Planning and Building (Jersey) Law 2002

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr G Snyman (see paragraph 5 below) against a refusal of planning permission.

Reference Number: P/2017/1467.

Site at Malorey House, Les Charrières Malorey, St Lawrence.

Introduction

1. This appeal is made 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 I consider first a procedural matter concerning the identity of the appellant. 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 to the extent you consider necessary.

3. The application was dated 19 October 2017 and date-stamped as received by the Department of the Environment on the same day. The proposed development was described in the application as: "Construct 1 bedroom staff accommodation unit". In its refusal notice the Department described the proposal as: "Construct 1 No. bed unit of staff accommodation to South-West of site".

4. The stated ground for the refusal of planning permission was:

> "The proposed development would provide accommodation for domestic staff in a new building in the Green Zone which is located separate from the main dwelling and it has not been demonstrated to the satisfaction of the Department of the Environment that the proposal would meet the relevant tests set out in Policy H9 with regard to the location on the site and the need to provide a separate building in the Green Zone, contrary to Policies NE 7 and H9 of the 2011 Island Plan (revised 2014)."

Identity of Appellant

5. The statement of case for the appellant states that the appeal is by Mr and Mrs G Snyman. That cannot be so, as the right of appeal against a refusal of planning permission under Article 108 of the 2002 Law is held by the applicant, who in this instance was Mr G Snyman. I am therefore treating the appeal as having been made by Mr Snyman.

Site and Surroundings

6. The appeal site lies east of Les Charrières Malorey in a rural part of St Lawrence. Malorey House is a substantial detached dwelling set well back from the road. A shingle-surfaced driveway leads past the west end of the house towards the location where the proposed building would be located. This is a rectangular-shaped level area partly covered with lengths of timber which apparently once

formed the base of raised beds for a vegetable garden. There is an open field to the south. Most of the immediately surrounding area is open countryside.

7. As is apparent from the submitted site plan, the main part of Malorey House has an approximately east-west alignment, and a wing projects northward. A swimming pool and detached outbuilding are located south-east of the house. At the time of my inspection the ground floor of the east-west part of the house was laid out with various rooms including a semi-open-plan kitchen/breakfast/dining room, a lounge, a day room and a study. On the first floor there were five bedrooms and bathrooms, plus a further bedroom with en-suite bath or shower room and toilet at first floor level above the double garage in the southernmost part of the north wing.

8. At first floor level on the northernmost part of the north wing above another garage there is a further bedroom, also with en-suite bath or shower room and toilet. Access to this part of the building is by means of an external stair and first floor door in the north elevation.

Case for Appellant

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

- The proposal is for a single-storey one-bedroom staff unit which would be occupied by a housekeeper and gardener, to provide these services for the owner-occupier of Malorey House.
- The dwelling would be discreetly sited in the corner of the domestic curtilage and would not be publicly visible.
- Policy NE 7 makes exceptions for ancillary buildings which are modest and proportionate and would meet other criteria. In particular, the site has the capacity for development and the proposal would not seriously harm landscape character, and so passes the key test set by policy NE 7.
- Other buildings for staff accommodation have been treated as ancillary and approved in the Green Zone. The proposed building would be smaller than those approved elsewhere. Because of the need for consistency of decision-making this proposal ought to have been approved.

Case for Planning Authority

10. The basis of the planning authority's case is:

- The site is within the Green Zone where there is a presumption against the development of new dwellings other than in specific circumstances. The proposal would be contrary to the aims of policy NE 7 and does not meet the tests under Policies NE 7 and H9.
- In particular, Policy NE 7 refers to staff and key worker accommodation which is in accordance with policy H9. This proposal would not satisfy policy H9 because the dwelling is not essential to the proper function of a business, and the accommodation could be provided in the existing house or by altering it.
- Each case must be judged on its own merits and the other developments mentioned in support of the appeal are not identical.

Assessment

11. This appeal raises two main issues: first, the likely effect of the proposal on the rural character of the area, considered together with relevant planning policies relating to the site's location in the Green Zone and the degree of need for staff

accommodation; second, the need for consistency in planning decisions, having regard to previous decisions on planning applications for staff accommodation outside the built-up area.

12. On the first issue, the proposed building would be set well away from public viewpoints and would be quite small. Thus its direct visual impact would be very limited, and the Department has accepted that the development would not cause any serious harm to landscape character. However, the proposal would entail the creation of a dwelling in a location where Island Plan policies establish a general presumption against most forms of built development. These policies have been adopted not just for reasons of visual impact or appearance, but also to prevent the spread of dwellings or other buildings across the countryside, as part of a wider aim to concentrate development as much as possible into built-up areas.

13. As is pointed out for the appellant, the Island Plan states that impact on landscape character is "the key test" under Policy NE 7 of the Island Plan. The proposal would meet that test - although the development would take away a little of the area's rural quality, it would not seriously harm landscape character. The site is also in a spacious setting, so in that sense it has the capacity for development.

14. Nevertheless the proposal would conflict with Policy H9 of the Plan, because under this policy, special justification is required for the development of a new dwelling outside the built-up area. The policy sets out six criteria, all of which have to be met to make a proposal acceptable. The first criterion is that the development has to be "essential to the proper function of the business". There is no evidence that a business is being operated from the appeal property. A housekeeper and gardener would normally provide domestic and garden maintenance services, and no case has been made out for the appellant that there is any business need for the proposed dwelling.

15. Since the proposal would conflict with Policy H9, it would also fail to meet the provisions of Policy NE 7, because there is no good reason to set aside the general presumption against development in the Green Zone.

16. The appellant's case with regard to need is also undermined by what I found during my inspection, combined with certain aspects of the property's history. Planning permission was evidently granted in October 2012 for an extension to the house, consisting of an additional double garage on the ground floor with a proposed study at first floor level on the north wing of the house. The approved plans show the addition as having an internal staircase. The plans also show the southern part of the north wing as a double garage on the ground floor with a "games room" above, also with internal stair access from the ground floor.

17. As is apparent from my site description above, there are significant discrepancies between the situation at this property and the 2012 planning permission. The "games room" is in fact a bedroom and en-suite bath or shower room and toilet; the "proposed study" which was part of the 2012 permission (shown on the approved drawing with no shower or bath room or toilet) is a further bedroom with en-suite facilities and external instead of internal access.

18. There is no evidence before me about when the northernmost part of the north wing was built, but the available information suggests that what exists was built following the 2012 permission. If that is so, the development did not implement the 2012 permission and is unauthorised - its layout and function differs materially from that approved, and unless development of this type is carried out

internally as well as externally in accordance with a planning permission, it is unlawful.[1]

19. The Department of the Environment has evidently not taken any enforcement action against what would appear to be a breach of planning control, and whether such action may or may not be appropriate is outside the scope of this current appeal. I do not know whether the Department inspected the completed extension to check whether it complied with the 2012 permission - I suspect not, since the officer's report on the application now subject to appeal wrongly describes Malorey House as a 5 bedroom dwelling. Either way, the appellant's argument about the need for staff accommodation is further weakened by the existence of accommodation which could (and perhaps does) provide a quite large bed-sitting room with external access at the appeal property. The presence of this accommodation is not acknowledged anywhere in the appellant's written statement.

20. Turning to the second issue, the appellant's case on precedent and consistency grounds refers specifically to three sites. One is at Woodside Farm, St Peter; another is at Domaine de St Laurent, Les Charrières Nicolle, St Lawrence; the third is at Highfield House, St Clement.

21. At Woodside Farm, one of the reasons for permitting what was described as "a new two-bed staff house" was that the house was "essential to the main function of the existing dwelling in providing staff accommodation". The planning officer's assessment referred to policies H9 and NE 7, and stated that (subject to a proviso about the impact on the character of the area) one of the types of development which will be permitted is "limited ancillary or incidental buildings within the curtilage of a domestic dwelling".

22. That assessment was inaccurate. Policy NE 7 does not refer to limited ancillary buildings within the curtilage of a domestic dwelling, and the allowance for staff accommodation under policy H9 only relates to staff accommodation where it is "essential to the proper function of the business" (and also subject to other criteria). The applicant in the Woodside Farm case evidently claimed that the house was needed to accommodate a housekeeper, and there does not seem to have been any claim that the house was being operated as a business.

23. The proposal at Domaine de St Laurent was to create two dwellings by converting the ground floor of a garage outbuilding which already contained a first floor dwelling, and to build a new detached garage for six cars. The planning officer's report again mentioned "scope for ancillary structures" and quoted the part of policy NE 7 referring to "the development of staff and key agricultural worker accommodation, but only where the proposal would…accord with policy H9". The officer's appraisal then found that the "staff accommodation" test would be met because the garage conversion would provide accommodation for the applicant's housekeeper, which was considered to be "essential to the operational function of the property". Again, that is not what policy H9 provides for - the "function of a residential property" is not the same thing as the proper function of a business.

24. Similarly, the development at Highfield House (an extension to an existing dwelling) was considered by the Department to be in accordance with policy H9

[1] The leading case on this point is the House of Lords judgment in *Sage v SSETR & Others* [2003] UKHL 22. The court held that: " If a building operation is not carried out, both externally and internally, fully in accordance with the permission, the *whole* operation is unlawful." Where the legislation is similar and there are no contrary applicable Royal Court judgments, UK court judgments apply as a guide to interpreting planning law in Jersey.

because it was to provide staff accommodation, despite the fact that there was no apparent connection with a business and no case of essential need for the proper function of a business.

25. The planning officer's report on the application now subject to the current appeal states that the first test in Policy H9 is not met, because the proposal relates to staff accommodation for a private residence and is not essential to the proper function of a business. The same evidently applied to the three foregoing cases. If there had been a genuine business need in any of those cases I would have expected the nature of the business to have been mentioned in the planning officers' reports, and also reflected in a planning permission for business use of the properties (or mixed business and residential use); but there is no such evidence. So I agree with the appellant's argument that the Department has acted inconsistently. Alternatively, the planning authority when dealing with other applications has misinterpreted its own policies.

26. The Department has defended its past decisions by pointing out that the building subject to this appeal would be detached from the main house by 25 metres, whereas the other cases include a conversion of an existing building, an extension of the main house, and a detached building only 4 metres from the main house. The main houses in the other cases are also much larger than Malorey House. Those are not very convincing points, especially since the conversion scheme at Domaine de St Laurent involved the additional construction of a large detached garage well away from the main house, albeit apparently well screened from public view. However large the main houses may have been, the proposals were apparently to provide housing for domestic staff such as housekeepers or a gardener, not because the accommodation was necessary for the proper function of a business.

27. The Department is not the only party to have a flawed case on policy. Part of the appellant's case relates to the statement in the Island Plan (in the explanatory text supporting policy NE 7) that proposals for the creation of new habitable accommodation in detached ancillary buildings will not be supported. On this point, it is argued for the appellant that:

> "Evidence demonstrates that this does not apply to domestic staff accommodation for high networth *[sic]* residences. Jersey, through….the States of Jersey Economic Department, actively encourages high networth residents to Jersey and needs to provide residential properties with opportunities to meet their needs, including the provision of staff accommodation….having regard to Policy H9."

28. If Jersey (that is to say, the States as a whole, not just one Department) wants to promote the provision of dwellings with staff accommodation so as to encourage wealthy individuals to move to the Island, such a policy should have been included *as a planning policy* in the Island Plan. There is nothing in the Plan to say that Policy H9 does not apply to wealthy people; nor is there any definition of "high net worth" for the purpose of applying planning policy. The supporting text of this policy makes clear that staff accommodation outside the built-up area may only be permitted as an exception "on the basis of proven economic need and evidenced business case." [2] Thus provided there is good evidence, a small firm or an individual of modest means can have a business case just as much as a large company or wealthy person.

[2] Island Plan, paragraph 6.144.

29. In summary, I find that there is some force in the appellant's arguments relating to precedent. There should be reasonable consistency in planning decisions. Although of course I cannot know all the circumstances, Island Plan policies on proposals for staff accommodation in the Green Zone appear to have been inconsistently applied. The available evidence gives me the impression that the wealth of the applicant may have been treated as a factor having some weight in other cases, and this impression is reinforced by the applicant's agent in the current case describing the appeal property as a "high networth dwelling" as if that is a material point. Be that as it may, if the precedent argument were to be treated as compelling it would mean repeating what I judge to be flawed past decisions. I do not consider that previous planning permissions have set a precedent which should now be followed.

Conclusions

30. I conclude that despite weaknesses in the Department's case, on balance the refusal of planning permission was justified for the reasons stated in the decision notice.

Possible Conditions

31. Neither of the parties to this appeal included any submissions on the matter of possible conditions in their written statements. If planning permission were to be granted it would be important to control the way the proposed dwelling would be used and occupied. However, the conditions imposed on the previous permissions at other sites mentioned in evidence should not be treated as any sort of model. Examples are:

"This permission extends to the use of the residential accommodation hereby permitted only as an ancillary use to the main dwelling, Domaine de St Laurent."

and:

"The accommodation shall not be occupied as a dwelling separately/independently from the existing dwelling at Woodside Farm."

32. Conditions using the wording just quoted are not satisfactory for two main reasons. First, the term "ancillary use" in this context is open to different interpretations, and so can cause enforcement problems in some situations. The same applies to the concept of occupation "separately/independently".

33. Secondly, these conditions would probably be breached anyway as soon as the dwellings became occupied in the way described in the applications. What is proposed by the current appeal (and was apparently permitted in the past schemes mentioned in evidence), is a unit of residential accommodation which would provide all the normal facilities for day to day domestic living - that is to say, a dwelling. Where the occupant or occupants eat their main meal in the proposed dwelling, cook, wash, rest and sleep there, they would be living there, and the building would be occupied as a separate dwelling, irrespective of whether some or all of its occupants are employed to work in a "main house" or its garden, and irrespective of common ownership and shared external access.

34. For the sake of fairness in these circumstances, I suggest that if you are minded to grant planning permission, the two main parties in this case should be informed, and invited to submit comments on possible conditions before a final decision is made. If necessary in that event I could consider any such comments and submit a short further report on conditions.

Recommendation

35. I recommend that the appeal be dismissed and that the decision to refuse planning permission be confirmed, for the reasons stated in the original ground for refusal.

G F Self

Inspector
29 April 2018.