that is the case, it is important to know how the revised iteration should be treated.

24. The appellant argues that should the Minister decide that the appeal should be allowed if the development were to be changed to the form shown in the revised iteration, then it would be possible to achieve this by means of imposing conditions. The Law [Article 23(3)(a)] says that a condition may relate to the dimensions, design, structure or external appearance of a building on the land, or the materials used in its construction. The appellant says that, since the revised proposals relate to a smaller building, with fewer apartments, and would be contained entirely within the envelope of the original proposal (ie would by reference to dimensions and design be less than applied for) it would be appropriate to achieve that by way of conditions. In support of this, my attention has been drawn to judgments of the High Court (Kent County Council v. Secretary of State for the Environment and Another [(1976) 33 P. & C.R. 70]), and Bernard Wheatcroft Limited v. Secretary of State for the Environment and Another [JPL 1982 p37), in which it was held lawful that permission could be granted where the development would be less than applied for.

25. In the Kent judgment, the judge concluded that *"where an application consists of a number of separate and divisible elements it is lawful for them to be separately dealt with"*. In other words, if various elements of an application were severable, it would be lawful to grant permission for less than the totality of what had been applied for. But

the present case does not involve separate and divisible elements. However, in the later Wheatcroft judgement, the judge held that *"there is no principle of law that prevents the Secretary of State from imposing conditions that have the effect of reducing the permitted development below the development applied for except where the application is severable"*. That is to say, severability is not the determining factor. He also held that *"the true test is … : is the effect of the conditional planning permission to allow development that is in substance not that which was applied for?"* and, while acknowledging that this required the exercise of judgment, added: *"The main, but not the only, criterion on which that judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation"*.

26. If those principles are applied to the present appeal, I conclude first that, if permission were to be granted for the development shown in the revised iteration it would remain "in substance" the development applied for. It would be a little smaller and there would be 2 apartments fewer, but the proposed use would be identical; and the footprint and the height would remain the same. Second, I conclude that the development would not be so changed that to grant it would deprive consultees the opportunity of consultation. I reach this second conclusion having regard to the limited extent of the changes made and to the fact that the Department took the view that these were so slight as to be capable of falling within the ambit of Article 6 of the Application Publication Order (ie that that the changes were minor and so no further consultations would be necessary), notwithstanding that in the event it appears not to have gone on to consider the revised iteration formally. Moreover, I am satisfied that the revised iteration would not raise any new issues or otherwise disadvantage any person, when compared to the originally submitted scheme. I note that the Department's only comment about the revised iteration in its report was to say that it *"did not go nearly far enough in addressing the wide ranging concerns that it had with the scheme"*. This does not necessarily indicate that the changes were "minor". It could have been, for example, that even substantial changes might not have been sufficient to overcome the Department's concerns. However, on the facts, I am satisfied that the changes would have been sufficiently minor not to have triggered the need for further publicity, had the revised iteration been formally considered.

27. To conclude overall, I am satisfied that the Minister has the power, should he wish to exercise it, to allow the appeal either with respect to the originally-submitted scheme or the revised iteration, and that in the latter case, this may be achieved by way of imposing a condition making it clear which plans had been substituted.

28. I should add that, at this stage, it is unfortunate that the parties and I have been obliged to consider these legal and procedural matters at length; and I regret the delay in bringing the appeal to determination that has been brought about as a result. This could have been

avoided had the status of the revised iteration been made clear on submission; and had the Department's report contained greater clarity on the matter.

The reasons for refusal

29. The reasons for refusal are:

1. *The current application does not contain comprehensive proposals for the development of land, inasmuch as it does not account for the potential development of the adjacent warehouse site to the east, or address the servicing needs of the supermarket further to the east. With regard to the warehouse site, there are emerging proposals for its redevelopment whilst - in respect of the supermarket – its current access arrangements are contrived and wasteful in their use of land. It is considered therefore that, in the best interests of the community, the opportunity should be taken to develop the sites with a mutual consideration for each other. As an isolated development proposal in its current form, it is considered that this application runs contrary to the fundamental purposes of the Planning Law, as set out within Article 2. Moreover, the submitted plans indicate that the proposed development would encroach upon the existing roadway to the south, thereby compromising its usability for vehicular traffic, contrary to the requirements of Policy GD 1 of the adopted Island Plan 2011 (revised 2014).*

2. *By virtue of its overall scale and design the proposed development would result in an overly-large building (the tallest building within the immediate vicinity), distinctly urban in its appearance which would be harmful to the character of this part of St Saviour. Accordingly, the application fails to satisfy the requirements of Policies SP 7, GD 1 and GD 7 of the adopted Island Plan 2011 (revised 2014).*

3. *The application seeks to develop the whole site at 5 storeys (albeit set in at the top level). It would bring a large amount of residential development onto a restricted site (which itself is compromised by the existing commercial right of way). The problems which result from this density of development include the scheme's failure to comply with the residential standards (as set out within Planning Policy Note 6: A Minimum Specification for New Housing Developments) in respect of internal space standards and the level of amenity provision for some of the units. Accordingly, the application fails to satisfy the requirements of Policy GD 1 of the adopted Island Plan 2011 (revised 2014).*

4. *The proposed development fails to provide sufficient on-site car parking for new residents in accordance with the standards published by the Department of the Environment. Therefore the application fails to satisfy the requirements of Policy GD 1 of the*

adopted Island Plan 2011 (revised 2014).

5. *The proposed development would sit considerably higher in the street scene than its immediate neighbours and the balconies to every elevation (particularly the west and north elevations) would result in an unacceptable degree of overlooking and loss of privacy for immediate neighbours. In addition, owing to the height of the building, neighbouring residences, particularly those to the north, would lose out considerably on sunlight throughout the winter months. Accordingly, the application fails to satisfy the requirements of Policy GD 1 of the adopted Island Plan 2011 (revised 2014).*

6. *The applicants have failed to provide details relating to water capacity and conservation (Policy NR 2), an Air Quality Assessment (Policy NR 3), and Renewable Energy (Policy NR 7). These policies apply to all major new developments which propose 10 or more new dwellings. As such, the application fails to satisfy the requirements of Policies NR 2, NR 3 and NR 7 of the adopted Island Plan 2011 (revised 2014).*

The grounds of appeal

30. The appellant's grounds of appeal, in brief, state that, having regard to the Law and all material considerations, the proposed development accords with all relevant planning policies. On balance, there are no, or no unacceptable material considerations that justify not granting permission, subject to conditions. With respect to the reasons for refusal (RFR):

- RFR 1 – The suggested breach of Article 2 of the Law is misconceived. The Department cannot refuse permission on the basis of its own failure to discharge its obligations or those of the Minister. The proposals comply with relevant policy. Any overlap onto the roadway can be overcome by a minor alteration and is resolvable by condition.

- RFR 2 – The design was amended during pre-application discussions to overcome the Department's concerns. There is no breach of design policy. The proposed attractive development will be sympathetic to its urban context and will replace an unattractive building. The building would be one storey higher, but planning policy promotes higher building densities and efficiency in the use of land and resources.

- RFR 3 – Though a proportion of the bedrooms fall slightly below the standard of Policy Note 6, the proposed apartments meet the requirements in terms of overall floor area. The approach is consistent with recent decisions. A proportion of the apartments exceed the private amenity standard. There is compliance with the relevant Island Plan policies.

- RFR 4 – The proposed development includes 46 parking spaces compared to 59 required under the Policy Note 3 standards, but this is consistent with other recent decisions and the Department's approach in pre-application discussions. It is in compliance with the relevant Island Plan policy.

- RFR 5 – The existing building overlooks its neighbours and what is proposed would not make the situation worse. High density development as promoted by the Island Plan means that some overlooking will be inevitable. It would be comparable to situation at the Glenrow apartments which also have balconies overlooking Plat Douet Road. The design has been refined to set back the building from the Canning Court properties. With respect to daylight and sunlight, a sun path analysis shows that the guidance of the Building Research Establishment would be met.

- RFR 6 - These matters can be dealt with by means of a planning condition.

Main Issues

31. From my assessment of the papers submitted by the appellants and the Department, and from what was given in evidence during the Hearing and seen and noted during the site visit, I consider that there are 7 main issues in this case, broadly relating to the matters raised in the RFRs, as follows:

    (a) Whether it is permissible in Law or otherwise appropriate to regard the matters referred to in the first reason for refusal, concerning the failure of the application to contain comprehensive proposals for the development of land, including existing and potential development on other land, as material considerations in the determination of the appeal.

    (b) The effect of the proposed development on the character and appearance of the locality.

    (c) The effect of the proposed development on the living conditions of neighbouring occupiers by reason of overlooking and shading.

    (d) Whether the development would comply with residential standards and provide satisfactory living conditions for future occupiers.

    (e) Whether the development would provide sufficient parking provision.

    (f) The effect of the proposed development on highway safety and the free flow of traffic.

(g) Whether the proposed development would be sustainable, having regard to policies with respect to water capacity and conservation, air quality and renewable energy.

Reasons

Comprehensive development (RFR 1)

32. I note that during most of the period when the proposals were the subject of discussion between the appellant and the Department, the matter of the potential for comprehensive development including other land did not figure. It appeared as an issue only fairly late in the process. The Department's officer report says that it had recently become aware of emerging development proposals for the neighbouring warehouse site to the east, and, in view of the difficulties of the current access arrangements for the supermarket (described as contrived and wasteful in the use of land), the proposal would appear to be an ideal opportunity for the 2 sites to be brought forward together or at the very least redeveloped with mutual consideration for each other. Such a comprehensive approach it was argued would be in the best interests of the community and go to the heart of the purposes of the Law as set out in Article 2. The Department's written response to the appeal simply repeats that the scheme fails to take the opportunity to improve access to the adjacent warehousing site. It does not elaborate on its concerns.

33. Article 2(1) sets out the purpose of the Law: *to conserve, protect and improve Jersey's natural beauty, natural resources and general amenities, its character, and its physical and natural environments*. Its first stated intention (Article 2(2)(a) is of particular relevance: *to ensure that when land is developed the development is in accordance with a development plan that provides for the orderly, comprehensive and sustainable development of land in a manner that best serves the interests of the community*.

34. At first glance, this may appear to place a requirement on development proposals; and this seems to be the interpretation placed on it by the Department. But it does not. In fact, it sets out the basis of the formal system of planning control that seeks to achieve orderly, comprehensive and sustainable development by means of a development plan (my emphasis). Under Article 4 of the Law, the development plan (the Island Plan) should include policies which must further the purpose referred to in Article 2(1) and the intention referred to in Article 2(2); and, in so doing, designate land for particular development or use.

35. The requirement of the Law in relation to development is that it should be in accordance with the development plan. There is no requirement for individual development proposals to be comprehensive in their scope other than where this is guided by the development plan.

36. I appreciate that it will commonly be desirable in the interests of good planning, and indeed a matter of common sense, to seek to co-ordinate developments on adjoining or nearby sites; and that this may require the preparation of comprehensive schemes. The Island Plan identifies certain sites and areas which should be developed for particular purposes and / or in particular manner. It also identifies Supplementary Planning Guidance (SPG) which either has been prepared, or is to be prepared, relating to broad areas (for example the North of Town Masterplan) and development briefs for specific sites (for example the Jersey Gas site). Such SPGs are produced under the provisions of Article 6 of the Law

37. It may be that the vacant offices on the appeal site, together with the parking area and the redundant warehousing behind would benefit from a co-ordinated approach to redevelopment, and that the servicing arrangements for the supermarket beyond could also be improved. However, neither the site of the present appeal proposal, nor adjoining land has been identified in the Island Plan nor in any SPG. Moreover, the Department has no plans to draw up any such SPG, and it had not entered into discussion with landowners or others with a view to considering the production of such guidance. In other words, although there are opportunities open to the Department under the Law to guide development of the land in a comprehensive manner, it has not taken them.

38. Policy GD 1 *General Development Considerations* states, amongst other things, that development proposals will not be permitted unless they contribute towards a more sustainable form and pattern of development. Although this policy is referred to in a number of the RFRs, including the first, in no instance does the reference relate to a failure to comply with this element.

39. There is no general policy in the Island Plan that requires development proposals to be comprehensive with respect to adjoining or nearby land. That notwithstanding, at the time of submitting or considering a planning application, it would be perverse of a prospective developer or the Department not to take into account the manner in which new development may integrate successfully into existing and proposed development nearby. To do otherwise would be contrary to the purpose of the Law. However, and despite the claimed awareness of the Department at the time of taking its decision that there were emerging development proposals for the warehouse site, I learned at the Hearing that this amounted to no more than an enquiry concerning the possibility of redeveloping the land rather than anything more firm. I have not been made aware of any active proposals for the development of other land; and neither adjoining landowners nor any prospective developers have indicated in representations that what is presently proposed would compromise any future intentions they may have. Had there been any such proposals, the Department could have sought to produce an SPG, or at the very least, floated the idea with the appellant and other landowners; or it could have sought to bring the various interested

parties together. But there is no evidence that it adopted any such positive approach.

40. Finally, there is no requirement in the Law or in the Island Plan that requires developers of one site to address opportunities or problems with respect to other land outside their control. Indeed, it would probably be unreasonable to seek to do so.

41. Having regard to the foregoing, I conclude with respect to this issue that, although the effect of the proposed development on its surroundings, including on existing and other proposed land uses and occupiers, is capable of being a material consideration in this appeal, and although I address various matters that relate to such effects, it is inappropriate for the Department to have used the lack of a comprehensive scheme encompassing neighbouring land as a RFR. There is no basis in Law or in the Island Plan that supports such an approach.

Character and appearance (RFR 2)

42. The site lies within the boundary of the Built-up Area (BUA) shown in the Island Plan (IP), but just outside the defined Town of St Helier, which explicitly extends only as far eastward as Plat Douet. IP Policy SP1 *Spatial strategy* seeks to concentrate development within the BUA and in particular within the Town, but it does not distinguish between the two in terms of its underlying aim. The supporting text says that, whilst less capable of accommodating the same volume of development as the Town, the BUA outside has an important contribution to meeting Jersey's development needs, including housing needs. It adds that in particular it can contribute to providing different types of accommodation and development that might not be capable of being provided on more densely developed town sites

43. Even though Plat Douet Road forms the boundary between the Town and the BUA, it has a largely residential, suburban character on both sides. Along that part to the south of the appeal site from its junction with Rue des Pres are mostly 2 storey houses and bungalows of conventional design, mainly set back from the road behind front gardens. To the north, to its junction with Bagot Road, the properties are more varied in appearance and situated generally closer to the road.

44. In the vicinity of the site there are some larger buildings, notably the Glenrow apartments, situated very nearly opposite the site in Plat Douet Road. This is mostly 3 storeys in height with a four-storey element, and has a much smaller footprint that the proposed building. There is also a 3-storey block of flats a short distance to the north, again much smaller in scale. Plat Douet school to the south is an extensive building but not tall or bulky. Moreover, it is set back from the road in landscaped grounds, so that its size is not readily appreciated in the street scene. The warehouses and the Waitrose

supermarket to the rear of the site are large buildings, but mostly hidden from Plat Douet Road behind the existing offices and having little impact on the street scene. A little way to the north and also largely hidden from Plat Douet Road is the "Clos Gosset" development which includes some 4-storey flats beneath pitched roofs. But these are much smaller in floor plan than what is presently proposed; and their visual impact is lessened by being set within a relatively spacious residential estate.

45. In comparison, the proposed building would be 5 storeys in height, though the top floor would be set back somewhat, thereby slightly reducing the impression of bulk. It would be on an H-shaped plan, with the inset elements at the sides, providing some articulation to these elevations and some visual interest. Its frontage would be narrower than the present office building, but it would be approximately 1 complete storey taller, even taking account of the pitched roof. It would also be very considerably more massive, with its floor area being around 3 times the depth of what is presently there. In my opinion, notwithstanding the attempts of the designers to limit its impact, it would appear a very large and visually dominating building in what is otherwise a mostly residential street predominantly characterised by buildings of modest scale and suburban character. In my view, the physical and visual impact would be emphasised by the fact that Plat Douet Road curves to the south of the site, which would allow clear views of the side of the proposed building, where its height, depth and bulk would contrast strongly with the neighbouring bungalow and the school beyond.

46. As the proposed building would be situated very close to Plat Douet Road and to the private road that runs along the southern boundary of the site, the opportunity to provide landscaping in order to soften its outline; to break up its bulk; or to reduce its physical impact on the street scene would be very limited. It would be restricted on these sides to some small planters. On the northern side, the indicative landscaping also shows some trees, rising to third and fourth floor level. In practice, I have doubts about whether that would be practical or realistic. The small proportion of the site not occupied by the building would be mostly covered by car parking with little opportunity of providing any positive setting to the development. The overall impression would be of a dense development having a strong urban character.

47. Notwithstanding the fact that the site is already occupied by an office building of some size located close to the road frontage, and that there are some other sizeable structures nearby, I take the view that, by reason of its scale, height and massing and the lack of opportunity for landscaping, what is proposed would detract from the prevailing largely small-scale character and appearance of Plat Douet Road, contrary to the requirement of Policy SP 7 *Better by design.* It would not, as suggested by the appellant, be a transitional site between areas of different character, as it would have little in common with either the suburban development to the west or to the commercial

development to the east. In my judgment, the building would contrast just as much with the commercial buildings as it would with the existing housing. It would not make a positive contribution to a number of urban design objectives referenced in Policy SP 7, including local character and sense of place, continuity and enclosure, and quality of the public realm. For the same reasons, it would not be in accordance with comparable parts of Policies GD 1 and GD 7. I thoroughly agree with the view that "different" does not automatically equate to "harmful" – indeed the introduction of difference into the built environment can introduce interest and be beneficial. But the appeal proposal would not in my opinion bring any such benefits.

48. I appreciate that Policy GD 3 requires that the highest reasonable density should be achieved for all developments, and that building higher and over a greater proportion of a site area are ways in which to achieve this aim. However, the requirement is set within the context of also meeting other aspirations including those addressed by Policies SP 7 and GD 1: amongst other things, density should be commensurate with good design. Higher densities can and arguably should be achieved in town centre locations, where the predominant character is quite different to that of the suburbs. In my view, the appeal proposal is more characteristic of what might be acceptable in parts of the town centre. It is not appropriate to Plat Douet Road; and it is not appropriate to compare developments in the two locations.

Living conditions of neighbours (RFR 5)

Privacy

49. Policy GD 1(3)(a) *General development considerations* states that development should not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents. In particular, it should not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy.

50. The proposed development would have windows and balconies on all sides. The Department does not raise any concerns about the potential for overlooking to the south and east. I agree: the former would face the blank side wall of a bungalow and beyond to the well-landscaped grounds of the primary school; while the latter would face towards warehousing and the Waitrose supermarket. However, there would be 10 terraces or balconies looking north to the adjacent 2-storey Canning Court flats, and 8 looking west across Plat Douet Road.

51. At a distance of some 15 metres at the closest, the proposed building would be somewhat further away from Canning Court than is the present office building on the site, which is separated only by the width of a vehicular access way. However, as there are no windows in the flank wall of the offices, there is currently no opportunity for overlooking towards their windows on ground and first floors. In my opinion, under the proposed scheme there would be some potential

for overlooking though, at that distance, it would probably be more perceived than actual.

52. At the Hearing it was estimated that the balconies on the western (front) side would face directly across Plat Douet Road towards Apple Tree Cottage, which has 3 windows in its first floor elevation, and to its side garden, at a distance of 8.5 to 9 metres; obliquely to a neighbouring house on one side and to the Glenrow apartments on the other. All of those properties will have suffered in the past from some degree of overlooking from the offices, which I regard as being in unneighbourly proximity. Moreover, the garden to Apple Tree Cottage is already overlooked from windows and a terrace on the Glenrow building. Nonetheless, I believe that the proposed building would create an even greater potential for overlooking, notably from its balconies, which would provide the only opportunities for the occupiers to sit in the open air. I therefore disagree with the appellant that there would be no net difference with respect to loss of privacy.

53. I conclude on this matter that the proposed development would give rise to the potential for a modest reduction in privacy for some existing residents of properties in Plat Douet Road, principally by reason of proximity. Though alone this matter would be insufficient to warrant refusal, having regard to the terms of the policy, it adds limited weight to my other concerns expressed elsewhere in this report about the proposed positioning of the building so close to the roadside.

Shading

54. Policy GD 1 also states that development should not unreasonably affect the level of light to buildings and land that owners and occupiers might expect to enjoy.

55. The Department's report states that, based on the appellant's 3D model, the neighbouring residences, particularly those to the north would "lose out on a lot of sunlight throughout the winter months". It provides no independent evidence in support of this.

56. The appellant has produced a Sun Path Analysis (SPA) based on the tests set out in the UK Building Research Establishment (BRE) Good Practice Guide *Site Layout Planning for Daylight and Sunlight*. Though this is not official guidance in Jersey and hence not binding, the Department considers it a helpful indication. The guidance recommends that for an open space to appear adequately lit throughout the year, no more than 40% and preferably no more than 25% of its area should be prevented from receiving any sunlight at all on 21st March,. Naturally, the amount of sunlight will be greater in the summer months and less over the winter, but the equinox is chosen to provide a more balanced picture. Sunlight availability will be adversely affected if both the amount of sunlight falls below these targets and is less than 0.8 times the amount before the development

took place.

57. The appellant's diagrammatic model, showing the effect of shading on neighbouring properties shows that the fronts of those opposite in Plat Douet Road would remain in shadow for an hour or so longer in the morning compared to the existing situation, but that the garden to Apple Tree Cottage would have no greater shading at any time. From 14.00hrs, shadow from the development would start to affect the southern side of Canning Court, with the difference between the present and proposed situations increasing during the course of the afternoon. The claimed figures show that, while under both existing and proposed situations, Canning Court would be unaffected by shading between 08.00hrs and 10.00hrs; the degree of shading would decrease slightly at 11.00 and 12.00, owing to the proposed building being further away than the present offices; and then increase at 14.00hrs from 25% to 42%; at 15.00hrs from 25% to 58% and at 16.00hrs from 30% to 60%. At 17.00 the degree of shading would decrease slightly.

58. The SPA concludes that the proposed development would have a relatively low impact on the light received by neighbouring properties. It does not comment on the effect on those in Plat Douet Road, but states that it would increase shadowing on to the southern side of Canning Court by 6%. The Department accepts that the SPA is factually correct. However, my analysis of the figures presented show it to be somewhat misleading. The 6% headline figure has been calculated as the difference between the averages of the existing and proposed degree of shading between 08.00hrs to 17.00hrs. It is not a 6% increase, as claimed, but an average increase in shading of 6 percentage points, calculated by comparing the hourly situation averaged over that period. The calculated average increase from 19% to 25% actually represents an increase of over 30%, not 6%.

59. The Department draws attention to another part of the BRE guidance that includes a useful "rule of thumb" for defining an "unobstructed zone of daylight", by imagining a line drawn from the centre of the lowest window of a property upwards at an angle of 25 degrees. This so called "25 degree rule" has been referred to at other appeals, notably at the Le Squez development. In the present case, applying it to one of the Canning Place windows shows that the line would be breached by the proposed building at around the top of the third floor level. In response, the appellant says that the BRE guidance is intended to be used in a sequential way, so that, if the 25 degree rule is met, then there is no need to proceed further. If it is not, then it may be appropriate to go on to apply a more sophisticated analysis, such as the SPA. I am content to accept this as a reasonable approach and that a breach of the "rule" should not be considered conclusive.

60. It is clear that the proposed development would give rise to some additional shading to properties opposite in Plat Douet Road and to flats having windows in the southern elevation of Canning Court, to

the side. With respect to the former, I am reasonably satisfied that the occupiers would not suffer any significant reduction in the quality of their living conditions through loss of light. As for Canning Court, I have been unable to find out at the Hearing or at my site visit whether the windows in question serve rooms that would be particularly sensitive to loss of light. I have to assume that some may be. In the second half of the afternoon, a proportion of these windows would receive less light than at present; and at all times the view of the sky would be reduced. I conclude that some, if not all of the occupiers would suffer a reduction in the quality of their living conditions, but only to a moderate degree. Overall, I conclude that the additional shading effect would be an adverse consequence of the proposed development. In my view it would be insufficient alone to warrant dismissal of the appeal but, as with the matter of the loss of privacy, it nonetheless adds limited weight to other adverse consequences that I identify elsewhere in this report.

Residential standards and living conditions for future residents (RFR 3)

61. Amongst other things, Policy Note 6 *A Minimum Specification for New Housing Developments* (updated 2009) (PN6) includes minimum space standards for new dwellings. However, it is not included in the list of adopted and proposed SPG in Appendix A to the Island Plan (IP). It is recognised by the States as being in need of review, and it is intended that in time it will be replaced by "Design for Homes", which will have the status of SPG. However, for the time being it remains extant and is still regarded by the Department as a key source of guidance and a material consideration in making planning decisions. The SoCG states that development has been permitted on other sites where the terms of PN6 regarding internal layout have not been satisfied.

62. The weight to be accorded to PN6 is not indicated expressly in the document, but the Department considers it should be "higher than moderate". IP Policy H6 supports new housing development in the built-up area provided that it is in accordance with the required standards for housing as established and adopted by the Minister through SPG. The supporting text makes it clear that the SPG – presumably "Design for homes" - is to be published in the future. It does not refer to PN6. Against this background, I agree with the appellant that the weight to be accorded to it should be little, not least because it predates the IP and does not have its genesis in planning policy.

63. The appellant has compared the internal space proposed to be provided for each of the 37 apartments. In every case, the overall floorspace would exceed the minimum requirements of Table 2 of PN6, by between 4.2 and 9.1 square metres (sqm). However, a large proportion of the apartments would fail to meet the minimum standard of 12.5 sqm for the main bedrooms. The shortfalls vary between 0.7sqm and 3.8sqm. The Department is content to accept the smaller sizes of the bedroom for the 1 person / 1 bedroom apartments, leaving 21 apartments with bedrooms smaller than the

standard by between 0.4 and 2.1sqm.

64. PN6 says that the minimum net floor area standards for new dwellings are the "absolute minimum", but it is clear that this relates to the overall area. For bedrooms, by contrast, the floor areas should "normally" be no less than the standards. This suggests that a degree of flexibility may be permissible. All of the proposed apartments would be provided with studies, which may be regarded as small rooms that could be used for a variety of purposes, including overcoming the shortfall in bedroom size, for example by providing storage. With a floor area in the region of 6.2-6.4sqm, I appreciate that the "studies" might have the potential to be used as small bedrooms, in which case the overall floorspace standards would be breached.

65. PN6 also addresses the question of the amount of private amenity space which should be provided. It says that the Island Development Committee proposes to adopt an overall minimum standard of 30sqm per family flat and 20sqm for non-family flats. The use of the expression "proposes" suggests that the PN6 standards have no formal standing. All of the proposed private amenity space would be in the form of balconies. If the 2-bedroom apartments were to be regarded as family flats, just 5 of the units would meet the standard. For the remainder, the shortfall would amount to between 2.3 and 17sqm; and for non-family flats, between 1.0 and 10.3sqm.

66. My attention has drawn to a file note, recording a meeting between the appellant's representatives with the Department's case officer, which says that 10sqm for a balcony would be acceptable. However, the Department cannot recall this.

67. The Department has referred in its relevant RFR to IP Policies GD 1 and GD 3 *Density of development.* Both promote sustainable development, but neither directly addresses the subject of living standards for future residents of new housing or refers to space standards. The latter, while supporting the highest reasonable density for development, adds that this should be commensurate with (amongst other things) good design and adequate amenity space. The context suggests, however, that design relates to external matters rather than the internal arrangements of buildings

68. With respect to the internal space standards, I conclude that only limited weight can reasonably be accorded to PN6. I am satisfied that the internal space provision of the proposed apartments would be satisfactory. The failure of some of the units to meet the PN6 standard for main bedrooms is not to my mind critical in view of the fact that all apartments exceed the overall space standards. Considering the design of the units in the round, including the incorporation of studies, which provide the opportunity for home-working and flexibility, a failure to meet bedroom size standards does not in my view equate to a finding of unacceptability. There has been no clear breach of any policy of the Island Plan.

69. However, I take a different view with respect to the provision of private amenity space. Though the standards proposed in PN6 carry very little weight, I consider that the level and quality of provision would be inadequate for a number of the apartments by reference to Policy GD 3, particularly for the 2-bedroom apartments which would be suitable for small families. I have drawn this conclusion not only because the size of many of the balconies would be fairly small, but because there would be no compensating outdoor amenity space, either private or communal. I appreciate that the site is reasonably close to the coast, to a park and a sports centre; and that there are shops and other amenities nearby, together with bus stops and cycle storage to aid access to other facilities further away. But the complete absence of any other outdoor area on which children, particularly younger children, could play close to their home, is to my mind an omission. Moreover, some of the balconies, particularly those on the lower floors, would not provide a particularly attractive or private space for residents to use.

70. The warehouses and the supermarket to the rear of the site have legal rights to use a private road and its existing accesses from and egress to Plat Douet Road and these would remain, irrespective of the use of the appeal site. To my mind, the current and proposed arrangements for servicing are far from ideal. Nonetheless, I have already concluded that there is no obligation for the appellant to draw up comprehensive plans for the future use of adjoining land; and this applies equally to vehicular access. However, that does not mean that these access arrangements are irrelevant to the present proposals, as they have the potential to affect the living conditions of future residents.

71. At the Hearing, I heard from the appellant that the Private Road Agreement, that governs the use of the private road, is worded restrictively in relation to width and corners such that effectively it limits the size of delivery vehicles to rigid vans. However, according to information contained in representations from Waitrose, the store typically daily receives deliveries by what are described as "short based articulated lorries", together with 6-8 local deliveries by van, between 07.00hrs and 14.00hrs and between 19.00hrs and 21.00hrs. Deliveries arrive by way of the southern entrance and leave by the northern one. The warehouses are presently unoccupied, but could also have considerable potential to add to this level of traffic if brought back into use.

72. The proposed building would be narrower than the office but, effectively surrounded by the private road, its future occupiers would potentially be subject to noise and disturbance from the delivery vehicles passing by in close proximity. I appreciate that the present occupiers of Canning Place and the former workers at Samuel Le Riche House will have been subject to similar conditions, and that residents of Plat Douet Road itself will to some degree be affected by the same vehicles. However, I would expect the occupiers of the proposed

apartments to be more sensitive to noise and disturbance than office workers, and the potential for disturbance greater in relation to the use of the balconies which would provide their only outside amenity space. In short, even if it was considered acceptable for an office use on the site to be subject to disturbance from commercial vehicles, it does not follow that it would be so for residential accommodation. To my mind, the presence of the commercial access / egress so close to the apartments and to their balconies adds further weight to my earlier conclusions concerning the quality of the living conditions likely to be experienced by future occupiers.

Parking (RFR 4)

73. Policy Note 3 *Parking Guidelines* (PN3) has the status of SPG, but it dates from 1988 and is under review. It has been the subject of significant criticism. In particular, the Inspector's report into the Castle Properties appeal in 2016 described the approach as obsolete and disconnected from sustainable transport planning policy, and woefully out of date and entirely disconnected from the Island Plan's strategy. The IP (paragraphs 8.136 – 8.137) describes the standards as having encouraged car use, increased congestion and contributed to the decline of public transport use and services, and is not a viable or sustainable approach. It concludes that the provision of significant amounts of parking space in association with new development is an inefficient use of valuable land and a constraint to good urban design. It is clear from the cases that have been brought to my attention that the standards are now honoured more in the breach than the observance.

74. I acknowledge that many of the developments where reduced parking provision has been made are located in and around the town centre, whereas the present appeal site is a short distance outside. However, the locality is well-served by buses, and bus stops are conveniently located. Moreover, the development would include cycle storage at a rate no less than one per unit. Overall, and notwithstanding that PN3 has the status of SPG, I accord it negligible weight in view of the clear divergence of approach between it and the Island Plan.

75. The appellant, while accepting that some parking is necessary, considers that it should be less than the PN3 standards. The Department also accepts that some flexibility is required: its suggested starting point is the provision of a minimum of 1 space to be provided for the 1-bedroom apartments: 1.5 spaces for the 2-bedroom apartments and a further 9 spaces (1 per 4 units) for visitors: a total of 56, or an overall ratio of 1.51 spaces per unit. The PN3 standards would require 70 spaces. By contrast, the development as proposed would be provided with 46 spaces, amounting to 1 space per unit irrespective of size, and 9 visitor spaces, or an overall ratio of 1.24 spaces per unit.

76. Policy GD 1(5)(c) requires development to provide adequate space for parking. Policy SP 6 *Reducing dependence on the car* amongst other

things also requires development proposals to demonstrate that it is (1) immediately accessible to existing or proposed pedestrian, cycle and public transport networks; (2) does not give rise to an unacceptable increase in vehicular traffic … or parking on the public highway; and that (4) appropriate provision is made for car and cycle parking. I consider that the appeal proposal meets (1) and (2) and, with respect to the present issue, under (4) I regard the amount of parking to be "appropriate"; and under Policy GD 1, to be "adequate". Each apartment would have its own space and there would be limited visitor parking, amounting roughly to 1 space for every 4 units. In my view that should be adequate for the type of development proposed. I conclude that the proposed parking provision would meet the requirements of planning policy.

77. In reaching these conclusions I have had regard to representations made by a number of local residents, who have drawn my attention to existing parking problems and associated access and traffic congestion in the locality, notably associated with parents dropping off and picking up children at the nearby school. It has been suggested to me that both the number of dedicated spaces per unit and the number of visitor spaces would be inadequate, particularly in view of the fact that parents presently use an existing car park – albeit in an unauthorised manner – which would be lost as part of the proposed development. I fully understand these concerns, but it is clear that the Island Plan seeks to reduce dependence on the private car, and that making large-scale provision for residential parking can only militate against that aim. In my opinion, to provide even the quantity of parking suggested by the Department, which assumes a need to provide for half of the 2-bedroom apartments with 2 parking spaces each, would be contrary to that approach. The area is just 2.5 km from the centre of St Helier and it is undisputed that it is well served by convenient public transport. Cycle storage would also be provided.

Sustainability (reason for refusal 6)

78. At the Hearing the Department conceded its case with respect to air quality (Policy NR 3) and does not seek a condition in relation to that matter. I agree, there is no evidence that the development would decrease air quality in the area. The Department is similarly "not exercised" by the subject of water capacity and conservation (Policy NR 2). However, I consider that this should be addressed by way of a condition, as it is a requirement of the policy. The matter of renewable energy (Policy NR 7) was also agreed as amenable to being dealt with by way of a condition requiring a scheme to be submitted.

79. I conclude that, subject to the imposition of appropriate conditions, none of the matters raised in the sixth reason for refusal form the basis of an objection to the proposed development

Highways and related matters

80. There is no separate RFR relating to highways and access matters. So far as the final element of the first reason is concerned, relating to the minor encroachment of the development on to the private road to the rear, the Department accepts that this has been resolved by means of the submission of a revised plan which makes a minor adjustment to the parking layout and overcomes the problem.

81. The SoCG says that the proposed development would lead to a net reduction of vehicular movements in the morning peak period and an additional 2 two-way trips in the school peak hour, such that the change of use of the land from offices to residential would have no material impact on road safety. I have no basis on which to disagree with this conclusion.

82. Nonetheless, the consultation response to the application from the Department for Infrastructure identifies a number of issues which should be addressed. These include:

    (a) A financial contribution to the development of the Eastern Cycle Network.

    (b) Widening of the footpath between the site and the Clos Gosset development.

    (c) Provision of raised footways across the existing accesses.

    (d) Provision of a footway with bollards along the site frontage to prevent pavement parking.

    (e) Improved access to cycle parking.

    (f) The maintenance of unobstructed access to the Waitrose shop.

    (g) Provision of electric vehicle charging points.

    (h) Management of the use of the visitor parking bays.

    (i) Provision of visibility splays to both accesses.

    (j) Pedestrian improvements at the Bagot Road / Plat Douet Road junction.

83. Point (a) is addressed by the Proposed Eastern Cycle Route Planning Obligation Agreement (POA). (b), (c) & (d) are addressed by the Pavement Improvement Contribution POA. (e) & (f) have been addressed in the submission of revised plans. (g), (h) and (i) are the subject of proposed conditions. The need to address the matters covered by point (k) is disputed by the appellant. I address matters relating to the POAs separately below.

The Planning Obligation Agreements

84. The appellant has put forward 3 POAs signed on behalf of the owner covering the matters set out in Annex A to this report.

    1. The proposed Eastern Cycle Route POA.

       This agreement obliges the owner to make a contribution (of £37,000) to the States to be applied towards the provision of the Eastern Cycle Route. This responds to Island Plan Policies SP 6 *Reducing dependence on the car* and TT 3 *Cycle routes*, together with Proposal 27 *Island path network*, which seeks to develop plans for the improvement and expansion of (amongst other things) cycle routes and for developing a coherent network for cyclists across the Island.

    2. The Pavement Improvement Contribution POA.

       This agreement obliges the owner to make a contribution (of £30,000) to the States to be applied towards widening part of the footway on the eastern side of Plat Douet Road and associated works. This responds to Island Policies SP 6 *Reducing dependence on the car* and Objective TT 1 *Travel and transport objectives*, which amongst other things seek provide appropriate priority and a safe environment for pedestrians, and to enable and promote walking.

    3. The Percentage for Art Contribution POA.

       This agreement obliges the owner to make a contribution to make a contribution (of £37,000) to the States to be applied towards the provision of public art within the site. This responds to Island Plan Policy GD 8 *Percentage for Art* which encourages such contributions in order to integrate art and craftsmanship into the built environment, and to Supplementary Planning Guidance Advice Note 3.

85. The 3 POAs have been assessed by the appellant against the policies of the Island Plan, the Minister's Guidance (SPD Practice Note 13 *The Use of Planning Obligation Agreements*) and other relevant considerations. I agree with the appellant that the matters covered by these POAs meets the tests of the Minister's guidance, in that they are necessary (to make the development acceptable in planning terms); relevant to planning; directly related to the proposed development; fairly and reasonably related in scale and kind to the proposed development; and reasonable in all other respects. As these matters are agreed, I do not intend to consider them in detail.

86. As indicated under "Highways and related matters" above, the Department for Infrastructure sought to gain a contribution from the appellant for various pedestrian works to the junction of Plat Douet Road and Bagot Road, to the north of the site. (the Junction

Improvements POA) The appellant has declined to enter into such an agreement on the grounds that, while the improvements may be desirable, they are not directly related to the development and so would not comply with the third of the relevant tests.

87. I concur with this assessment. The junction improvements cannot be justified by reference to additional traffic or to road safety. It is common ground that the proposed development would have no material impact on these matters. Moreover, pedestrians wishing to take a bus may walk to a local (69 metres from the site) bus stop to the south, without having to negotiate the Bagot Road junction. The Department (of the Environment) has indicated that in its view a requirement to widen the entire footway to Bagot Road (beyond that required under the Pavement Improvement Contribution) would not be fair, reasonable or proportionate. Consequently, the improvements sought are not necessary to make the development acceptable in planning terms. The appropriate tests have therefore not been fully met and consequently these 3 POAs are material considerations in this appeal.

88. The POAs have not been signed on behalf of the Minister but would need to be signed prior to the issuing of any planning permission, should this appeal be allowed.

Conditions

89. In the event that the appeal is allowed, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately. Planning conditions were discussed at the Hearing on a without prejudice basis; and a number of were agreed in principle. Of the conditions suggested, I am satisfied that there is no need to require the submission of an ecological statement, in view of the fact that the site is entirely previously developed. There is also no need for a "Percentage for Art Statement" as this has already been submitted as a supporting document and the matter of provision is covered by one of the Planning Obligation Agreements. Schedules listing the matters to be covered by conditions is attached as Annex B to this report. The Minister has the power to refer the appeal back to me for further detailed consideration of the detailed wording of the conditions, should the circumstances arise.

Other Matters

90. The proposed development was the subject of prolonged discussions between the appellant's representatives and the Department's planning officers prior to the determination of the application. During this time, various matters were agreed between the parties, or at least strong indications appear to have been given by the Department that they were agreed. Anything stated by the Department's officers during discussions are on a "without prejudice" basis and do not commit it to any particular decision. Nonetheless, it is not good practice for the Department to give the impression that all, or most

matters relating to a proposal are satisfactory or capable of resolution, only to refuse permission by reference to a wide range of considerations. But I do not propose to take up time analysing what was said, when and by whom, as these matters are not material to the merits of the case.

91. My attention has been drawn to a number of other developments in the context of alleged inconsistency in the application of policies and standards by the Department. I do not have first hand knowledge of many of these developments and so cannot say to what degree they may be considered to be comparable with this case. I have therefore made my recommendations based solely on the individual merits of the present appeal.

Overall Conclusions

92. The principle of residential development on the appeal site is not in dispute. However, in my judgment, the development as proposed is not acceptable for a number of reasons, all of which, to a greater or lesser extent, relate to over-development of the site. The proposed building and a proportion of the parking provision would occupy very nearly all of the site, up to five storeys in height. As a consequence, the building would be out of scale with the existing development in Plat Douet Road, characterised as it is by mostly modestly proportioned housing. Situated very close to the road frontage and extending a considerable way behind, it would dominate the street scene physically and visually. There would be little or no possibility of incorporating any meaningful landscaping that would assist in integrating the development into its setting; reducing its impact; or creating attractive living conditions for future occupiers. The amount of amenity space, comprised solely of balconies, would not be sufficient, and there would be no outside space on which to provide any more. The living conditions of future occupiers would be further compromised by the building being entirely surrounded by roadways, including those serving commercial premises to the rear which are used by vehicles capable, in my view, of causing noise and disturbance at close quarters. Further, the proximity of the building to the roadside would increase the potential for overlooking of nearby residential properties at close range; and the moderate increase in shading of Canning Court adds limited additional weight to these conclusions. Where these matters are contrary to the provisions of policies of the Island Plan it is indicated within the report.

93. I have not agreed with all of the Department's reasons for refusal. I consider the first to be misconceived, but that does not mean that the present use of neighbouring land is immaterial. Clearly it is relevant to the living conditions of occupiers. I also disagree that the internal accommodation of the individual apartments would be unsatisfactory by reference to PN6 or that parking would be inadequate, notwithstanding the PN3 parking guidelines. I agree with my colleagues who have criticised reliance by the Department on these

out of date documents which do not properly reflect the objectives and policies of the Island Plan. Moreover, a number of other matters are capable of being addressed satisfactorily by means of imposing planning conditions.

94. For the reasons given above, I recommend that the appeal should be dismissed.

95. However, should the Minister disagree, I recommend that any permission granted should be subject to the Planning Obligation Agreements listed in Annex A to this report being first signed on behalf of the Minister, and to conditions being imposed as outlined in Annex B.

The revised iteration

96. As set out at length above, the "revised iteration" is a material consideration, insofar as, if it were capable of satisfactorily overcoming the various objections to the original proposal that I have identified and thereby bringing the proposed development in line with the relevant policies of the Island Plan, it would be possible to allow the appeal and grant permission, subject to suitable conditions. But I do not believe it makes any significant improvement. The reduction in the size of the top floor would to a small extent reduce the bulk of the building, but not to the extent that it would render it satisfactory in context. My primary concerns relating to overdevelopment would remain. In short, I agree with the Department's assessment that it does not go nearly far enough in addressing the concerns we share.

97. However, should the Minister disagree, and take the view that the revised iteration would overcome the objections to the proposed development set out in this report, I recommend that any permission granted should be subject to the Planning Obligation Agreements listed in Annex A to this report being first signed on behalf of the Minister, and the plans relating to the revised iteration substituted for the originally submitted scheme in the relevant condition.

Jonathan G King

Inspector

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ANNEX A

PLANNING OBLIGATION AGREEMENTS

1. The proposed Eastern Cycle Route.

2. The Pavement Improvement Contribution.

3. The Percentage for Art Contribution.

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ANNEX B

SUBJECT MATTER OF CONDITIONS THAT MAY BE IMPOSED ON THE PLANNING PERMISSION IN THE EVENT THAT THE APPEAL IS ALLOWED

1. Standard timescale for commencement.
   (to define the permission)

2. Compliance with the approved plans.
   (to define the permission – IP Policies SP 2, GD 1 & GD 3)

*(**NB** in the event that the permission refers to the "revised iteration", the plans relating to that scheme should be substituted.)*

3. Compliance with revised plan showing amended parking fully within site boundary
   (to limit development to the site and to maintain access to land at the rear)

4. Provision of a specified number of parking and cycle storage spaces.
   (to ensure that sufficient vehicle storage is provided)

5. Protection of the visibility sight lines at access/egress
   (to ensure appropriate safe visibility for vehicles using the accesses – IP Policy GD 1)

Submission and approval of, and compliance with:

6. details of external building materials.
   (to ensure an appropriate finish to the building – IP Policies SP 7 & GD 1)

7. a scheme of landscaping for the site.
   (to ensure the provision of an appropriate setting for the development – IP Policy GD 1)

8. details of waste management arrangements, including bin stores and recycling.
(to ensure adequacy of provision and proper control over the management of waste on the site – IP Policy WM 5)

9. a scheme concerning the provision electric car charging infrastructure.
(to encourage the use of sustainable travel modes – IP Policy NR 7)

10. a scheme for the management of parking space and cycle storage.
(to ensure equitable availability of parking spaces and to avoid misuse – IP Policies SP 6 & GD 1)

11. a water conservation strategy.
(in the interests of sustainable water management – IP Policy NR 2)

12. a renewable energy statement.
(in the interests of sustainable energy management – IP Policy NR 7)

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