



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

Conway Tower Properties Ltd.

Site at Wayside Cafe, Private Car Park and Seabreeze, Le Mont Sohier, St
Brelade JE3 8EA

Hearing held on 6th February 2018 at the Tribunal Offices, International House, 41 The Parade, St Helier

An accompanied visit to the Appeal site and surroundings was held on 8th February 2018

Department of the Environment Reference: P/2017/0574

Site at Wayside Cafe, Private Car Park and Seabreeze, Le Mont Sohier, St Brelade JE3 8EA

- 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 Conway Tower Properties Ltd.
- The application Ref P/2017/0574 was refused by notice dated 23rd November 2017.
- The development is described as *demolish existing and construct new restaurant, surf shop with 1 three-bed flat above; to demolish existing 2 dwellings; to construct 2 five-bed dwellings with garage and associated landscaping and 2 one-bed staff units; to construct 1 one-bed and 1 two-bed flats; to alter vehicular access onto Le Mont Sohier; to construct bus shelter and to create public access through the site.*

Summary of Recommendations

1. I recommend:

- (1) that, the appeal should be allowed and planning permission granted for the appeal development; and
- (2) that any such permission should be subject to: (a) the prior signing of a Planning Obligation Agreement addressing the matters listed in Annex A to this report; and (b) issued subject to conditions addressing the matters set out in Annex B.

Introduction, Procedural and Legal Matters

2. This is an appeal against the refusal of planning permission, made by the Planning Committee contrary to the recommendation of officers of the Department of the Environment.

Scope of the report

3. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendations of this report, unless he is satisfied 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.**
4. 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 appellant's grounds of appeal

and those raised by interested persons. However, other matters are also addressed where these are material to the determination, including in relation to a Planning Obligation Agreement; the imposition of conditions; and in order to provide wider context.

Plans

5. At the Hearing I sought clarification about the submitted plans – which would become the approved plans in the event that the appeal is allowed. It has since been confirmed to me that the plans are the **same as those listed in the Department's original report**, but with one amendment: Plan PL-20 relating to Units 4 and 5 has been replaced by Plan PL-20 Revision B. The only change to this drawing is that it has now been annotated to clarify that the glazed privacy screen to **the terrace would be 'obscurely glazed'** – otherwise there is no change to the detail of the scheme.

Description of the site and surroundings

6. The appeal site, extending to some 0.65 hectares, lies between the promenade that extends the length of the centre portion of **St Brelade's Bay and Le Mont Sohier**, the main coast road that runs roughly parallel to it. On the seaward side, it is presently occupied by The Wayside Café, a part 2- and part single-storey building with a flat on the upper floor and an open terrace; a number of small timber structures, including one which has been occupied as a dwelling, and another, little more than a shed, in which a business known as *Fish 'n Beads* operates. At its eastern end is an overgrown dune. Behind, across the centre of the site, are some old boat houses or warehousing, occupied by a surf shop and restaurant storage, and the Conway Tower – a Listed Napoleonic fort which has been converted to living accommodation. The remainder of the site through to the road is occupied by a large (approximately 60 space); a tennis court, and a row of 9 lock up garages. In the far northeast corner is a timber bungalow known as *Sea Breeze*, fronting the road. Vehicular access to the site is taken from the north-western corner, with the remainder of the frontage marked by a grassy bank. There are a number of trees – some on the dune; one within the car park, and the remainder on or towards the eastern boundary.
7. The most prominent feature on the site is the tower. This Listed structure appears to be in good condition, though its degree of historic and architectural interest is reduced by being surrounded by an unkempt private area enclosed by a modern granite wall. Its broader setting within the site is also generally unattractive: the car park is featureless and in poor condition; the garages are functional but ugly; and the tennis court appears poorly maintained. The boathouses have some seaside character, but the café, despite enjoying an enviable location next to the promenade, is of no great architectural interest. *Sea Breeze* is a modest building some distance from the others, relating visually to the road rather than to the tower and the café.

The wooden buildings near the promenade are of no great visual interest. The one which has been used as a dwelling appears to have been renovated fairly recently, but the others are not in good condition. I am informed that the self-set vegetation on the dune is largely of an alien, invasive nature and does not provide an ideal habitat for native species.

8. To the west, beyond a narrow access that serves a slipway, is the Hotel **L'Horizon, comprising a substantial complex of mostly 3-storey** buildings beneath pitched roofs, some providing accommodation. Beyond, the land between the promenade and the road (here re-named as La Route de la Baie) progressively narrows, and is occupied by tourist accommodation, individual dwellings, flatted development, restaurants / cafes and shops, ranging in height from one to four storeys; mainly with pitched roofs and all seemingly dating from various periods of the twentieth century. At the far end is the Churchill Memorial Park, an attractive open space that provides a rare uninterrupted view from the road to the sea, the foreshore and the wider bay.
9. Immediately to the east of the appeal site are, on the seaward side, a dormer bungalow, *La Plage*, and, fronting the road, *Longbeach Court*, a 2-storey building containing a number of flats. Beyond, the strip of land between the promenade and the road broadens. This area, which rises towards the elevated Biarritz Hotel, is occupied by several residential properties. Adjoining *La Plage* is a particularly large house, *Zanzibar*, of modern style, under construction at the time of my visit, but nearly complete.
10. **St Brelade's Bay itself is a very attractive piece of coastline, with a** broad, shallow-sloping sandy beach, backed by the coastal development and with rising land beyond. It has for many years been a very popular tourist destination: a place to stay, visit and to live. It is rightly valued and protected by policies in the Island Plan, as set out below.

Description of the proposed development

11. It is proposed to remove all of the buildings and structures from the site with the exception of the Conway Tower, which it is intended would be occupied as a holiday let, though this does not form part of the submitted proposal. The café would be replaced in the same position by a larger restaurant with a flat above (unit 1), similarly 2-storey and with pitched roofs reminiscent of the former boathouses in appearance and orientation. There would be terraces at both ground floor and first floor levels. The surf shop would also be replaced on broadly the same site. Between the building and the road access, the garages and part of the car park would be replaced by a much smaller parking area **(16 spaces) and a linear "public space" which would** incorporate planting, seating and a pedestrian route through to the Tower, a viewpoint and ultimately to the restaurant and the

promenade. It is intended to restore the dune habitat by removing invasive species and replanting with native varieties. Behind the dune, through to the road on land presently occupied by the car park and the tennis court, 2 large dwellings comprising 5-bedrooms in part one- and part 2-storeys above basements, together with staff quarters and garaging are proposed (units 2 & 3) Finally, *Sea Breeze* would be replaced by a 2-storey, flat-roofed building occupied by 2 flats (units 4 & 5).

The reasons for refusal

12. The reasons for refusal are:

- 1. The proposed development would be significantly larger, in terms of the overall level of built form, when compared to the site at present. Although the site is located within the Built-up Area (wherein new development will generally be permitted), it is also within the **Shoreline Zone for St Brelade's Bay**. Within the Shoreline Zone, under the provisions of Policy BE 4 of the Island Plan, development proposals will not normally be permitted where they would be larger in terms of any of gross floorspace, building footprint or visual impact than the building being replaced. The tension between these policy objectives is acknowledged, as is the need to consider the Island Plan in the round. However, in this instance, it is considered that the application fails to strike an appropriate balance between these objectives, and (with specific regard to Policy BE 4), as such, the scheme – with particular reference to the scale of the replacement restaurant & apartment above – represents an overdevelopment of the site, which would have an unreasonable impact upon the character of the bay.*
- 2. By virtue of its overall scale, form and design – including the first floor terrace – the proposed block in place of Sea Breeze (Units 4 & 5) would have an unreasonable impact on the amenities of neighbouring residents, in particular Longbeach Court to the east, and Val Plaisant Cottage to the north. For this reason, the application fails to satisfy the requirements of Policy GD 1 of the Jersey Island Plan 2011.*

The grounds of appeal

13. **The appellant's grounds of appeal, in brief, state that:**

- 1. The Committee was unduly influenced by unfounded and emotive allegations and misrepresentations made by objectors against the appellant (ie inaccuracy of plans, non-viability of restaurant, property ownership matters).*
- 2. The Committee was unduly influenced by incorrect visuals presented at the Committee meeting by the Department whose 3D model did not accurately reflect the site as it exists and which*

undermined and, therefore, seriously harmed the Appellant's case.

3. *Normal protocols for Committee Meetings were not adhered to. For instance the Chairman of the St Brelade's Bay Association (SBBA) was permitted to speak twice; a letter of objection was submitted to the Committee a day before the Committee Meeting whereas the Appellant was prevented from submitting a photomontage of the scheme 10 days in advance of the Meeting. Various allegations (see ground 1) were made of the Appellant that could not be answered in the 5 minutes allowed to the Appellant to speak.*

4. ***Insufficient weight was given to the Minister's discretion to allow justified exceptions to Policy BE 4 as provided for by the States of Jersey adoption of the 2011 Island Plan: Interim Review (P.37/2014 – amendment 6 in July 2014). The proposal does not represent "rampant" or excessive levels of redevelopment.***

5. *Insufficient weight was given to Policy H 6 which sets a presumption in favour of new residential development within the Built-Up Area, and which also aims to provide a greater choice of housing.*

6. *Insufficient weight was given to Policy EVE 1 which sets a presumption in favour of new tourism-related development and which should have been given additional weight because the site is in a Tourist Destination Area.*

7. *Insufficient weight was given to the existing character of the bay, which is characterised by an eclectic mix of buildings in terms of siting, size, scale, massing, form and design.*

8. *Insufficient weight was given to the existing unsightly state and condition of the site and the inefficient use of most of the site as a private car park, and under-used tennis court, and mostly non-native scrubland.*

9. *Insufficient weight was given to the public benefit that would arise from the proposed development by creating public access through the site from Le Mont Sohier to the seaside promenade, therefore providing a public amenity that Policy BE 4 specifically seeks to protect, but which presently does not exist.*

10. *Insufficient weight was given to the public benefit that would arise from the proposed development by creating public views through the site from Le Mont Sohier to the coast (including new viewing platforms within the site) therefore providing a public amenity of the sort that Policy BE 4 specifically seeks to protect and enhance, but which presently does not exist.*

11. *Insufficient weight was given to the public benefit that would arise from the proposed development by improving the setting of, outlook from, and public access to the Conway Tower and wider Bay (including Ouaisne Bay), implemented in accordance with the Percent*

for Art proposal, as encouraged by Policy BE 4.

12. Insufficient weight was given to the other public benefits including the provision of an improved public realm involving the planting of 17 new trees; a new public footpath onto Le Mont Sohier; a new bus stop and shelter; the creation of a restored dune; the reinforcement of wildlife corridors; and the replacement of a tired, run-down café with a new restaurant and delicatessen.

Main Issues

14. From my assessment of the papers submitted by the appellant, the Department and others, and from what was given in evidence during the Hearing and seen and noted during the site visit, I consider that there are 3 main issues in this case, broadly relating to the matters raised in the reasons for refusal, as follows:

- (a) the effect of the development on the character and appearance of the locality;*
- (b) the effect of the development on the living conditions of nearby residents; and*
- (c) in the event that the proposed development is found to be inconsistent with the Island Plan, whether sufficient justification exists to grant permission.*

Planning Policy

15. The site lies in the Shoreline Zone, as defined in the Island Plan (IP) and to which Policy BE 4 specifically relates. Within the Zone, the following types of development will not be approved:

- 1. New buildings, new structures or extensions to existing buildings, where such development will obstruct significant public views of the foreshore and sea.*
- 2. Development involving the loss of open spaces that are considered important for the preservation of public views to the foreshore and the sea.*
- 3. Development which adversely affects public access to and along the coastline and seafront.*

16. Within the **Zone for St Brelade's Bay**, additionally the following will also not normally be approved:

- 4. The redevelopment of a building, involving demolition and replacement, where the proposal would be larger in terms of any of gross floorspace, building footprint or visual impact than the building being replaced.*

17. In addition under Policy BE 4 public access to and along the shoreline will be protected and enhanced, where possible. Proposals which seek to raise the quality and standard of design of the public realm within the Zone, particularly with regard to promenades, quay sides, car parks and other waterfront areas will be approved where they do not have a significant adverse impact on places or structures of historic or architectural importance. Finally, proposals that encourage and enhance access to and awareness of the coast will be permitted where they do not have a significant adverse impact on the biodiversity and character of the coast.
18. Supporting text to the policy (para 4.99) **says that St Brelade's Bay is** generally regarded as one of the most beautiful natural bays in the Island. Successive development plans have sought to retain and protect its natural beauty and character while recognising its role as an attractive place to stay and live. This is repeated in para 4.86 within the context of Local Development Plans, adding that it is important that the spirit of the 1968 proposition *Development in St Brelade's Bay area* (p.15/1968) and the 1989 *St Brelade's Bay Environmental Improvement Plan*, continue to be addressed in this and subsequent Island Plans where they remain relevant today.
19. The 1968 proposition was adopted under an earlier planning regime. Its exact standing 50 years ago is the subject of debate, but it seems likely that it had the status of a development plan, and it was used in the making of planning decisions. As for the 1989 Plan, I have no evidence that it progressed beyond a consultative draft. As an unadopted document, it could not have carried development plan weight.
20. Considerable discussion took place at the Hearing concerning the status of these 2 documents, and how much weight they should be accorded for the purposes of making planning decisions. I have been urged by some opponents of the present proposal - notably by the **St Brelade's Bay Association** (SBBA) - to accord them considerable weight. The introduction to the current Island Plan under the heading of *Superseded development plans* states it supersedes a number of smaller development plans applicable to specific areas of the Island, whose policies have either been implemented, or, where relevant, have been incorporated into the new Plan. For the avoidance of doubt, 3 such plans are listed, together with the former 2002 Island Plan. The 1968 proposition is not amongst them, leaving some doubt as to whether it was indeed superseded.
21. However, all such doubt is dispelled by Article 130(3) of the Planning and Building (Jersey) Law 2002 which states that "***Until an Island Plan for the Island has been approved by the States in accordance with this Law any development plan (as that term was defined by Article 3 of the 1964 Law) in respect of a part of the Island, which had been approved by the States under the 1964 Law and was in force immediately before the commencement of Part 2 of this Law shall be taken as the Island Plan for that part of Jersey.***". By implication,

such development plans approved under the 1964 Law would have ceased to be part of the development plan on approval of an Island Plan under the 2002 Law. Such a Plan has, of course, since been adopted. In short, if the 1968 proposition had development plan status, it has since lost it. The 1989 Plan never possessed any formal status at all; and its value is only as an historical record.

22. Any importance that the 2 documents retain today is only by reason of the reference to them in paragraph 4.86 of the current Island Plan. **Insofar as their "spirit" can be identified** – and that could not be adequately divined at the Hearing – I am satisfied to accept the view **of the Department's** Director of Planning that the wording of the paragraph indicates that it is for the Island Plan and its successors to **"address"** the **"spirit"** of the documents and therefore it does not need to be separately addressed in the decision-making process. That spirit may be assumed to have been incorporated into the Island Plan. Consequently, the documents carry no additional weight.
23. In reaching these conclusions, I have had regard to the judgment in the case of *Ferguson v Minister of Planning and the Environment* [2013], drawn to my attention by the SBBA. However, contrary to its assertions, that judgment does not support its case that the 1968 Proposition or the 1989 Plan should be accorded weight today. In fact, the judgment concludes that **"the spirit of the 1968 Proposal has presumably been addressed in the actual policies set out in the 2011 Plan and will continue to be addressed in Proposal 14, whenever that is formulated. The Minister can hardly be criticized for failing to take into account a framework that is not in existence."** (NB Proposal 14, indicating that the Minister will develop a planning framework for **St Brelade's Bay**, now appears as Proposal 16 *Local Development Plans* in the 2014 revision of the Plan. No such framework has yet been produced).
24. Development affecting the coastal strip of this bay, as defined by the Shoreline Zone, has the potential to affect the special character of the whole bay. IP Paragraph 101 indicates that, following the development and adoption of supplementary planning guidance (SPG) **for St Brelade's Bay**, proposed under Proposal 16, the policy provision for the bay will be reviewed when the Plan is next revised. To date, no such SPG has been published.
25. Under the heading of *Other Built-up Areas*, the IP identifies the **shoreline of St Brelade's Bay** and land behind as a *Secondary Urban Settlement*. Policy SP 1 *Spatial Strategy* states that development will **be concentrated within the Island's Built-up Areas**. Policy H 6 *Housing development within the Built-up Area* favours new dwellings and changes of use to residential within these areas.
26. Policy SP 2 *Efficient use of Resources* adds that new development should secure the highest possible resource efficiency in terms of – amongst other things – the re-use of existing land and buildings and the density of development. The supporting text to this policy says

that a more sustainable approach to the development and redevelopment of land requires the application and delivery of higher densities and, in particular, greater housing yields than have generally been achieved in Jersey. If done well, imaginative design and layout of new development can produce higher density of development – representing a more efficient use of land – without compromising the quality of the local environment. The density of existing development should not dictate that of new development by stifling change or requiring replication of existing style or form. In locations with good access to amenities and services, it should be possible to increase the density of development to ensure a more efficient use of land, without compromising local character or design quality.

27. Policy EVE 1 *Visitor accommodation, tourism and cultural attractions* says, amongst other things, that visitor attractions will be permitted within the identified Built-Up Area boundary provided it accords with Policy GD 1.
28. **St Brelade's Bay is designated as a Tourist Destination Area.** In such areas, Policy EVE 2 supports environmental enhancements to the public realm; proposals for al fresco activities associated with restaurants, bars, cafes and outdoor performances; and improvements in accessibility for pedestrians, cyclists and public transport users and associated signage.
29. On the site, the Conway Tower is a Grade 3 Listed building. Policy HE 1 *Protecting Listed buildings and places* presumes in favour of the preservation of the architectural and historic character and integrity of Listed Buildings and their settings. Proposals which do not preserve or enhance the special or particular interest of a Listed building and their setting will not be approved.
30. Policy GD 5 seeks to protect or enhance the skyline, strategic views, important vistas and the setting of landmark and Listed buildings and places.
31. Policy SP 6 *Reducing dependence on the car* amongst other things 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.
32. 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. Part (5)(c) requires development to provide adequate space for parking.

Reasons

Character and appearance

33. With respect to the Shoreline Zone generally, the proposed development would not breach criterion 1 of Policy BE 4: it would not obstruct significant public views to the foreshore and sea. Indeed, any such views to the foreshore through the site are limited to glimpses of little or no value, or obtainable only from high vehicles passing by. In contrast, the development would increase public views towards it, particularly by encouraging the public to pass through the site to the waterfront. With respect to criterion 2, the open spaces on the site: the car park and the tennis court, do not permit public views to be obtained from outside the site and they are not open to the public: the former serves the Wayside Café, and the latter is used by the **residents of the Hotel L'Horizon**. Further, with respect to criterion 3, the improved pedestrian access to the coastline and seafront, together with the proposed viewpoint and informative signage would encourage and enhance access to and awareness of the coast.
34. The proposed development would also contribute to other aspirations of the policy. In particular it would create an area of public realm where presently there is none, and generally make the site appear welcoming through the quality and standard of its design. For example, access to the promenade and the restaurant would be by way of an attractive landscaped route rather than through the rather desolate car park. The setting of the tower would also be enhanced, including through the removal of the surrounding wall. The **Department's Historic Environment Team made no objection to the proposal**. Further, the replacement of largely alien plants and trees from the dune area by native species would be likely to increase biodiversity and improve the character of the coast rather than the reverse, **and is welcomed by the Department's Natural Environment Section**. These aspects of the development are all consistent with Policies EVE 2, HE 1 and GD 5. The overall impact on the built and natural surroundings would be beneficial rather than adverse.
35. I now turn to the fourth criterion, which is explicitly to be applied **"normally", implying that some degree of flexibility may be allowable**. Regrettably, neither the policy nor its supporting text provides any assistance with respect to the circumstances in which any such flexibility may be applied.
36. It is clear that the proportion of the site that would be covered by buildings would increase markedly, principally by reason of the 2 new detached properties. The appellant freely acknowledges that the development would not be consistent with the criterion, by reason of being significantly larger than that which would be replaced in terms of gross floorspace and building footprint.
37. That notwithstanding, it is clear in the supporting text to the policy that the underlying purpose of the fourth criterion is to ensure that

the character of St Brelade's Bay should not be seriously harmed by replacement buildings. With that in mind, at the site visit I undertook a very extensive walk in the immediate area, including the promenade, the beach and the road, taking care to view the site from all directions. In particular I was asked to consider the appearance of the site and its surroundings from the church at the western side of the bay and from the terrace of the Biarritz Hotel to the east.

38. Viewed from road, the site is presently seen largely as free of built development, other than *Sea Breeze*, the tower and the garages. As proposed to be redeveloped, this openness would be lost and the site as a whole would clearly appear far more intensively developed and more urban in character. However, the present absence of development is not in itself a positive feature as, viewed through the access, the site presents a neglected and unattractive scene. *Sea Breeze* is of no great architectural merit; and the garages are poor specimens. The proposed development presents an opportunity to improve the visual quality of the frontage considerably. I have no reason to believe that it would be out of character with the remainder of the frontage, which is with only a few exceptions almost completely built up with buildings having little consistency of scale, style or use, and of very variable quality of design. In any event, IP Policy SP 2 *Efficient use of resources* actively encourages higher density of development as part of its approach to sustainable development.
39. Other than at fairly close quarters, when viewed from the promenade, the new residential development would be screened from the west owing to the intervening **bulk and height of the L'Horizon Hotel**. They would be of substantial scale, but would be located well back into the site from the seafront and partly set down into the slope so that when viewed from a lower angle from the promenade and the beach, they would not look as prominent as might appear from the elevation drawings. In terms of height, one would be just a little taller than *La Plage* and the other just a little lower. Similarly, these taller elements would be set back from the road, limiting the visual impact from that direction.
40. The greater width and height of the new restaurant and flat would certainly be apparent compared to the present café, and from certain viewpoints – for example when approaching from the west and from some places on the beach - it would obscure rather more of the lower part of the tower than at present. But I am satisfied that, overall, the setting of the Listed building would not be harmed, nor would there be a serious detrimental impact on any skyline, strategic view or important vista by reference to Policy GD 5; or the Green Backdrop Zone by reference to Policy BE 3.
41. The 2 new houses would be substantial in scale, but on the southern side of Le Mont Sohier / Route de la Baie are a number of large buildings, some significantly larger in height, mass and extent; and these are an integral part of the character of the area. It is clear that the development would alter the appearance of the site considerably.

However, I do not believe that this character would be adversely affected by its scale or the proportion of the site taken up by buildings. In many respects, the development would improve the site; and, while undoubtedly modern, the design of the buildings appears to be innovative and of high quality.

42. Simply being different, whether compared to what is presently there or to its surroundings, does not necessarily equate to it being harmful or unacceptable. As the Island Plan says, in the Built-up Areas, the density of existing development should not dictate that of new development by stifling change or requiring replication of existing style or form. The most important feature of the site – the tower – would remain the tallest and most prominent feature; and its immediate setting would be enhanced. I consider that the proposal represents an example of what the Island Plan has in mind when it refers to supporting higher densities without compromising the quality of the environment, local character or design quality.
43. Viewed from the church, I consider it unlikely that the development would be particularly prominent: the site is simply too far away for detail to be clearly registered with the naked eye. The tower would remain the tallest feature, but even that would be seen against the backdrop of the rising land beyond. The Biarritz Hotel, in contrast, is much closer to the site, and elevated, so that it would be possible to look down towards it. But there is a considerable amount of development in the intervening space, not least *Zanzibar* and *La Plage*, and it is into this context that the proposed development would be placed. I acknowledge that the hotel terrace provides a spectacular view over the bay, but I disagree that there would be any significant reduction in its quality by reason of the proposed development.
44. **In its report the Department sought to address the “tension” which exists between criterion 4 and the housing and strategic policies of the Island Plan (such as H 6, SP 1 and SP 2) which seek to direct housing development and higher density development to the designated Built-up areas, including the site, together with tourism and cultural attractions under Policy EVE 1 and EVE 2. The criterion was inserted as an amendment to the Plan, but there was no alteration to these other policies; and the supplementary guidance that was intended to be produced to guide development in particular areas has yet to be published. In the absence of such guidance, the decision maker must, in my opinion, bear in mind the principles and objectives of all policies of the Plan, with none taking priority or “trumping” another. Where “tension” between policies can be resolved, it should be. Where it cannot, then some flexibility or compromise may be necessary in order to achieve satisfactory outcomes.**
45. In this case, the proposed development is consistent with the IP policies that seek to direct development to the Built-up Area. At the same time, it is inconsistent with criterion 4 of Policy BE 4. But in my view the tension is more apparent than real. To a very considerable

extent, I consider that the proposed development manages to put into practice the housing and strategic objectives of the Plan while still managing to avoid serious harm to the **character of St Brelade's Bay**, the test implied by the supporting text to the policy (para 4.100). This is a pragmatic and balanced approach which also takes account of the flexibility accorded to the application of the fourth criterion by the word "normally".

Living conditions of neighbours

46. The second reason for refusal relates solely to the effect of Units 4 & 5, which would replace the existing dwelling *Sea Breeze*, located directly fronting Le Mont Sohier in the north-eastern corner of the site. There is no suggestion in the second reason for refusal that either the proposed restaurant and its associated flat or the 2 larger residential units would have any adverse effects on amenity. It says that the impact would result from the overall scale, form and design of the proposed block. However, **neither in the Department's report** nor in the minutes of the Planning Committee meeting are there any specific references to these aspects of the development or in what way they might harm the amenity of neighbouring occupiers.

47. The proposed block would be located with its front elevation close to Le Mont Sohier approximately on the same alignment as *Sea Breeze*. Consequently, it would be a similar distance away from the nearest dwellings opposite: *Val Plaisant* and *Martello Lodge*. It would be 2 storeys in height with a flat roof, in contrast to the modest, single-storey, pitched-roof *Sea Breeze*. However, 2-storey buildings are by no means uncommon along Le Mont Sohier, and many are taller. It would, for example, be lower than the eaves of *Longbeach Court*, the closest property to the east, which is also located partly opposite *Val Plaisant*. Although *Longbeach Court* is located further back from the road, it is considerably wider and situated on rising ground. In my view, the proposed building would have no greater impact. The front elevation, which would be a little broader than that of *Sea Breeze*, but not substantially so, is intended to be articulated and constructed of differing materials in order to break up the impression of mass. The gap between it and *Longbeach Court*, occupied by an access way to *La Plage* at the rear, would be widened, compensating to some degree for the greater height of the new building compared to *Sea Breeze*. To the rear the new building would extend further than *Sea Breeze*, but at single storey with only a first floor terrace above, and not for its full width. This would not be readily appreciated in views from properties in Le Mont Sohier. It would be visible from *La Plage*, but at some distance and partly obscured by a garage and vegetation.

48. The SBBA has suggested that Policy BE 5 *Tall buildings* is relevant. But that policy applies to buildings over 18 metres in height or rising more than 7 metres above their neighbours. Neither criterion applies in this case. Although the proposed building would be larger than that which it would replace, I am satisfied that there is nothing relating to

its scale that would cause any harm to the living conditions of local residents. I can understand the concern of those living opposite the site, but the new building would in my view be in proportion to other buildings in the locality and be set a sufficient distance away from them, such that they would not be physically or visually dominated, or subject to unreasonable invasion of privacy.

49. Moreover, I find little about the form of the proposed building that would adversely affect residential amenity. The first floor terrace which is referred to in the relevant reason for refusal might provide an opportunity for overlooking into the garden of *La Plage* and towards the side of *Longbeach Court*, which has a high-level ground floor window in the facing flank wall. However, I am satisfied that any such concerns could be overcome by the fitting of obscure glazed panels in the proposed privacy screens, and in the rear-facing bedroom window to the first floor flat. The amount of light entering the window to *Longbeach Court* would, I believe, be reduced to a degree by reason of the new building being two-storey. But I do not think that the loss, which would be appreciated only towards the end of the day, would be significant. Owing to the height of the window, outlook would not be significantly affected.
50. I address the question of design briefly under my first issue, where I conclude that there would be nothing in the appearance of the proposed buildings that would adversely affect the character or appearance of the immediate or wider locality. Similarly, I conclude that there is no reason to believe that the quality of life experienced by local residents would be in any way harmed by the design of the building. That would replace *Sea Breeze*.
51. Overall, I am satisfied that, by reference to the provisions of Policy GD 1(3) the building would not unreasonably harm living conditions for nearby residents. Insofar as there would be any material effects, they would be within the generally acknowledged bounds of acceptability for housing in a built-up area.

Whether sufficient justification exists to grant permission for development inconsistent with the Island Plan

52. Article 19(2) of the Law states that, in general, planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan. However, Article 19(3) adds that, despite that paragraph, planning permission may be granted where the proposed development is inconsistent with the Island Plan if the Planning Committee is satisfied that there is sufficient justification for so doing.
53. It has been put to me by the SBBA, based on the comments of the Planning Inspector in his report following the Quennevais School Public Inquiry that **"overriding need" must be demonstrated** before a substantial departure from the Island Plan may be permitted. I would

simply **observe that “overriding need” is not the test in relation to Article 19. Rather the proper test is one of “sufficient justification”.** Moreover, in my view, the present appeal does not in any event relate to a substantial departure from the Plan.

54. In this case, as discussed above, the appellant acknowledges that the development would be inconsistent with criterion 4 of Policy BE 4 of the Island Plan. I have already concluded under my first issue that **the character of St Brelade’s Bay would not** however be seriously harmed and that account needs to be taken of other policies that promote development in the Built-up Area. Nonetheless, I propose to consider whether the provisions of Article 19(3) should also apply.
55. A number of matters, described as **“public benefits”** have been put to me claiming to represent justification for allowing the appeal. A number have already been addressed under my first issue.
56. I am in little doubt that the overall appearance of the site would be improved in several ways: first through the removal of elements that presently detract, including the unsightly car park, the garages, and the wall and enclosed area around the tower; and second, through their replacement by thoughtfully-designed new buildings and the proposed public realm works, including the pedestrian corridor, a seating area, viewpoint, an artwork and associated landscaping. These improvements would be appreciated by those on the road and the promenade, looking towards the site; to those on the site looking outwards, especially towards the bay; and by those passing through it to reach the sea-side and the restaurant. The pedestrian corridor would also permit some views of the sea to be obtained through the site, though these would be limited. In my view, the proposals seek to raise the quality and standard of design of the public realm within the *Shoreline Zone* and a *Tourist Destination Area*, consistent respectively with Policies BE 4 and EVE 2.
57. I disagree with the appellant that the tower would become more prominent in the bay: it would after all be viewed in the context of the proposed new buildings which themselves would not be negligible in scale. Nonetheless, its prominence would not be thereby diminished and the quality of its immediate setting would be significantly improved, consistent with the approach of Policy HE 1. This, together with the provision of information and the ability to approach the building more directly would, I believe, enhance the public appreciation of its historical and architectural value. Outlook from the tower for those who may occupy it would also be enhanced.
58. The proposed restoration of the dune by replacing invasive species with native plants would create and improve valuable wildlife habitat particularly for reptiles. This would be an additional benefit in its own right, but would also be a further item of educational and general interest for visitors, albeit on a small scale. The proposals would practically encourage and enhance access to and awareness of the coast, while having a beneficial impact on its biodiversity and

character, all in line with Policy BE 4.

59. The site is presently wholly in private ownership; and though access through it may be gained, there is no right to do so, other than for reaching the cafe. The provision of the public pedestrian route would consequently represent a significant improvement, providing a new, attractive and welcoming approach not just to the restaurant and surf shop, but to this end of the promenade more generally. The replacement of the rather run-down café with a new restaurant and surf shop, together with the enhanced pedestrian access and public realm improvements would, I believe, increase the value of the location as a local tourist destination, to the benefit the businesses, visitors and the locality.
60. The scheme would be broadly sustainable, following the objectives of IP Policy SP 6 to reduce dependence on the car and EVE 2 with respect to improvements in accessibility for pedestrians, cyclists and public transport users and associated signage. The use of cars would be discouraged by the significant reduction in size of the car park for the restaurant, and travel by alternative means would be promoted through the provision of a bus stop and shelter on Le Mont Sohier; together with a footpath along the road frontage and cycle racks.
61. The development would also be sustainable insofar as it would promote the more effective and efficient use of land, consistent with IP Policy SP 2 *Efficient use of resources*, notably in relation to resource efficiency, the re-use of land and the promotion of a higher density of development. This is within the stated context of the *Other built-up areas having an important contribution to make to meet Jersey's* development needs, including housing, albeit that its capacity to accommodate new development will generally decrease down the settlement hierarchy. The proposed density of development, though greater than at present, would, according to the Department, be lower than what might be ordinarily required for the redevelopment of a site in the Built-up area. I believe that the design takes appropriate consideration of the sensitive coastal location with respect to density.
62. Individually, several of the public benefits claimed for the development are fairly minor. For example, the provision of a bus stop on a road already quite well served by buses would not be a very significant improvement. Similarly, the erection of signage and historical information would be a small contribution. Such things may be desirable, but on their own hardly provide sufficient justification for taking a decision contrary to IP policy.
63. However, taken together, I consider that these various contributions would have a value significantly greater than the sum of their parts. For example, when the bus stop is taken together with the attractive pedestrian access to the sea, the improved setting of the tower, the enhanced dune habitat and the information signage and so forth, it is clear that the site would create a pleasant and engaging, albeit modest, visitor destination. This would make the most of its location

and the natural beauty of the bay, of its historical and environmental interest and the enhanced commercial offer. All these things, along with the approach to the sustainable use of the land and travel are actively promoted by the Island Plan.

64. I conclude on this issue that the proposed development would thereby make a positive contribution to the locality and to the objectives of the Island Plan. The degree of non-compliance with Policy BE 4 is, in my estimation, minor in that although the replacement buildings would considerably exceed the floorspace and footprint of those presently there, and would have a greater visual impact, that would not result in any significant harm. Indeed, when taken as a whole, and having regard to the Island Plan in the round, I believe there would be clear benefit. This is in my view sufficient justification to make a decision inconsistent with the Plan.

Other matters

65. **The appellant's grounds of appeal 1, 2 & 3 relate to alleged procedural shortcomings.** Similarly, many of the objections raised by the SBBA concern the way in which the application was handled or considered. But as the proposed development is being reconsidered *de novo* in the context of this appeal, those matters are not material to the decision. If any party is dissatisfied with procedural issues, there are other avenues provided by the Law which may be followed.
66. The SBBA has also requested that I make a number of recommendations concerning various procedural matters. However, such matters are outside my remit in relation to this appeal. I make no such recommendations.
67. **The fourth ground of appeal refers to the Minister's response to** proposed amendments to the Island Plan, including criterion (4) of Policy BE 4, which were ultimately adopted in 2014. Attention is **drawn to the use of the word "normally" that allows some** discretion to be exercised when applying that criterion. The Minister observed that it would provide an additional policy tool for decision-makers to regulate what might otherwise be considered to be '*rampant*' or '*excessive*' levels of redevelopment in the sensitive coastal strip of St Brelade's Bay that is embraced by the Shoreline Zone.
68. It has also been drawn to my attention by the originator of the amendment, Mr J H Young, that he had the appeal site, amongst others, in mind when he brought it forward. I do not doubt that, but I must seek to apply the policy as written, not as it was perhaps intended to be. If the amendment was intended to mean something different, or if it were to supplant some other parts of the Plan, it should have made these things clear. On that basis, it would not be appropriate to apply a test of whether the redevelopment is '*rampant*' or '*excessive*'. These are not tests that appear in the policy or its supporting text. However, even if such tests were to be applied, the proposed development could not realistically be described in that way.

The Department's officers have been accused of ignoring the policy.

That is not so. They (and I) have applied it as written and in the context of the Island Plan as a whole. To do otherwise would risk running into legal error.

69. Although there was no separate reason for refusal relating to highways matters, some criticism has been levelled at the proposed development with respect to the reduction in car parking facilities on the site. I appreciate that, particularly in peak tourist months, the ability of visitors to find enough parking space in the bay area has been a long-term problem. However, although the existing car park on the site is large, it is not a public facility. It serves only the café. The loss of a large proportion of it would therefore not affect general provision locally. There are no other public car parks in the immediate vicinity of the site, though there are several further west which are within easy walking distance.
70. The number of parking spaces proposed to be provided for the restaurant – just 16 - is small by reference to that required under the Parking Guidelines (Policy Note 3). That Note has the status of SPG, but it is now 30 years old and 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, woefully out of date and entirely disconnected from the Island Plan's strategy.** Certainly it runs counter to IP Policy SP 6 *Reducing dependence on the car*. Supporting text to IP Proposal 29 *Parking guidelines* (paragraphs 8.136 – 8.137) describes the current 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 my experience of dealing with appeals involving parking issues that the standards are now honoured more in the breach than the observance. Against that background, and taking into account the positive measures incorporated into the proposals to encourage walking, cycling and the use of public transport, I am satisfied that the amount of proposed parking provision should not be something to count against the development. I have no detailed information on the subject, but I note that several of the eating establishments along the bay appear to trade successfully without their own parking areas.
71. The SBBA takes the view that the car park should be regarded as employment land for the purpose of applying Policy E 1 *Protection of employment land*, which includes a presumption against development that results in the loss of land for employment use, other than in specified circumstances. The third of these is where the overall benefit to the community of the proposal outweighs any adverse effect on employment opportunities and the range of available employment land and premises. The applicability of this policy to the loss of some of the car park **was not addressed in the Department's report.**

72. The café may reasonably be regarded as occupying employment land; and the car park certainly supports the café, in the sense of providing a function ancillary to it. Although I have seen no conclusive evidence or legal authority on the matter, there is considerable doubt in my mind whether the car park should be considered as employment land. In particular, it seems to me unlikely that, in the words of the policy, the proposed development would result in **“the loss of land for employment use”**. **The car park does not itself provide any** employment; and if it were redeveloped there would be no loss of employment. Moreover, even if it were to be regarded as employment land, I am not aware that the proposed development would lead to any adverse effect on employment opportunities and the range of available employment land in the context of the third set of circumstances. As I have already concluded, the proposed development would give rise to an overall benefit to the community. In the absence of any identified relevant adverse effects, it follows that the former must prevail. On that basis, the loss of a proportion of the car park would not amount to a breach of Policy E 1.
73. The development would lead to the loss of the *Fish n’ Beads* cabin. I am also urged by the SBBA to apply Policy E 1 in this situation. But *Fish n’ Beads* is a tiny, seasonal business lacking any vehicular access or basic infrastructure, whose practical contribution to the economy of the Island must be negligible, with the site incapable of accommodating employment of any significant scale. From the representations I have seen, it is a business clearly appreciated by a number of customers who would mourn its loss, but I consider it would be unreasonable to **frustrate the Island Plan’s strategic** approach to development in the Built-up Area by reference to it. It would accord to it disproportionate weight in the overall balance.
74. However, if I am wrong on these matters, I would draw attention to the tension between the Policy E 1 presumption against development that results in the loss of land for employment use and the Policy H 6 presumption in favour of the change of use of land in the Built-up Area to residential. Consistent with my approach to criterion 4 of Policy BE 4, I would argue that, if no little or harm to the objectives of Policy E 1 is demonstrated, then it is not unreasonable that the balance should tip in favour of Policy H 6. Again that is a pragmatic approach to the resolution of apparent tension between policies.
75. The tennis court would also be lost. But it is a private facility which is not in good condition. I do not regard the loss as being significant. A number of trees would also have to be felled to accommodate the development. But the layout includes replacement planting together with the improvement of the dune habitat. The Department has raised no issues in relation to the loss of the trees.
76. It has been alleged by some opponents that the restaurant has been **“designed to fail”**, without any consultation having taken place with experienced restaurateurs who would be aware of alleged flaws in the

design or without any interest having been shown in taking up a lease. But these are not planning considerations. Similarly I accord no weight to the suggestion that the appellant may have some ulterior motive in wishing to see the restaurant fail so that the land could be used for residential development.

77. Access to the restaurant for disabled persons would be provided which, though practical for wheelchair users, would not be especially attractive, involving the use of a rear corridor that serves the bin store and kitchen. It would be less than ideal, but broadly acceptable.
78. Concern has also been expressed about the potential for damage to nearby properties during construction and to the potential for hazard from waste materials. I am aware that some structural damage may have occurred during the course of other development, but I have no reason to believe that these matters could not be addressed as part of the usual development process, including the application of the Building Bye Laws. As for waste, a condition may be applied to any permission requiring the development to be carried out in accordance with an approved waste management strategy to be
79. 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. Consistency in decision taking is an important matter that goes to the question of fairness in the administration of the planning system. However, I do not have first hand knowledge of these developments and the circumstances in which they were considered, and so I cannot say to what degree they may be considered to be comparable with the present case. I have therefore made my recommendations based solely on its individual merits.
80. I have considered these and all other matters raised, but none to my mind are sufficient to lead me to alter my recommendations.

The Planning Obligation Agreement

81. The Department has proposed that, if the appeal is allowed, the applicants should first enter into a Planning Obligation Agreement (POA) under Article 25 of the Planning and Building (Jersey) Law 2002, and 1 in accordance with IP Policy GD 4. This would cover matters relating briefly to: (1) the creation of a new footpath along the road frontage of the site; (2) provision and maintenance of a new bus shelter; and (3) retention of the public access route from Le Mont Sohier to the promenade. These matters are set out in more detail in Annex A to this report. The appellants are content to enter into such an agreement. The POA would need to be signed prior to the issuing of any planning permission, should this appeal be allowed.
82. From the information available to me, which is limited, I am reasonably satisfied that the proposed POA would meet the tests of

the Minister's Guidance contained in SPD Practice Note 13 *The Use of Planning Obligation Agreements* [ie that it would be 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]. However, it would be for the Minister to satisfy himself as to conformity with these tests.

Conditions

83. 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 were agreed in principle, based on those put forward by Department officers in their first Committee report. In addition to the normal conditions relating to the timescale for commencement and compliance with the approved plans, these relate, briefly, to: approval of external materials; details of the Percentage for Art contribution; waste management; the fitting of obscure glazing etc.; submission of supplementary information concerning the ecological assessment; submission of details of planting; and implementation of landscaping. These are included in Annex B to this report. I agree that they are necessary in the interests of good design and to protect the character and appearance of the area; to promote sustainability; for the protection of residential amenity and in order to protect protected species. I have made a number of amendments to the detailed wording in order to improve their clarity and effectiveness, but without altering their intentions.

Overall Conclusions

84. For the reasons given above, I recommend that the appeal should be allowed and planning permission granted subject to a Planning Obligation Agreement being completed covering the matters set out in Annex A to this report, and to the conditions set out in Annex B.

Jonathan G King

Inspector

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ANNEX A

MATTERS TO BE ADDRESSED IN THE PLANNING OBLIGATION AGREEMENT

1. The creation of a new public footpath / pavement along the roadside frontage of the site, as indicated in approved plan PL06 B, to a width of 1.8m, to accord with DFI Transport requirement. The work is to be **undertaken to DFI specification, and at the applicants' expense**, and thereafter the land shall be ceded to the public.
2. The construction / supply of a new bus shelter as set out within approved plans PL 06 and PL 11. The applicants shall also agree to the future maintenance costs of the shelter.
3. The public footpath access route through the site from Le Mont Sohier **to the pedestrian promenade (incorporating the "Public Space", steps, and "viewpoint") shall be retained for the use of the general public at all times for the lifetime of the development.**

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ANNEX B

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

- A. The development shall commence within three years of the decision date.
- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission
 1. Prior to their first use on site, samples of all of the external materials to be used shall be submitted to and approved in writing by the Department of the Environment. High quality photographic evidence may be sufficient for some items. In addition, prior to the commencement of the new granite walls, a sample panel, measuring not less than 1m x2m, shall be constructed on the site and made available for inspection. Thereafter, the approved details shall be implemented in full and retained as such.
 2. A Percentage for Art contribution must be delivered in accordance with the Percentage for A Statement submitted and approved as part of this permission. Precise details relating to the exact form which the contribution will take must be submitted and approved prior to the commencement of any development on the site. Thereafter, thee

- approved work(s) of art must be installed prior to the first use / occupation of any part of the development hereby approved.
3. Waste management shall be implemented in full accordance with the approved Waste Management Strategy. Any variations shall be agreed in writing by the Department of the Environment prior to the commencement of such work.
 4. No part of the development hereby approved shall be occupied until all of the proposed glazed screen to the eastern elevation of Unit No 3 at first floor level (including, for the avoidance of doubt, the projecting south-facing window to bedroom 2 at a height of 1.7m above finished floor level) are fitted with obscure glass and restricted in their opening mechanism to no more than 200mm. Once implemented, the obscure glass and restricted opening mechanism shall be retained as such thereafter.
 5. No works shall commence on site until a detailed Reptile Mitigation / Compensation Strategy has been submitted to and approved in writing by the Department. Such Strategy shall be based on the Summary programme dated August 31st 2017 (ref. NE/ES/WCT.05, Nurture Ecology) which has been approved in principle only. The Strategy shall incorporate the terms of the following related documents: Coastal Habitat Restoration and Management Plan (ref. NE/ES/WCT.04), Ecological Mitigation Strategy (ref. NE/ES/WCT.03) and Ecological Method Statement for the clearance of trees (ref. NE/ES/WCT.02). Once approved, such Strategy shall be implemented prior to the commencement of development, continued throughout the phases of development (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Department of the Environment prior to works being undertaken.
 6. Notwithstanding the landscaping details approved, prior to the commencement of the development, further details relating to the (native / non-invasive) planting species to be used on the green roofs and the new wildlife dune habitat shall be agreed in writing by the Department of the Environment.
 7. No part of the development hereby approved shall be occupied until all hard and soft landscape works as indicated on the approved plan have been carried out in full. Following completion, the landscaping areas shall be thereafter retained as such

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