

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

Report to the Minister for the Environment

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Sea View Investments Limited

Planning Permission Reference Number: P/2017/0162

Decision notice date: 20th October, 2017

Location: Keppel Tower & Elizabeth Cottage, La Grande Route des Sablons, Grouville, JE3 9FP

Description of Development: Demolish 2 No. dwellings. Remove modern extensions from existing Tower and make good. Construct 3 No. three bed units and 11 No. two bed units of residential accommodation. 3D model available.

Appeal Procedure and Date: Hearing, 12th January 2018

Site Visit procedure and Date: Unaccompanied 9th January & accompanied, 11th January 2018

Date of Report: 19th February, 2018

Introduction

1. This is an appeal by Sea View Investments Limited against a refusal to grant planning permission for developments adjacent to Keppel Tower. In summary, these comprise demolition of the existing dwellings on two adjoining plots, including the buildings attached to Keppel Tower. These would be replaced by four buildings comprising a total of 14 apartments and an underground car park. The proposal also includes for restoration works to Keppel Tower, a listed building.
2. Owing to the number of objections received, the application was determined by the Planning Committee. At its meeting on 21st September 2017, the Planning Committee refused the application and confirmed the decision for refusal at its meeting on 20th October 2017. This decision was contrary to the Department's recommendation to approve the application.
3. The decision notice, dated 20th October 2017, lists a single reason for refusal:
 - (1) The mass and scale of the development, particularly Block B, is out of character with the context of the area, contrary to Policy GD3 of the Jersey Island Plan 2011 (Revised 2014).
4. A summary of the cases presented by the appellant, the Department of the Environment and the Planning Committee, together with comments received during the application and appeal processes and at the hearing are presented below.

Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

The appeal site and surroundings

5. The appeal site is located between La Grande Route des Sablons and the coast, to the north of the Seymour slip. It comprises two residential properties; Elizabeth Cottage, a detached 2.5 storey building to the south of the site and Keppel Cottage, a 1.5 storey building to the north of the site. Both appeared to be in a poor state of repair at the time of my site inspection. The site also encompasses Keppel Tower, a category B listed building. There are a collection of single storey extensions attached to the tower.
6. The dwellings are accessed from La Grande Route des Sablons, but sit at a higher ground level. They also sit above the level of the adjacent beach and are separated from it by a sea wall.

The proposed development

7. The appealed application relates to demolition of the existing dwellings and additions to Keppel Tower. They would be replaced by four blocks (labelled A - D from south to north) housing a total of 14 apartments as follows:
 - Block A: 3 No. units, comprising 2 No. 3 bed units and 1 No. 2 bed unit;
 - Block B: 5 No. units, each of which would be 2 bed units;
 - Block C: 4 No. units, comprising 3 No. 2 bed units and 1 No. 3 bed unit;
 - Block D: 2 No. units, each of which would be 2 bed units.
8. The proposals also include ancillary facilities comprising modification of the vehicle access from La Grande Route des Sablons, construction of a basement car park for 36 vehicles and bicycle storage, a leisure suite and external landscaping. A pavement along the frontage of the site with La Grande Route de Sablons would also be provided. In addition, the proposals would include works to restore Keppel Tower.

Case for the appellant

9. The appellant has responded to the reason for refusal in addition to submitting a number of general grounds of appeal. They refer to the planning history of the site, highlighting that Planning Officers have consistently supported previous development proposals. The appellant considers that the Planning Committee members have given too much weight to advice provided by the Royal Court, who considered appeals in relation to the previous applications.
10. In summary, the appellant considers that the proposals would deliver new development in the Built-up Area; satisfy minimum density standards; meet standards for design quality and space; and would not have an unreasonable harmful impact on the island's character or environment. In addition, they consider that it meets car parking standards and includes elements that would meet sustainable transport objectives to reduce private car trips.
11. The scheme has been designed to avoid any unreasonable harmful impacts upon the amenity of neighbours through overlooking, overbearing, or loss of light. In particular, the appellant does not consider that the effects on light levels to the neighbouring property to the north, Trois Pignons, would be unreasonable. They

consider that the proposed application has a lower density than previously cancelled schemes.

12. The appellant does not consider that the proposals would have an adverse impact on the setting of nearby listed buildings. They are surprised by the objection from the Historic Environment Team, who is concerned about impacts on the setting of Cyprus House. In the appellant's view the proposals are similar to those included in previous schemes, which the Historic Environment Team did not object to in relation to impacts on Cyprus House.
13. On balance, the appellant considers that the application complies with the Island Plan. Mitigation measures have been included which provide sufficient justification for the Minister to approve the scheme.

Case for the Department of the Environment

14. The Department identified the application as lying within the Built-up Area as set out in policies SP1 (Spatial Strategy) and H6 (Housing development within the Built-up Area), where there is a presumption in favour of development. It considered that the scheme would result in improved views to the sea and hence would comply with policy BE4 (Shoreline Zone). The proposed design was considered appropriate and to respect the character of the area, satisfying the requirements of policy GD7. It was also considered that there would be no unreasonable impacts on the amenities of neighbouring properties, and hence also satisfied the requirements of policy GD1.
15. The report considered the objection from the Historic Environment Team. It concurred with the appellant's view, that the test of HE1 (protecting listed buildings and places) in relation to the setting of a listed building relates to the special interest of the setting, rather than looking at the setting as an entity in itself. Taking this approach, the Department concluded that the proposed scheme would result in the removal of poor quality landscape features and replace these with a package of improved landscape finishes. On balance it concluded that there was a net enhancement of the setting of Cyprus House and hence the proposal would accord with policy HE1.
16. The Department also considered the proposals against the requirements of policy GD3 (Density of development). In its written report to the Planning Committee, the Department estimated that the application would deliver a density of 56 units/ ha, which it considered met the policy commentary.
17. The Department's recommendation was that the scheme should be approved, subject to a Planning Obligation Agreement for provision of a bus shelter and a contribution towards the Eastern Cycle Route. A number of conditions were also identified.

Case for the Planning Committee

18. As the Planning Committee was not represented at the hearing, the assessment of the Committee's views is based on: the written minute of the Planning Committee's meeting of 21st September 2017; the reasons for refusal included on the Decision Notice dated 20th October 2017; and comments from the Department at the hearing.
19. The decision was based on a Committee vote and decided by a majority decision. The Committee considered that the scale and mass of development, particularly

Block B, would be out of character with the context of the area. For this reason, it failed to satisfy the requirements of policy GD3 (Density of development) and the Planning Committee refused the application.

Consultations

20. Four consultation responses were received from: Department of the Environment - Natural Environment; Department of the Environment - Historic Environment; Department for Infrastructure - Highways; and Department for Infrastructure - Drainage section.
21. The Natural Environment response confirmed it was content with the conclusions of the submitted reports, subject to a minor amendment in relation to timing of provision of a bat box. It further recommended that the Species Protection Plan should be secured by condition.
22. The responses from the Historic Environment Team highlighted that the interest of Keppel Tower is diminished by the later built additions and extensions. It is content with the archaeological investigations completed to date, but would wish to see additional works following removal of the extensions. This could be a condition to any permission that was granted. The responses also suggested that a condition should be added to ensure the full repair and restoration of the tower and future maintenance was tied to a Management Company for the new apartment buildings. In relation to Keppel Tower, the Historic Environment Team concluded that the proposals would result in positive changes to both the fabric of Keppel Tower and its setting, which should ensure the future restoration and maintenance of the tower.
23. The response confirmed that the setting of Seymour Cottage was not considered to be detrimentally affected. However, the Historic Environment Team was concerned that the proposed new vehicle entrance to the basement car park would have a significant impact on the setting of Cyprus House.
24. Following receipt of additional information, the Highways section of the Department for Infrastructure confirmed it was content with the proposals, subject to a Planning Obligation Agreement to provide a bus shelter and a financial contribution to the Eastern Cycle Route. The Department also commented that in its view, the bicycle storage in the basement could be difficult to use owing to its proximity to parking bays.
25. The Drainage section of the Department for Infrastructure confirmed that the public foul water sewer had sufficient capacity to accommodate the proposal. However, it noted that there was no capacity for surface water and it was not clear where a soakaway could be located. It also raised concerns about how run-off to the foreshore would be accommodated and noted that any works within 5 metres of the public seawall, which forms the northern boundary of the site, would require the consent of the Minister for the Department for Infrastructure.

Representations made by other interested persons

26. During the application process, 22 letters of representation were received from 21 respondents. Fourteen of these opposed the scheme; two letters provided mixed feedback. Six representations were in support of the proposals. Seven of the respondents sent a further response during the appeal stage.
27. The grounds of objection can be summarised as:

- proposals will not preserve or enhance Keppel Tower and its setting;
- effects on Keppel Tower not been fully assessed (effects of basement);
- blocks C and D will detract from the Tower;
- blocks A and B will be overpowering in terms of height and footprint;
- over-development of the site/ increase in density of buildings;
- deleterious impact on character of area;
- appearance and design;
- design still intrusive to Seymour Cottage;
- traffic congestion and road safety;
- effects on neighbouring properties (Prospect House, Trois Pignons).

Inspector's assessment and conclusions

28. Throughout the appeal all parties have made reference to the planning history of the site, including the two third party appeals to the Royal Court. I do not intend to repeat that history here, as the Minister will be well aware of it, and it is summarised in both the Department's report and the Appellant's Statement of Case. Whilst I have considered each of the Royal Court's decisions, the scheme that is before me now is different to either of the previous proposals. As such, I am required to consider it afresh, on its own merits, and in the light of the current policy and legislative framework.
29. Having regard to the decision notice, appeal documents, representations submitted during the application and appeal stages and the discussions at the hearing, I consider that the main issue in this appeal is: the mass and scale of the proposed development and whether this meets the requirements of policy GD3 of the adopted Island Plan 2011 (revised 2014). In addition, I note that there is an outstanding objection from the Historic Environment Team concerning the effect of the proposals on Cyprus House.

Assessment against requirements of policy GD3

30. The adopted Island Plan 2011 (revised 2014) sets a strong requirement for a more sustainable approach to the development and redevelopment of land. To safeguard the special qualities of Jersey, the plan contains policies that focus development within the Built-up Area. The spatial strategy recognises a settlement hierarchy; built-up areas outside St Helier are expected to make an important contribution to meeting Jersey's development needs, but are recognised as being less capable of accommodating the same volume of development as the town. The appeal site lies within a Secondary Urban Settlement, and therefore I conclude it is not expected to accommodate the same level of development as St Helier.
31. In recognition of the fact that space is limited, Policy GD3 - Density of development - requires sites to achieve the highest reasonable density for development, commensurate with good design, adequate amenity space and parking.
32. Policy GD3 goes further to state that residential development on sites of more than 0.2 hectares (0.5 acres) will not be permitted unless a minimum density is achieved. This minimum density is to be set out in supplementary planning guidance, which is yet to be published. Nevertheless, the supporting text to policy GD3 (paragraph 1.11) refers to standards applied elsewhere, namely a minimum target of 30 dwellings per hectare set out by the UK Government and a minimum of 40 dwellings per hectare suggested by Lord Roger's Urban Task Force.

33. Within Jersey, Supplementary Planning Guidance Note 6: “*A Minimum Specification for New Housing Developments*” published in 1994 and updated in 2006 also provides advice for minimum density. Paragraph 6.2 of this document refers to a series of rule-of-thumb density guides for different areas, which suggests a density of from 65 to 75 habitable rooms per acre on sites in or around the edges of the Built-up Area.
34. The appeal site extends to 0.25 hectares (0.6 acres) and so would fall within the requirements of policy GD3. The Department considers that the proposal would achieve a density of 56 units per hectare, which is well in excess of the 30 or 40 dwellings per hectare referenced in the preamble to policy GD3. The appellant has stated that the development would deliver 68 habitable rooms per acre, which is consistent with Supplementary Planning Guidance Note 6.
35. At the hearing, the appellant provided details of the density of other developments in the vicinity of the appeal site as varying from 57 habitable rooms per acre to 75 habitable rooms per acre. I was also advised that the density of the development of the Shakespeare Hotel, also in a coastal location, was at a significantly higher density of 106 habitable rooms per acre. However, I do not consider that is a direct or fair comparison, given that it is a remodelling of an existing hotel building rather than a purpose-built apartment block.
36. Whilst these numbers are helpful in providing an indication of scale of development, I am conscious that Supplementary Planning Guidance Note 6 is now considered rather old, and the UK figures have not been formally adopted in Jersey. Nevertheless, it is clear to me that the proposed density of development would at least meet, if not exceed, what might be considered to be minimum density requirements and would represent a significant increase over the current density.
37. The Planning Committee considered that the proposed density would be too high. The adopted Island Plan 2011 (revised 2014) does not provide guidance on maximum densities for development; but it must be of good design; provide adequate amenity space and parking. Design quality can be assessed by reference to policy GD7. Policy GD1 - General Development Considerations- sets out general criteria that all developments are required to meet. Consequently I have considered the proposals against the requirements of policy GD3, and GD1 with reference to policy GD7.
38. The application was accompanied by a Design Statement and at the hearing the appellant provided clarification of the proposed approach. Architecturally, the buildings had been designed as individual entities, each with a different character to their roadside /seaward elevations. They explained that the layout of buildings had been informed by the grain of properties in the surrounding area, where there is an emphasis of gable ends facing La Grande Route des Sablons. The difference in orientation of Block B to the other blocks drew on the orientation of the property immediately to the north of the site (Trois Pignons) and provided a more eclectic style.
39. In my view, the style and orientation of the proposed blocks would fit within the grain of the streetscape. Whilst the majority of buildings are orientated at 90 degrees to the coast, these are interspersed with a smaller number of buildings whose main elevations face the public road/ coast. During my site inspection I observed that dwellings on the eastern side of La Grande Route des Sablons were generally larger than those on the western side and were separated by narrow spaces, similar to those of the proposed development. The appellant also pointed out some existing apartment blocks to the east of the road. Whilst these were fairly

large and bulky, they were interspersed with substantial individual private dwellings and to my mind they were not obviously recognisable as apartment blocks.

40. The current layout obstructs views of the coast and Keppel Tower from La Grande Route des Sablons. The proposed arrangement would result in a visual opening up of the area, particularly around the tower.
41. The proposed heights of the buildings decrease from south to north across the site, and I consider that the height of each block fits with its surroundings. Block A would be a similar height to the neighbouring property to the south (Maison du Roc), and the height of Block D would be 1.4 metres lower than the neighbouring property to the north (Trois Pignons). The maximum height of the blocks would be below the height of Keppel Tower by approximately 2 metres.
42. In my opinion, the proposed materials and finishes of the development would be sympathetic to the surroundings; I observed examples of the use of granite blocks and white render along this stretch of La Grande Route des Sablons, together with both grey and red roof tiles. Final approval of materials and finishes could be a condition to any permission that was granted.
43. The appellant's Statement of Case has referred to the Countryside Character Assessment (1999), noting that the development would be within the Character Type B2: St Clement - St Saviour Coastal Plain. In describing the settlement type, the assessment refers to the appearance of a large and continuous urban development when travelling along the coast road. This Character Type is noted as having some capacity for change and being capable of accepting new development, provided it is carefully located. Notwithstanding this character assessment, I consider that the immediate context of the appeal site, which comprises a mixed architectural style including a high proportion of individual dwellings means that it retains a more rural feel. This is enhanced by the numerous more traditional, smaller dwellings to the west of La Grande Route des Sablons.
44. When viewed individually, each of the proposed blocks does not appear to me to be out of scale or proportion with other dwellings in the vicinity. However, despite their individual design elements, they are unmistakably a cohesive group of apartment blocks rather than substantial, individual dwellings. In my view, this acts to emphasise the density of development. Consequently, I consider that when viewed cumulatively they would create a visually dominant addition to the streetscape, which is out of character with the immediate area.
45. I note that the proposed layout provides adequate amenity space and that it also includes on-site leisure facilities.
46. The basement car park would provide a total of 36 spaces (31 for residents and 5 for visitors). I accept the Department's view that this is considered adequate, given the proximity of the development to a bus route and provision of cycle parking.
47. I have considered the effects of the proposals on neighbouring properties, particularly the property to the north (Trois Pignons). The neighbour has expressed concern that Block D would result in a loss of light to his property.
48. I visited the property during my site inspection and noted that Keppel Tower already casts a shadow over it at certain times. The properties are currently separated by a tall fence, which also contributes to shade. There is a lean-to structure at ground

level and two small windows at first floor level on the southern elevation of Trois Pignons. I noted that the main external amenity area appeared to lie to the east of the property. The appellant has provided a shadow analysis, which has shown that most of the shadowing results from Trois Pignons itself and the tower. Based on the shadow analysis and my site inspection, I conclude that the proposals would not unreasonably affect the level of light to Trois Pignons.

49. Drawing these points together, I consider that the proposal satisfies the requirements of policy GD3 in relation to provision of adequate amenity space and parking. I also consider that it satisfies the requirements of policy GD1 in relation to not having unreasonable effects upon the amenity of neighbouring properties. The proposals satisfy many of the aspects of good design defined by policy GD7 in terms of their siting, orientation, and use of appropriate materials and finishes. However, for the reasons set out in paragraph 44 above, I consider that the cumulative effect of the four buildings would act to exacerbate the increased density of the scheme and result in the introduction of features more typical of the Main Urban Settlement rather than a Secondary Urban Settlement.

Effects upon listed buildings

50. Keppel Tower is a listed building (Grade 3), and there are a number of listed buildings in the wider area including Seymour Cottage and Cyprus House.
51. Policy HE1 sets a presumption in favour of the preservation of the architectural and historic character and integrity of listed buildings and places, and their settings. It states that *“Proposals which do not preserve or enhance the special or particular interest of a listed building or place and their settings will not be approved.”* This sets a high threshold for developments affecting listed buildings, in that the effects must either be neutral or result in a positive improvement; small scale detrimental impacts would not accord with the wording of the policy.
52. The proposals would result in the removal of the additions and extensions to Keppel Tower, followed by a survey of the works required to restore the tower. Preliminary archaeological work has been carried out, which included suggestions for further investigations. Detailed surveys of the buildings to be removed would also be required. Implementation of these additional investigations and surveys could be subject of a condition to any planning permission that was granted.
53. The appellant has provided details of ground investigation works already conducted and proposed safeguards and working methods to ensure that the tower is not destabilised or undermined during construction of the underground car park or residential blocks. These could form part of a condition to any permission that was granted.
54. I have considered the relationships between the proposed residential blocks and the tower including their effects on the visibility and visual value of the tower. In my opinion, existing views of the tower from the beach are partially obscured by the extensions around its base. Removal of these would open up views of the whole tower and would help to re-establish it as a standalone structure. Whilst the proposed new residential blocks are substantial buildings, they would be shorter than and set back from the tower, allowing it to be viewed in its entirety.
55. Views of the tower from the road are currently restricted, owing to the existing arrangement of buildings and boundary treatments. The proposals would create a

more open arrangement, allowing better views of the tower for those travelling along La Grande Route des Sablons.

56. Overall I consider that the proposals would enhance Keppel Tower and its setting and so satisfy the requirements of policy HE1. I note that this is also the view of the Historic Environment Team.
57. Seymour Cottage is separated from the application site by Maison du Roc. I accept the view of the Historic Environment Team that the current proposals would not have an effect on Seymour Cottage or its setting.
58. Cyprus House is located on the western side of La Grande Route des Sablons, opposite the proposed access to the underground car park. The Historic Environment Team has stated that the proposed access would have a significant impact on the setting of this listed building.
59. The listing does not cover the whole building, but is restricted to the western portion of the dwelling, located furthest away from La Grande Route des Sablons. Whilst the gable end of the listed part of the building faces the road (and proposed access to the car park), it is separated from it by a later non-listed extension and a boundary wall.
60. The proposed access would be located broadly in the location of the existing access. Although the width of the access road would be similar to the current road, the existing boundary walls would be replaced by new walls which would be curved and set back to allow for creation of visibility splays and construction of a footpath along the edge of the road. The boundary walls would extend onto the site to form retaining walls adjacent to the ramp down into the car park.
61. The response from the Historic Environment Team argues that the current streetscape is typified by gables facing the road; with narrow gaps between buildings. It considers that the proposals represent a departure from this by creating a more significant opening into the streetscape. The representation does not consider that the proposed works represent an enhancement to Cyprus House, nor does it consider them to preserve the setting. The appellant does not agree with this view, considering that any effects on the setting of Cyprus House would be beneficial.
62. There is no published guidance specific for the definition of ‘setting’ in a Jersey context. In its second consultation response (1st September, 2017), the Historic Environment Team has stated that *“We agree that setting is the space or place in which an asset is experienced. This can be in close proximity or in longer views.”* This was also the approach taken by the Royal Court (decision dates 16 January 2014) who considered the setting of a listed building to include the general area in which it is to be found and its characteristics within that area. In their view, the setting of the listed building changes by reference to what is around it and how its characteristics are to be appreciated in that context.
63. At the hearing I asked the representative of the Historic Environment Team (Ms Ingle) and the appellant’s heritage adviser (Mr Strawbridge) to define their understanding of the setting of Cyprus House.
64. Ms Ingle considered the setting of Cyprus House to encompass the rural streetscape with gable end buildings and the wider environs, and to include parts of the

proposed development site. In her view, an increase in the width of the access road, combined with the height of retaining walls, would have an adverse impact on the pattern of buildings and space, changing the setting of Cyprus House.

65. The appellant's heritage adviser explained that his definition drew on best practice guidance produced by Historic England. He explained that setting comprised three elements: a wider landscape context, which in this case was the coast; a proximate or close setting, which in this case he considered to be the road corridor; and prospect, which is what could be seen from the asset. Using this approach, in his view the settings for Cyprus House and Keppel Tower were overlapping. The Historic Environment Team's representative also accepted that the settings of Keppel Tower and Cyprus House overlapped.
66. Both parties accepted that the proposals would introduce change into the setting of Cyprus House.
67. Mr Strawbridge considered the existing boundary treatments along the edge of the appeal site represented substantial, detrimental changes to the immediate setting of Cyprus House and he questioned which of these features it was desirable to preserve? In his view the removal of the California block wall and improvements to the roadside would enhance the streetscape. He concluded that the immediate contextual setting, of the road itself, would experience little material change as a result of the proposals, and so there would be no material change on the immediate setting of Cyprus House. Further, he considered that the proposals would enhance the setting of Keppel Tower and its setting; as this setting overlapped with that of Cyprus House it must also represent an enhancement to its setting.
68. By contrast, Ms Ingle, for the Historic Environment Team did not consider the proposed changes to be an enhancement. In her view they would not preserve the setting of Cyprus House.
69. The wording of policy HE1 is demanding: it requires that buildings and their settings should be preserved or there should be a positive enhancement; it does not appear to allow for change that is neutral or has any negative effects, no matter how small. If the test were to be applied rigidly, it could be used to prevent any or all development involving listed buildings. Furthermore, the policy does not provide for situations, such as this, where proposals could influence more than one listed building.
70. I conclude that, to the extent that both the appeal site and Cyprus House are located along the same street in the same coastal location, they have overlapping settings. In my view, this setting is defined by the physical relationship between each of the listed buildings and the road; rather than the direct relationship between the listed buildings themselves.
71. The heritage professionals have taken opposing views on whether or not the proposals would enhance the setting of Cyprus House. The Historic Environment Team is the official adviser to the Minister, and as such its opinion cannot be dismissed out of hand. Nevertheless, on balance I find the arguments presented by the appellant's specialist to be more compelling.
72. The immediate streetscape has obviously been altered over the years, and the boundary features opposite Cyprus House are not particularly attractive. The access would be retained in the same location, albeit slightly enhanced and remodelled.

However, based on my site inspection, it would be no wider than some other openings onto the same road in the vicinity of the property. In my view, Cyprus House would continue to be viewed within the same context of its proximity to La Grande Route des Sablons, and as lying opposite to other dwellings, albeit with enhanced landscape features along the opposite side of the road. On balance, I consider that the proposals would enhance the setting of Cyprus House and so the test of policy HE1 is met.

Other issues

73. Some of the representations raised concerns about the effects of the proposals on traffic. I note that a traffic report has been produced, the conclusions of which have been accepted by the Highways section of the Department for Infrastructure. The proposal lies adjacent to the Island's primary route network, which benefits from a good bus service. There is a bus stop in close proximity to the site and the developer would be required to enter into a Planning Obligation Agreement for provision of a bus shelter. The development provides cycle storage and the appellant would also be required to enter into a Planning Obligation Agreement to make a contribution towards the Eastern Cycle Route. The proposals also allow for the construction of a public footpath. I am therefore content that the proposals satisfy relevant policies of the adopted Island Plan 2011 (revised 2014) in relation to traffic, travel and car use (SP6, TT3, T4, TT8).
74. Issues relating to drainage have been raised in representations and at the hearing. The appellant has supplied notes of a meeting with the Department for Infrastructure - Coastal Defence, which provides confirmation that the team is content that a resolution strategy could be agreed during detailed design to address the stability of the sea wall during and after construction, surface water drainage, treatment of overtopping and prevention of surface water build up behind the sea wall. I also note the consultation responses from the Department for Infrastructure relating to sewerage capacity.
75. I note the response from the Natural Environment team that it was content with the ecological information provided and proposed mitigation methods. The minute of the Planning Committee meeting identified the proximity of the proposed development to the coastal Ramsar site. At the hearing, it was confirmed that effects on the Ramsar site had not been identified as an issue, and that providing a pollution prevention plan were in place during construction, there would be no effects on the site. I am therefore content that the scheme satisfies policy NE1 of the adopted Island Plan 2011 (revised 2014).
76. During the hearing questions were raised from members of the public about the effects of piling works on adjoining properties. It was also suggested that there could be sub-surface streams, which would be affected by the proposed basement. These issues had not previously been raised in written representations. However, the appellant has provided details of soil borehole surveys that have been carried out, which included assessments of groundwater levels. I am content that the measures identified in conditions (see Annex A) would safeguard the amenities of neighbours during construction.
77. I note the representation which raised concerns about effects to privacy of the external amenity space of Prospect House. This property is located to the south and west of the proposed development site, on the opposite side of La Grande Route des

Sablons. I do not consider there would be any effects on the external amenity space of this property.

78. I have considered all other issues raised, and other policies of the adopted Island Plan 2011 (revised 2014) addressed by the Department's report to the Planning Committee and am content that I have considered all material issues.

Possible conditions

79. Without prejudice to the outcome of the appeal, I held a discussion about conditions that should be applied to any permission that was granted.
80. The Department's original report to the Planning Committee recommended a Planning Obligation Agreement and 14 conditions. These were used as the basis for discussion at the hearing and were agreed where appropriate. In some cases I asked the Department to prepare a proposed form of words for amendments or additions to conditions. It has done this subsequent to the hearing, and the appellant has provided their views on these suggestions. My proposals for the wording of the Planning Obligation Agreement and 16 conditions that should be applied to any planning permission that is granted are set out in Annex A.
81. In addition to conditions discussed at the hearing, I note that the Department for Infrastructure - Coastal Defence team indicated that they would wish to agree certain details during the detailed design stage. I have proposed a scope for such a condition in Annex A.
82. There was a discussion about the best way of ensuring that the onsite leisure facilities were for the exclusive use of the residents of the apartments and their visitors. It was agreed that this could be achieved by adding the words: "*and ancillary gym and swimming pool*" to the description of development (see Annex A).

Conclusions

83. There have been a number of applications to develop this site in recent years. Whilst the current application inevitably leads to comparisons with those earlier schemes, I have considered it afresh, on its own merits in relation to the policies of the island plan and other material considerations, and not in terms of whether it is 'better' than previous applications.
84. There is much to commend this scheme, which satisfies many of the policies of the adopted Island Plan 2011 (revised 2014). However, for the reasons I identified in paragraph 44, when considered as a group the density of the proposed development would not fit with the character of the area. Consequently, I do not consider that it meets the requirements of policy GD3 of the adopted Island Plan 2011 (revised 2014).
85. Where there is an apparent tension between different policies, it is necessary for the decision-maker to take a balanced view, having regard to all material considerations. On balance, I consider that the disadvantages of this scheme which I have identified above outweigh the advantages of the scheme which I have identified above.

86. Article 19(2) of the Planning and Building (Jersey) Law 2002 requires that all development should be in accordance with the Island Plan, unless there is sufficient justification for granting permission that is inconsistent with the plan.
87. In the Statement of Case, the appellant has referred to Jersey's housing needs assessment, which identified a potential shortfall, particularly in 2-bedroom properties. Whilst the proposed development would make a contribution to delivering these properties, I do not consider it sufficient justification to approve these proposals, which in my view are not in accordance with the adopted Island Plan 2011 (revised 2014). The Minister may take a different view on this.

Recommendations

88. For the reasons outlined above, I recommend that the Minister should DISMISS the appeal.
89. If the Minister is minded not to follow this recommendation, and wishes to allow the appeal, then the permission should be subject to:
 - (i) amendment of the description of the development - as set out in paragraph 80 and Annex A; and
 - (ii) subject to a Planning Obligation Agreement and conditions as set out in Annex A.

Sue Bell

Inspector 19/02/2018

Annex A: Proposals for Planning Obligation Agreement and Conditions to be applied in the event that the appeal is allowed and permission is granted

Amendment of Description of Development

To ensure that the proposed gym and swimming pool are for the exclusive use of residents and their visitors, the Department suggested the following amendment to the description of the development. The appellant has indicated they would be content with such an amendment.

The description of development should be amended to:

Demolish 2 No. dwellings. Remove modern extensions from existing tower and make good. Construct 3 No. three bed units and 11 No. two bed units of residential accommodation and ancillary gym and swimming pool.

Planning Obligation Agreement

Within 3 months of the decision of this notice the applicant should enter into a suitable Planning Obligation Agreement pursuant to Article 25 of the Planning and Building (Jersey) Law 2002 (as amended) to:

- a. Pay the Eastern Cycle Route contribution of £1,000 per unit, totalling £14,000 prior to the commencement of any element of the development.

- b. Pay a financial contribution of £11,500 in relation to the delivery of a bus shelter, at a location to be agreed with DFI Highways.
- c. Agree to construct a footpath to DFI requirements as shown on the plans. The footpath will be offered to be ceded to the States of Jersey prior to the first occupation of any part of the development, however the date of the legal transfer of land agreement will be subject to crown office acceptance.

Following completion of the Planning Obligation Agreement the decision notice approving the application shall be issued within 7 days.

If the Planning Obligation Agreement is not completed within 3 months then the application shall be returned to the Committee for their further consideration.

Notes of Possible Conditions

1. The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Department of the Environment, a scheme of landscaping which shall provide details of the following:
 - i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site and on adjoining land within the same ownership;
 - ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them;
 - iii) other landscape treatments to be carried out or features to be created, for example, any excavation works, surfacing treatments, or means of enclosure;
 - iv) the measures to be taken to protect existing trees and shrubs; and
 - v) the arrangements to be made for the maintenance of the landscaped areas.

Reason: To ensure that before development proceeds provision is made for a landscaping regime that will enhance the appearance of the development and help to assimilate it into the landscape and to deliver a high quality of design in accordance with Policies GD1 and GD7 of the 2011 Island Plan (revised 2014).

2. All planting and other operations comprised in the landscape scheme hereby approved shall be carried out and completed in the first planting season following the first occupation of the development.

Reason: To ensure the benefits of the landscape scheme are not delayed, in the interests of the amenities of the area and in accordance with the requirements of Policies GD1 and GD7 of the 2011 Island Plan (revised 2014).

3. Prior to the first occupation of development hereby permitted, a report setting out the arrangements for the management of the landscaped areas shall be submitted to and approved by the Department of the Environment, to include that any trees or plant(s) planted in accordance with the approved landscape scheme, which within a period of five years from the planting taking place; die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season, unless the Department of the Environment gives written consent for a variation of the scheme.

Reason: To mitigate against the potential failure of trees and plants, and the extent to which that might threaten the success of the approved landscape scheme and in accordance with the requirements of Policies GD1 and GD7 of the 2011 Island Plan (revised 2014).

4. Notwithstanding the information on the approved plans, prior to the commencement of development, full details, including samples and colours, of all external materials and hard surfacing to be used to construct the development including the windows, downpipes, hoppers, gutters, railings, roof materials, elevational finishes and road / footpath / driveway surfacing, shall be submitted to and approved by the department of the Environment, implemented, and thereafter maintained.

Reason: For the avoidance of doubt and in the interests of the amenities of the area and to deliver a high quality of design in accordance with Policies GD1 and GD7 of the 2011 Island Plan (revised 2014).

5. Prior to first use of the new junction of the site and La Grande Route des Sablons, everything within the required visibility sight lines (as shown on drawing 4856/24), including gates, walls, railings and plant growth is to be permanently restricted in height to 900mm above road level.

Reason: In the interests of highway safety, in the interest of the amenities of the area and in accordance with Policies GD1 and GD7 of the 2011 Island Plan (Revised 2014).

6. Notwithstanding the information on the approved plans, prior to the commencement of development, full details, including location, heights, samples and colours, of all perimeter enclosures (walls, railings and fencing) shall be submitted to and approved by the Department of the Environment, implemented, and thereafter maintained.

Reason: For the avoidance of doubt and in the interests of the amenities of the area and to deliver a high quality of design in accordance with Policies GD1 and GD7 of the 2011 Island Plan (revised 2014).

7. Prior to the commencement of development, a Demolition and Construction Environmental Management Plan shall be submitted to and approved by the Department of the Environment. The Demolition and Construction Environmental Management Plan shall be thereafter implemented in full until completion of the development and any variations agreed in writing by the Department of the Environment prior to such work commencing. The plan shall secure an implementation programme of mitigation measures to minimise the adverse effects of the proposal, and shall include:
 - i) a demonstration of compliance with best practice in relation to noise and vibration control, and control of dust and emissions;
 - ii) details of a publicised complaints procedure, including office hours and out-of-hours contact numbers;
 - iii) specified hours of working to be restricted to 0800-1800 Monday to Friday and 0800-1300 Saturdays and not at all on Sundays, Bank or Public Holidays;
 - iv) details of any proposed crushing/sorting of waste material on site; and
 - v) a pollution prevention plan.

Reason: To ensure the development does not have an unreasonable impact on public health or the wider environment including the Ramsar site and to accord with Policies GD1 and H6 2011 Island Plan (revised 2014).

8. No unit shall be occupied until a plan identifying the allocated car parking spaces for each particular unit has been submitted to and approved in writing by the Department of the Environment. Such areas shall thereafter be permanently retained for the purposes of parking/ manoeuvring.

Reason: To ensure that the site has adequate car parking facilities in accordance with Policies GD1 and H6 of the 2011 Island Plan (revised 2014).

9. Notwithstanding the information on the submitted drawings, prior to the commencement of development details of provision for separated waste facilities and waste collection arrangements, communal satellite television reception system (or other communications infrastructure), electric car charging points and proposed rainwater harvesting, shall be submitted to and approved in writing by the Department of the Environment, to be thereafter implemented prior to first occupation and maintained in perpetuity.

Reason: In the interest of sustainable development and adequate service infrastructure and to accord with Policies GD1 and H6 of the 2011 Island Plan (revised 2014).

10. Notwithstanding the information on the submitted drawings, prior to the commencement of development details of all external lighting shall be submitted to and approved in writing by the Minister for Planning and Environment, to be thereafter implemented prior to first occupation and maintained in perpetuity.

Reason: In the interest of sustainable development, to protect the amenities of the area and to accord with Policies GD1 and H6 of the 2011 Island Plan (revised 2014).

11. Notwithstanding the information within the submitted drawings, no works are approved to Keppel Tower. Prior to the commencement of development a Written Scheme of Investigation (WSI) (to include as a minimum that a full standing building recording is carried out, including an Historic England Level 1 record of the 19th century extension) and a method statement for the demolition of C19th and C20th additions; and the proposed repair, restoration, and future management of the tower shall be submitted to and agreed in writing by the Department of the Environment, to be thereafter implemented in full prior to first occupation of any of residential units hereby approved.

Reason: To ensure that the heritage asset is appropriately recorded and protected from harm throughout the development process.

12. Prior to the commencement of development a programme for the implementation of the Conclusions and Suggestions for Further Investigation from the Results of the Archaeological Evaluation shall be submitted to and approved in writing by the Department of the Environment to include that the final development be subject to monitoring by an agreed project archaeologist.

Reason: In the interests of the preservation and enhancement of the historic environment, in accordance with Policies SP4, HE1 and HE5 of the 2011 Island Plan (revised 2014).

13. Prior to commencement of the development hereby permitted, details shall be submitted to and approved by the Minister for Planning and Environment, implemented and thereafter maintained, setting out the arrangements for Waste Management in relation to the proposed demolition and excavation. Prior to

commencement of construction of the above ground structure a Waste Management Completion Report shall be submitted to the Department of the Environment.

Reason: To ensure adequate arrangements are made to reduce, re-use and recycle waste, in accordance with Policy WM11 of the 2011 Island Plan (revised 2014).

14. All work at the site shall be undertaken in accordance with the approved Species Protection Plan within NE/ES/KT.02, with the exception of the Ecological Method Statement which shall include a bat box being in situ prior to any roof stripping works.

Reason: To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the 2011 Island Plan (revised 2014).

15. No part of the development hereby approved shall be commenced until full details of a methodology to assess the current structural condition of Keppel Tower, including proposed monitoring systems during construction and agreed procedures to deal with any changes has been submitted to and agreed in writing by the Department of the Environment. All works shall then be carried out in accordance with that agreed methodology and prior to the first occupation of any part of the development hereby approved. The study shall address the stability of the existing tower, the impact of the proposed works on site, any mitigation or cautionary working practices required, a method of monitoring the impact upon the tower during the development, and acceptable tolerances which if breached will require the cessation of the relevant works on site.

Reason: To ensure that the development does not affect the stability and integrity of the listed asset.

16. No development or works (other than demolition) shall take place until a Written Scheme of Investigation (WSI) to ensure a watching brief during works of demolition, ground works and foundations within the site is submitted and agreed in writing by the Department of the Environment.

Reason: To ensure that works take due notice of the geotechnical report in so far as it refers to the sub-ground heritage fabric, as required above, and the appropriate recording of any archaeological remains is assured.

In addition to the above conditions, which were discussed at the hearing, the Department of Infrastructure - Coastal Defence indicated in its response that there were details that would need to be agreed during the detailed design phase. To allow for this, it is recommended that an additional condition is added. The possible wording of such a condition was not discussed at the hearing, but it is recommended that it should encompass the following points:

Prior to commencement of the development hereby permitted, details shall be submitted to the Department of Infrastructure relating to measures to ensure the stability of the sea wall during and after construction, a system of surface water drainage, and method for treatment of overtopping and prevention of surface water build up behind the sea wall. Development should not commence until these are approved.