

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

Site visit made on 20th May 2019

by N McGurk BSc (Hons) MCD MBA MRTPI

Reference: P/2018/1569

La Fontaine, La Route de la Pulente, St. Brelade, JE3 8HG

- The appeal is made under Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended) against the granting of permission to develop land.
 - The appeal is made by Anwar Hussain against the decision of the States of Jersey. The appellant lives within 50 metres of the appeal site.
 - The application Ref P/2018/1569 by David and Victoria Baker, dated 11 June 2018 and validated 5 November 2018, was approved by notice dated 7 March 2019.
 - The application granted permission is "Demolish existing site structures. Construct 2 No. three bed units of tourist accommodation and 1 No. four bed dwelling with associated parking and landscaping. Alter vehicular access onto La Route de la Pulente. 3D model available. AMENDED PLANS: Reduce scale of both new buildings. Alter vehicular access."
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Recommendation

1. I recommend that the appeal be upheld and planning permission be refused.

Procedural Matters

2. The description of the proposed development, above, takes into account amendments to the planning application as originally submitted, which were made by the applicant in response to concerns raised by the States of Jersey and by the appellant. These amendments changed the proposed access arrangements and reduced the scale/alterd the design of the proposed new buildings.
 3. Representations have been made in respect of the existing use of the site. Further to the site visit, the public hearing and consideration of the information before me, I am satisfied that existing residential accommodation at the site comprises a two bed maisonette, a one bed studio and a one bed flat.
 4. The proposal is for a mixed use development. This would comprise a dwelling and two self-catering units. The two self-catering units would comprise tourist accommodation, regarded by the Department as an employment/commercial use.
 5. Whilst the appellant, in his representations, has expressed concerns in respect of the proposed self-catering tourist accommodation being changed to residential use, or effectively being used in a manner similar to, or the same as, residential use, there is no substantive evidence before me to demonstrate that this would be the case. Controls exist to restrict the use of tourist accommodation to that which is appropriate and a change of use from tourist accommodation to residential use would require a planning application to be made and planning permission to be granted.
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Main Issues

6. The main issues in this case are whether the proposal would comprise a form of sustainable development, having regard to the provisions of the Island Plan, including those set out in Policy NE6 (Coastal National Park); and the effects of the proposed development on the living conditions of neighbouring occupiers, with regards to privacy.

Reasons

Sustainable development

7. The appeal site is located adjacent to La Route de la Pulente in a mixed use area, where there are dwellings, tourist accommodation and commercial uses. The site comprises two main buildings, hard-standing and garden areas.
8. The two main buildings are in poor condition. They comprise two storey detached buildings, located close to one another and whilst two storey, the buildings are low in height, with first storey rooms being located at roof level. One of the buildings is located alongside the side boundary with La Vallette, a two storey semi-detached property of modern appearance. This building has a two garage doors and a first floor window facing towards La Route de la Pulente.
9. The other building is located next to the appeal site's side garden area. It has a small terrace above the ground floor. This is accessed from a first floor bedroom area and provides an outlook towards La Route de la Pulente.
10. Whilst the external appearance of this second building is a little more modern than that of the other building on site, neither structure appears attractive and the interiors of both structures appear awkwardly laid out and physically run-down. Ceiling and doorway heights are low and the general living environment offered by each of the buildings appears to be of poor quality and well below modern standards.
11. There is hard-standing to the front of the buildings and also in between them. This provides for access and parking space. There is an area of garden to the front, as well as to the side and rear. The garden areas are unkempt and appear partially cleared. The small rear garden area ends at the foot of a steep bank, with dwellings to the rear sited considerably higher than La Fontaine.
12. During my site visit, I observed that, whilst they are not attractive buildings, the two structures at La Fontaine appear modest in size. As such, they do not unduly "crowd" the appeal site but rather, they appear as relatively small buildings within a reasonably spacious setting, with open spaces to the front, to one side, to the rear. There is also a small space between the buildings.
13. Further to the above, their low height and modest overall scale means that the buildings do not draw attention to themselves. Rather, they appear unobtrusive. Further, the modest scale of the buildings and the space around them provides for outlooks and views past, over and around them to the surrounding area.
14. The two buildings at the appeal site are set back from the neighbouring property, Blue Fountain, such that the front elevation of the appeal buildings reach a similar build line to the rear elevation of this neighbouring property.

Blue Fountain itself is a two storey building, with a restaurant use at ground floor level and residential accommodation on the first floor.

15. There is a very close relationship between the appeal site and Blue Fountain due to their close proximity and to the shape of the plots of the two properties. The appeal site's side garden is located immediately to the rear of Blue Fountain, such that first floor rear facing windows from Blue Fountain look directly down upon and across this part of La Fontaine's garden.
16. I viewed the appeal property from Blue Fountain during my site visit. In doing so, I noted that the appeal property appears in very close proximity to its neighbour - to the extent that the relationship between the two properties and most notably between the appeal site's garden and its closest building to Blue Fountain, can appropriately be described as "intimate." The appeal site's side garden and nearest building both appear prominently in the outlook from Blue Fountain's first floor windows.
17. Also, the existing terrace to the front of the bedroom, above the ground floor of the appeal site's closest building to Blue Fountain, extends very close to this neighbouring property, with only a small gap between the buildings. However, the modest scale of the building and the small access from the bedroom area appear, to me, to result in a terrace that, despite its very close proximity, does not appear especially intrusive nor unduly dominant, when seen from the first floor side and rear windows of Blue Fountain.
18. It is proposed to demolish the buildings at the appeal site and replace them with two new buildings. The new buildings would comprise two two storey buildings, with rooms at first storey level being located within the roof of the new buildings.
19. The proposed buildings would be taller than the existing buildings. They would also occupy a greater footprint. In addition, their overall volume would be greater than the built volume that currently exists on site. Also, the proposed dwelling (which would comprise the new building located closest to Blue Fountain) would extend to the side, over a substantial part of the existing side garden area.
20. The proposed siting of the two buildings would also differ from that of the existing buildings in a number of other ways. The replacement building closest to La Vallette would be wider than and extend further forward than, the building it would replace. The proposed dwelling would be located closer to Blue Fountain and would have an "L-shaped" footprint that would, to some considerable degree, wrap around the corner of the rear of this neighbouring property. Parking areas would be provided to the front and to the rear of the proposed buildings.
21. The proposal would result in a change to the garden area of the appeal site. Whereas there is a reasonably large existing garden to one side and further substantial garden areas to the front and rear of La Fontaine, much of this garden land would be replaced by built space, access and parking space. This would place a significant focus upon a more condensed garden area immediately adjacent to the rear of Blue Fountain. Sets of French windows, facing towards Blue Fountain, would open directly onto the small proposed garden area between the dwelling and Blue Fountain.

22. The proposed dwelling would have a new balcony area at first floor level, serving the main living accommodation of the property. This balcony would extend closer to Blue Fountain than the existing balcony which, as noted above, is in very close proximity to its neighbour.
23. The internal and external design of both properties is modern, purposeful and makes attractive use of natural materials. Taken in isolation, there is no doubt that the individual appearance of the proposed buildings themselves is more attractive than that of the poor quality buildings it is proposed to replace.
24. Furthermore, the proposal would replace what appears as brownfield land with an active residential and commercial use. The proposed self-catering accommodation is supported by Visit Jersey, which recognises the site as an ideal location for tourist accommodation, for which it considers there is significant demand.
25. During my site visit, I observed there to be other tourist accommodation in the immediate vicinity, including self-catering accommodation. Taking this and the immediate presence of the coast and tourist facilities into account, it appears to me that the site is generally well-located for tourist accommodation and this is something that combines with some of the above factors to generally stand in favour of the proposal.
26. However, importantly, the appeal site is located within the Coastal National Park. The primary purposes of the Coastal National Park are the conservation and enhancement of its natural beauty, wildlife and cultural heritage; and the promotion of opportunities for the understanding and enjoyment of its special qualities by the public.
27. Policy NE6 of the Island Plan affords the Coastal National Park the highest level of protection from development and states that this:
- “...will normally be given priority over all other planning considerations.”*
28. Consequently, within the Coastal National Park, there is the strongest presumption against all forms of development, with only a few, stated, exceptions. Of these, Policy NE6 provides for the redevelopment of an existing dwelling, involving demolition and replacement:
- “...but only where the replacement would not be larger in terms of any of gross floorspace, building footprint or visual impact than the building being replaced...”*
29. In this specific regard, there is no doubt in my mind that the proposed development is in direct conflict with land use planning policy requirements in respect of the Coastal National Park.
30. The proposal would not only result in a new dwelling that would be larger in respect of gross floorspace, thus failing to comply with Policy NE6, but in addition, the proposed dwelling would have a larger building footprint and due to being considerably taller than the building it is proposed to replace, it would also have a greater visual impact.
31. I am also of the view that the presence of very large glazed windows and doors connecting to a balcony at first floor level would add to the visual impact of the

proposed dwelling, not least during the evening when it would be expected for these windows – which would serve the main living area of the dwelling – may be lit up.

32.I note earlier in this Report that the existing buildings, whilst not attractive, are modest in scale and do not draw attention to themselves. The proposed dwelling would have a significantly greater visual impact than the building it would replace.

33.I find that the proposed dwelling does not meet the requirements of Policy NE6 and in reaching this conclusion, I am mindful that supporting text to the Policy is neither vague nor ambiguous in respect of explicitly stating that:

"In all cases, (my emphasis) *replacement buildings should not be larger than that being replaced in terms of any of gross floorspace, building footprint or visual impact."*

34.Policy NE6 goes on to recognise that new tourism development might be appropriate in the Coastal National Park, but only in exceptional circumstances. These are where the proposal supports the purposes of the Coastal National Park, is appropriate relative to existing buildings and landscape context and does not harm landscape character. Paragraph 2.104 of the supporting text to Policy NE6 states that:

"New...tourism buildings are unlikely to be favourably considered other than possibly small-scale buildings or structures such as beach kiosks."

35.The self-catering accommodation proposed would be located within a building taller and larger than that which it is proposed to replace. In addition, it would be sited closer to La Route de la Pulente than the existing building and it would also include a large, forward-facing glazed area and a balcony at first floor level. The proposed self-catering accommodation would appear prominently in its surroundings and when seen together with the proposed dwelling, would comprise one of two buildings that would visually dominate the appeal site.

36.Rather than simply appear as two attractive buildings of a similarly modest scale as those buildings which it is proposed to replace, the proposed development would introduce a significantly greater scale of development than that which currently exists, with a resultant increase in visual impact. I find that this would serve to harm landscape context and character, whereby the proposed development would, due to its scale and appearance, result in a considerably more dominant and visually intrusive form of development than that which currently exists.

37.Island Plan Policy NE6 sets an extremely high hurdle for new development. This is entirely purposeful – simply, the Coastal National Park is afforded the highest level of protection from development.

38.There is no disputing that the existing site is run-down and that the buildings within it are of a poor quality. Outside of the Coastal National Park there would be significantly more scope for redevelopment. However, whilst I acknowledge that tourism development can bring benefits and that larger, more spacious tourism accommodation and larger, more spacious residential accommodation is generally more preferable to tourists and to residents respectively, than

smaller, less spacious accommodation, the Island Plan is very clear in establishing that new development within the Coastal National Park is severely restricted.

39. There is nothing within the Island Plan to suggest that the provision of new tourist accommodation is of such a significant benefit to the Island that it outweighs the requirements of Policy NE6.
40. Rather, conversely, Policy EVE1 (“Visitor accommodation, tourism and cultural attractions”) requires proposals for visitor accommodation within the Coastal National Park to be determined in accordance with Policy NE6. Policy NE6 sets out the strongest presumption against development within the Coastal National Park.
41. Taking all of the above into account, I find that the proposal would fail to comprise a form of sustainable development, having regard to the provisions of the Island Plan, including those set out in Policy NE6 (Coastal National Park).

Living conditions

42. As noted above, during my site visit, I observed the appeal site from Blue Fountain. The juxtaposition of the appeal site and Blue Fountain is such that it could, in some ways, be described as “awkward.” This sense of awkwardness derives from the very close proximity of the two dwellings and the location of the appeal site’s side garden immediately to the rear of Blue Fountain.
43. The proposal would result in the development of an L-shaped dwelling that would effectively “wrap around” part of Blue Fountain within very close proximity. This would, I find, add to the awkward geographical relationship arising from the juxtaposition of the two properties in two main ways.
44. Firstly, the proposed dwelling would significantly reduce the size of La Fontaine’s overall garden area and would, to a large extent, rely upon a smaller area of garden immediately between the proposed dwelling and Blue Fountain. This smaller area of garden would appear below, be directly visible from and be in very close proximity to, the rear elevation of Blue Fountain. It would be accessed by two sets of French doors that would face towards Blue Fountain.
45. Taking the above into account, it appears likely to me that the proposal would result in the intensive use of this area of garden and that this would, in turn, result in a significant impact on the privacy and the perception of privacy, of the occupiers of Blue Fountain, as well as that of the future occupiers of the proposed dwelling.
46. Secondly, the proposed balconies to both proposed buildings would be located within close proximity to Blue Fountain and would be clearly visible from the window to the side elevation of the first floor living accommodation, which serves a main living area.
47. Whilst there is an existing balcony to the building closest to Blue Fountain, I note earlier in this Report that, despite its proximity, this is served only by a small access to a bedroom area and is not an unduly dominant feature. By way of significant contrast, the proposed balconies of the two proposed buildings would each be accessed directly from main living areas, by way of large glazed doors. As such, I find it very likely that these areas would comprise outside

living areas for much of the time. Indeed, the provision of main living areas on the first floor with adjacent outside areas looking directly out across the bay appears to comprise a main design feature of the buildings.

48. Taking the above into account, I find it inevitable that the balconies would comprise active living areas during the daytime and the evening. These would be in very close proximity to Blue Fountain and would provide clear views towards the main living area of this neighbouring property. Consequently, the balconies would give rise to significant scope for overlooking and I consider that this would be harmful to the living conditions of the occupiers of Blue Fountain with regards to privacy.
49. Further, I find that the presence of large glazed windows and doors, providing access to the balconies, would add to the perception of overlooking from Blue Fountain, not least during hours of darkness when the balconies may be lit and light may spill through the large glazed areas adjacent.
50. I note that the proposed development would give rise to a very different relationship to and a significantly greater impact than, the existing arrangement described above.
51. Taking all of the above into account, I find that the proposal would result in unreasonable harm to the living conditions of the occupiers of Blue Fountain, with regards to privacy. Consequently, the proposal would be contrary to Island Plan Policy GD1 (“General development considerations”), which amongst other things, seeks to protect residential amenity.

Other Matters

52. In support of their case, the applicants draw my attention to other tourist developments in the vicinity. I note in this Report that the site appears well-located for tourist development, but I have found that the proposal would result in significant harm, contrary to the Island Plan. This harm is not mitigated or outweighed by the presence of other developments elsewhere.
53. Whilst the appellant has suggested that misleading information was provided by the applicants, I do not consider this to be the case and I am satisfied that, in reaching the decision that it did, the Planning Committee had all relevant and necessary information before it.
54. The planning application was supported by an appropriate ecological report and whilst I recommend that the appeal succeeds, there is no substantive evidence to demonstrate that the proposal would result in harm in respect of biodiversity and/or the protection of wildlife. Similarly, no substantive evidence has been provided to demonstrate any harm to archaeology or to demonstrate that the proposal would prejudice the appellant’s human rights, having regard to the European Convention on Human Rights.

Conclusion

55. The proposal would result in a form of development that would conflict directly with Policy EN6 of the Island Plan. As such, I find that it would not comprise a sustainable form development and that it would harm the Coastal National Park. In addition, I find that, contrary to Island Plan Policy GD1, the proposal would harm the living conditions of neighbouring occupiers, with regards to privacy.

56. For the reasons set out above, I recommend to the Minister that the appeal be upheld and that planning permission be refused.

N McGurk

INSPECTOR