

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:

Jennifer Lawson

Planning permission reference number and date:

P/2020/0515 dated 27 October 2020

Applicants for planning permission:

Bridgewater Homes Ltd

Site address:

Ville à l'Evêque Cottage, La Rue de la Monnaie, Trinity JE3 5DG.

Description of development:

"Demolish existing dwelling. Construct 3 no. four bed dwellings with associated garages, parking and landscaping."

Inspector's site visit date:

9 April 2021

Hearing date:

21 April 2021

Introduction

1. This is a third-party appeal against the grant by the Planning Committee of planning permission P/2020/0515 on 27 October 2020 for the development described above. The application was recommended for approval.
2. The permission was granted subject to the standard conditions relating to the commencement of the development and the carrying out of the development in accordance with the approved details, and to six additional conditions. The additional conditions relate to external materials, landscaping, species protection, vehicular access, withdrawal of permitted development rights and

drainage. The condition relating to drainage requires the submission of design calculations for surface water disposal and storage; the Infrastructure, Housing and Environment Department confirmed on 28 March 2021 that this requirement had been satisfied following the submission and approval of the details required.

Description of the site and its surroundings

3. The site is on the southern side of La Rue de la Monnaie and is in the Built-up Area designated by the Island Plan. This part of the Built-up Area is shown on Map 2.2 on page 19 of the Plan as Trinity Village, a Main Rural Settlement.
4. Ville à l'Évêque Cottage is an unoccupied detached dwelling, which abuts the carriageway at the front of the site, so that its front door opens directly onto the road. The age of the original, single-storey parts of the Cottage is in dispute between the appeal parties. It is evident that, when viewed from the road, much of its original appearance can be recognised. However, during the 20th century the Cottage was extended at the rear by a loft conversion with a flat-roofed box dormer that has six sets of windows and occupies almost the full width and depth of the roof plane, giving the Cottage the appearance of a two-storey dwelling from the rear. The Cottage has an attached garage adjoining its eastern side, which has its door directly onto the road, and other ancillary outbuildings. There is a vehicular access next to the western elevation of the Cottage, which leads to the side and rear of the site and provides some uncovered parking space.
5. The garden area immediately around the Cottage is more or less level with the road. It then falls in a southerly direction towards a stream that issues in the field to the south-west of the site and flows across the site from the south-west to the north-east. Beyond the stream the garden area rises sharply to the site's southerly boundary.
6. The site's surroundings consist of (i) modern housing on the opposite side of the road and to the north-east on the same side as the Cottage, (ii) a large stable with a utilitarian appearance next to the south-western boundary, beyond which are fields that are within the Green Zone defined in the Plan, and (iii) the Springside Industrial Estate next to the southerly boundary. The Island Plan designates the area of the site between the stream and the Estate as part of a Protected Industrial Site, apparently in error. This area has been treated in this appeal and in the previous appeal as being in the residential use of the Cottage.

Background

7. The appeal follows the earlier third-party appeal (P/2019/0165) brought by the appellant against the approval of the applicants' previous proposal to demolish the Cottage and construct new dwellings on the site. The proposed dwellings were two four-bedroom and one five-bedroom dwellings, with garages and landscaping. The development was described by the Inspector as follows: -

"The proposals would require the demolition of the existing cottage and the construction of 3 new two-storey dwellings, situated around a central courtyard to create a layout reminiscent of a traditional farmstead. The vehicle access to La Rue de la Monnaie would be relocated to the centre of the

site. Houses No. 1 and No. 3 would comprise 4-bedroom properties, and would be located to the west and east respectively of the central access. House No. 2 would be a 5-bedroom dwelling situated to the south of the central courtyard area, facing the road. Each dwelling would have an integral garage, off-street parking and external amenity space."

"In addition to the demolition of the existing cottage and ancillary buildings, the proposals would require some levelling and re-grading of ground levels across the site. Levels would be lowered to the north of the site adjacent to the road and increased to the rear of the site."

8. The Inspector recommended that the appeal should succeed and that planning permission should not be granted. The Minister agreed with the Inspector's recommendation, allowed the appeal and refused to grant planning permission for the following reasons: -

"1. The proposed development would result in the demolition of an existing, habitable dwelling and its replacement with three new dwellings. Insufficient evidence has been submitted to satisfy the Minister that the existing dwelling could not be reasonably repaired or refurbished to bring it to an acceptable standard of accommodation. The proposal, therefore, fails to satisfy the requirements of Policy GD1, of the adopted Island Plan 2011 (amended 2014) which states that development proposals will not be permitted unless [inter alia] they will not replace a building that is capable of being repaired or refurbished.

2. The proposed siting of the development, alteration to existing ground levels and creation of straight lines and sharply defined edges in the landscape would result in a conspicuous artificial feature that would not serve to respect, conserve or contribute positively to the diversity and distinctiveness of the landscape. The proposal, therefore, fails to satisfy the requirements of Policy GD7, of the adopted Island Plan 2011 (amended 2014).

3. The proposed development and, in particular, the proposed groundworks would not serve to preserve or enhance the setting of the listed Le Mare d'Angot Bakehouse when experienced within the context of the wider landscape. The proposal, therefore, fails to satisfy the requirements of Policy HE1, of the adopted Island Plan 2011 (amended 2014)."

The development now proposed

9. The Cottage and its outbuildings would be demolished as before. A structural engineer's report relating to the condition of the Cottage has been submitted along with a quantity surveyor's appraisal of the cost of its refurbishment and retention as a dwelling.
10. The dwellings now proposed would consist of three houses arranged in the form of a farmstead with a courtyard. The largest house would be a five-bay, two-storey dwelling designed to look like a main farmhouse with a dower annex. There would be two smaller two-storey dwellings in an L-shaped block designed to resemble a barn conversion. A new vehicular access from the road would lead into the courtyard. Garaging with access only from within the courtyard would be provided in a building in a similar position to the Cottage, which has been designed to replicate its character. Small sheds for bins and garden storage would be provided. The external building materials would

include a mix of random coursed granite, painted render and quoins, natural slate roofs, clay chimney pots, painted hardwood windows and doors, granite cills and lintels, lead-clad dormer windows and 'conservation' rooflights.

11. A landscaping plan has been approved. At the rear of the development, there would be narrow patio areas next to the houses and grassed areas sloping down to the stream. The area beyond the stream would remain as it is.

Island Plan Policies

12. The principal Island Plan policies relevant to the appeal are as follows: -

Policy SP1 "Spatial strategy"

"Development will be concentrated within the Island's Built-up Area, as defined on the Proposals Map, and, in particular, within the Town of St Helier. ..."

Page 19 of the Plan describes the Spatial Strategy as it applies to the Built-up Area outside St Helier as follows: -

"The remainder of the Island's Built-up Area outside of St Helier, as defined on the Proposals Map, has an important contribution to make to meet Jersey's development needs whilst also sustaining the social fabric of local communities and, in particular, parochial identity and vitality. Whilst less capable of accommodating the same volume of development as the Town of St Helier, the other Built-up Areas of the Island have a contribution to make in meeting housing needs, in particular, and in providing different types of accommodation and development that might not be capable of being provided on more densely developed town sites. The capacity of other Built-up Areas to accommodate new development will generally decrease down the settlement hierarchy.

The Built-up areas outside the main Built-up Area comprise various urban, suburban and isolated rural settlements. They differ widely in their age and architectural style, in individual character and general density of development. This variation greatly contributes to making the Island a unique place and is a quality which has to be conserved for the future. The Minister will review the Island's Built-up areas, as defined on the Proposals Map, for individual areas within it which are particularly sensitive locations in consultation with stakeholders, to determine their individual character."

Policy SP2 "Efficient use of resources"

"Development should make the most efficient and effective use of land, energy, water resources and buildings to help deliver a more sustainable form and pattern of sustainable development and to respond to climate change. In particular; ...

4. new development should secure the highest viable resource efficiency, in terms of the re-use of existing land and buildings; the density of development; the conservation of water resources and energy efficiency."

Paragraph 2.15 on page 23 of the Plan states: -

“A more sustainable approach to the development and redevelopment of land requires the application and delivery of higher densities and, in particular, greater housing yields than have generally been achieved in Jersey. If done well, imaginative design and layout of new development can produce a higher density of development - representing a more efficient use of land - without compromising the quality of the local environment. The density of existing development should not dictate that of new development by stifling change or requiring replication of existing style or form. In locations with good access to amenities and services, it should be possible to increase the density of development to ensure a more efficient use of land, without compromising local character or design quality.”

Paragraph 6.82 on page 236 of the Plan adds: -

“It is important to recognise, however, that unless higher more land-efficient densities are generally realised on all development sites, in accord with Efficient Use of Resources, it will not be possible to meet all the identified needs for housing without zoning additional housing sites: this would inevitably result in the further loss of greenfield land.”

Policy SP4 “Protecting the natural and historic environment”

“A high priority will be given to the protection of the Island’s natural and historic environment. The protection of the countryside and coastal character types; Jersey’s biodiversity; and the Island’s heritage assets – its archaeology, historic buildings, structures and places – which contribute to and define its unique character and identity will be key material considerations in the determination of planning applications. The enhancement of biodiversity will also be encouraged.”

The preamble to Policy SP4 comments on Jersey’s historic buildings in paragraph 2.31 on page 27, as follows: -

“Their presence adds to the quality of our lives, by enhancing the familiar and cherished local scene and sustaining the sense of local distinctiveness which is so important to the character and appearance of our Island.”

The preamble to Policy SP4 continues in paragraph 2.33 on page 28 of the Plan, as follows: -

“There should be a general presumption in favour of the preservation of the character and integrity of protected areas, buildings and sites, except where a convincing case can be made for alteration or demolition. While the protection of a building or site should not be seen as a bar to all future change, the starting point for the exercise of control is the requirement to have regard to the desirability of preserving the building, its site or its setting or any features of particular architectural, archaeological or historic interest which it possesses. This reflects the great importance to society of protecting the historic built environment from unnecessary demolition and from unsuitable and insensitive alteration and should be the prime consideration for all those considering works to protected buildings and sites.”

Policy SP7 "Better by design"

"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.

The various components of development, including:

- layout and form;
- elevational treatment and appearance
- density and mix
- scale: height and massing
- external elements, and landscaping; and
- architectural detail and materials

will be assessed to ensure that the development proposed makes a positive contribution to the following urban design objectives:

- local character and sense of place
- continuity and enclosure
- quality of the public realm
- ease of movement and permeability
- legibility
- adaptability
- diversity
- safety by design

Applications must, where appropriate, be accompanied by a Design Statement to demonstrate and explain how the principles of good design have been incorporated into the development proposal."

Paragraph 2.50 on page 32 of the Plan adds:

" ... The emphasis must be on quality and encouragement will be given to traditionally designed schemes or modern interpretations of traditional forms, provided that they are of the highest standard, where they respect their context and where they can demonstrate their local relevance to Jersey. The use of either traditional or more innovative forms of modern architecture of the highest quality will be encouraged in locations where the setting and context are appropriate, and where areas of particular quality or local character will not be damaged but may be enhanced."

Policy GD1 "General development considerations"

"Development proposals will not be permitted unless the following criteria are met such that the proposed development;

1. contributes towards a more sustainable form and pattern of development ... and in particular it;
 - a. will not replace a building that is capable of being repaired or refurbished; ...
 - d. is adequately serviced and includes the provision of satisfactory mains drainage (Policy LWM 2 'Foul sewerage facilities') and other service infrastructure. ...

2. does not seriously harm the Island's natural and historic environment, in accord with Policy SP 4 'Protecting the natural and historic environment', and in particular;
 - a. will not have an unreasonable impact on the character of the ... countryside ... or heritage assets (Policy HE 1 'Protecting Listed buildings and places') and includes where appropriate measures for the enhancement of such features and the landscaping of the site;
 - b. will not have an unreasonable impact on important open space; natural or built features, ...
 - 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.
3. does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, in particular;
 - a. not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy;
 - b. not unreasonably affect the level of light to buildings and land that owners and occupiers might expect to enjoy;
 - c. not adversely affect the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions; ...
6. is of a high quality of design, in accord with Policy SP 7 'Better by design' and Policy GD 7 'Design quality', such that it maintains and enhances the character and appearance of the Island ..."

Policy GD3 "Density of development"

"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 SP2 Policy SP 2 [*sic*] '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. ..."

Paragraph 1.8 on page 40 of the Plan 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."

Policy GD7 "Design quality"

"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, in accord with the principles of good urban design, as set out in policy SP7 'Better by design.'

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; ..."

Policy HE1 "Protecting Listed buildings and places"

"There will be a presumption in favour of the preservation of the architectural and historic character and integrity of Listed buildings and places, and their settings. Proposals which do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved."

Policy H6 "Housing development within the Built-up Area"

"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 by the Minister for Planning and Environment through supplementary planning guidance. ..."

Policy WM1 "Waste minimisation and new development"

"In considering proposals for new development and in accordance with the principles of sustainable development, 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."

The case for the appellant

13. The appellant makes the following principal points: -

Ville à l'Evêque Cottage is a traditional vernacular rural cottage and is part of Jersey's unique character and identity. Although not a listed building, it has a proven historical, cultural and environmental significance to the area in which it is located and to the character of the area. It occupies a prominent location in a sensitive landscape where the Built-up Area adjoins the Green Zone. Policy SP4 indicates that the protection of the Cottage should be a "high priority" and a "key" material consideration in the appeal, which should be balanced with other relevant planning policies when the appeal is determined.

The Cottage was occupied as a dwelling until 2019. It is structurally sound and is reasonably capable of repair or refurbishment. The applicants have listed

repair and refurbishment works that are not necessary. All development proposals should also take into account the viability of incorporating existing buildings into the proposed development. This is particularly relevant in the case of the Cottage, where the existing building is a heritage asset and it would be reasonably possible to preserve its integrity by, for example, remodelling it and extending it. The *Therin* case did not involve a heritage asset, or Policy SP4, and the "light presumption" against demolition referred to by the Royal Court in that case is therefore not applicable in this appeal.

Although the new design no longer includes the infilling of the garden areas to the north of the stream, the visual effect of its scale and siting would be little changed from what the previous Inspector criticised in her Report. For example, there would be increases in ridge heights and site levels, changes affecting lines of sight within the valley, and other alterations that would unreasonably affect the residents of the adjoining bungalow, Rougemont.

The locality already experiences flooding from the stream. The additional surface-water run-off from the site as a consequence of the development is likely to place neighbouring properties at increased risk from flooding. This matter needs to be adequately addressed.

Insufficient attention has been given to the Plan's objectives to minimise the waste generated as part of construction activity and to make the best use of the waste that is produced in accordance with the principles of sustainable waste management.

The case for the applicants

14. The applicants' case, summarised, is that the proposed development will comply with all relevant policies in the Island Plan and has been sensitively designed to provide a development of much-needed residential accommodation that will enhance the character of the area and improve road safety. It addresses the issues raised in the previous Inspector's report and the Minister's decision and it will make the best use of land that is in the Built-up Area without harming landscape character.
15. The applicants make the following principal points in support:

The need for new housing has become more urgent in view of assessments undertaken to inform the Island Plan Review.

The Plan's policies should be looked at as a whole and an overall balancing of the different policies should be made. When this is done, the "light presumption" against demolition is more than outweighed in the planning balance and the proposed development can be supported in the wider context of the Plan as a whole.

The policies relating to heritage protection will be complied with. There is no heritage reason to resist the demolition of the Cottage. It probably dates from the third quarter of the 19th century and it is not of a quality that would be listed. It has been significantly modified and fails modern building standards. The tests in Policy SP4 have been addressed satisfactorily; the policy does not require all granite buildings to be kept and any assessment under the policy should take into account the industrial estate and the 20th-century residential development that has evolved around the site.

The tests in Policy GD1.1.a have been addressed satisfactorily. The potential for the reuse of the Cottage has been considered as part of the design process, as has the viability of refurbishment and extension. The defects in the Cottage mean that it cannot be cost-effectively updated to present-day residential standards. The engineer's report confirms that the best course of action is demolition and new build. The quantity surveyor's report shows that the redevelopment of the site to provide three new dwellings will be a financially viable scheme with a reasonable return, whereas the refurbishment and resale of the Cottage will not be financially viable based on site costs and potential revenue. The three-house scheme is the only viable option.

The Department's policy is that unless visibility splays can be provided in accordance with their published standards no increase in housing density can be permitted. The existing access on the western side of the Cottage has a very poor standard of visibility and the visibility splays that could be achieved by constructing a new access in the garden area to the east of the Cottage would be well below the Department's standards. For the site to be developed for anything other than the modest extension and refurbishment of the Cottage, a new access would have to be created in a position that would require the removal of about 70% of the Cottage. The demolition of the Cottage is therefore the only way to realise the housing potential of the site.

The layout and design of the development respect the setting and the local vernacular. Other proposals for development in this Built-up Area have been approved in a similar context. The site is in an area with a mixed character that includes 20th-century buildings to the north and east and an industrial estate to the south that dominates the landscape. The "artificial feature" referred to in the previous Inspector's report related to the terraced gardens, which have been removed from the current scheme, with the ground level of the gardens remaining as existing. There would no longer be artificial hard lines in the landscape. The patio areas would be much smaller and be lower in the landscape. The natural character of the valley would be preserved and garden areas would be increased. A comprehensive landscaping scheme has been prepared to provide for the enhancement and protection of the natural landscape character, including the site's boundaries and the valley's setting.

The revised scheme would allow views into the courtyard to be opened up when approaching the site from the west. Ridge heights would be lower. Houses 1 and 2 would be set further back from the road. The western gable of House 1 is intended to be a visual feature of the design, with traditional detailing; its location would be behind the stable on the adjoining land, which would reduce its prominence when viewed from La Rue de la Fontaine.

The development's impact upon Rougemont has been taken into account. The buildings would not have an overbearing impact; they would be 6m further away from the eastern boundary than the refused proposals, which the previous Inspector found to be acceptable. All the windows facing east would have obscure glazing and be fitted with restrictors, although they would not in fact overlook the private gardens of Rougemont since they would face its garage and parking areas that are next to the road. The occupiers of Rougemont would not experience a loss of privacy or sunlight and daylight. There would be no "unreasonable harm" to their amenities and the policy test would therefore be complied with.

A Waste Management Plan has been submitted. It shows that the majority of materials generated by the development would be recycled and reused. Construction waste would be minimised and all granite would be reused on site.

The case for the Infrastructure, Housing and Environment Department

16. The Department draw attention in particular to the provisions of Policies SP1, SP2, GD3 and H6 and the supporting paragraphs (as set out in paragraphs 3 and 12 of this report). They state that there is in principle a presumption in favour of residential development here; that this is a large site accommodating only one dwelling at present; and that there is an opportunity here to make more efficient use of the site in accordance with the Plan and at the same time to create a much-improved access on to the road, which is part of the Primary Route Network. They point out that the existing visibility splays are poor and that the improvement in visibility and road safety could not be achieved without the removal of the Cottage.
17. The Department acknowledge that in accordance with Policies GD1, GD3, GD7 and H6 other factors must also be considered, including the quality of the accommodation, good design, parking provision, amenity space, landscaping and the impact on adjoining properties and the area. They maintain that these issues have been satisfactorily addressed. They draw attention to the following specific points: -

The character of the development in the area is mixed with an industrial estate to the south and residential buildings to the north and north-east most of which date from the 20th century and are one or two storeys in height.

The character of the proposed development would evoke traditional rural building groups, would not be out of keeping with the rural setting and would be in keeping with the built development in the area. The design approach accords with paragraph 2.50 on page 32 of the Plan (see page 6 of this report).

The development would make more efficient use of the site, deliver the highest reasonable density commensurate with good design and respect its context. It would provide adequate amenity space and parking space, improve highway safety and would not have an unreasonable impact on the amenities of neighbours.

The development would satisfactorily address each of the reasons given by the Minister for refusing the previous scheme P/2019/0165 (see paragraph 8 of this report). That appeal was not dismissed because of the loss of a building of historic value or on the basis of Policy SP4. The Cottage is not a Listed Building and has been found not to fulfil the Listing Criteria; it is not a "protected" building within the meaning of paragraph 2.33 on page 28 of the Plan (see text on page 5 of this report).

Even if a building is capable of repair and refurbishment its demolition may be necessary to make the more efficient use of land. The benefits may outweigh the light presumption against its loss. The additional information now submitted demonstrates that the Cottage is not capable of sensible repair or refurbishment, and its demolition is therefore justified. Only the four external granite walls could be retained.

The Department's Historic Environment Team have commented on the Minister's third reason for refusal, as follows: -

"... I have been party to pre application discussions to revise the proposals to better manage visual impacts in the rural setting and the wider setting of the bake house.

The proposals accord with those discussions, seeking a more vernacular form with the direct presentation of the southern elevations as a farm group. It is accepted that the buildings are higher and closer than the existing cottage on site, but the scale of these buildings is more reminiscent of the rural farm groups typical in Jersey. The setting of the Bakehouse has been changed by the proposals. However, the impact has been mitigated by the management of the height and scale of the southern range of proposed buildings, adding further landscaping and echoing a vernacular built form. This mitigation overcomes the impact on setting given by the closer and higher development. Proposed landscaping to the south within the application site and control of the boundary treatments will help ensure the subsequent development sits into its rural open contexts from the south and west appropriately.

Policy SP4 and Policy HE1 of the 2011 Jersey Island Plan, which seek to preserve the special historic and architectural interest of Listed Buildings and Places has been used to guide this assessment. ..."

18. Other sections of the Department commented at the application stage. There were no objections to the applicants' Demolition Waste Management Plan. The proposals for foul drainage were acceptable. Surface water drainage required more detailed consideration (this has now been dealt with - see paragraph 2 of this report). There were no highways objections, since on-site turning facilities would be provided and the proposed visibility splays were acceptable. The applicants' Initial Ecological Assessment Report was sufficient and no further survey was required at this stage.

Other representations

19. Trinity Parish Council support the appellant's planning policy arguments. They maintain that the size and scale of the development would harm the character of the area, the built environment and the open vista down the valley towards Trinity Church. They draw attention to the strength of public feeling against the loss of the Cottage.
20. Jersey Heritage have been consulted again. Their Supplementary Report reviews further evidence submitted about the Cottage, and states: -

"... it remains our view that the cottage falls short of satisfying the listing criteria as set out in that report. We do not disagree that the cottage is of some historical interest as an example of a single-storey rural property of 18th century origins, but the extent of alteration to the historic fabric of the cottage is damaging and extensive. ...

Jersey Heritage maintains its position that the overall loss of authenticity and integrity is such that it cannot recommend Ville a l'Eveque Cottage for listing under any criteria. It is however recognised that there is a strong local community desire to see the building protected, with a detailed case for its

wider historic interest set out by Mr Benest, and if the minister was so minded to pursue a listing then it should only be considered under historic interest. ...”

21. National Trust Jersey do not support the proposed development. They comment as follows: -

“This is an application to demolish a traditional granite cottage and construct 3 no. 4 bed dwellings with garaging, parking, and landscaping.

The Trust supports the view that physical survivals of our past are to be valued and protected for their own sake as a central part of our cultural heritage and our sense of Island identity. Their presence adds to the quality of our lives by enhancing the familiar and cherished local scene and sustaining the sense of local distinctiveness, which is such an important aspect of the character and appearance of our Island. The historic environment of the Island is a finite resource and an irreplaceable asset. Once the history of the Island and the differences of our culture.

The Trust is aware that Ville a `Leveque is an old and traditional area that is becoming scarce in the Island. The demolition of this cottage will deprive this area of its character. Policy HE1 of the Island Plan seeks to protect, maintain, enhance, and promote the historic environment. In view of the Island Plan the Trust regrets it cannot support this application.”

[Note: Policy HE1 seeks to preserve and enhance the special and particular interests of Listed buildings and places and their settings. It does not apply to the Cottage as it is not a Listed building.]

22. There has been widespread public opposition to the proposed development. The application attracted 22 separate objections from 20 households and a petition against it signed by 39 residents in the locality. A further petition against the development, signed by people from Trinity and several other parishes and understood to contain 339 additional signatures, has been presented at the appeal stage. The opponents raise the same concerns as those set out in paragraph 13 of this report. They also maintain that the Cottage creates a pinch point in the road which has a traffic-calming effect and that the standard of highway visibility at the Cottage is not a good reason for its demolition, since it could be improved.

Inspector's assessments and conclusions

Introduction

23. I have considered this proposed development afresh on its own planning merits.
24. I have considered how the differences between the present proposals and the previous proposals have addressed the Minister's reasons for refusing planning permission in appeal P/2019/0165 (see paragraph 8 of this report).
25. I have taken into account all the planning objections made by members of the public. The magnitude of public opposition to the proposed development is not in itself a material planning consideration.

26. There are important distinctions between the present appeal and the previous appeal. Firstly, submissions about the protection of the Cottage based specifically on Policy SP4 did not feature in the previous Inspector's report or in the Minister's decision. Secondly, further evidence has been submitted in relation to Policy GD1.1.a in response to the Minister's first reason for refusing planning permission. I begin therefore by assessing these two considerations, before moving on to the other main matters arising in the appeal.

Policy SP4

27. In the previous appeal, and to an extent in this appeal, there has been a tendency for issues relating to the protection of the Cottage to have become conflated with representations about whether or not the Cottage meets any of the Listing Criteria for Listed Buildings. Policy SP4 does not distinguish between buildings that are listed, or meet the criteria for listing, and other buildings that are also heritage assets.
28. The term "heritage asset" is not defined in the Plan, but it is normally taken to include a building that has been identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest. Jersey Heritage state that "the cottage is of some historical interest as an example of a single-storey rural property of 18th century origins". It is therefore reasonable to conclude that it is a heritage asset to which Policy SP4 applies, particularly since the purpose of the policy is to give a high priority to the protection of the Island's historic environment. This means that, in accordance with the policy, the protection of the Cottage is a key material consideration in this appeal, although the level of protection will be less than that afforded to Listed Buildings by Policy HE1.

Policy GD1.1.a

29. Policy GD1.1.a applies to all buildings and therefore to the Cottage. It does not exist to protect buildings from demolition, although that may be an outcome of its application in practice. It ensures that permission will be withheld for development which will replace buildings that are capable of being repaired or refurbished, the objective being that proposed development should contribute towards a more sustainable form and pattern of development, in accordance with Policies SP1, SP2 and SP3.
30. The interpretation of the *Therin* judgment relating to Policy GD1.1.a is ultimately a matter for the Royal Court, but in my opinion the Court did not set out three 'tests', as has been stated in this appeal. The so-called 'tests' were three questions that the Court indicated the Minister would have to consider in relation to the new development in question (see paragraph 93 of the judgment). These were questions relating specifically to that development. They were not, in my opinion, questions to be answered in all cases.
31. In my view, *Therin* should be applied as I advised in paragraphs 51 and 52 of my report in appeal P/2019/1076:

"51. The Royal Court considered this policy [GD1.1.a] 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.

52. 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.”

32. The Minister was not satisfied in the previous appeal that sufficient evidence had been submitted to show that the Cottage could not be reasonably repaired or refurbished to bring it to an acceptable standard. I have examined the evidence that has now been provided and have concluded that it is not sufficiently robust to demonstrate compliance with Policy GD1.1.a, for the following reasons: -

- (i) The Cottage does not suffer from major structural defects, although it will require extensive refurbishment before its use as a dwelling can be resumed. The evidence does not demonstrate that it is not capable of being refurbished to an acceptable standard.
- (ii) The cost appraisal for the refurbishment of the Cottage is heavily affected by the offset of a large amount for what is described as “Land Purchase Costs” or “Land Value”. The basis for an offset of this size, where the starting point in Policy GD1.1.a is that the Cottage cannot be replaced because it is capable of being refurbished, has not been adequately explained. The amount of the offset is crucial to the appraisal's conclusion because the latest appraisal (29 January 2021) indicates that the costs of refurbishment will be just over half the sales value of the Cottage after the refurbishment and, since the amount offset is greater than the difference between the refurbishment costs and the sales value, it leads to a conclusion that there will be a shortfall.

33. Accordingly, the ‘light presumption against demolition’ described in *Therin* applies. The policies in the Plan therefore need to be balanced and a judgment call made as to where that balance comes down in this appeal.

Housing policies

34. There is a recognised need for more dwellings and the proposed development would make a net contribution of two additional houses. The standard of accommodation provided would exceed the minimum standards for housing.
35. The site is in the Built-up Area where there is in principle a presumption in favour of granting permission for residential development. The policies encourage residential development here at a higher density than the existing density if that can be achieved without compromising design quality or local character.

Design quality and impact on local character

36. In the previous appeal, the farmyard-style design and layout of the houses was found to be acceptable. The present proposals would continue that theme and improve upon it by making the layout more open when viewed from the west and by incorporating a garage block that would replicate the Cottage and make the development less open to view from the road.
37. The site is in a sensitive location because it is where the Built-up Area meets the Green Zone and is open to view over the shallow valley to the west. The design quality of the previous proposals failed because of the works proposed at the rear of the houses (see reasons 2 and 3 of the Minister's decision at paragraph 8 of this report). These issues have now been addressed by removing the works from the proposals and designing a rear garden area that would preserve existing levels and be well-landscaped. The development would still have some impact on views from the west, but I do not consider that the quality of the landscape setting or the setting of the Bakehouse would any longer be affected to an extent that would justify withholding planning permission for these reasons.
38. The principal concern is the impact on local character that will occur because of the loss of the Cottage. The extensive and damaging alterations to the Cottage that Jersey Heritage refer to are at the rear of the Cottage. Seen from the road, the Cottage has the appearance of a single-storey rural property with most of its historic fabric intact. This is the aspect that people notice and the one that makes the contribution to local character which is valued by the appellant and the members of the public who have objected to the demolition of the Cottage. In my opinion, significant weight should be attached to this contribution.

Neighbours' amenities

39. The only neighbour whose amenities could be significantly affected by the proposed development is the occupier of Rougemont. I have carefully considered the objections she has made about the impact on her amenities, but in my opinion they would be adequately protected, for the reasons given by the applicants and set out on page 10 of this report.

Highways considerations

40. The standard of visibility for drivers emerging from the site is poor, although no evidence has been provided that it has led to road safety incidents. A new and improved access could be provided within the site without affecting the

Cottage itself, but it would still fail to meet the Department's visibility standards. As matters stand, an access that met those standards and did not involve the demolition of the Cottage could only be provided with the co-operation of an adjoining landowner. The demolition of the Cottage would enable an access to be provided within the site which met those standards without involving any other owner.

41. In the circumstances I have described, I do not consider that substantial weight should be attached to this matter as an argument in favour of granting planning permission for the proposed development.

The balancing exercise

42. The proposed development would be a well-designed scheme providing quality housing in the Built-up Area for which there is a need. It would not have an unacceptable impact on the landscape or neighbours' amenities. As a by-product there would be an improvement in highway visibility.
43. The downside is that a building would be demolished in circumstances where (i) there is a "light presumption" against the demolition of that building, (ii) the protection of that building is a key material consideration and (iii) the building makes a significant contribution to local character.
44. The conclusion of the balancing exercise is one for the Minister to reach, but in my planning judgment it is firmly against the proposed development, for the reasons I have set out in my recommendations in paragraph 45 below.

Inspector's recommendations

45. I recommend that the appeal is allowed and that planning permission is refused for development at Ville à l'Evêque Cottage, La Rue de la Monnaie, Trinity JE3 5DG, consisting of the demolition of the Cottage and the construction of three four-bedroom dwellings with associated garages, parking and landscaping (ref. P/2020/0515), for the following reasons:
 1. Insufficient evidence has been submitted to demonstrate that the Cottage is not capable of being refurbished to bring it to an acceptable standard of accommodation.
 2. On balance, the benefits of the development would not outweigh the loss of a building which has historic interest and contributes to local character.
 3. The development would therefore be in conflict with Island Plan Policies GD1 (which states that proposals will not be permitted if they will replace a building that is capable of being repaired or refurbished), SP4 (which indicates that the protection of the Cottage will be a key consideration in the determination of the application) and SP7 (which states that all proposed development must maintain the character of the area in which it is located, with one of its objectives being that proposed development should make a positive contribution to local character).

Dated 7 July 2021

D.A.Hainsworth

Inspector