

## **REPORT TO MINISTER FOR THE ENVIRONMENT**

**By Graham Self MA MSc FRTPI**

Appeal by G&D Limited against a refusal of planning permission.

Reference Number: P/2018/1696.

Site at: Au Caprice Hotel, La Route de la Haule, St Brelade JE3 8BA.

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### **Introduction**

1. This appeal is being conducted by the written representations procedure. I inspected the site and surroundings on 4 December 2019.
2. In this report I refer first to some procedural matters. A description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellant, the planning authority, and other parties. 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 if necessary.

### **Proposed Development and Related Procedural Matters**

3. The proposed development was described in the application as:  
"Demolish single storey rear wing. Construct two storey rear extension, convert building to provide 5No two bedroomed apartments and 1No one bedroomed apartment".
4. In the planning authority's decision notice, the proposed development was described as:  
"Demolish existing extension. Construct two storey extension to North-West elevation with roof terraces, balcony to South-East elevation and convert hotel to form 5 No. two bed and 1 No. one bed residential units. AMENDED PLANS: Omit 1 No. two bed residential flat".
5. It is not clear why the planning authority considered it necessary to change "apartments" to "residential units" and "apartment" to "residential flat". The "existing extension" mentioned in the decision notice appears to refer to the "single storey rear wing" mentioned in the application. The "two storey rear extension" in the decision notice appears to be a reference to what was described in the application as "two storey extension to North-West elevation". But "two-storey extension to North-West elevation with roof terraces" is not an accurate description of the proposal for which planning permission was refused and is now subject to this appeal. The added note about amended plans enables the reader to detect that the revised scheme proposes four, not five, two-bedroom units but does not convey any alteration to the description of the extension as two-storey.
6. Different descriptions of proposals can cause misunderstandings and legal problems. There is no evidence that the Department<sup>1</sup> obtained the applicant's written agreement to their description of the proposal being altered - I suspect

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<sup>1</sup> Unless otherwise specified, references to the "Department" or "your Department" in this report are to the Growth, Housing and Environment Department.

not, since if that had happened, the contradictory reference to the two storey extension with roof terraces would surely then have been corrected.

7. Be that as it may, the proposal for which permission was refused - as amended compared with the original application - would apparently have been to provide four two-bedroomed apartments (or flats, or residential units) and one single-bedroomed apartment (or residential unit, or residential flat). The amendments included changes to the originally proposed rear extension so that it would have only a single storey and would not have any roof terraces.
8. There are some differences between the plans listed in the refusal notice and those submitted by the applicant. Differences were noticed during the inspection and have been the subject of later correspondence. I return to this point in my assessment.

### **Appeal Site**

9. Au Caprice is a semi-detached three-storey property laid out as a guest-house with manager's accommodation. It is located on the north-west (inland) side of La Route de la Haule where this road is close to the shore of St Aubin's Bay. There is a public car park on the opposite side of the road. The adjacent semi-detached property to the north-east, Overton Lodge, is subdivided into flats. The design and appearance of Au Caprice can most easily be seen on the "as existing" elevation drawings (Drawing Number 1544/18/S01) or on the photographs submitted in evidence. Inside, the guest-house has 12 letting bedrooms in addition to the two-bedroomed manager's apartment, a lounge, bar and dining area.
10. An access way (which is evidently a private road) leads north-westwards from La Route de la Haule past the north-east side of Overton Lodge and serves four other properties as well as providing access to the rear of the appeal site. One of these properties, La Mielle, is a listed building. The land attached to Overton Lodge includes a car parking area next to the access way. Part of the land at the rear of Au Caprice is used for parking, part is laid out as a small garden; there is also a timber shed in this area.
11. La Route de la Haule in this vicinity is a busy main route (part of the A1 coast road). The flow of traffic in both directions was fairly constant during my inspection (which was not during a morning or evening peak hour). At the point where the access way mentioned above meets the main road, there is a kerbed pavement or footway alongside the road, edged by a short length of lowered kerb next to the carriageway. The entrance to the access way is set back from the road between stone pillars and walls positioned to form a "semi-circular splay" shape as shown on the site layout plan. The access way is about 3.3 metres wide between the pillars but widens further to the north. The pillars are about 5.7 metres from the edge of the main road carriageway.
12. The main road past the site is subject to a 30 mph speed limit. There is a south-westbound bus stop on the opposite side of the road and a north-eastbound bus stop on the north-west side of the road a little to the south-west of the site. Visibility along the main road for drivers of vehicles emerging from the private access way is good in the direction of St Helier, towards the north-east. To the south-west (that is to say, looking towards vehicles approaching on the nearside of the main road) visibility is restricted. From a set-back dimension of 2.4 metres, an approaching vehicle cannot readily be seen until it is about 15 metres

away. From a set-back dimension of 2.1 metres<sup>2</sup> the field of view along the nearside of the main road extends to about 24-25 metres.

13. The land immediately west and south-west of the appeal site is undeveloped, and there are views of the appeal property across this open land from the coast road and from gaps in built development along a side road (Mont au Roux) which leads north-westwards from the coast road about 250 metres south-west of the site.

### **Case for Appellant**

14. The appellant disagrees with the planning committee's refusal of planning permission. Au Caprice has been a guest-house for over 40 years. The property has 12 guest bedrooms with en-suite facilities plus a manager's apartment and other reception rooms. The guest-house business is no longer viable and the proposal to provide individual apartments is considered to be a reasonable alternative use of the site.
15. The revised proposal, including the demolition and removal of existing structures on the site, would have a total floor area only 0.9 square metre greater than the existing buildings. The proposed rear extension would project only about 1.8 metres further than the existing timber storage building which would be demolished, and the proposal would also involve the removal of a structure currently within the Green Zone area of the site. The proposed extension would be viewed against an urban background. The development would not be prominent or detrimental to the area's character.
16. The proposed parking layout would provide spaces with dimensions as recommended in Planning Policy Note 3. Vehicle manoeuvring space would be above the minimum recommended in the Policy Note's guidance. There would be adequate space for access to the bicycle rack area. The site is well located for access to public transport and local facilities. Other development has been permitted with proportionately lower parking provision, for example 63 flats on the former CICS warehouse site at Beaumont.
17. The planning committee did not have proper opportunity to review the application drawings at the committee's site inspection. Members of the committee had not received copies of the drawings before the site inspection and they had to refer to the planning officer's copies. The committee had still not received copies at the committee meeting on 11 July, and expressed concern that they did not fully understand where the proposed extension would be located. The application did not have the correct and normal scrutiny.
18. The representation by Mr Naish for local residents is incorrect or unsubstantiated in a number of respects as set out in detail in the letter from the applicant's agent of 28 October 2019. The planning officer's response regarding car parking and vehicle usage is unreasonable.

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<sup>2</sup> A 2.4 metre set-back dimension is a standard criterion and is specified in the Department for Infrastructure 2016 publication "Access Standards for Small Housing Developments". 2.1 metres is the normal minimum allowing for the driving position in a typical car. The same publication quotes the distance of the visibility splay along the edge of the carriageway as 43 metres for traffic with an 85 percentile speed of 30 mph and 25 metres for an 85 percentile speed of 20 mph. For this case, there is no evidence of actual surveyed traffic speeds, but at peak times the 85 percentile figure is probably well below 30 mph because of queuing or congestion; at other times it is more likely to be close to the speed limit.

### **Case for Planning Authority**

19. The application for this proposal was referred to the planning committee because of the number of objections. The proposal was amended in several ways, including a reduction of the number of flats from six to five. The Department considered that the amended scheme was acceptable; but permission was refused by the committee and the refusal was later confirmed. The two reasons for refusal mainly related to the scale and nature of the proposed rear extension and what was considered to be sub-standard car parking provision.<sup>3</sup>
20. The site has a prominent position next to the coast road. The committee considered that the proposed extension would have a detrimental impact on the character of the area, including the Green Zone, because of the prominent position of the extension.
21. The committee also decided that the area at the rear of the site would appear cramped and that the proposal would fail to provide adequate practical car parking. Parking spaces 4-7 would be short of the normal length specified in the Department's current guidelines in Planning Policy Note 3; parking spaces 1-3 and 7 would also be narrower than the normal 2.4 metres.
22. The Department considered that the provision of amenity space for each of the proposed dwellings would be acceptable. The room sizes would also meet the standards set out in Planning Policy Note 6, and this aspect of the proposal was not a reason for refusing permission.
23. The appellant's floorspace figures are noted, but the committee was concerned about the apparent scale and visual impact of the extension rather than its size with regard to floorspace. The committee were shown full size copies of the application plans at the site visit and drawings were also shown as part of the Powerpoint presentation at the committee meeting.

### **Representations by Other Parties**

24. About 14 written representations were submitted by 11 local residents commenting on the application. About seven were objections and five expressed support.
25. The main points of the objections were also covered in the later appeal stage submission on behalf of some residents by James Naish (Chartered Architect and Construction Adjudicator) . The main points are summarised below.
  - The western gable of the existing property already dominates the view of this building from the west. The proposed rear extension would visually double the height and quadruple the length of the existing rear extension. The scheme would block out views of the Green Zone land to the rear and would be detrimental to the character of the area.
  - The scheme fails to conform to minimum parking standards, making it likely that there would be nuisance parking along the narrow private lane. Under Planning Policy Note 3, 14 spaces should be provided. All the spaces shown on the application plans would be less than the standard minimum size of 2.4mx4.8m. Even the proposed (not adopted) June 2018 SPG Technical Standards would require 10 spaces, and at a larger size.
  - It would not be acceptable to assume that public car parking spaces could be used to make up for the shortfall in provision.

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<sup>3</sup> For ease of reference the stated reasons for refusal are reproduced in the appendix to this report.

- The vehicular access layout would create major safety concerns. A roadway to more than 5 units needs to be at least 4.8m wide; the existing roadway is only 3m wide. The proposal would cause a huge increase in traffic and would lead to congestion. The owners of the roadway do not wish to remove the granite posts at the entrance.
  - Amenity space would be only just over the minimum for the proposed units and woefully inadequate for the top floor unit. The terrace to Unit 4, which was used infrequently as part of a guest-house, looks directly into living rooms at Overton Lodge. The internal space standards would be below acceptable standards.
  - The proposal would be overdevelopment, primarily because of the fifth unit in the rear extension. The car park area would be in the Green Zone and contrary to policy.
  - The original application contained a number of factual inaccuracies, including mis-labelling of a neighbouring property (La Mielle, to the north of the private road access way) which is a listed building. The development would be within the setting of this building. The proposal would also affect several private legal rights which would be for the developers to overcome. It is not clear whether Au Caprice has any right of access over the private road.
26. In summary, the supporting representations by local interested parties commented as follows.
- The proposed development would be aesthetically pleasing, would improve the appearance of the property and would improve the accommodation.
  - The plans would be a good use of an old site, with good floor space and outside amenities. The apartments would be of a good size, unlike many new apartments.
  - The proposal would result in a reduction in traffic.

## **Assessment**

### **Procedural Matters - Submitted Plans and Inconsistencies**

27. It is necessary to deal with some issues regarding the application and submitted plans. Before the site inspection I asked to be supplied with full-size paper copies of the application plans showing site layout, floor plans and elevations, so that I could check dimensions. Copies of plans were sent by the appellant's agent. At the site inspection it became apparent that the drawings I had been sent were not all the same as those considered by the planning committee when the application was decided. After the site inspection I received an email through the Judicial Greffe from the Department, from which it was apparent that the Department and the appellant's agent did not agree on which drawings were the "application plans". A later email explained that the Department had received revised drawings after the officer's report to committee had been completed but before the committee meeting, although the Department say that Drawing SK03 Revision E was submitted after the committee meeting.
28. Some other plans were also evidently submitted to the Department after the refusal decision. According to the Department these were Drawings SK01 Revision F, SK02 Revision D, and SK03 Revision E. The Department's email says that these drawings show a narrower rear extension, additional west facing windows, a change in the west elevation to render, and a relocated and

redesigned bike store. However, these drawings were not considered by the planning committee.<sup>4</sup>

29. The confusion apparent from the emails appears to involve the proposed floor plans and site layout. The plans on which the committee's decision was based included Drawings SK01 Revision D ("Proposed Floor Plans") and SK03 Revision D ("Proposed Site Layout Plan"). The later plans are Revision E of both of these drawings. The Department has confirmed in an email that there is no objection to me considering the later versions (Revision E). The differences include two additional electric car charging points, adding electric power to two spaces in the bicycle rack, and a note referring to an extended dropped kerb at the road edge.
30. However, as far as I can see that is not the end of the confusion, because there are inconsistencies between Revision E of Drawings SK01 and SK03. On the former, the parking bay nearest the rear of the building at Au Caprice is shown as having a width of 2.4 metres. On the latter, this bay when scaled from the drawing is about 2.1 metres wide.<sup>5</sup> The four bays numbered 4-7 are shown on Drawing SK01 Revision E as 4.8 metres long, whereas on Drawing SK03 Revision E these bays scale at about 4.55 metres long. The wall (or other barrier structure) next to the steps behind the building is also shown with different thicknesses in these drawings. Given the limitations of this site, these differences are more than minimal, especially when considered cumulatively.
31. There are also inconsistencies involving other plans. One concerns the width of the garden to Unit 1 and the width of the proposed rear projection, the roof of which is about 6.25 metres on Drawing SK03 Revision E and between 6.5-6.7 metres (depending on whether guttering is included) on the elevation drawing (Drawing SK 02C, which is evidently one of the undisputed application plans). The position of a proposed bedroom window is shown differently in Drawings SK01 Revision E (the proposed ground floor layout) and SK02 Revision C (proposed south-west elevation). As was established during my inspection, the north-west part of the site boundary is not shown accurately on application plans.
32. There is a convention that where drawings are inconsistent, the larger scale takes precedence; but the drawings mentioned above are at the same scale.
33. As has been pointed out by objectors, there are other inconsistencies between the proposal subject to appeal and what is stated in the application.<sup>6</sup> For example, the application (in the answer to Question 15 in the application form) states that eight parking spaces are proposed, whereas seven are shown on the application plans subject to this appeal. Question 18 in the application form is wrongly answered, since the proposal would involve some demolition.<sup>7</sup> The application also states (Question 13) that the existing guest-house has ten guest

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<sup>4</sup> I have not seen Drawings SK01 Revision F or SK02 Revision D and they do not appear to have been published on the Government website.

<sup>5</sup> The drawing has the standard annotation: "Do not scale from this drawing"; but I have no other ready means of checking dimensions, and it is reasonable to expect scaled drawings to be accurate within the limits of the reproduction process.

<sup>6</sup> Here I am not trying to quote all of the points made by objectors or by James Naish as agent for objectors, and some of them are debatable.

<sup>7</sup> Question 18 in the application form asks "Does the proposal involve demolition or will generate a significant quantity of waste?". The applicant's agent answered "No". The proposal if implemented would probably not generate "a significant quantity" of waste, but it would involve demolition - indeed, the first word of the applicant's description is "Demolish..." - so the answer to this question should have been "Yes".

bedrooms. The 12 guest bedrooms are clearly shown on the plan of the existing layout (Drawing S01) and are mentioned in the appeal statement - which does not acknowledge the discrepancy with the application even though the same agent has handled both the application and appeal.<sup>8</sup>

34. What seems to have happened in this case is that numerous changes have been made since the original application, without the application as a whole having been correspondingly revised. The brief reference to amended plans and the omission of one "residential flat" in the Department's description of the proposal does not cover the changes, which involve much more than just the omission of one flat from the submitted plans. Most of the inconsistencies I have mentioned may not by themselves be crucial, but they create doubts and difficulties, which have caused me to consider recommending summary dismissal of the appeal without any further assessment. For completeness because I do not know what your view as Minister will be, my assessment of the other issues follows.

#### **Main Planning Issues**

35. Three main planning issues are raised by this appeal: first, the appearance of the proposed development and effect on the character of the area; second, parking provision, traffic generation and impact from a road safety viewpoint; third, the effect on the privacy or other amenity of neighbouring residential properties. Several other matters are also disputed, including the provision of amenity space, bicycle storage, access rights and the effect of the development on the setting of a listed building. These issues have to be considered in the light of relevant planning policy.

#### **Appearance and Effect on Area**

36. The south-west elevation of the existing building is a prominent feature in the view from the west and south-west, and objectors point out that the proposed rear extension would be about four times longer than the existing rear projection which would be demolished. So objectors' concerns about the visual impact of the proposed rear extension are understandable, especially bearing in mind the location of the site on the edge of the built-up area.
37. However, two factors would help to make this aspect of the proposal less visually intrusive than might appear from the application plans. One is that the field south-west of the site slopes up towards the north-west, and would obscure the lower portion of the proposed extension in views from the west and south-west. The other factor is that an existing outbuilding which projects to the rear of the main building would be demolished (as well as an existing flat-roofed projection at the rear of the main building), and although these features are not prominent, their demolition would provide an offsetting benefit. As has been pointed out for the appellant in response to objectors referring to the 18 metre length of the proposed rear extension, this extension would project only about 2 metres further than the existing combination of the part of the main building which would be demolished and the adjacent timber store.
38. The proposal to clad the walls of the proposed extension in "Hardiplank" boarding would in my view be a negative aspect of the overall scheme. The walls of the existing building have a rendered finish. Giving the proposed extension a different finish would tend to draw attention to it rather than helping it to blend with the rest of the building, and would not reduce the overall mass of the south-west elevation. I am also mindful of Policy BE6 of the Island Plan, under which

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<sup>8</sup> The applicant shares responsibility for the errors in the application. Mr W Lingard signed the application on behalf of G&D Ltd, apparently without checking what the agent had stated in it.

"proposals to....extend existing buildings will be approved where they respect or compliment the....materials of the existing building". But the "Hardiplank" feature was apparently introduced at the request of your Department, so I do not think it would be fair for it to count against the proposal. The use of a low-pitch roof would help to limit the visual impact of the proposed extension. Longer views across the site are already largely obscured by buildings or vegetation, and in this respect the impact of the proposal would not be as detrimental as objectors claim.

39. The house known as La Mielle, a listed building, is a substantial detached property which stands in its own plot on the opposite side of the private road from Au Caprice and Overton Lodge. La Mielle is set well back in its site and is visually separated from the rear part of Au Caprice by the private road and trees. Views towards La Mielle from the south-west are mostly obscured by vegetation. Taking these factors into account I do not consider that the proposed development would materially harm the setting of the listed building.

#### **Traffic Generation, Road Safety and Parking**

40. The layout of the junction where the private access road meets La Route de la Haule is far from ideal. Visibility from this junction along the main road is good towards the north-east; but to the south-west, visibility is obstructed by the wall at the back of the pavement, and is well below modern standards even allowing for the 30 mph speed limit. The layout of the junction is also such that except where two small cars might be involved, a vehicle emerging from the access road stopped while the driver waited for a gap in the main road traffic would make it difficult or impossible for the driver of a vehicle wanting to turn into the access road to do so without obstructing main road traffic. The shape of the splay-shaped area here and the narrowness of the gap between the entrance pillars could also cause problems - if the driver of a vehicle turning into the access were to pull into the available space in front of the pillars alongside an emerging vehicle stopped at the kerbside, the driver of the emerging vehicle would probably (depending on vehicle dimensions and precise position) be prevented from seeing traffic approaching from the south-west.
41. However, those safety issues exist now. The amount of vehicular traffic generated by five apartments is not likely to be significantly greater than could be generated by a 12-bedroomed guest house plus owner's dwelling, and could well be less. Some of the evidence suggests that the guest-house has been under-occupied, at least outside the main summer holiday period, and that may be so; but this situation could change if, for example, a new guest-house operator were to market the business in a way different to that of the past so as to increase winter occupancy. Visitors staying at the guest-house may not all have used cars and may not have parked them at the rear of the property, but again those circumstances could change.
42. Some visitors staying at the guest-house have apparently used the public car park on the opposite side of the road. That would reduce the amount of vehicular traffic turning into the private access way but would cause road safety hazards arising from pedestrians crossing a busy road. Permanent residents of the proposed apartments are also likely to be more aware of local traffic patterns and potential hazards than visitors staying in the guest-house.
43. One objector (Mr C Forster) has argued that the proposed development would provide for a potential occupancy of 17 people in the five units, perceived by Mr Forster as "an 850% increase on the previous adult trip/footfall". If *potential* occupancy were to be regarded as a decisive factor, the *potential* occupancy of

the existing guest-house including the owner's accommodation is considerably more than 17 people.

44. The pattern of traffic generation with five dwellings would probably differ from that likely to have been generated by the guest-house. For example, permanent residents (ie not people on holiday) might tend to use cars at peak times for travel to work. But these are periods when evidently traffic along the coast road here is often slow-moving, so from a road safety viewpoint the presence of extra traffic turning on to or off the main road would not necessarily cause hazards or increase the risk of accidents. The location of the site next to a cycle route and on a bus route with bus stops nearby would also help to encourage the use of cycling and public transport, especially for peak hour journeys.
45. Changes have apparently been made to the number of parking spaces proposed and to the layout of the rear parking area since the proposed development was first designed. The schemes shown in the application drawings would provide seven parking spaces, with dimensions varying depending on which drawing is looked at. But whichever drawing is taken to be definitive, and contrary to the appellant's claim, the parking bay dimensions would not all meet the recommended dimensions in Supplementary Planning Guidance (Policy Note 3). The standard dimensions for car parking bays in "head-on" (ninety-degree angle) parking specified in that document are 4.8 metres long by 2.4 metres wide, with a clear zone for manoeuvring between two lines of bays specified as 6.1 metres. The width of the space available for turning within the site (about 7.8 metres) would be well above the minimum in Policy Note 3.
46. The dimensions specified in Policy Note 3 are not rigid requirements, for two reasons: the document was published more than 30 years ago<sup>9</sup>; and the document itself states that the standards are for guidance only, not "inflexible rules". In particular, the standards for the number of spaces appropriate to different types of development may not have the weight they once had because of the modern trend to discourage private car usage. On the other hand, as is mentioned by objectors, larger parking bays were specified in more recent (June 2018) draft government guidance, though this was evidently withdrawn. As far as I am aware this withdrawn draft guidance has no official status or weight, but it is perhaps a reminder that personal vehicle dimensions have tended to increase rather than decrease in recent years.
47. Cycle parking and electric charging points for vehicles would be provided if the proposed development were to be carried out as shown in the latest version of the submitted drawings. Access to the corner of the site where the cycle storage area is proposed to be located might cause some difficulties if the adjacent car parking spaces were occupied by large vehicles.
48. The transport section of your Department originally raised objections to the application, but later were evidently prepared to support it subject to amendments including the provision of electric charging points to the cycle rack and some of the car parking spaces, and the widening of the lowered kerb next to the main road. These items are shown on the Revision E versions of Drawings SK01 or SK03. A possible planning obligation agreement covering the widening of the lowered kerb is mentioned in one of the statements. There is no evidence of any such agreement having been finalised, but this matter could be made subject to a condition.

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<sup>9</sup> The document states: "It is intended that these guidelines will be kept under periodic review". The intended period is not stated.

49. Having regard to all the above factors, I find that there are reasons to be concerned about traffic generation and highway safety, particularly because of the poor visibility and awkward layout where the private access road meets the main coast road. There appears to be no prospect of the gap between the wall pillars being widened, and such a step would probably be aesthetically undesirable. The layout of the proposed parking area also has some substandard features. However, subject to the imposition of conditions covering matters such as the provision of a wider lowered kerb on land which is not controlled by the applicant, the proposal would meet the requirements of your Department in its role as highway authority, and this is a material point of support for the development.

#### **Privacy and Amenity Effects**

50. The standard of internal space provided by the development has been criticised by some objectors. The Department and the planning committee evidently consider this aspect of the proposal acceptable, and I see no reason to disagree. Internally, the dwelling specifically criticised (Unit 2) would meet the criterion for two-bedroomed dwellings in Planning Policy Note 6. Externally, each of the proposed units would have its own amenity space. Two of them would be next to the main road, but more extensive outside space for recreation is available nearby as the site is close to the beach. In my view the overall provision would be adequate.
51. Views sideways from the second floor balcony would be restricted by a proposed screen. The existing terrace to the proposed Unit 4 at the first floor front is directly adjacent to a bay-shaped window of a flat in Overton Lodge. One of the objections relates to loss of privacy if the terrace were to be available for permanent residents, as opposed to people on holiday who apparently in the past have usually only been there during the summer.
52. I consider this to be a weak reason to oppose the development. As I have already commented, if Au Caprice remained in use as guest-house the past pattern of occupation could change, depending on management and marketing matters outside planning control, and winter occupancy could increase. The proposal to construct a privacy screen along part of the terrace next to Unit 4 is not shown on the drawing of the north-east elevation (part of Drawing SK02). I also have reservations about the position of this screen, which as shown on Drawing SK01 Revision E would be located closer to the bay window at Overton than to the modified window opening in Au Caprice. In my view if the development were carried out this screen should be located within the roof terrace of Au Caprice, further away from the bay window at Overton Lodge than is shown on the drawing, so that the restriction on sideways outlook would affect Overton Lodge less and Au Caprice more. I return to these points later when considering possible conditions.
53. Taking into account the intervening distances and position of proposed windows (including blocking-up of some existing windows) the proposed development would not materially harm the privacy or amenity of other nearby properties. In summary, I judge that the effect of the development on the privacy or amenity of neighbouring properties would be no worse, and in some respects better, than the existing situation.

#### **Green Zone and Policy**

54. The northern corner of the site is within the Green Zone. The boundary of the Green Zone here has an odd shape which does not reflect the physical features of the area. It seems that some of the land attached to Au Caprice, forming part of

its plot at the rear and used for garden or parking purposes, has encroached into the Green Zone; but this situation has apparently existed for more than 20 years, and if an unauthorised change of use has occurred it is now likely to be immune from enforcement. The Green Zone boundary encroachment has not been regarded by the planning authority as an objection to the appeal proposal and I do not see this as a sound reason for refusing planning permission. For practical purposes the site is in the built-up area where the general thrust of policy is to encourage the provision of new housing.

#### **Other Matters**

55. The lack of detail about the provision of bin stores and soakaways is criticised by objectors. These points could be adequately covered by conditions if planning permission were to be granted.
56. Whether or not occupiers of the proposed dwellings would have a right of access either on foot or by vehicle to the proposed rear parking area may be covered by private legal agreement or property title deeds. Either way, it is a matter outside planning legislation, as is the issue of maintenance of the private access road.
57. The arguments for the appellant about parking provision for proposed flats at the former CICS site in Beaumont have little weight. That scheme apparently involved 63 flats, so there would have been more potential for flexibility in parking space allocation and usage than there would be with only five dwellings. The CICS site is evidently close to bus routes but is not directly comparable with the Au Caprice site and has not set a precedent which should necessarily now be followed regarding parking provision.
58. Part of the appellant's case is about the apparent inadequate provision of drawings for the planning committee when they carried out a site visit and considered the application during an ensuing meeting. It seems that members of the committee had not received copies of the drawings before the site visit and still did not have copies at the later meeting. The appellant's agent states that he provided copies for committee members to see at the meeting.
59. The concern expressed on the appellant's behalf is understandable, though obviously I do not know exactly what happened at the site, or whether what the applicant's representative heard and believed was said was actually said. As has been pointed out for the Department, committee members had other means of understanding the proposal, including a Powerpoint presentation at their meeting. I conclude that concern about this procedural aspect is not a reason for allowing the appeal.

#### **Overall Conclusions**

60. From all the points discussed above I draw the following conclusions.
61. This is a case where instead of the process by which amendments were made after the application was submitted, it would have been more satisfactory if the original application had been withdrawn and a revised application submitted. The changes made to drawings, without corresponding amendments to the written part of the application (which is a key document) have caused problems. It is not surprising that the planning committee apparently had difficulty understanding what was proposed - members may have been confused by the discrepancies between the description of the development in the application and what was actually proposed when put to the committee. Altering an application to the extent which happened here after its submission is also likely to cause difficulties for interested parties.

62. I perceive two alternative courses of action. The first alternative would be to dismiss the appeal and confirm the refusal of planning permission on the grounds that the application contains too many flaws and inconsistencies to be properly decided. There would be good reason for taking this option; however, you may feel that it would cause delay, cost and inconvenience for all involved, since a further application would be very likely.
63. I judge that in principle - subject to reservations and provisos regarding details - the effect of the proposed development on the appearance and character of the area, on traffic generation and road safety, and on the privacy and amenity of existing or possible future residents would be acceptable and would satisfy the aims of the planning policies quoted in the refusal notice (Island Plan policies GD1, GD3, GD5, GD7, BE6 and H6). I consider that satisfactory on-site arrangements could be made for car and cycle parking, bearing in mind that Policy SP6 of the Island Plan aims to reduce dependence on private car travel. But the confusion and inconsistency between the various plans must be sorted out and clear proposed layout details should be finalised and submitted so that, if approved, their implementation can be properly controlled. Some adjustment of parking bay sizes appears feasible and I note that the transport section of your Department doubts the need to have seven parking spaces.<sup>10</sup> I can also envisage how adjustments to the layout could improve access to the cycle rack, but as it is not for me to redesign the proposal I must resist the temptation to do so.
64. Other objections on matters such as access rights, bin stores and soakaway drainage do not justify refusing planning permission.
65. In the light of the above points, the second alternative would be to allow the appeal and grant planning permission, subject to conditions aimed at dealing with the inconsistencies between the submitted plans, the discrepancies between the application and the submitted plans, other errors in the application, and what I see as the need for amendments such as the position of the first floor side screen as well as clarification and/or amendment of the car and cycle parking layout.
66. If permission were granted, the proposal to increase the extent of lowered kerb would also have to be subject to what is sometimes termed a "negative" or "Grampian-type" condition<sup>11</sup>. This is because although it appears that the owner of the kerb and pavement (presumably the highway authority) would have no objection to the work, this could not be controlled by the applicant, so the condition has to be framed in such a way that if for any reason the work were not carried out, the planning permission could not be implemented.
67. The application subject to this appeal was expressed as an application "in detail" (Question 8 in the application form). A permission subject to conditions as outlined above would in effect make details reserved matters, so would be similar to an outline permission. I consider that such an approach would be valid, provided you consider that the proposed development would be acceptable in principle, leaving details to be subject to the planning authority's approval.

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<sup>10</sup> Source: Copy of email from Senior Transport Planner to Mr Lingard 22 October 2019.

<sup>11</sup> So-called because a condition of this type was found to be valid in a leading court judgment in the case of *Grampian Regional Council v City of Aberdeen DC* (1984) P&CR 633 (& other case law reports). This sort of "negative" condition prevents the start of development until off-site works on land not controlled by an applicant have been completed. Such conditions should not be imposed unless there is at least a reasonable prospect of the works being carried out. In this instance that criterion appears to be met.

68. On balance I judge that the second alternative would be more appropriate than the first, and I recommend accordingly below. If adopted, the reasons for the decision to grant permission would be similar to those quoted in the original officer's report to the planning committee (it is undated but is headed: "Report for Planning Committee Site Visit") except for the addition of a statement that some details are unsatisfactory and need to be made subject to conditions.

### **Conditions**

69. The officer's report to the planning committee set out one recommended condition, but neither main party has commented on possible conditions. If permission is granted I recommend that the following conditions be imposed, in addition to the standard conditions about the timing of implementation. The reasons for the conditions have been explained above.
1. Notwithstanding the details shown on previously submitted drawings, no development shall be carried out unless and until details of the following matters have been submitted to and approved by the planning authority:
    - (a) Proposed site layout, floor plans and elevations, showing proposed arrangements and layout for car and cycle parking, details of privacy screens, window positions and finishing materials. All the features on these drawings including the width of the proposed rear extension and adjacent garden, the position of windows and the site layout must be consistent between the drawings.
    - (b) Proposed arrangements for bin storage and soakaway drainage.
  2. No development shall be carried out unless and until a written schedule describing the proposal accurately and listing all the proposed amendments and corrections to the original application has been submitted to and approved by the planning authority. This schedule must be consistent with the submitted drawings referred to in Condition 1 above.
  3. The development hereby permitted shall not be carried out other than in accordance with the approved details including the items mentioned in Conditions 1 and 2 above.<sup>12</sup>
  4. No development shall be carried out until the lowered kerb at the junction between La Route de la Haule and the private road providing access to the rear of the appeal site has been widened by 1.5 metres at both ends.
  5. Before the first occupation of any part of the development, the car parking area, cycle rack and charging points must be in place. These facilities shall be retained for the sole use of occupiers of and visitors to the dwellings hereby approved.

### **Recommendation**

70. I recommend that the appeal be allowed and that planning permission be granted, subject to conditions as set out above.

*G F Self*

Inspector  
2 January 2020

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<sup>12</sup> References to condition numbers may need to be altered if the insertion of standard timing conditions affects the numbering.

**Appendix : Reasons for Refusal in Decision Notice dated 20 August 2019.**

1. The proposed extension by reason of its scale and relationship to the existing building and its prominent position in the landscape, is considered to be detrimental to the character of the area including the Green Zone, and thereby fails to satisfy the requirements of policies GD1, GD5, GD7, and BE6 of the 2011 Island Plan (Revised 2014).
2. As a consequence of the proposed extension and the limited space at the rear of the site, the proposed layout appears cramped and fails to provide adequate practical car parking. Therefore the scheme fails to satisfy the requirements of policies GD1, GD3, GD7, and H6 of the 2011 Island Plan (Revised 2014).