

STATES OF JERSEY

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

APPEAL OF A DECISION UNDER ARTICLE 108

SUPPLEMENTARY REPORT

TO THE MINISTER FOR THE ENVIRONMENT

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Inspector appointed under Article 107

Appellants: Mr and Mrs M. Thérin (Third Party Appellants)

Site address: Pine Grove, Le Vieux Mont Cochon, St. Helier, JE2 3JQ

Appeal against: Decision of the Department of the Environment to Grant Planning Permission to "*Demolish dwelling and construct 1 No. five bed dwelling with associated parking and landscaping.*"

Decision date: 23 February 2017

Reference: P/2016/1593

Appeal procedure: Hearing – 4 May 2017

Site visit: 4 May 2017

DATE: 1 October 2018

Background and procedural matters

1. On 4 May 2017, I conducted a hearing to consider a third party Planning appeal made by Mr and Mrs M. Thérin ('the Appellants'). The appeal concerned the decision of the Department of the Environment to grant planning permission for the demolition of an existing house, *Pine Grove*, and its replacement with a new five-bedroom contemporary design dwelling. The proposed development is adjacent to the Appellants' home, *Les Champs House*, which is a Listed building at Le Vieux Mont Cochon in St Helier.
2. Following the hearing, I prepared and submitted my report, dated 31 May 2017, to the Minister. My report recommended that the appeal be dismissed and that the planning permission P/2016/1593 be confirmed, subject to the conditions set out in the Department's original decision notice, dated 23 February 2017. The Minister endorsed my assessment and agreed with my recommendation, confirming the planning permission through his Ministerial Decision on 5 June 2017 [MD-PE-2017-0051].
3. One of the Appellants then challenged the decision and the grant of planning permission through the Royal Court. I have not been provided with full details of the grounds of challenge but I understand that it was wide ranging. Whilst most of the grounds for challenging the decision were rejected, the Royal Court's judgment, dated 1 June 2018, considered that Policy GD1's criterion 1(a) of the Island Plan had not been adequately addressed in my initial report.
4. Policy GD1 is a wide ranging 'general development' policy, setting out a list of criteria against which all development proposals are to be assessed. Criterion 1.a. sets a presumption that development '*will not replace a building that is capable of being repaired or refurbished*'. In the light of the silence of my report on this specific matter, the Court remitted the application back to the Minister to reconsider.
5. On the 19 July 2018, in line with the Royal Court judgment, the Minister decided (MD-PE-2018-0056) to refer the matter back to the Judicial Greffe and sought further advice from me, as the Inspector, on this specific additional issue. The Minister asked me to revert to him with a fresh recommendation. The reasons for his decision set out that it would be a matter for me to decide whether to re-examine the existing submissions at the appeal, or call for fresh evidence from the parties.
6. Following that decision, I did consider it appropriate and necessary to re-examine the original evidence and to seek invited written submissions from the principal parties and interested parties. Given the very specific and focused issue identified by the Court, I considered that the written submissions approach was entirely appropriate. I did not consider it necessary or proportionate to re-open the hearing or to convene a new hearing. I consider that my invitation to the parties and my general

approach falls within the discretion afforded to me by the Law¹ and is fair, proportionate and reasonable in all other respects.

7. There were some administrative issues concerning notifications undertaken by the Judicial Greffe. Additionally, one of the parties only received the notification at a very late stage. As a result, I extended the time period for submissions. I also answered, via the Judicial Greffe, a number of clarification questions. These included making clear that I placed no restrictions on the content of the invited written submissions, other than guiding the focus to the specific matter identified by the Royal Court.
8. This supplementary report sets out my further assessment in the light of the Royal Court judgment and the submissions made by parties that responded to my invitation. It is confined to the specific issue identified by the Court and does not rehearse the full content of my earlier report (which should be read alongside this supplementary report). I begin by summarising the responses to my invitations to make further submissions on the identified matter. I then provide my response and assessment, followed by my conclusions and recommendation.

Views of the parties

The Appellants

9. In email exchanges with the Judicial Greffe, the Appellants indicated that they did wish to '*adduce expert evidence on the subject*'. They also indicated that they sought a 'meeting' and wished to see and scrutinise evidence from the Applicant. However, this was not the process that I had set out through my invitation and, as I explain above, I consider my approach to be reasonable. The Appellants did not make any substantive submissions within the extended deadline.

The Department

10. The Department considers that policies of the Island Plan have to be considered holistically. It considers that the 'light presumption'² against demolition contained in GD1.1(a) must be seen in the wider policy context and in the light of the merits of the scheme as a whole. It considers that the development of a dwelling on this site is compliant with the Island Plan's spatial strategy and policies SP1, SP2 and H6.
11. The Department notes that the Court's judgment, at paragraph 75, agrees that Policy SP2 does not inhibit redevelopment, and logically therefore nor does GD1.1(a). The Department points out that paragraph 4 of Policy SP2

¹ Article 115 Planning and Building (Jersey) Law 2002

² *Therin v Minister for Environment* [2018] JRC098, paragraph 88

goes further, and in line with policy GD3, encourages higher densities, which can only be achieved through redevelopment.

12. It further explains that some, typically modern, buildings can be repaired and refurbished and, for example, the removal of a good quality building, which fits in with its surroundings, may have little to recommend it. However, at the other end of the spectrum, an older dilapidated building, which is not of historic or architectural merit, is likely to be better removed and replaced by a new building, constructed to modern standards and more appropriate to its setting and neighbours. It points out that between these extremes are many buildings, typically constructed in the 20th century, which are of no architectural merit and either poorly constructed or built to a standard well below that expected today. The redevelopment of these buildings can allow for new buildings which are more efficient, more attractive and that enhance their context.
13. The Department is satisfied that the Applicants have taken advice on the potential for refurbishment, the conclusion of which is that it is not viable. In addition, the removal of the building will allow for additional landscaping and a better designed and more efficient building, which enhances its setting and that of the neighbouring Listed building. It also makes use of the waste created, wherever possible.
14. It concludes that it would be unreasonable to require that the building be retained and that to do so would deny the opportunity to undertake a development which satisfies other policies of the Island Plan and enhances the environment.

The Applicants

15. The Applicants' 'Supplementary Planning Information Submission' is comprehensive. It seeks to establish the relative financial cost of refurbishing the existing dwelling to the equal standard of the application proposal.
16. Chapter 1 of the submission identifies the Island Plan content in respect of Objective GD1 and Policy GD1. Chapter 2 provides a brief description of the existing dwelling, including its history of piecemeal extensions, judged poor internal layout and 'non descriptive' external aesthetics. Chapter 3 sets out the improvements required to bring the dwelling up to a comparable standard (to the application proposal): these works include re-roofing to include insulation; thermal upgrades to walls; window replacements throughout; comprehensive internal reconfiguration and extensions; a new electrical system; new heating; a replacement swimming pool and new basement tanking. Chapter 4 sets out the intended approach to site waste management, which outlines measures to re-use and recycle demolition arisings and minimise waste.

17. The submission is supported by reviews of the existing building's services and thermal performance by Henderson Green Consulting Engineers and a newly commissioned cost analysis, undertaken by Tillyard Chartered Quantity Surveyors.
18. The Tillyard cost analysis estimates that the cost of the refurbishment option would be £4.299 million whereas the new build option would be £4.220 million. Tillyard also cautions that, based on its experience, new build carries significantly less risk and *"provides an all round better end product than remodelling and refurbishing."*
19. The Applicants' covering report concludes that: *"taking the amount of work required to refurbish the existing house up to a modern living standard of the approved new dwelling, it is clear that the immense costs involved would only be a 'repair' of an insignificant 70/ 80's house, as well as a lost opportunity to create a new piece of architecture, which would be of its time and setting."*

Other Parties

20. No other parties responded to the invitation to make submissions.

Inspector's response and assessment

21. In this particular case, faced with very wide ranging and voluminous grounds of appeal, alleging breaches of no less than 11 Island Plan policies, I sought to identify the 'main issues' in my original report. I did this through my preparation for the hearing, the setting of the hearing agenda, the conduct of the hearing, and my written report. At the hearing itself, I tested what I had identified as the main issues with the parties. The Appellants' confirmed that their two principal objections related to their concerns about impacts of the proposal on i) heritage (their Listed building home) and ii) the Green Backdrop Zone.
22. I did not identify GD1.1(a) as a 'main issue' but I did review and assess material and references to it in the submissions. I regarded it as an 'other issue'. It is always a challenge for Inspectors to judge whether a specific 'other issue' requires explicit assessments in their written reports. A balance needs to be struck in seeking to cover all of the main planning issues and, at the same time, producing relatively succinct, coherent and readable reports.
23. However, in this case, the Royal Court has judged that my report should have covered the specific GD1.1(a) issue explicitly. I fully accept that finding and I am pleased to be invited to respond further in the light of the judgment.

24. This is not the first case where the relevance and applicability of GD1.1(a) has exercised decision makers. When read in isolation, and without the Royal Court's recent helpful clarification, it could easily be interpreted as an absolute requirement (that no building 'capable' of being repaired or refurbished should be permitted to be demolished). However, it is important that specific policies are not considered in a vacuum, but assessed holistically.
25. Indeed, it can be the case that certain policies and, where applicable, their list of criteria, can seemingly pull in different directions to other policies. This is not a flaw in the system, but simply a product of a sophisticated and wide ranging Plan, which requires carefully balanced Planning judgments when applied to specific proposals in a decision making forum.
26. In this case, I do agree with the Department's submission that the '1(a)' element of Policy GD1 needs to be assessed in the broader context of the policy itself, which relates to sustainability issues. In turn, that also needs to be considered in respect of the inter-relationship with Policy SP2, concerning the efficient use of resources.
27. The Royal Court's judgment is helpful here in providing clarity. It establishes that GD1.1(a) amounts to a 'light presumption' against demolition and replacement of existing buildings. It further clarifies that 'capable' (of being repaired or refurbished) should be seen in terms of economic viability. It also helpfully guides decision makers in terms of their approach.
28. I will deal with the viability issue first. At the 2017 hearing, I did not have before me a detailed viability report but I did have submissions that indicated that the building would require extensive and costly renovation works to bring it up to modern standards. I also visited the site and this confirmed the history of piecemeal additions and the rather dated and tired condition of the existing property.
29. The Applicants most recent invited submissions go a step further and present a more comprehensive cost analysis. This claims that a refurbishment / repair scheme to achieve a similar product (to the new build proposal) could be more costly than the demolition and new build proposal. Whilst I would apply some caution to these cost figures, as they are simply the Applicants' informed estimates, there can be no disputing that the refurbishment option would be a very costly venture.
30. However, even if the costs were comparable, or the refurbishment option refined to be less costly, the refurbishment option could only ever deliver a repair of a rather unremarkable and architecturally bland building. Moreover, it could not deliver the wider Planning benefits of a better designed and more efficient building, with associated landscaping, which I consider will enhance its local context, including the setting of the neighbouring Listed building (albeit that I judged that particular

enhancement to be marginal). These benefits weigh in favour of the proposal.

31. I am also satisfied that the Applicants' stated intention to maximise the re-use and recycling of demolition and waste arisings is appropriate and reasonable and that it accords with policies SP2, GD1.1(b) and WM1.

Conclusions and recommendation

32. The 'light presumption' against the demolition of *Pine Grove* to provide a larger replacement dwelling needs to be considered in a wider context of other relevant policies and objectives set out in the Island Plan.
33. When assessed in that context, the 'light presumption' is more than outweighed in the Planning balance by the proposal's wider Planning benefits and, in particular, its compliance with other policies, including the relevant provisions of policies SP1 (spatial strategy), SP2 (efficient use of resources), SP7 (better by design), the other requirements of GD1 (general development considerations), GD5 (skyline, views and vistas), GD7 (design quality), BE 3 (green backdrop zone) and H6 (housing development within the built-up area). I do not consider that the overall balance is a particularly fine one in this case.
34. Accordingly, for the reasons set out above, I recommend that the Planning Permission P/2016/1593 should be confirmed, subject to the conditions set out in the Department's decision notice dated 23 February 2017. I also consider that it would be prudent to impose an additional Planning condition requiring submission of, and adherence to, a demolition and construction site waste management plan. This will provide a mechanism to maximise re-use and recycling of demolition arisings and construction waste and also ensure that measures are put in place to protect the amenities of neighbouring properties during the development implementation stages.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI