

**STATES OF JERSEY**  
**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**  
**APPEAL OF A DECISION UNDER ARTICLE 108**  
**REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**  
by Mr Philip Staddon BSc, Dip, MBA, MRTPI  
an Inspector appointed under Article 107

**APPEAL BY:** Ms. J. Bradley

**AGAINST:** Refusal to grant retrospective planning permission to *"Remove existing conservatory to North elevation. Replace 1 No. window with 1 No. pvcu window and construct conservatory to North elevation. Replace 1 No. bay window with 1 No. timber bay window to South elevation.* Decision dated 19 April 2018.

**LOCATION:** Flat 1, 5 Belgreve Terrace, Dicq Road, St. Saviour , JE2 7PZ

**REFERENCE:** P/2017/1746

**APPEAL PROCEDURE:** Written Representations

**SITE VISIT:** 5 July 2018

**DATE:** 3 August 2018

## **Introduction**

1. This report contains my assessment of the appeal made by Ms. J. Bradley against the decision of the Department of the Environment to refuse to grant retrospective planning permission for a range of works to a Listed building at Flat 1, 5 Belgreve Terrace, St Helier.
2. No. 5 Belgreve Road is a Grade 4 Listed end of terrace property which lies on the north side of Dicq Road. To the north is St Luke's primary school. The Statement of Significance in the Listing entry states that the house is a *"fine example of late Victorian exuberantly ornamented seaside architecture. Many original features survive, particularly the dormers, windows, door and porch."* Its context is recorded as an *"imposing terrace detached from other houses on this side of street as set piece, set back behind raised gardens and granite rubble retaining wall."* The other properties in the terrace are also Listed.
3. Today, the property is sub-divided into flats. I understand that the Appellant occupies Flat 1, which is on the ground floor, and that she undertook a series of works to the property without first securing Planning Permission. A retrospective application was refused and this appeal is made against that refusal.

## **The retrospective application and the refusal**

4. Application reference P/2017/1746 sought retrospective planning permission for three elements of works carried out to the Listed property. These were:
  - (i) The replacement of a ground floor bay window at the front of the property;
  - (ii) The replacement of a conservatory at the rear of the building; and
  - (iii) The replacement of a window in the rear of the house.
5. The application was initially refused under officer delegated powers in February 2018, on the basis that each of the three elements was considered unacceptable, given the Listed status of the building. The Applicant's request for a review of that decision was considered at the April 2018 Planning Committee. The Committee resolved to amend the reason for refusal to refer to the replacement bay window only, as it was less concerned about the conservatory and replacement window to the rear of the property. The reason for refusal, as amended following the Review, states:

*"No justification to support the removal of the historic bay window has been provided and the loss of this historic feature fails to preserve the special interest of this protected building. The detailing of the bay window does not carefully replicate the historic detail or appearance and as such, the proposals are contrary to policies SP4, HE1, HE2, BE6 and GD1 of The Adopted Island Plan 2011 (Revised 2014) and Supplementary Planning Guidance, Planning Policy Note 2, Windows and Doors in Historic Buildings (2008)."*

### **Summary of the Appellant's grounds of appeal**

6. The Appellant's grounds of appeal are straightforward and are set out by her agent.
7. With regard to the front bay window it is contended that "*the original windows rattled, were drafty and were completely rotten.*" The Appellant's submissions explain that a professional window company recommended replacing the windows with double glazed painted timber units and it was left to these experts to replicate the original closely enough not to cause aesthetic harm.
8. With regard to the other works, the Appellant contends that the lean-to conservatory and the rear window were "*definitely not historic (original features)*" and it is unreasonable to suggest that historic features have been lost when they have not.
9. The Appellant submits that the conservatory simply replaced an earlier 1970's structure of the same size and profile, which was of no historic significance and would not have formed part of the original listing. The Appellant also submits that, were it not for the Listing, Planning permission would not be required.
10. The Appellant says that the ground floor window to the rear of the property replaced a metal side hung unit in an opening which was not an original feature.
11. The Appellant further submits that none of the "*late Victorian exuberantly ornamented seaside architecture*" has been touched and its characteristics have not been eroded. It is considered that no damage has been done to the integrity of this building.

### **Summary of the Department's response**

12. The Department rebuts the Appellant's grounds of appeal. It relies upon the advice of the Historic Environment Team, which explained the Island Plan policy framework that seeks to protect Jersey's heritage assets from harmful development. It contends that the need for replacement of the bay window was not evidenced and that, whilst the new windows may be similar, they do not sufficiently replicate the historic window that has been lost.

### **The relevant Island Plan 2011 (Revised 2014) policies and associated guidance**

13. The strategic Policy SP 4 provides a high level of protection for the Island's historic environment, including its Listed buildings.
14. Policy HE 1 states that there will be a presumption in favour of preserving and enhancing the special interest of Listed buildings and places, and their settings. It states that proposals that do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved. It specifies that certain types of development will not

be permitted and these include those involving loss of historic fabric or 'extensions, alterations and changes' which would adversely affect a Listed building and its setting.

15. It is worth noting here that the Policy HE 1 test is a stringent one, as any adverse impact on a heritage asset renders a proposal in conflict with it. This reflects the strategic priority afforded to heritage protection under Policy SP 4. There is also legal precedent on the application of Policy HE 1 in respect of development impacts on a Listed building or place<sup>1</sup> of which decision makers should be mindful.

16. Policy HE 2 seeks to protect historic windows and doors. It states that:

*All existing historic windows and doors in historic buildings should be repaired, wherever possible, using materials and details to match the existing.*

*The replacement of historic windows and doors in Listed buildings and in those historic buildings in Conservation Areas, where consent is required for such work, will not be approved, unless there is clear justification to show that repair is not possible.*

*Where repair is impracticable or where previous replacements are being replaced again, replacements that do not carefully replicate or restore the historic windows or doors in terms of materials, method of opening, proportions, dimensions, visual weight, decorative details and finish, will not be approved.*

17. Similar, albeit more general, provisions are set out in Policy BE 6 (Building Alterations and extensions) and Policy GD 1, which includes a wide range of development considerations which apply to all development proposals.
18. Of some relevance to this appeal is Supplementary Planning Guidance (SPG) set out in *Planning Policy Note 2, Windows and Doors in Historic Buildings (2008)*.

### **Main issues and Inspector's assessment**

19. The main Planning issues in this case relate to the impact of the works undertaken on the Listed building.

*Procedural matter*

20. I am mindful of the outcome of the committee review process which limited the focus of the reason for refusal to the bay window replacement. However, all three elements of the works (i.e. replacement bay window, conservatory and rear window) comprise development requiring Planning permission and fall under the application made. I have therefore approached my assessment on a *de novo* basis, considering the Planning merits of each of the three items of works.

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<sup>1</sup> Herold v Minister for Planning and Sea View Investments [2015]JRC111

### *The replacement bay window*

21. Photographic evidence of the former bay window appears to confirm that it was an original Victorian feature. This element of the building is identified in the Listing entry where it records '*French window to front, projecting entablature/ dentil cornice*'. As such, the original window was an important element of the historic fabric which was protected by the statutory force of the Listing and the Island Plan's policies, which seek to protect the Island's heritage. Specifically, Policy HE 2 would only allow a replacement window if the original was beyond repair and the replacement carefully replicated the original. More generally, Policy HE 1 would only allow Listed building alteration proposals that met its 'preserve or enhance' test.
22. Whilst the photographs suggest a degree of disrepair, they do not confirm to me that the window was "completely rotten" (as the Appellant suggests) or that it was beyond restoration and repair. I acknowledge that I make this judgement based on photographic evidence alone, but that is a direct consequence of the retrospective nature of the application. Beyond the assertion of the Appellant, there is nothing before me to confirm that the original window was genuinely beyond repair. As a result, the proposal fails to meet Policy HE 2's requirement for a 'clear justification'.
23. Notwithstanding the lack of clear justification, I turn now to the merits of the replacement window itself. Whilst it is clear to me that there has been an endeavour to produce a window that is similar to the original, it far from a careful replication. It is heavier and cruder in appearance, with prominent exposed modern hinges and it lacks the profile, detailing and finesse of the original. It does not meet the requirements of Policy HE 2 nor the test of Policy HE 1, as it neither preserves nor enhances the Listed building.
24. I do recognise that a layperson viewing this replacement window may not find it to be visually offensive and may wonder what all the fuss is about. However, unauthorised works to heritage assets raise some difficult (and avoidable) issues. It is important that assessments are made on strict Planning merits, using the same application of Island Plan policies as 'normal' application proposals.
25. In this case, there is no escaping the conclusion that the installation of this replacement bay window entailed a loss of this Listed building's historic fabric and that loss has not been justified. Even if that justification had been made, the replacement unit fails in its design, detailing and appearance to carefully replicate the original. Accordingly, the window is unacceptable in Planning terms when judged against the relevant Island Plan policies.

### *The conservatory*

26. The installed conservatory is located to the rear of the house. It sits within the recessed area, enclosed by the projecting rear wing (of no. 5 Belgreve Terrace) and the neighbouring property to the east (no. 4). It is therefore not prominent or visible in public views. It is small structure constructed in white uPVC framing and glass, with a mono-pitch roof. When I visited, it

appeared to be used as extended living space, containing a sofa and some domestic appliances.

27. The Appellant submits that the conservatory simply replaced an earlier 1970's structure. No details of that structure have been provided, but the existence of an earlier structure has not been contested by the Department. However, the earlier structure is of limited relevance to this appeal, as it is a matter of fact that the new conservatory has been built on to a Listed building and that Planning permission is required.
28. In my view, the installation of a modern white plastic framed conservatory on to the rear of a Victorian Listed building is unsympathetic and harmful. It raises conflicts with policies designed to protect heritage assets and their settings. There is a clear conflict with the requirements of Policy HE 1, as the conservatory does not preserve or enhance the Listed building. There are also conflicts with the related provisions of Policy SP 4, BE 6 and GD 1 (2). I assess it to be unacceptable when judged against these policies.

#### *The replacement window*

29. The window opening is in the rear face of the rear wing. It is clear to me, from its position and proportions, that it is not an original window opening. No details of the earlier metal framed window are available.
30. The replacement window is a modern white uPVC framed double glazed unit. Notwithstanding the fact that the opening is not original, it is difficult to reconcile the use of white uPVC windows on historic Listed buildings. The materials, finish and style are inherently inappropriate and neither preserve or enhance the heritage asset, which is the acid test of policy (HE 1). I assess it to be unacceptable.

#### **Conclusion and recommendation**

31. This is an unfortunate case which illustrates the problems and difficulties that can arise when unauthorised development is undertaken on Listed buildings. Whilst the reasons behind the unauthorised developments may be those of a genuine mistake or misunderstanding, Jersey's heritage has legal protection. The Island Plan gives significant weight to ensuring that heritage assets, such as No. 5 Belgreve Terrace, are protected and are not subject to harmful developments. The bar is set high and proposals must reach it or the presumption that they will not be permitted is triggered.
32. My conclusions in this case are clear. I assess that all three elements for which retrospective planning permission is sought (i.e. the replacement bay window, conservatory and rear window) are unacceptable in Planning terms, when judged against the relevant policies of the Island Plan. There are no other material considerations that would provide justification for departing from these clear policy provisions.
33. However, it is important that I make plain that my assessments and recommendation are based on the Planning merits alone, made in the light of the evidence before me and the relevant Island Plan policies. I have not

assessed potential future enforcement implications under Article 40<sup>2</sup>, should the three developments remain in place, as those are matters beyond the scope of this appeal. That would involve a quite different and separate appraisal of whether the unauthorised developments are such that it would 'expedient' to seek their remedy i.e. removal. There can be cases where a retrospective application proposal can be refused but it is then subsequently assessed that it would not be 'expedient' to take enforcement action.

34. I did wonder whether the Committee, in considering the review request, may have, for understandable reasons, drifted in its consideration beyond the strict Planning application merits into those matters of potential enforcement implications. Its resolution to redraft the refusal reason (to focus solely on the bay window) appears, to my mind at least, more akin to an enforcement 'expediency' assessment (i.e. that 'no action' would be appropriate), rather than a finding that the conservatory and replacement window actually accorded with the Island Plan's policies. However, it is important that 'planning application' and 'enforcement' assessments are kept distinct and discrete. I have undertaken the former (Planning merits) assessment but not the latter and make no comments upon it.

**Recommendation:** That the appeal be DISMISSED and that the decision notice under reference P/2017/1746 be varied to include the following reasons for refusal:

Reason 1: No justification to support the removal of the historic bay window has been provided and the loss of this historic feature fails to preserve or enhance the special interest of this protected building. The detailing of the replacement bay window does not carefully replicate the historic detail or appearance of the original. As such, the proposal is contrary to policies SP 4, HE 1, HE 2, BE 6 and GD 1 of the adopted Island Plan 2011 (Revised 2014) and Supplementary Planning Guidance, Planning Policy Note 2, Windows and Doors in Historic Buildings (2008).

Reason 2: The addition of the white uPVC framed conservatory and replacement white uPVC window to the rear of this property are inappropriate and unsympathetic additions and alterations which fail to preserve or enhance this Listed building's appearance and special qualities. As such, the proposal is contrary to policies SP 4, HE 1, BE 6 and GD 1 of the adopted Island Plan 2011 (Revised 2014), which seek to protect Jersey's heritage from harmful and inappropriate development.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**

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<sup>2</sup> Planning and Building (Jersey) Law 2002 (as amended) – Article 40