

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:

Sujjan Limited

Application reference number and date:

P/2020/0623 dated 24 June 2020

Decision Notice date:

13 November 2020

Site address:

Chalet des Arbres, Le Mont Gras d'Eau, St Brelade JE3 8ED

Development proposed:

"Construct 4 no. 2 bed residential units with integrated subterranean parking and roof terrace."

Inspector's site visit date:

12 April 2021

Hearing date:

16 April 2021

Introduction

1. This is an appeal against the decision of the Infrastructure, Housing and Environment Department to refuse planning permission for the development described above.
2. The decision notice records that permission was refused for the following reasons:

1. The proposed development, by reason of its design and height, would be unduly prominent, out of character with the area, and would obstruct a view of the wooded escarpment which provides an important landscape backdrop to St. Brelade Bay. Accordingly, the proposed development is contrary to policies BE3, GD1, GD5 and GD7 of the Adopted Island Plan 2011 (Revised 2014).

2. The proposal would intensify the use of the site to the extent that the scale and mass of the proposal is considered to be overdevelopment, out of character with the area and which would have a detrimental impact on adjacent uses by reason of overbearing impact and shadowing. Accordingly, the proposed development is contrary to policies GD1, GD3 and GD7 of the Adopted Island Plan 2011 (Revised 2014).

3. The proposed scheme is considered to deliver a scale of development within an elevated site which would cause unreasonable harm to neighbouring land users to the south (Homewood) and east (Hope Cottage) by reason of overlooking and a resultant loss of privacy to the occupiers of these properties. Accordingly the proposal fails to satisfy policy GD1, GD3 and GD7 of the Adopted Island Plan 2011 (Revised 2014).

Island Plan Policies

3. The site is in the Built-up Area, where Policy SP1 states that development will be concentrated. Policy H6 indicates that new dwellings will be permitted in the Built-up Area if they comply with housing standards.

4. Policy GD3 states that the Minister "will require that the highest reasonable density is achieved for all developments, commensurate with good design, adequate amenity space and parking ... and without unreasonable impact on adjoining properties." Paragraph 1.8 (Page 40) states:

"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".

5. The site is also in the Green Backdrop Zone. 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".

The reasoned justification for Policy BE3 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 ..." (paragraph 4.93)

"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 ... is required. New development in the Green Backdrop Zone will also likely need to be considered within the context of its potential impact upon views, in accord with Policy GD5 ..." (paragraph 4.95).

6. 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 and historic environment" (criterion 2) and "not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents" (criterion 3) and should be "of a high quality of design ... such that it maintains and enhances the character and appearance of the Island" (criterion 6).
7. Policy GD5 states: "Proposed development that has a seriously detrimental impact, by virtue of its siting, scale, profile or design, in terms of its affect upon or obscuring of the skyline, strategic views, important vistas, and the setting of landmark and Listed buildings and places will not be permitted."
8. 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".
9. 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 ..."
and 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; ..."

The site and its surroundings, planning history and proposed development

10. The site is on the northern side of Le Mont Gras d'Eau, which is a narrow road with a 15mph speed limit. The Parish Roads Committee have no objections to

the development, provided visibility splay requirements are met. A financial contribution towards improvements at the junction of the road with La Route des Genets has already been secured in connection with another development and work has been carried out there.

11. The site slopes steeply from north to south. It is bordered to the west by The Atrium, which is a modern five-storey apartment block with south-facing terracing. Beyond The Atrium is the French-chateau styled five-storey apartment building known as Chateau des Roches. Hope Cottage is a house on higher ground to the east of the site, which is separated from the site by the Cottage's spacious sloping side-garden area. Homewood is a substantial residence on the south side of Le Mont Gras d'Eau opposite the site, with its forecourt next to the road and private garden at the rear. The main part of Homewood is a Listed Building Grade 4 but no concerns have been raised by the Department about the effect of the development on its setting. The most significant landscape feature in the locality is the extensive area of woodland on the steeply-rising ground immediately to the north of the site, which forms part of the green backdrop to St Brelade's Bay.
12. The site is now vacant land, nearly all of the previous development and vegetation on the site having been cleared pursuant to planning permission P/2016/1864 ("Demolish existing and construct 1 No. five bedroom dwelling with incorporated two bedroom apartment and swimming pool"). The Department have confirmed that this development has been lawfully commenced and that the permission is extant. It includes the excavation of the site and the construction of a five-storey building with six parking spaces and gardens and terraces facing the road to the south. The permission constitutes a fallback position that is likely to occur if this appeal fails and an acceptable alternative proposal is not put forward.
13. This permission was followed by application P/2018/1638 ("Demolish existing dwelling and cottage. Construct 4 No. two bed residential units with associated parking and amenity space"), which was refused for similar reasons to those set out in paragraph 2 above. An appeal against this decision did not progress to determination because it was found to be procedurally invalid.
14. The main differences between the development now proposed and the one approved in P/2016/1864 are as follows: four two-bedroom units instead of one five-bedroom dwelling incorporating a two-bedroom apartment; a new design, with changes to volume, scale and massing and terracing, and including the extensive use of timber externally at top-floor level; revisions to the landscaping; and changes to the arrangements for vehicular access.

The case for the appellants

15. The appellants make the following main points: -
 - (i) The development addresses strategic and specific Island Plan policies to deliver increased residential density. There is a need to provide more housing across a range of market sectors, including the higher-value sector.
 - (ii) The character of the development in the area is very varied. Large buildings are not uncommon and the recent trend is for replacement buildings to be designed to reflect modern architectural styles. Typically, modern designs are angular with larger glazed openings and high void-to-solid ratios.

(iii) The development would have an innovative and exceptionally high quality design, which would respect and enhance the mix of local building character. The building would consist of two distinct parts - a solid terraced element and a lightweight timber structure consisting of two pitched-roof elements on top of the terraces. The previous approval was for a larger-scale development. In the proposed development there would be a relatively small increase in the overall height of the building but it would only be at the apex of the pitched-roof part.

(iv) The aim has been to root the new building deeply into its landscape so as to minimise its impact and respect its setting. The design approach includes a palette of materials and colours which respect and complement its character. Measures have been incorporated to enhance the landscape. There would be a series of planted staggered terraces, transitional terraces and a wild meadow roof garden. No incursion into the woodland would take place.

(v) The detailed design and landscaping would protect the privacy of The Atrium to the west and Hope Cottage to the east. Any loss of sunlight and daylight would be acceptable. Views of the front of Homewood are already available from the road and views of the private areas at the rear of Homewood would not be available from the development. There would be no unreasonable harm to the amenities of neighbours, given that the site is in the Built-up Area where higher-density residential development is encouraged.

The case for the Infrastructure, Housing and Environment Department

16. The Department acknowledge that redevelopment of the site is acceptable and that in principle the proposed development would accord with Policies SP1 and H6. Their concerns relate to the design and scale of the development and its impact on the area and neighbouring properties. In their view, the development would not achieve an acceptable balance between increasing density and respecting context, for the reasons set out in the decision notice (see paragraph 2 above).

17. The Department make the following specific observations: -

(i) It is not accepted that the building would be smaller than the one that was previously approved: it would in fact be taller and each of the floors would be larger. It would be more imposing and assertive in its appearance and it would be an imposing feature in the street scene and the area with no real allowance being made for its verdant setting. In contrast, the approved development would have had a more cohesive appearance, with upper floors that were smaller in area and mass and further from the road.

(ii) Two distinct design approaches have been adopted to the building - the terraced element and the timber structures on top of the terraces. The appellants refer to the top floor being designed to replicate traditional Jersey buildings with two pitched-roof elements set at 90°. The Department agree that buildings of this nature are to be found in Jersey, but indicate that they are normally at ground level, in granite or perhaps render, not as proposed in scorched timber on top of a residential apartment block, with faux chimneys and with external timber shutters that when shut would give this part of the building a solid uncompromising appearance.

(iii) The building would make full use of the site and there would be little space remaining for landscaping. Only one tree would be planted; the landscaping scheme would rely on planters, some of which would obscure views of the sea from the units and are therefore unlikely to be welcomed or retained.

(iv) The development's height, proximity and reliance on terraces and windows on several floors lead to the amenity concerns for neighbours that are set out in the decision notice.

Representations made by others

18. Objections to the development were received at the application stage from the St Brélade Bay Association and five others. The objections relate to the following matters: design, scale and mass, particularly at the top-floor level; landscaping; effect on the Green Backdrop Zone; privacy; noise; traffic.

Inspector's assessments and conclusions

The effect of the development on the character and appearance of its surroundings

19. The development would not comply with criteria 1 and 3 in Policy BE3 (Green Backdrop Zone) for two reasons. Firstly, it would be higher than the approved development and higher than The Atrium, and the highest parts would be "visually prominent ... in the landscape setting" because they would be obvious when viewed against the woodland rising above the site. Secondly, for the reasons given by the Department (see paragraph 17(iii) above), the development would not contain "satisfactory proposals for new planting which serve to maintain and strengthen the landscape setting and character of the area". Policy BE3 indicates that development will not be permitted where there is a failure to comply with these criteria.
20. The parties' opinions about the design of the building are in stark contrast (see paragraphs 15(iii) and 17(ii) above). Innovative designs are encouraged by the Island Plan in the appropriate context, and professional opinions can often vary when an unusual design is put forward for consideration. For my part, I consider that the Department's assessment should carry significant weight in this instance. It seems to me that the timber structures would look so out of keeping with the remainder of the building and with their setting that the building would not achieve the quality of design called for by Policies SP7 and GD7.

The effect of the development on the amenities of neighbouring properties

21. No objections have been made as regards the effect of the development on the amenities of The Atrium. The appellants have given detailed consideration to this matter and I have no reason to disagree with their assessment that the effect on The Atrium would be acceptable.
22. The appellants have demonstrated that close-range views of Homewood from the development would be limited to the front of the main residence and its forecourt and that its more private areas would remain unaffected. To a significant extent, these views are available from the roadside and would have been available from the demolished property as well as from the approved development. The development is likely to lead to the site being occupied by

more residents than would be the case with the approved development, but I do not consider that this factor would “unreasonably harm” Homewood’s amenities.

23. The effect of the development on Hope Cottage would be more serious. The changes in the design of the development, when compared to the approved development, and the use of almost the full width of the site for building works have opened up more opportunities for the Cottage’s garden to be viewed from a height and at close quarters, have increased overshadowing of the garden and have taken up space near the boundary that was previously available for more effective landscaping. Taken as a whole, I consider these drawbacks would “unreasonably harm” the amenities of Hope Cottage, contrary to criterion 3 of Policy GD1.

Conclusion

24. As the Department have pointed out, an acceptable balance needs to be achieved between increasing density and respecting context, taking into account the encouragement that is given in principle to residential development proposals for this site by Policies SP1, GD3 and H6. I have weighed these considerations against the drawbacks I have identified above, and in my opinion the balance is firmly against the proposed development.

Inspector’s recommendation

25. I recommend that the appeal is dismissed.

Dated 10 June 2021

D.A.Hainsworth

Inspector