Planning and Building (Jersey) Law 2002

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Tom Binet against a refusal of planning permission.

Reference Number: P/2017/0518.

Site at: The Farmhouse (Field 442), La Rue de Champ Colin, St Saviour.[1]

Introduction

1. This appeal is made by Mr Tom Binet under Article 108 of the Planning and Building (Jersey) Law 2002 against a refusal of planning permission. The appeal is being determined by the written representations procedure. I inspected the site on 18 April 2018.

2. In this report a brief description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellant and the planning authority. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

3. The application was dated 8 April 2017 and date-stamped as received by the Department of the Environment on 19 April 2017. The proposed development was described in the application as:

> "Amended application to extend existing house/approval, creation of accommodation in roof space, amendments to internal arrangement, fenestration alterations and amendments to materials".

4. In its refusal notice dated 1 March 2018, the Department described the proposal as:

> "Revised plans to P/2011/1605 (Construct 1 No. dwelling). Construct two storey extension to North elevation. Convert roof space to create habitable accommodation. Install 2 No. windows to South and East elevations. Render 2 No. chimneys. Review request of refusal of planning permission".

5. In the statement submitted by the appellant's agent, the application is described as seeking detailed planning permission for:

> "Construct two storey extension to north elevation. Convert roofspace to create habitable accommodation. Install 2 No. windows to south and east elevations. Render 2 No. chimneys."

6. The stated ground for refusal of planning permission was:

> "The application facilitates a significant increased occupancy with the Green Zone, contrary to Policy NE7 of the Island Plan which establishes a high level

[1] The site address specified in the application refers to "Field 440 & 442". This is also repeated in the titles of the application plans. However, the site address specified in the heading to the appellant's written statement and by the Department of Environment in the refusal notice does not mention Field 440. I have adopted what seems to be the majority and more recent view of the correct address, which from the location plan also appears to be correct.

of protection and general presumption against all forms of development. The planning history of the site sets out that the existing approval is a very specific like-for-like permission, and the supporting text indicates that the planning history is a material consideration - which in this instance does not support any increase in development. Likewise, the delivery of agricultural staff workers accommodation is not a material consideration of such weight to balance against the Green Zone issues as there has been no demonstration of compliance with the tests of Policy H9 from the Island Plan".

Site and Surroundings

7. The appeal site is in a rural location on the east side of La Rue de Champ Colin. Part of the site next to the road is a strip of land used for access. In the wider part of the site, towards the east, there is a rectangular-shaped area of concrete which appears to form the slab foundations of a building, together with some pipework. The concreted area was roughly flush with the ground surface. No building work was being carried out at the time of my inspection and this appeared to have been so for some time. There were no significant amounts of building materials or items of builders' equipment on the site.

8. There are several large heaps of soil towards the south of the site and in the adjacent field further south. Part of this adjacent field also appears to have been artificially levelled in the recent past.

Case for Appellant

9. The main grounds of appeal are, in summary:

- Too much weight was given to the site's planning history and too little weight was given to the Island Plan. Although the history is a material consideration, the Island Plan is primary. It acknowledges that the Green Zone is a living landscape. Policy NE 7 allows extensions to dwellings as a permissible exception to the normal presumption against. It is inconsistent to refuse permission having allowed the dwelling permitted under permission P/2011/1605. The site-specific points which counted in support of that permission also apply to the extension now proposed. The planning obligation agreement under which the permissions P/2011/1605 and P/2011/1577 were like-for-like swaps does not prohibit further development on these sites.
- The design is appropriate in its context in accordance with Policy NE 7(1). The two-storey extension and roof conversion are conventional. The proposal was not refused on design grounds. The proposal should be considered in the light of another extension to a dwelling in the Green Zone at Victoria Cottage, St Saviour. This is much larger and more dominant than the current proposal.
- The proposal does not facilitate a significant increase in occupancy. The extra two bedrooms would not be unreasonable. The Minister has allowed an appeal as recommended by an inspector for a very large extension at Lande a Geon, St Peter, acknowledging that the possibility of increased occupancy should not be an embargo which would prevent people from improving their homes. The two extra bedrooms could be provided using permitted development rights but would result in cramped circumstances for the inhabitants. This proposal would also result in less dependency on car transport, as more staff would be transported daily to and from work by mini-bus, and Southfork Farm is within 3 minutes walk of the site.

- The proposal does not seriously harm landscape character, and this was not a reason for refusal. The key test in Policy NE 7(1) is therefore passed.
- Too much weight was given to Policy H9. This policy is not relevant as the authorised building and use is already as a dwelling (restricted to occupation by agricultural workers). However, under Policy H9 the impact of providing staff accommodation on the character of the countryside should be minimised, one of the stated ways of doing this being by an extension of an existing on-site building.

Case for Planning Authority

10. In response, the planning authority make the following main points.

- The history of the site is unusual; the approved house (application 1605) was a swap for a house allowed elsewhere and for a previous permission for a golf driving range on this appeal site.
- The application has been assessed as a house extension and considered against the tests applicable to house extensions in the Green Zone.
- The size of the extension would be substantial, and would result in a significant increase in the scale and mass of the dwelling, with significant increase in potential occupancy.
- The proposal is for accommodating agricultural staff living together as one household with a canteen. No convincing case was made for such accommodation.

Assessment

11. Both sides in this case have got themselves into a muddle by not thinking through exactly what is proposed by the application and by mis-describing the proposal. The muddle starts with the application, referring to ""Amended application to extend existing house/approval…." etc, and is continued with the Department's description referring to ""Revised plans…. Construct two storey extension to North elevation….Convert roof space…" etc. The "revised plans" label is accurate - and the Department allocated a reference number beginning "RP" accordingly - but the same does not apply to the descriptions referring to extension and conversion. Then in the appeal statement, the appellant's agent mostly (though not exactly) adopts the Department's description and refers to the construction of an extension and conversion of roof space.

12. It is not possible to "extend" a dwelling which does not exist. This is not a proposal to extend an existing house, and the expression "to extend an existing approval" has no proper meaning. Nor is it a proposal to "construct a two-storey extension" or "convert roof space".

13. The proposal subject to this appeal is to build a 5-bedroomed house, designed for use as a multi-occupancy property. Planning permission was granted in 2012 (reference P/2011/1605) for a 3-bedroomed house on the site. The building now proposed would not be the same as the house previously permitted. There would be similarities, but the building now proposed would be a different shape and layout, would provide different facilities to enable a different type of residential occupation, would be larger and would have rooms on the second floor.

14. Because what is proposed would be a new dwelling, the numerous references to extensions in the statements of case have limited relevance. For example, the claim that the applicant "is able to convert the existing roof space of the dwelling

into two additional double bedrooms without the need to apply for planning permission" is incorrect, since there is no "existing roof space". (There would of course be existing roof space if the 2012 planning permission were to be implemented in full. That is a different matter concerning a hypothetical, non-existent situation, on which I comment further below.) Nor would the development be simply a matter of completing the permitted building and then "having to attach the extension to a finished building", as claimed in the final comments for the appellant - the end result of any such attempt would be a concoction materially different from both what has been permitted and what is now sought through this appeal.

15. The submitted drawings show all the bedrooms labelled as "staff bedroom", and there would be a "staff canteen", a "staff rest area" and "staff dining area". There would also be a "staff changing room" and laundry and staff wc/shower on the ground floor next to the main entry door. Thus irrespective of the points mentioned above about the faulty descriptions of the proposal as an "extension", the 5-bedroomed house now proposed would be laid out for use as a "house in multiple occupation". The evident intention is that the house would be used for shared occupation by farm workers.

16. There are no objections to the proposal on design or visual impact grounds. The site is in the Green Zone for policy purposes, and the main issues raised by the appeal concern policies NE 7 and H9 of the Island Plan. The general thrust of the Plan under these policies is that there is a presumption against most urban types of development in the Green Zone unless specific criteria are met.

17. I do not accept the argument put forward on the appellant's behalf that policy H9 has been given too much weight or (as is claimed in the appeal statement and final comments) does not apply at all. This policy provides that planning permission for staff accommodation outside the built-up area will not be permitted unless the proposal is (among other things) essential to the proper function of the business, and unless the need cannot be provided within the built-up area. The proposal should be assessed in that context.

18. Both sides in this case refer to recent history relating to the Beach Hotel in Gorey. The planning officer's report mentions what the Department perceived to be the applicant's belief that an essential need is demonstrated by the loss of staff accommodation at the Beach Hotel. The statement submitted by the appellant's agent describes the history in more detail, from which I note that the Beach Hotel was demolished in 2017, leaving the Jersey Royal Company with a severe shortage of agricultural worker's accommodation. I also understand from the available evidence that Mr Binet and his sister have a leading role in a property company (Jersey Royal Property Holdings Ltd) involved in providing accommodation for employees of the Jersey Royal company.

19. Considered in the light of that background, there are three significant flaws in the arguments for the appellant. First, no real case has been made out to show why there is a need to provide residential accommodation for farm workers on this particular site. The appellant's statement mentions that Southfork Farm (the JRC's headquarters) is a three minute walk from the appeal site - but it is also argued for the appellant that future occupants of the proposed house would not generate much traffic, because they would be transported to and from work by minibus. That suggests to me that the occupants would be working anywhere in Jersey.

20. Second, the claim that the appellant's case is supported by a statement in the Island Plan about house extensions meeting "the reasonable expectation of

residents to improve their homes" is misguided. This proposal is not about existing residents wanting to improve their home - it is a proposal for a house for multiple occupation to provide accommodation for farm workers.

21. Third, no information has been supplied about the number of workers employed by JRC, or the extent to which they are seasonal or temporary, or the extent to which they could be accommodated elsewhere. Examples of "elsewhere" might be Southfork Farm, or other farms owned or operated by the Jersey Royal Company, or within a built-up area. There is no evidence about what other properties are used to house farm workers or the capacity of such properties. I can see why it may be convenient both practically and financially to install farm workers' accommodation on land already owned by Mr Binet; but from a public interest planning viewpoint, if workers would be transported by minibus to and from their places of work, their accommodation might just as well be in a built-up area as in the countryside, and no good reason has been put forward showing why, for example, it is not possible for the company to rent or buy accommodation within the built-up area so as to minimise urban development in the Green Zone.

22. This is also the sort of isolated location not well served by public transport, where travel for shopping, social or recreation purposes would be likely to generate traffic by private vehicles. In that respect despite the potential use of a minibus for work journeys by occupants, this proposal would (to use the words from paragraph 6.148 of the Island Plan) "contribute to an unsustainable pattern of development in the Island"; and assuming the proposed house were to be fully occupied, the contribution would be greater than would be likely with a smaller dwelling.

23. Part of the appellant's case is that a property in St Ouen was purchased by Jersey Royal Property Holdings on the advice of a previous planning minister and of the chief planning officer, on the understanding that facilities of the sort now applied for would be granted planning permission. Planning permission for farm workers' accommodation there has evidently been refused; an appeal has been lodged, but has apparently been "stayed" pending discussions about alleged faults in a committee report.

24. I do not know what was said in any conversations between Mr Binet and a former Minister or the chief planning officer. No written evidence (such as an agreed record of a meeting or correspondence about pre-application advice) has been supplied confirming Mr Binet's "understanding", which amounts to an alleged oral agreement that planning permission would be granted for development at West Point, St Ouen. Nor should a dispute about a planning application elsewhere affect the assessment of the current appeal.

25. Reference is made on the appellant's behalf to a 2014 Court of Appeal judgment, which quoted an earlier judgment stating:

> "The test on each application is not a comparison with what has gone before on the basis that any improvement suggests a consent, but rather, in accordance with Article 19 of the Planning Law whether the proposal is consistent with the Island Plan and is appropriate given all material considerations, or whether a permission can be justified despite inconsistency with the Island Plan".

26. This seems to be a rather convoluted way of saying that each case has to be judged on its own merits. I agree with the appellant that the principle of residential development on this site was accepted when the 2012 planning

permission for a three-bedroom dwelling was granted, linked with legal undertakings which in effect quash other planning permissions (including permission for a golf driving range at the appeal site and adjacent land). But what is now proposed would be a significantly different scheme, which has to stand or fall on its own merits. It is also important to bear in mind the potential cumulative effect of individually small-scale developments.

27. One question raised in the appellant's statement is: if the site is now so sensitive why was the dwelling allowed in this location in the first place? It is not for me to explain why a planning permission was granted in 2012, or whether it should have been granted.

28. There is what might be called a "fall-back" argument here, in that if the house permitted in 2012 were to be built, some additional accommodation (smaller than would be provided with the appeal scheme) could then be provided using "permitted development" rights for a roof conversion, although such rights would only arise if and when the 2012 permission were to be implemented to the point of the building being a "dwelling-house". At a squeeze, a house with a roof-space conversion could accommodate as many occupants as the proposed dwelling; but the current proposal would result in a house having nearly double the floorspace of what was permitted in 2012, and I do not regard the potential for exercising permitted development rights as a good reason to permit the proposal.

29. Various comments are made about developments elsewhere, including in particular an appeal case at Lande a Geon, St Peter. There, an inspector's report mentioned that it would be unreasonable to resist all forms of development to improve people's homes. There are significant differences between these proposals. The main purpose of the proposal at Lande a Geon was apparently not to increase occupancy - some of the scheme was to provide garaging, stores and stables, and the inspector's report states: "in my opinion little of the increased floorspace would directly facilitate increased occupancy".

30. In the current case, the proposed building, with five double bedrooms, the canteen and other provision, appears to be designed to accommodate up to ten people as shared occupants, clearly more than would normally be accommodated in the smaller, conventionally arranged dwelling subject to the 2012 permission. Thus even if - adopting the appellant's position - the proposal were to be treated as an extension to an existing dwelling, the development would facilitate increased occupancy compared with the dwelling permitted in 2012, and would not meet the test in sub-paragraph 1(b) of policy NE 7.[2]

Conclusions

31. Taking all the above considerations into account, I find that despite some flaws in the way the proposal was assessed, the decision to refuse planning permission was made for sound reasons. I conclude that permission should not be granted.

Possible Conditions

32. None of the parties to this appeal covered the matter of possible conditions in their written statements. If you are minded to grant planning permission, it would be appropriate to impose standard conditions requiring the development to be carried out in accordance with the submitted plans and started within the standard time period, together with a condition limiting occupation to agricultural

[2] This part of the policy provides that as an exception, the extension of a dwelling may be permissible where several criteria would be met. One of these is where "it does not facilitate increased occupancy".

workers. Bearing in mind that as explained above, this would be a permission for a dwelling, not an extension as mis-described in the written representations, you may also wish to consider adding conditions taking away normal permitted development rights for the construction of extensions or outbuildings, and limiting the maximum number of people living at the property to ten. Otherwise, despite restrictions in the General Development Order, the building could end up accommodating a much larger number of people than implied by the current proposal.

Recommendation

33. I recommend that the appeal be dismissed and that the refusal of planning permission on the grounds set out in the Department's decision notice be confirmed.

G F Self

Inspector
29 April 2018.