

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

**Appeal under Article 108 against a decision made under Article 19 to  
refuse planning permission**

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

---

**Appellant:**

Ray Pettitt

**Application reference number and date:**

P/2019/0961 dated 31 July 2019

**Decision Notice date:**

19 December 2019

**Site address:**

Apartment 5, The Atrium, Le Mont Gras D'Eau, St Brelade, JE3 8ED

**Development proposed:**

"Construct extension to south elevation on existing roof terrace"

**Inspector's site visit date:**

29 September 2020

---

**Introduction**

1. The application was refused by the Planning Committee following a review of an officer's decision to refuse. The Decision Notice gives the following reason for refusal, which is unchanged from the officer's decision: -

"It is considered that, due to the elevated position, scale and projection forward of the proposed extension, it will increase the apparent scale of the existing building and diminish views through to, and therefore the landscape benefits of, the green backdrop to the site, which forms an important part of the character of the bay. It is therefore concluded that the development would have an unacceptable impact upon the character of the area and that the scheme fails to satisfy the requirements of policies BE3, BE6, GD1 and GD7 of the 2011 island Plan (Revised 2014)."

2. The Decision Notice is an example of Island Plan policies being referred to as "requirements". None of the policies referred to imposes "requirements". Each of them sets out considerations that call for the exercise of planning judgment on a case-by-case basis. The use of the term "requirements" can give the impression that the decision-maker considers a refusal is mandated by the policies. This is not the case and is not how planning applications are to be dealt with under Article 19.

### **Description of the proposed development and its surroundings**

3. The Atrium is a modern apartment block that faces towards the Bay and has wooded rising ground behind it. It is in the Built-up Area and in the Green Backdrop Zone, as designated in the Island Plan.
4. Apartment 5 is on the top floor of The Atrium where, at the rear of the block, it has an internal staircase leading up to a small single-storey rooftop annex. The annex opens out on to an extensive roof terrace affording wide-ranging views of the area and the Bay. The proposed development is an extension to the annex; it would have an internal floor area of 26.73m<sup>2</sup>, approximately doubling the size of the annex. To within 10cm, it would keep to the same width and height as the annex. Matching materials would be used.

### **The main issue in the appeal**

5. The main issue in the appeal concerns the effect that the proposed development would have on the character and appearance of The Atrium and the wider area, including the Green Backdrop Zone.

### **The Island Plan policies referred to in the Decision Notice**

6. Paragraph 4.93 of the Island Plan states:

"Much of the setting of St Helier, St Aubin, Gorey and St Brelade's Bay consists of hill slopes with low density residential development set amongst private gardens or natural landscaping providing a green backdrop to these urban environments. These settings are important for the character of these areas and for the enjoyment of views along the coast and from within the built environment".
7. Paragraph 4.95 adds:

"The Green Backdrop Zone policy is still considered to be a useful and legitimate tool in achieving an appropriate lower intensity of building and a higher degree of open space and planting. It is, however, acknowledged that greater resolve in its application is needed than has been applied in the past and that greater attention to the requirements for new and enhanced landscaping in this zone, as an integral element of new development proposals ... New development in the Green Backdrop Zone will also likely need to be considered within the context of its potential impact upon views ..."
8. Accordingly, Policy BE3 states:

"Within the Green Backdrop Zone, development will only be permitted where:

1. the landscape remains the dominant element in the scene and where the proposed development is not visually prominent or obtrusive in the landscape setting;
  2. it retains existing trees and landscape features;
  3. it presents satisfactory proposals for new planting which serve to maintain and strengthen the landscape setting and character of the area”.
9. Policy BE6 deals with building alterations and extensions. It states:  
“Development proposals to alter or extend existing buildings will be approved where they:
1. respect or complement the design, detailing and materials of the existing building;
  2. are sympathetic to the form, scale, mass and proportions of the existing building;
  3. complement the design of adjoining buildings and the quality of the surrounding area; and
  4. respect the space between buildings where it contributes to the character of the building group or surrounding area.”
10. Policy GD1 is a wide-ranging policy dealing with general development considerations. The significant considerations in this appeal are the criteria that proposed development should “not seriously harm the Island’s natural ... environment” (criterion 2) and should be “of a high quality of design ... such that it maintains and enhances the character and appearance of the Island” (criterion 6).
11. Policy GD7 deals with design quality. It states:  
“A high quality of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and the built context will be sought in all developments”.
12. The policy adds:  
“Where the design of proposed development does not adequately address and appropriately respond to the following criteria, it will not be permitted”. These criteria include scale, form, siting and inward views (criterion 1) and relationship to existing buildings and the landscape (criterion 2).

### **The case for the appellant**

13. The proposed development would be a modest addition to the existing annex. It would simply be a projection forward of the annex using matching materials; it would maintain the profile of the annex and its front and sides would be well set back from the perimeters of the roof terrace.
14. The roof terrace and the annex are not visible from the road. They can be seen from higher up Le Mont Gras D’Eau, on the approach from a north-easterly direction, but the green backdrop is not apparent from here as the line of sight is in a south-westerly direction. The distance one needs to be from The Atrium in order to be able to see the annex from other locations is such that the modest increase in its size would make any loss of green backdrop imperceptible to the naked eye.

15. There would be no loss of view through to the green backdrop behind The Atrium. There would be no impact on landscape nor on the character of the building and the wider area. No-one's amenities would be affected. Planters would be provided on the roof terrace if landscaping is necessary.
16. The proposed development would therefore not be in conflict with any of the Island Policies referred to and planning permission should be granted.

### **The case for the Growth, Housing and Environment Department**

17. The Department accept that the proposed development would be in the Built-up Area where there is a presumption in favour of development, including extensions and alterations to existing buildings. They state that the annex is set well back and has only a very modest impact at present. They agree that the proposed development would be in keeping with the design and character of The Atrium.
18. The Department acknowledge that the proposed development would not be visible when viewed from the road in front of the building, but they maintain that it would come into view at the top of the slipway across the road from the junction of Le Mont Gras D'Eau with the coast road and from the former car park to the east of that junction. They accept that the impact from other viewpoints may be modest, but they consider that, in order to retain the integrity of the green backdrop, it is important to prevent incremental erosion of the natural setting and views of it. The Department state that the apparent scale of the building would be more visible, that views through to the green backdrop behind would be reduced and that the visible area of green backdrop would be reduced.
19. The Department point to the greater resolve to protect the Green Backdrop Zone referred to in paragraph 4.95. They assert that Policy BE3 would not be complied with and that, although criteria 1 and 2 of Policy BE6 may be complied with, criteria 3 and 4 of this policy are relevant because of the effect the proposed development would have on the character of the area and reduction in the visible space between buildings. The Department also consider that the proposed development would fail to comply with criteria 2 and 6 of Policy GD1 and criteria 1 and 2 of Policy GD7.

### **Representations made by others**

20. Objections were received at the application stage from the St. Brélades Bay Association and several interested persons. The objections focus on the protection of the Green Backdrop Zone, the changes in the character and appearance of the Bay area in general as the result of The Atrium and other recent approvals, and the impact of the extension proposed in this appeal.

### **Inspector's assessments and conclusions**

21. I viewed The Atrium from all the viewpoints to which my attention has been drawn and assessed the effect that the proposed development would have on the character and appearance of The Atrium and the wider area, including the Green Backdrop Zone. In my opinion, the development would be a minor extension and the objections raised to it by the Department and others are either extraneous or overstated.

22. As to the visibility of The Atrium and the proposed development, I agree with the appellant's summary set out in paragraph 14 of this report and the Department's summary set out in the first sentence of paragraph 18.
23. The most significant landscape feature here is the wooded rising ground that lies to the north at the rear of The Atrium. The annex in its existing state cannot be seen against this background apart from limited views from a considerable distance to the south, in the area of the shoreline and the beach. The extension to the annex would be to its southern elevation and the existing profile of the annex would be maintained. As a result, the annex would come into view from the south at a slightly closer location; however, it would still be unobtrusive against its background and the wooded landscape behind it would remain the dominant element in the scene. The Department's assertions that views through to the green backdrop behind would be reduced and that the visible area of green backdrop would be reduced are unfounded.
24. The Department consider that The Atrium has "a certain architectural quality and design" and the appellant states that the building has been commended for its design. I agree with the Department that the proposed development would be in keeping with the design and character of The Atrium.
25. Criterion 1 of Policy BE3, criteria 2 and 6 of Policy GD1 and criteria 1 and 2 of Policy GD7 would therefore all be complied with. The remaining criteria in Policy BE3 are not applicable to the proposed development. If the appellant wishes to provide planters on the roof terrace, he may of course do so, but landscaping is not needed for screening purposes in this instance.
26. The Department state that the proposed development may comply with criteria 1 and 2 of Policy BE6; I consider that it does. The Department's claims that criteria 3 and 4 of this policy are relevant because of the effect the proposed development would have on the character of the area and the reduction in the visible space between buildings have not been substantiated; there would clearly not be an impact on the character of the area or the space between buildings. Where all the criteria in Policy BE6 are satisfied, as they are in this instance, the policy states that extensions to buildings will be approved.
27. I conclude that the proposed development would be in accordance with the Island Plan and that no considerations arise to indicate that it should not be permitted.

### **Inspector's recommendation**

28. I recommend that the appeal is allowed and that planning permission is granted for the construction of an extension to the south elevation of the annex on the roof terrace of Apartment 5, The Atrium, Le Mont Gras D'Eau, St Brelade, JE3 8ED, in accordance with the application P/2019/0961 and the submitted plans and documents, subject to the standard conditions and reasons A and B relating to the commencement of the development and the carrying out of the development as approved. No other planning conditions are needed.
29. The approved plans will be:

Location Plan; Proposed Site Plan 102; Proposed Terrace and Roof Plans 103;  
and Proposed Elevations 104

Dated 30 October 2020

*D.A.Hainsworth*

Inspector