

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr C Vieira (see paragraph 1 and footnote) against a refusal of planning permission.

Reference Number: P/2017/1790.

Site at: Printania, Le Mont Matthieu, St Ouen.

Introduction

1. This appeal is made by Mr C Vieira under Article 108 of the Planning and Building (Jersey) Law 2002, against a refusal of planning permission.¹ 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 some procedural matters. 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 30 November 2017 and was date stamped as received by the Department of the Environment on 21 December 2017. The proposed development was described in the application as:

"Remove existing kitchen, porch and conservatory. Remove existing roof. Construct new first floor, with hipped pitched roof, new stairs and internal alterations at ground floor level."
4. In the Department's decision notice, the proposed development was described as:

"Demolish existing conservatory. Construct ground floor extension to North-East elevation and raise roof to create first floor."
5. The stated ground for refusal of planning permission was:

"The proposed development would result in a building which would be substantially enlarged and the appearance of which would look out of character with the surrounding dwellings. The proposal would disproportionately increase the size of the dwelling in terms of its gross floorspace and its visual impact, which would harm the landscape character of the Coastal National Park. The proposal is therefore considered to fail to satisfy the requirements of Policies NE 6, GD 7 and BE 6 of the Adopted Jersey Island Plan, 2011 (Revised 2014).

¹ The name of the applicant on the application form was specified as "Mr and C Vieira". This appears to have been a mistake, but could be interpreted in different ways. The appeal form specified "Mr and Mrs C Vieira" as joint appellants. On the basis that Mrs Vieira was not named as a joint applicant, and only Mr C Vieira signed the application, I am treating the applicant as Mr C Vieira, and since the right of appeal is held only by an applicant I am treating the appeal as also being by Mr C Vieira.

Procedural Matters

6. The application drawings showing (or purporting to show) the existing bungalow do not have any labelled scale. Comparisons with parts of the building which would remain unaltered after the proposed development indicate that the scale is probably 1:100. However, it became apparent during my inspection that these drawings are not accurate in places.
7. The appeal statements submitted for the appellant and the Department of the Environment contain different figures for the difference in height between the existing and proposed buildings. The height of the building is a factor of considerable relevance in this case.
8. In view of the problem with the drawings and the dispute about building height figures, I arranged for a message to be sent to both parties after my inspection, inviting submissions in response to questions. This report has been delayed to allow that to happen. I return to this matter in my assessment below.
9. On an unrelated matter, I have not given weight to the plans and photographs of a property in St Ouen, contained in Appendix 2 of the "Second Response" submitted for the appellant. This material constitutes new evidence, which should not be submitted at final comments stage unless in response to an inspector's questions or invitation to comment, or as a result of a late change in circumstances such as the introduction of a new planning policy.

Site and Surroundings

10. The property known as Printania is a detached bungalow situated on the north-eastern fringe of a cluster of about 15 dwellings forming a residential area south and south-east of Le Mont Matthieu. The group of dwellings is laid out in three rows and has the character of a small estate. Access to them is from a cul-de-sac off Le Mont Matthieu. Most of the other dwellings in the area are bungalow style, although some have windows at first floor level.
11. The cluster of dwellings just mentioned has an elevated position on land which slopes down towards St Ouen's Bay. The surrounding area is predominantly rural. It is part of the Coastal National Park.
12. Printania is an L-shaped bungalow which has three bedrooms (one being a small single), living and dining rooms, and a small kitchen on the south-east side. A conservatory is attached to the rear of the building, in the corner formed by the crook of the L-shape.
13. Also at the rear (north-east) there is a partially separate dwelling (labelled "flat" on the drawing showing the existing layout). This unit, which appears to be occupied separately from the main dwelling, is furnished as a bed-sitting room with kitchenette fittings. It has a bath or shower room but no separate, independent access.

Case for Appellant

14. The main grounds of appeal are, in summary:
 - The proposal is in accordance with policies NE 6, GD 7, and BE 6. Other dwellings in the immediate area are higher than Printania would be after the proposed enlargement. Printania is set back from the escarpment and not visible from the coastal plain to the south. From the north, it is seen against a taller backdrop. Eight out of the 15 houses in the cluster have accommodation at first floor level, including one known as Whitehaven

where planning permission was granted for the roof to be raised by a greater extent (1.24 metres) than is proposed at Printania. There is great variety in the design of buildings in this cluster. The proposal would not look out of character with the area and would be well-designed in its context. It complies with policy NE 6.

- The development would increase the building's floorspace but it is small at present, and affected by the presence of the flat, which existed as an integral letting unit when the present owners bought the property. The development would be subservient to the existing building. Island Plan policy for the Coastal National Park is not a moratorium against development; it allows for a reasonable expectation of residents to improve their homes. The visual impact of the proposal would be negligible and would not harm the landscape character of the area. These factors also mean that the proposal would be in accordance with policy NE 6.
- The proposal satisfies the design criteria of policy GD 7 and also complies with policy BE 6 on building alterations and extensions.
- The proposal is similar to other developments which have been approved in the Coastal National Park. The development at Whitehaven has particular weight. This was approved by the planning committee but subject to third party appeals by neighbours. The inspector held that despite the increased floor area created by the new first floor the 1.24 metre increase in roof height would not be major and the property would appear to some degree nestled into the landscape. The circumstances at Printania would be similar. The proposal was purposely designed to result in the roof height being raised by only 1.1 metre (less than Whitehaven), and hipped on four sides, with roof lights so as not to have projecting dormers or gables.
- Other examples of nearby properties in the National Park which have had their roofs raised to provide additional accommodation include Ocean View, Mont Bijou (2013), and Tamar (2005).

Case for Planning Authority

15. In response, the planning authority make the following comments.
- The proposal would lead to a substantial increase in the floorspace and visual impact of the dwelling. The increase in size of the dwelling would be disproportionate, and would not be subservient to the existing building as required by policy on development in the Coastal National Park.
 - The enlarged dwelling would look out of character with surrounding buildings. The roof would be larger and would be 2 metres or 44% higher overall than the existing roof.
 - The development would not meet the requirements of Policies NE 6, GD 7 and BE 6 of the Island Plan. Policy NE 6 in particular allows for domestic extensions subject to provisos, but the policy tests would not be met because the proposals would increase the height, footprint and overall mass of the building. The increase in floor area of 88% would also facilitate a significant increase in occupancy.

Assessment

16. I turn first to the issues mentioned in "Procedural Matters" above concerning building height and the submitted drawings. The email sent to the parties after my site inspection stated that on a simple factual matter of change in building

height, it ought to be possible for there to be a reasonably accurate undisputed figure. Some of the submitted drawings have no specified scale and others appeared to be inaccurate, but my own estimate - based on check measurements at the site and taking fixed points such as window sills and the garage door - was that the increase in height would be about 2.1 metres. I asked both sides for the source or derivation of their figures, and invited them to provide a jointly agreed figure for the increase in height if possible.

17. In response to my questions, further written submissions have been sent on behalf of the appellant and of the Department. Copies of emails exchanged between the parties have also been submitted.² In summary, the main points which have emerged from the submissions and emails are:
 - (i) The parties have not been able to agree on the change of building height which would result from the proposed development.
 - (ii) A dimension of 1.45 metres has now been put forward for the appellant as the difference in height between existing and proposed roof heights.
 - (iii) The appellant's architect has stated that the original elevations shown on the application drawings were not accurate. He has also stated that "our application elevations and sections show the new roof being too high".
 - (iv) The architect has asked that dimensions stated in his recent emails and related section drawings based on actual measurements be treated as accurate, and that dimensions should not be scaled from application drawings.
18. The claim that the increase in height would be "only 1.1 metre" is repeated as an important point several times in the appellant's representations, where the difference in height between the existing and proposed buildings is described as "marginal". The emails to the Department (Mr Townsend) from the appellant's architect (Mr Cuddon-Large) indicate that the 1.1 metre figure was inaccurate because the ground around the dwelling is not level. This does not explain how the appeal statement came to refer to "raising the ridge height by only 1.1 metre", since as long as any single base point is taken for both existing and proposed figures, the slope of the land elsewhere should not matter. The appellant's case places emphasis and detail on comparing the height of the proposed building with other buildings, so this is a point which is germane and needs to be got right.
19. Sometimes those responsible for preparing application plans or drawings place a note on them to the effect that dimensions should not be scaled from drawings. That might perhaps be acceptable where the dimensions are apparent by other means. Divergences which are minimal might not matter. In this instance, however, no dimensions are specified in the application drawings or anywhere else in the application, so for assessing the proposal it is necessary to scale from the drawings. The requirements set out in Practice Note 11 would also seem pointless if dimensions could not be scaled from drawings.³ The divergences

² Copies of the emails exchanged between Mr Cuddon-Large and Mr Townsend (together with the schedule apparently attached to Mr Cuddon-Large's email of 30 April and drawings attached to an email of 1 May) are in Appendix 1 of the "Appellant's Responses" statement.

³ Practice Note 11: "Information Required for a Planning Application" published in January 2016 states that floor plans must be drawn to a scale of either 1:50 or 1:100 and that elevations may be drawn at a scale of either 1:50 or 1:100. This document also requires that all drawings must be submitted at a recognised scale found on standard metric scale rules, and applicants must ensure the scale quoted is correct. Neither the original application nor the recent submissions met the requirements set out in this Practice Note.

between the drawings submitted for this application and what is stated in the exchange of emails are more than minimal.

20. It seems to be generally agreed that because of varied ground levels it is probably best to use dimensions based on floor slab level. But disagreements remain. One example of a disputed figure is the dimension between first floor level and the underside of the proposed roof. This is labelled as 2900 (ie equivalent to 2.9 metres) on a cross-section drawing attached to an email from Mr Cuddon-Large, but is considered by the Department to be 3.4 metres, based on the application drawings.
21. The architect's latest drawings submitted with one of the emails have no stated scale, but from checking ratios between width and height, the overall size and shape of the proposed building appears not to be the same as is depicted in the application drawings. There are other differences: for example, first floor doors shown with a normal rectangular shape on Sections AA and BB in application drawing number 106 are shown in the latest drawings of the same sections with a top corner of the doors angled to accommodate the roof slope. The emails also refer to the latest drawings being "freehand and not to scale". Bearing these points in mind I judge that the dimensions on these drawings could not be implemented without departing from the application drawings to a more than minimal extent.
22. The appellant's agent has stated: "It is regretted the submitted drawings were incorrect, but this does not mean the submitted scheme, now corrected, is unacceptable". That over-simplifies the situation. An application for full planning permission should contain all the information necessary to enable the decision-maker to know what is being proposed, and where relevant (as is argued in this case) to compare it with other developments. Then if planning permission is granted, all involved need to know exactly what is permitted, especially since any planning permission granted would normally be subject to a standard condition requiring the development to be carried out in accordance with the application plans.
23. The schedule of dimensions put forward in one of Mr Cuddon-Large's emails to Mr Townsend was not part of the application and contains some dimensions which, rather than clarifying the application, differ from it. The section and elevation drawings attached to another email, apparently unscaled and showing roof heights and other features different from the application drawings, cannot be satisfactorily treated as substitute application drawings, especially at appeal stage and bearing in mind the failure to meet the requirements of Practice Note 11.
24. This situation can be tested in the following way. If, hypothetically, planning permission were to be granted, which scheme would be assessed and what could be built? It could not be the scheme applied for, because the drawings are known to be incorrect. It could not be the scheme illustrated in the drawings attached to a recent email to the Department, because the elevations shown there are not to any stated scale, are stated to be freehand, and anyway are not what was applied for. It could not be the scheme described in the appellant's initial written statement because that, too, has not been the subject of an application, and refers to a 1.1 metre height increase now accepted as wrong. If, equally hypothetically, planning permission were to be refused for planning merits reasons, the same points apply - which scheme would be assessed and refused?

25. I conclude that the flaws in the application go beyond the threshold of what can be regarded as acceptable. Because of the inconsistencies among the submitted material and the admitted inaccuracy of application drawings, the application cannot properly be decided. Moreover, if I were to present here my assessment of the planning merits or demerits of any of the various proposals, a fresh application - which would seem a probable outcome - would be prejudiced one way or the other. Since the original proposal has already been the subject of a decision at application stage it would not be appropriate to return the application to the applicant or re-advertise it as a modified application.

26. In all these circumstances, I consider that the appeal should be dismissed and the Department's decision on the application should be varied using the powers available to you under Article 116(2)(d) of the 2002 Law, so that planning permission is refused but for a reason different from that quoted in the original refusal.

Possible Conditions

27. None of the parties to this appeal covered the matter of possible conditions in their written representations; but in view of the conclusion I have reached, any comment here on possible conditions would be superfluous.

Recommendation

28. I recommend that the appeal be dismissed and that planning permission be refused for the reason that the application plans are insufficiently accurate, and as a result the application cannot be properly determined.

G F Self

Inspector
9 May 2018.