

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

Appeal under Article 108 against a decision made under Article 19 to grant a 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:

Mark Raymond Vellam

Planning permission reference number and date:

P/2019/1404 dated 30 March 2020

Applicants for planning permission:

The Siena Group

Site address:

Les Bardeaux, La Rue de Haut, St Lawrence JE3 1JZ

Description of approved development:

“Demolish existing dwelling and associated buildings. Construct 10 No. two bed and 1 No. three bed residential units with basement parking and associated landscaping.”

Inspector’s site visit date:

29 September 2020

Hearing date:

1 October 2020

Introduction

1. This is a third-party appeal against the grant on 30 March 2020 of planning permission P/2019/1404 for the development described above. The permission was granted by the Planning Committee in accordance with the recommendation of the Growth, Housing and Environment Department.
2. The permission was granted subject to conditions relating to the following matters - species protection; the provision of visibility sight lines; obscure glazing, external fixed panels and screening planters; landscaping, including

the planting of semi-mature trees along the roadside boundary; and surface water drainage.

3. The reasons given for the approval of the development are as follows:

“Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received.

The approved scheme is for the comprehensive redevelopment of the existing site, creating a total of 11 new residential apartments.

The development site is located within the Built-Up Area, wherein there is a presumption in favour of the development of new dwelling units.

The Planning Committee is satisfied that this is a well-designed scheme, which is compliant, in all regards, with the Minister's residential standards, and which would sit comfortably within the site.

The comments received from nearby residents are noted; however, the committee is satisfied that the development would not unreasonably harm neighbouring amenities.

The application is considered to be justified with reference to the relevant policies of the Island Plan which, in general, seek to ensure that Built-Up Area sites are developed to their highest reasonable density.”

4. The applicants have entered into a planning obligation agreement associated with the planning permission to make a financial contribution towards the implementation of a speed limit reduction along La Rue de Haut, the provision of a bus shelter and standing area on La Vallée de St Pierre and footway improvements at the junction of La Vallée de St Pierre and La Rue de Haut.

Procedural matter

5. There are thirty-seven approved plans and documents. It emerged for the first time during the hearing that at least one of the approved plans contained an inaccuracy. I arranged for the applicants and the Department to discuss the matter after the close of the hearing and to notify me and the appellant of the outcome. The appellant was not content with this arrangement, but I agreed to it because it was put to me that there was an error that could be corrected without making a material difference to the development that was approved.
6. The applicants have explained that a genuine error occurred. The outcome of their discussion with the Department is that four revised plans have been produced and submitted for consideration in the appeal. They are P008 B - Proposed South Elevation, P009 B - Proposed West Elevation, P011 B - Proposed East Elevation and P013 B - Proposed North-South Longitudinal Sections.
7. The Department state that the revised plans clarify the dimensions of the existing building on the site and do not change the approved development. The Department have explained that the difference in height between the existing development and the approved development is now shown to be

0.89m less than it was before, but that the height of the approved development has not been changed from that shown on the approved plans.

8. The appellant has had the opportunity to comment on the outcome of the discussion and has objected to the revised plans being considered at this late stage. I have considered his objection but have recommended at paragraph 74(a) below that the revised plans should be accepted, because the revisions do not alter the details of the new development that the Committee approved and are not detrimental to the arguments put forward by either the appellant or the other objectors.

The site and its surroundings and the approved development

9. Les Bardeaux is an unoccupied two-storey dwelling with an extensive range of outbuildings. It is about sixty years old and is built on three levels on a substantial plot that rises northwards from La Rue de Haut. Other nearby buildings are of various sizes and styles. All the building plots here, on both sides of the road, are in both the Built-up Area and in the Green Backdrop Zone as defined in the Island Plan. Undeveloped land to the north and south of these plots is in the Green Zone. Substantial redevelopment schemes have recently taken place on the plots on each side of Les Bardeaux.
10. The approved development is a comprehensive redevelopment of Les Bardeaux, involving the demolition of all the existing structures and the construction of a residential apartment block with eleven units of accommodation. Redevelopment work will be confined to the Built-Up Area.
11. Excavation works will be carried out to create new levels and the block will have four storeys with terraces above a basement car park. At its highest point, it will be about 2.51m higher than the existing dwelling and slightly higher than the apartment block on the adjoining plot to the east.
12. The block will be set back about 20m from the roadside and the existing vehicular access will be repositioned to create a separate entrance and exit. A new pedestrian footpath will be constructed. The approved landscaping scheme includes the planting of semi-mature trees alongside the boundary with La Rue de Haut, which will be 7m to 8m high at the time of planting.

Island Plan Policies referred to by the parties

13. Strategic Policy SP4 states that a "high priority will be given to the protection of the Island's natural ... environment".
14. Paragraph 4.93 of the 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. There are also important views from the higher ground down to the town roofscape in particular, as well as to the coast and sea beyond."
15. 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 ...”

16. 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”.

17. Policy BE5 deals with tall buildings. It states:

“Tall buildings, defined as those either above approximately 18 metres in height, or rising more than 7 metres above their neighbours, will only be permitted where their exceptional height can be fully justified, in a Design Statement, in urban design terms. Development which exceeds the height of buildings in the immediate vicinity will not be approved ... Buildings above approximately 18 metres will not be appropriate outside of the Town of St Helier and will not be approved.”

18. Policy GD1 is a wide-ranging policy dealing with general development considerations. It indicates that development proposals will not be permitted unless the development, amongst other criteria,

- “will not replace a building that is capable of being repaired or refurbished” (criterion 1.a)
- “where possible makes efficient use of ... demolition materials to avoid generation of waste and to ensure the efficient use of resources” (criterion 1.b)
- “does not seriously harm the Island’s natural ... environment, in accord with Policy SP4 ‘Protecting the natural and historic environment’, and in particular; a. will not have an unreasonable impact on the character of ... the countryside ... biodiversity ... or heritage assets ... and includes where appropriate measures for the enhancement of such features and the landscaping of the site” (criterion 2.a) and “c. will not unreasonably affect the character and amenity of the area, having specific regard to the character of the ... countryside ... and the built environment” (criterion 2.c)
- “does not unreasonably harm the amenities of neighbouring uses ... in particular ... the level of privacy to buildings and land that owners and occupiers might expect to enjoy” (criterion 3.a)

- “in particular ... will not lead to unacceptable problems of traffic generation, safety or parking” (criterion 5.b) and
- “is of a high quality of design ... such that it maintains and enhances the character and appearance of the Island” (criterion 6).

19. Policy GD3 deals with the density of development. It states:

“To contribute towards a more sustainable approach to the development and redevelopment of land in accord with the Strategic Policies of the Plan (Policy SP 1 'Spatial strategy' and ... Policy SP 2 'Efficient use of resources') the Minister for Planning and Environment will require that the highest reasonable density is achieved for all developments, commensurate with good design, adequate amenity space and parking (bearing in mind the potential for reducing the need for car ownership by the creation of car pooling schemes and other methods) and without unreasonable impact on adjoining properties.

Residential development proposals on sites of more than 0.2 hectares (0.5 acres or 1.125 vergées) will not be permitted unless a minimum density, in accord with supplementary planning guidance, is achieved.”

The supporting text to Policy GD3 states at paragraph 1.8:

“Density is a measure of the number of dwellings which can be accommodated on a site or in an area. The density of existing development in an area should not dictate that of new housing by stifling change or requiring replication of existing style or form. If done well, imaginative design and layout of new development at higher densities can lead to the more efficient use of land without compromising the quality of the local environment for adjoining neighbours.”

20. Policy SP7 states “All development must be of high design quality that maintains and enhances the character and appearance of the area of Jersey in which it is located”.

21. Policy GD7 also 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”.

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:

1. the scale, form, massing, orientation, siting and density of the development, and inward and outward views;
2. the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting;
3. the degree to which design details, colours, materials and finishes reflect or complement the style and traditions of local buildings;
4. the use and maintenance of landscape to enhance new development and the degree to which this makes use of local features and an appropriate

- mix of materials and plant species suited to both the landscape and wildlife interests of the locality;
5. the incorporation of existing site features into the development such as boundary walls, banks and trees;
 6. the design of safe pedestrian routes, including for those with mobility impairments, vehicle access and parking; and
 7. the incorporation of features to design out crime and to facilitate personal safety and security, in accord with the principles of safety by design, by way of a crime impact statement if required, as set out in supplementary planning guidance.”
22. Policy H6 deals with housing development within the Built-up Area. It states: “Proposals for new dwellings ... will be permitted within the boundary of the Built-up Area ... provided that the proposal is in accordance with the required standards for housing as established and adopted ... through supplementary planning guidance”. This policy is subject also to paragraph 6.129, which states “Whilst the principle of new residential development in the Built-up Area, in accord with the Spatial Strategy, is supported, proposals for new residential development will need to be assessed relative to their impact on the local environment and neighbouring uses (against Policy GD 1 'General development considerations') and in terms of their quality of design and architecture (against Policy GD 7 'Design quality')”.
23. Policy NE2 states “Where a proposal may have an adverse effect on protected species or habitats, applicants will be expected to undertake an appropriate assessment demonstrating proposed mitigation measures”.
24. Policy NE7 states “The Green Zone ... will be given a high level of protection from development and there will be a general presumption against all forms of development”. Subparagraph 3 of the policy indicates that this includes the redevelopment of an existing dwelling where it would facilitate a significant increase in occupancy.
25. Policy WM1 indicates that the Minister “will encourage the minimisation of waste generated as part of construction activity and an increase in the recycling, re-use and recovery of resources” and that a ‘Site Waste Management Plan’ should be submitted with planning applications for larger development proposals.

The case for the appellant

26. The appellant’s property, Highgrove House, is on the opposite side of La Rue de Haut from Les Bardeaux. He maintains that the development will unreasonably harm the privacy of his property, because of its overall design and in particular its fenestration and the terraces on its southern elevation. He states that this is contrary to Policy GD1 and that only a reduction in the height of the development would ensure that his privacy will not be disturbed. He points out that the semi-mature trees along the roadside boundary may not survive, a concern that he states is shared by the States’ arboriculturist.
27. The appellant maintains that the development will be overdominant in the landscape and will unreasonably harm the character of the Green Backdrop Zone. He states that the design quality of the block is not in accordance with Policy GD7, and may be in breach of Policy BE5, because of the siting of the development, its height, the alteration to ground levels and the creation of

straight lines and sharply defined edges in the landscape. It will therefore, he states, be a conspicuous artificial feature that will not serve to respect, conserve or contribute positively to the diversity and distinctiveness of the landscape.

28. There will therefore, he maintains, be a conflict with Policy BE3, which states that development will only be permitted in the Green Backdrop Zone where the three criteria set out in paragraph 16 above are satisfied. He adds that it will also fail to comply with Policies GD1 and SP4, because of its impact on the natural environment, and with Policy NE7, because part of the application site is in the Green Zone where there is a fundamental presumption against development.
29. With regard to Policy GD1 1.a, the appellant maintains that insufficient evidence has been submitted to demonstrate that the existing dwelling could not be reasonably repaired or refurbished to bring it to an acceptable standard of accommodation.
30. The appellant states that the planning history of the site should be taken into account and given its correct weight. He maintains that the previous application (see paragraphs 38 and 39 below) was nearly identical and that other planning applications that have been approved in the vicinity are not material considerations.

Other representations

31. Other objections have been submitted, raising concerns about various issues, in particular: the scale of the development and its impact on the character and appearance of the locality including the Green Backdrop Zone; overlooking, particularly from the terraces, and the effectiveness of the privacy screens; artificial lighting; noise from the use of the terraces; traffic and parking; construction activity; the effect on wildlife including bats; surface-water run-off on to the road.

The case for the applicants

32. The applicants state that the development will accord with the Island Plan as a whole. They maintain that it will deliver an imaginative and high-quality design and make the best use of land in the Built-up Area, contributing to Jersey's housing needs whilst respecting and complementing the landscape in accordance with sustainability objectives. They state that the development has been designed taking into account the need to balance the impact of the proposals upon the character of the environment and the amenities of neighbours and that it meets the standards set out in Policy H6.
33. The applicants state that planning permission has been granted for development on both sides of Les Bardeaux and for other proposals in the Green Backdrop Zone in the St Aubins Bay area. They point out that the character of the area has been and continues to be changed by the effects of planning decisions that respond to Jersey's needs. They maintain that the development will encroach only slightly upon views of the woodland slopes on the escarpment above Les Bardeaux, and from limited locations, and that no part of the development site is in the Green Zone. The development will incorporate significant landscaping, including the planting of semi-mature trees on the boundary with La Rue de Haut.

34. The applicants state that the character of development here is very mixed with a wide variety of styles. Replacement buildings in the area are generally larger and of an increased density - the apartment block recently built immediately to the east of Les Bardeaux has four storeys and a three-storey extension to the care home to the west of Les Bardeaux is being constructed. The development will comply with current guidance as respects density and will be in accordance with paragraph 1.8 of the Island Plan (see paragraph 19 above).
35. As to design matters, the applicants indicate that the recent trend is towards replacement buildings designed to reflect modern architectural styles with angular designs, large-glazed openings, flat roofs and high void-to-side ratios. They indicate that high-quality materials and finishes will be used and that the height of the block will respect the relationship provided by neighbouring buildings; it will comply with Policy BE5 (Tall buildings), being approximately 16.7m from slab base to roof terrace parapet and generally 12.5m above ground level.
36. The applicants state that the appellant's property is already overlooked from Les Bardeaux. They maintain that the distance between the appellant's garden boundary wall and the first-floor terrace would be approximately 26m and that the distance between the garden boundary wall and the main building would be approximately 40m. The semi-mature trees on the roadside will screen views of the appellant's property and will prevent overlooking from the first-floor terrace. The applicants expect users of the terraces mainly to keep to areas close to their apartments rather than to use areas at the southern perimeters nearer to the appellant's property.
37. As to Policy GD1.1.a. (see paragraph 18 above), the applicants state that it should not be seen as a moratorium against the demolition and the replacement of buildings, but as a requirement for robust and objective evidence to be submitted. They maintain that the technical reports they have submitted satisfy this requirement. The Royal Court, they indicate, has described the policy as a "light presumption" against the demolition and replacement of buildings; they maintain that it should be considered in the wider context of other policies and objectives in the Island Plan and that in this instance it is more than outweighed by the benefits of the development.
38. The applicants state that the approved development has a number of differences when compared to the previous proposal P/2019/0166 that was refused planning permission. The height of the main building has been reduced by 0.5m; the stair and lift access to roof terrace has been removed to reduce the overall height by a further 2.35m; the internal vehicular access has been rearranged to reduce the amount of excavation; the vehicular access from La Rue de Haut has been revised to address highway concerns; a new landscaping scheme has been introduced with semi-mature trees along the roadside boundary and more planting on the terraces; the roof terrace has been reduced in size; the design has been changed to include dark-coloured materials at the upper two floors; and the rear access and service core has been redesigned to rationalise and reduce the overall footprint of the block. In addition, the planning obligation agreement (see paragraph 4 above) has been entered into.

The case for the Growth, Housing and Environment Department

39. The Department's case relies on the reasons given for the approval of the development, as set out in paragraph 3 above, and on the following additional comments. The development would be confined entirely to the Built-Up Area. Within this Area there is a presumption in favour of new residential development and a need to ensure that land is developed to its highest reasonable density. The previous application P/2019/0166 was turned down on two specific grounds relating to the impact on the Green Backdrop Zone and the impact on neighbouring residential amenity. The applicants then incorporated a series of amendments to meet these concerns and the Committee was ultimately satisfied that they had been adequately addressed. The decision to approve the development was a balanced decision reached after a full assessment of all the relevant issues.
40. The Department's Operations & Transport section state that the development is acceptable subject to the planning obligation agreement referred to in paragraph 4 above being entered into. The Natural Environment Team recommended approval subject to a planning condition, which has been imposed. The Arboricultural Officer's concerns about the planting arrangements for the semi-mature trees along the roadside boundary have been met by a planning condition requiring a detailed specification to be submitted and agreed by the Department. Surface-water run-off requirements are the subject of a condition requiring a detailed scheme to be agreed.

Inspector's assessments and conclusions

The effect on the character and appearance of the area

41. All of the building works will take place within the Built-up Area, where new dwellings are acceptable in principle under Policy H6, subject to the provisos in paragraph 6.129 (see paragraph 22 above). The standards for housing referred to in Policy H6 will be met, as will the constraints on tall buildings specified in Policy BE5.
42. The Island Plan Zoning Map shows that the planting next to the replacement retaining wall at the northern boundary of the works will be within the Built-up Area. The only element of the scheme that will be within the Green Zone is the hedge to be planted on the northern boundary of the open land beyond the works. Planting is not in conflict with Policy NE7.
43. Since all the works will be within the Green Backdrop Zone, the constraints set out in paragraphs 13 to 16 above apply. Tension is evident between, on the one hand, Policies H6 and GD3, which promote housing development in the Built-up Area here and state that the highest reasonable density of development should be achieved and, on the other hand, Policy BE3, which states that development will only be permitted here (i) where the landscape remains the dominant element in the scene and the development is not visually prominent or intrusive in the landscape setting, (ii) existing trees and landscape features are retained and (iii) new planting takes place that maintains and strengthens the landscape setting and character of the area. As the Department have indicated, the resolution of this tension calls for a balanced conclusion reached after a full assessment of all the relevant issues.

44. The objective of Policy BE3 in this location is the protection of the backdrop provided by the rising ground to the north of the suburban coastal development. This backdrop includes the linear development on La Rue de Haut, comprising a variety of residential premises, a healthcare centre, a care home and a school, all of which are in the Built-up Area, as well as the open green areas interspersed with trees that lie to the north and south of La Rue de Haut beyond the linear development. The redevelopment schemes that have recently taken place on each side of Les Bardeaux are now part of the landscape setting and character of this area.
45. The development will have very little impact on the landscape setting of the backdrop, since views of it against the backdrop will only be available from a distance, and will be limited to the top part of the building and be screened by new planting, and there are no important views from the higher ground downwards that will be intruded upon by the development. The first criterion in Policy BE3 will be satisfied because the landscape will remain the dominant element in the scene and the development will not be visually prominent or intrusive in the landscape setting.
46. The second criterion will be satisfied because there are no existing trees or features at Les Bardeaux whose retention is necessary in order to protect the landscape. As to the third criterion, a comprehensive planting scheme has been approved that will maintain and strengthen the landscape setting and character of the area. The appellant has made a justified observation that planting may fail. Condition 5 of the permission requires the landscaping scheme to be completed prior to occupation of the development, but it is not strong enough since it does not deal with the subsequent management and replacement of the planting. It can be replaced by the condition set out in paragraph 74(b) below, which will deal with these matters satisfactorily.
47. I turn now to the effect the development will have on the character and appearance of its immediate surroundings. It will have a contemporary design, in keeping in size with the new development on its eastern side, but contrasting with the older development in the area. The settings of listed buildings in the area will be preserved.
48. Frequently, assessments of design quality will differ and will be based on subjective judgments. It is often acceptable for a development to have a contrasting design to its surroundings. In this instance, I agree with the Department's view that the scheme has been well-designed and will sit comfortably within the site without having an overbearing presence. It seems to me that its tiered design, its terraces and the varied use of building materials will be visually attractive and that the scheme will optimise the redevelopment potential of the site because of its good design and layout and its comprehensive planting scheme.
49. For the above reasons, I have concluded on these matters that the development will comply with Policies SP4, BE3, BE5, GD1.2.a, GD1.6, GD3, GD7, H6 and NE7.

The effect on neighbours' residential amenities

50. The residential amenity issues raised by neighbours relate to overlooking and privacy, noise from construction work, noise from the use by residents of the terraces, artificial lighting, parking and surface-water run-off on to the road.

Of these, overlooking and privacy have been identified as the most concerning, because of the height of the development and the windows and terraces on its southern elevation, which will face the appellant's property, Highgrove House, and the neighbouring property, Roselle, both of which are on the opposite side of the road from Les Bardeaux. I have considered this issue first and dealt with the remaining issues in paragraph 58 below.

51. Highgrove House is screened by its own high walls, but parts of it are at present visible from parts of Les Bardeaux. They include some of its upper windows and, from the upper windows of Les Bardeaux, the paved poolside area beyond the swimming pool and part of the rear garden, but not the pool itself. There is a view from Les Bardeaux of some of the windows in Roselle.
52. I do not consider that the development will have an adverse impact on the privacy of any of the windows, which are already open to view from most parts of Les Bardeaux and from the adjacent section of La Rue de Haut. Nor do I consider that there will be an adverse impact on the rear garden of Highgrove House, because it is normal for gardens to be overlooked in residential areas and the part affected is not secluded.
53. The main privacy issue concerns the impact on the swimming pool and its surrounds. The appellant and the applicants have each produced a drawing showing the viewing lines from the development. The principal difference between the two drawings is that the appellant's shows the viewing lines from the southern end of the terraces, whereas the applicants' shows the viewing lines from the apartments' facing windows at the back of the terraces. The applicants' also shows the approved tree screen in place on the roadside. I have already indicated in paragraph 46 that the condition applying to the tree screen can be reinforced.
54. The views from the windows will be enjoyed all the year round, whereas the views from the terraces will be seasonal and weather affected, and are likely to be enjoyed more regularly from the parts of the terraces that are nearest to the windows, rather than from the southern extremities of the terraces. The frequency on which views will be enjoyed will, of course, be much greater in the case of eleven units than it is in the case of the existing single dwelling and the height of the development on rising ground above Highgrove House is a factor to be taken into account.
55. The appellant's drawing indicates that the poolside area that is at present visible from the upper windows of Les Bardeaux will be visible from the southern end of all four terraces and that a very small part of the pool itself will be visible from the southern end of the top terrace. The applicants' drawing indicates that there will be no views of the pool itself from the windows and that there will be no view of the poolside area from the ground-floor windows. All the views on both drawings will be obscured by the roadside tree screen.
56. The Department assess the distance between the main block of the development and its roadside wall to be around 20m and its distance from Highgrove House to be just under 40m. The applicants state that the first-floor terrace will be approximately 26m from the garden boundary wall of Highgrove House and that the main building will be about 40m away from this wall. The appellant maintains that the distance from the edge of the nearest terrace would be considerably less than 40m, which he understands to be the

distance from window to window. This observation is correct in so far as the lawned amenity areas beyond the ground-floor terrace are concerned, but the block itself will be set back on all floors and the terraces will not have much depth. The landscaping scheme shows that the lawned amenity areas will have screen planting on their boundaries.

57. Policy GD1.3.a stipulates that development should in particular not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy. In the circumstances I have described above, I do not consider that the development will have such an effect. I have reached this conclusion because of the distances involved and the absence of any significant intrusion when the screen planting is taken into account.
58. As to the remainder of the residential amenity issues, my assessments are as follows. Noise from construction work is inevitable in redevelopment schemes and should be managed with consideration for its impact on neighbours. An additional planning condition can be imposed in order to deal with it (see Condition 9 at paragraph 74(c) below). I do not foresee that noise from the use of the terraces is likely to be a problem for neighbours to a greater extent than the normal use of residential amenity areas at ground level. External lighting will be kept to the minimum needed for safety reasons and will not be intrusive. The development should not lead to on-street parking problems, since the parking needs of the development will be met on the site. Surface-water run-off has been recognised as a concern by the Department and will be controlled by the existing Condition 6, to be enforced by the Department.
59. For the above reasons, I have concluded on matters relating to neighbours' residential amenities that the development will comply with Policies GD1.3.a and GD1.5.b.

Compliance with Policy GD1.1.a

60. Policy GD1 states that development will not be permitted unless it "contributes towards a more sustainable form and pattern of development in the Island in accord with the Island Plan strategic Policy SP 1 'Spatial strategy'; Policy SP 2 'Efficient use of resources'; and Policy SP 3 'Sequential approach to development'." It follows on by setting out several criteria in particular that are to be met, the first of which is GD1.1.a that it "will not replace a building that is capable of being repaired or refurbished".
61. The Royal Court considered this policy in the *Therin* judgment. My understanding of the judgment is as follows. It is planning policy that there should be a serious examination of the potential for re-use or adaption of an existing building before permission is given for its demolition. The question arises as to whether the balance lies in approving an application notwithstanding the pressure on resources which approving it will create, or refusing it. The policy is a light presumption against demolition – if a building is capable of repair and/or refurbishment, a proposed development which involves its demolition will not contribute to a more sustainable form and pattern of development in Jersey. The policy does not require that a building should be repaired or refurbished where it is uneconomic to do so. The different policies in the Island Plan need to be balanced and a judgment call made as to where that balance comes down. It is a matter for the Minister to determine where the balance lies in resolving whether a property is sensibly capable of being repaired and/or refurbished.

62. On 7 April 2020, the Minister wrote to Jersey Chamber of Commerce with the following advice about the *Therin* judgment:

“ ... Policy GD1(1a) should not be seen as a moratorium against the demolition and replacement of buildings. However, robust and objective evidence will be required in order to support an application where demolition / replacement is proposed in order to evidence its likely environmental or sustainable benefits over the retention of the existing building.

Any increase in floor area / footprint of the proposed replacement building over that of the original shall be limited and should be fully justified in terms of functional need, necessary improvements to the standard of accommodation and, the design context within the landscape or built environment.”

63. The applicants have submitted two reports as evidence.

64. The first is a detailed Structural Survey of Les Bardeaux prepared by RGA Consulting Engineers. It concludes:

“Whilst it appears that the property was generally constructed to a reasonable standard for its time, the negative effects of the building reaching the end of its design life is evident by way of defects such [as] cracking and movement to the roof and first floor. Given the defects noted, the poor layout of the first floor and the safety issues raised, it is unrealistic that the property could be cost effectively updated to present day Jersey Building Bye-Law standards to produce a quality modern residence lasting a further 50/60 years. Further, the existing building could not be adapted to be incorporated within the proposed development. It is recommended that a new build construction built to modern efficiency standards would be the best course of action for development of the site.”

65. The second are detailed costs estimates prepared by Tillyard Chartered Quantity Surveyors and Project Managers for works required to refurbish and upgrade Les Bardeaux to current standards. It estimates costs in the region of £2m, which in their experience would be likely to lead to a decision to demolish and rebuild, since “a new build scheme carries significantly less risk, is normally quicker and provides an all round better end product than remodelling and refurbishing”.

66. I conclude from these reports that it would be uneconomic to repair or refurbish Les Bardeaux.

67. Since this is a sizeable development that will generate a substantial volume of demolition material and excavated materials, the provisions of Policies WM1 and GD1.1.b also come into play. The applicants have stated that these materials will be taken off site for recycling and re-use: this will meet sustainability objectives. They have prepared a draft Site Waste Management Plan, but it was not submitted with the application and was not dealt with in the reports to the Committee or the decision. This omission can be dealt with satisfactorily by imposing an additional planning condition (see Condition 8 at paragraph 74(c) below).

68. As stated in *Therin*, a 'judgment call' needs to be made and the Minister in his letter has given guidance about his approach to the issue. My assessment is as follows.
69. Les Bardeaux has an extensive footprint because of the size of the dwelling and the range of outbuildings, but the redevelopment scheme would have a somewhat larger footprint and considerably more floorspace. It is not feasible to carry out a scheme of this kind that would retain Les Bardeaux in situ. The scheme complies with all other applicable Island Plan Policies. I agree with the reasons given for its approval (see paragraph 3 above) and with the Department's further representations. I also agree with the applicants' opinion that the scheme has an imaginative and high-quality design that makes the best use of land in the Built-up Area, contributing to Jersey's housing needs whilst respecting and complementing the landscape in accordance with sustainability objectives.
70. The emphasis of the Island Plan is upon sustainability as explained in the strategic policies SP1, SP2 and SP3. The scheme meets the objectives of these policies and in my opinion the balance that *Therin* calls for lies in its favour.

Comparison between the approved development and the proposals refused in planning permission in P/2019/0166

71. Consistency in the planning process is important and if like cases are not decided in a like manner confidence in the system can be undermined. Decision-makers are, however, always entitled to reach contrasting decisions, although they should be able to provide sound reasons for doing so. Often, the differences between what is assessed as being acceptable and what is not are borderline but nevertheless sufficient to tip the balance.
72. In this instance, the differences between the two applications are as set out in paragraphs 38 and 39 above. In my opinion, these are material changes in the proposals that are sufficient to overcome the previous reasons for refusal.

Other issues arising

73. Representations have also been received about potential wildlife on the site and the generation of more traffic on La Rue de Haut. The former has been dealt with satisfactorily by the approved Species Protection Plan and by Condition 1 of the permission, the latter by the planning obligation agreement, by the approved visibility lines at the access to the development and by Condition 2 of the permission. Policies GD1.2.a, GD1.5.b and NE2 will all be complied with.

Inspector's recommendations

74. I recommend that planning permission P/2019/1404 is varied by:
- (a) Approving the revised drawings P008 B - Proposed South Elevation, P009 B - Proposed West Elevation, P011 B - Proposed East Elevation and P013 B - Proposed North-South Longitudinal Sections as replacements for the Approved Documents P008 A - Proposed South Elevation, P009 A - Proposed West Elevation, P011 A - Proposed East Elevation and P013 A - Proposed North-South Longitudinal Sections.

(b) Replacing Condition 5 by the following condition:

"5. All planting and other operations comprised in the approved landscaping scheme shall be completed prior to the first occupation of any element of the development, in accordance with a landscape management plan (including management responsibilities and maintenance schedules) to be submitted to and approved in writing by the Growth, Housing and Environment Department. The landscape management plan shall be carried out as approved and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Reason: To safeguard the benefits of the landscape scheme in the interests of the amenities of the area and to ensure a high quality of design in accordance with Policies SP7 and GD7 of the Jersey Island Plan 2011 (revised 2014)."

(c) Imposing additional Conditions 8 and 9, as follows:

"8. Prior to the commencement of the development, a Site Waste Management Plan shall be submitted to and approved in writing by the Growth, Housing and Environment Department. The Plan shall set out the arrangements for waste management in relation to the approved works of demolition and excavation and shall be implemented as approved. Prior to the commencement of the approved works of construction, a Site Waste Management Completion Report shall be submitted in writing to the Growth, Housing and Environment Department demonstrating compliance with the Plan.

Reason: To ensure adequate arrangements are made to reduce, reuse and recycle materials, in accordance with Policy WM1 of the Jersey Island Plan 2011 (revised 2014).

9. No development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to and approved in writing by the Growth, Housing and Environment Department. The approved Plan shall be adhered to throughout the construction period of the development and any departures from it shall be approved in writing by the Department before they are put into practice. The Plan shall secure an implementation programme of mitigation measures to minimise the adverse effects of the construction of the development on the environment (including the effects of demolition work), and shall include but not be limited to:

A. A demonstration of compliance with best practice in controlling, monitoring, recording and reporting on any emissions to the environment (such as noise, vibration or air, land or water pollution);

B. Details of a publicised complaints procedure, including details of office opening hours and of out-of-hours contact numbers; and

C. Specified hours of operations on the site.

Reason: To safeguard residential amenities in accordance Policy GD1 of the Jersey Island Plan 2011 (revised 2014).”

75. In all other respects, I recommend that the appeal is dismissed.

Dated 30 November 2020

D.A.Hainsworth

Inspector