

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

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

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

**By Mr Philip Staddon BSc, Dip, MBA, MRTPI**

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Appellant: Mr Stewart Bruce

Site address: *La Rive Cottage*, La Vallee de Rozel, St. Martin

Application reference number: P/2020/1435

Proposal: 'Construct first floor extension to North elevation'

Decision notice date: 1 April 2021

Procedure: Written Representations

Inspector's site visit: 12 July 2021

Inspector's report date: 23 August 2021

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#### **Introduction**

1. This report contains my assessment of the planning appeal made by Mr Stewart Bruce against the decision to refuse to grant planning permission for an extension to his home known as *La Rive Cottage* in the parish of St Martin.

#### **Procedural matters**

2. The main parties agreed to the Written Representations procedure in this case.
3. The decision notice issued on 1 April 2021 contained a typographical error in referring to policy 'GD 12', rather than policy GD 1. As it is apparent that the main parties recognised the error and have made their submissions on the basis of the correct policy (GD 1), I am satisfied that no matters of unfairness arise.

#### **The appeal site and the proposal**

4. *La Rive Cottage* is a modest dwellinghouse which sits on the north side of La Valley de Rozel and about a quarter of a mile to the south-west of Rozel village. The appeal site is within the Coastal National Park (CNP).

5. The cottage sits on a sloping plot. It is sited back from the road and behind a wall / hedge and front gardens. The dwelling is set at an elevated level relative to the road and is reached by a stepped path. The dwelling appears to have its origins as a traditional single storey building which has been added to and adapted over the years. It is brick built (now painted white) under a slate covered pitched roof. It has a long and narrow (one room depth) footprint.
6. The existing floor plan indicates that the ground floor accommodates a bathroom / utility room, kitchen / diner, hall and sitting room. There is a large covered veranda and decking area on the front of the property at this level. The first floor is shown to include 1 bedroom with an en-suite bathroom, cupboards, and an attic storage area. The first floor accommodation is lit by rooflights. There is a dormer structure on the rear roof plane, but this was boarded up when I visited.
7. To the rear of the property, there is a short level space behind the rear elevation, before the site begins to slope steeply upwards. This sloping upper part of the plot contains a mixture of trees and shrubs. There are also wooded areas to the east and west of the plot.

### **The appeal proposal and the refusal decision**

8. The application sought permission to add an extension to the rear of the cottage. There would be a small ground floor addition, enclosing the short gap to the rear of the dwelling, to create a wine cellar and cool store. However, the main additional floorspace would be at first floor level, where the extension would project 5 metres rearwards and have a width of 9.7 metres.
9. The extended first floor space would accommodate a study and a bedroom with an en-suite shower room. The bedroom would have glazed doors on the west elevation, opening on to a proposed decked area. The walls of the extension would be in painted brick at the lower level and fibre cement weatherboard at first floor level. The roof would be a shallow pitched zinc covered structure containing 5 rooflights. The ridgeline of the extension roof would be perpendicular to that of the main cottage and just below it in height. When I visited, the area where the works are proposed had been cleared and the footprint of the extension had been marked out.
10. The submitted drawings include the outline of a previously approved but unimplemented, and now expired, permission for a larger extension in a similar position (reference P/2011/0442).
11. The application was refused under officer delegated powers on 21 January 2021. However, a review request was made and the Planning Committee reconsidered the application at its 31 March 2021 meeting. The committee resolved to maintain the refusal decision and the decision notice was issued on 1 April 2021. The refusal reason states:

*"The design of the proposal would, by virtue of its scale and form, result in an incongruous addition to a vernacular building; would result in a significant increase in floor area and building footprint; and would facilitate*

*a significant increase in occupancy within the Coastal National Park. As such, the proposal is contrary to policies GD 1, GD 7 and NE 6 of the Adopted Island Plan 2011 (Revised 2014). In addition, the proposal would result in the creation of a 3 no bedroom dwelling within a rural location and parking provision falls short of the number of spaces outlined in Planning Policy Advice Note 3.”*

## **Summary of cases of the parties**

### *The Appellant*

12. The appellant sets out 7 grounds of appeal and these are:

1. *The reason for refusal fails to recognise that the Island Plan requires a holistic approach to assessment. Householders have the right to request and make reasonable improvements to their homes. The site is located within Coastal National Park, where limited capacity for the extension of dwellings can be supported under policy NE 6, provided there is no harm to the special landscape character. There is sufficient justification to justify a favourable decision in the set of circumstances presented.*
2. *The decision to refuse the scheme under policy GD 1 (it is assumed that there has been a typo and GD 12 refers to GD 1) and GD 7 on the basis of an incongruous design fails to recognise the careful design approach used to deliver development in accordance with the Island Plan as a whole. It is not agreed that there is lack of accord under these policies.*
3. *The decision to refuse the scheme on the basis that an increase in floor area is harmful to landscape character fails to recognise that there are no absolute limits on floor area provided by policies GD 1, GD 7 or NE 6. The key test, provided by Policy NE 6 is whether there is harm to landscape character. The proposal introduces an extension to the rear of the property where it is invisible from public locations. It is not agreed that the increase in footprint is harmful to landscape character.*
4. *The decision to refuse the scheme on the basis that the scheme would result in a significant increase in occupancy cannot be justified. The effects of Covid-19 have resulted in a legitimate need for home studies.*
5. *The Regulation Department's approach to the use of home studies is inconsistent. Parking standards (Planning Policy Note 3) have been recognised as being out of date and have yet to be formally updated (from 1988). It is legitimate to request an assessment having regard to the sustainable transport aims of the Island Plan, which seek to reduce the use of the private car in accord with Policy SP 6 Reducing dependence on the private car and GoJ Sustainable Transport Policy (2020).*
6. *The decision to refuse the scheme fails to recognise that the development proposed meets the strategic Island Plan objective to*

*meet the island's housing needs in accordance with the specific policies of the Island Plan.*

7. *The Regulation Department's decision to refuse planning permission is inconsistent with other decisions to approve development in the Coastal National Park, where replacement dwellings or extensions to existing dwellings have been approved. The Applicant is entitled to consistency in decision-making under the current Island Plan.*

13. The appellant expands on these grounds in his statement of case and a further response. A letter from his employer is submitted in support of the appeal. It confirms his employment role and the company's move to a new 'hybrid' model of working, which entails 3 days in the office and 2 days home working per week, and asks for consideration to be given to his application to provide a more comfortable and functional home working environment.

*The Infrastructure Housing and the Environment (IHE) department's response*

14. The IHE department's case is set out in the initial officer report, the report to the Planning Committee following the review request, a response document to the appeal, and a second response.

15. In essence, whilst accepting that policy NE 6 allows for extensions to an existing dwelling in the CNP, the department submits that the policy's criteria, as well as design policy requirements, must be met.

16. The IHE department contends that the extension is not subservient or designed appropriately, being wholly different to the existing house, extending off the attic / roof level of the building, with a roof span significantly greater than the existing building and, a roof pitch which is significantly lower than the existing building. The design, scale, proportions, roof span and the roof pitch are all different and in conflict with the style and character of the existing building. As a result, the IHE consider that the proposal is out of keeping with the existing building and therefore it fails to satisfy the design requirements of policies NE 6, GD 7 and GD 1.

17. The IHE also contend that the proposal would facilitate a significant increase in occupancy in conflict with policy NE 6, expanding a 1 bedroom property into a potentially 3 bedroom house and that this would increase the habitable area at the sleeping level / first floor by a claimed 192%. It references and includes an Inspector's 2016 report (I was the Inspector on that occasion) which examined similar policy assessments on another appeal proposal<sup>1</sup> (the Windermere case).

18. The IHE department also contends that, under existing parking standards, 3 car parking spaces should be provided for a 3 bedroom dwelling, given the location outside the core part of St. Helier and that only 2 are available.

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<sup>1</sup> Appeal under reference P/2015/1837 – Windermere, La Rue des Platons, Trinity, JE3 5AA

### *Other parties' views*

19. At the application stage, 3 submissions were made by interested parties. These stated no objection in principle, but raised some comments about additional parking. At the appeal stage, 3 further representations were received, each supporting the appellant's case.

### **Inspector's assessment**

#### *Policy context and identifying the main issues*

20. The site is within the designated CNP. Policy NE 6 sets out that the primary purposes of the CNP are, first, the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the CNP and, second, the promotion of opportunities for the understanding and enjoyment of its special qualities by the public. The policy says that the CNP will be given the highest level of protection from development, which will normally be given priority over all other planning considerations.
21. Policy NE 6 sets a strong presumption against new development. However, it is not an absolute moratorium and sets out that certain forms of development may, exceptionally, be acceptable. Exception 1 relates to 'the extension of a dwelling, but this is subject to 5 criteria which, in summary, are that the extension must be (a) subservient in terms of scale and design; (b) designed appropriately; (c) not cumulatively increase the size of the dwelling disproportionately; (d) not facilitate a significant increase in occupancy; and (e) not harm landscape character. The policy wording requires all relevant criteria to be met.
22. Other design related policies SP 7, GD 1(6) and GD 7 are also relevant, as is policy SP 6 concerning reducing dependence on the car.
23. Although the IHE decision notice cites a single reason for refusal, it actually raises 3 distinct, albeit overlapping, planning objections. These are i) design matters ii) occupancy considerations and iii) parking requirements. These are the main issues in this case and I assess them in turn below.

#### *Design*

24. There are starkly different views between the parties in this case, the appellant claiming a 'careful design approach' (grounds 1 and 2) and the IHE department in its refusal and appeal response, considering the proposed extension to be 'incongruent' and 'out of keeping'.
25. Whilst accepting that assessing design inevitably involves some subjectivity, the relevant considerations are well trailed in the Island Plan's design policies. Policy SP 7 sets out the design components of development that include layout and form, elevational treatment and appearance, scale, and architectural detail and materials; it goes on to identify that development should make a positive contribution to listed design objectives, which include local character and sense of place. Similarly, policy GD 7 has a comprehensive list of design considerations including scale, form, relationship to existing buildings, whether it is complementary to local

building styles etc. More specifically, policy NE 6 requires home extensions in the CNP to be subservient to the existing building in terms of 'design and scale' and to be designed appropriately relative to existing buildings and context.

26. The appellant's design statement does not provide any detailed analysis of the existing context, the architectural qualities of the host building or explain its evolution, including permitted extensions and additions over the years. It does not provide an evidenced rationale for the extension design against the policy SP 7 / GD 7 / NE 6 considerations listed above, but appears to rely heavily on the fact that the extension would be smaller than an earlier approved scheme. However, that permission was not implemented and has long since expired and it was granted under a different Island Plan policy regime. I therefore consider that it carries negligible weight in this current appeal, which must be determined on its own individual merits against the planning policies in place today.
27. In my assessment, taking into account the key policy considerations, the design is poor and misplaced. The extension is simply too big, bulky and crude to integrate successfully with the host building which is of simple, restrained and traditional proportions and has already been extended sympathetically. Indeed, I cannot see any meaningful rationale for the adopted external design approach, which jars starkly with the attractive host building. Rather, it seems to have been designed from the inside out, to maximise floorspace. The resultant form would be a rather odd and unwelcome architectural collision.
28. I do recognise that, if permitted and built, the siting and heavy tree cover would mean that it would not be prominent in most public views from La Vallee de Rozel. However, I do not agree with the appellant's view<sup>2</sup> that the screening means that the extension would not be incongruent. In any event, the notion of it being largely 'out of sight out of mind' does not mitigate poor design.
29. I conclude on this issue that the proposed design is poor and fails to meet the required standard for new development. As a result, the proposal conflicts with Island Plan policies SP 7, GD 1 (6), GD 7 and NE 6 (exception 1 – criteria a. and b.), all of which require a high standard of design relative to the existing building and its context.

#### *Occupancy*

30. Under the policy NE 6 exception 1 for limited home extensions in the CNP, criterion d. requires that the proposal must not 'facilitate significant increased occupancy'. It is an important policy requirement which has strong links to the Island Plan's strategy of directing new development to the defined Built-up Area and seeking to limit new 'occupants' in the rural areas comprising the CNP and the Green Zone. This is due to the pressure placed on the fragile environment and infrastructure and the general issues

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<sup>2</sup> Appellant's Statement of case paragraph 9.2

of sustainability, e.g. the inevitable car trip generation and dependence arising from people living remote from day to day services.

31. Policy NE 6 does not define limits for domestic extensions either in terms of floorspace or bedroom numbers and there is no available published guidance to my knowledge.
32. The pre-amble to the policy<sup>3</sup> states that the 'purpose' (of the extension) will be a material consideration and, in this case the purpose is simply to provide a home office and an additional bedroom. However, the policy test is about whether the development would facilitate increased occupancy, which is a somewhat different matter and does require an assessment of what additional rooms may be used for in the future.
33. The appellant contends (ground 4) that the IHE claim of a significant increase in occupation cannot be justified, and the effects of Covid-19 have resulted in a legitimate need for home working. However, IHE officers have drawn attention to previous additions to the property and consider the cumulative expansion needs to be considered and have sought to draw on my findings in the Windermere case in 2016, which I believe is one of the few cases where this issue has been forensically examined.
34. Whilst I do not regard the Windermere case, and its subsequent Ministerial Decision, as setting a precedent, I am bound to adopt a similar assessment approach here. Based on the evidence before me, *La Rive Cottage* was a modest 1 bedroom dwelling. It has benefitted from extensions and alterations to improve its living conditions and facilities, including a living room extension, large timber deck / veranda and a car port.
35. Whilst acknowledging the appellant's intention to use one of the proposed rooms as a home office, and noting some disputed floorspace and percentage increase figures, there can be little doubt that the extended property would be capable of being used as a 3 bedroom family home. That would be a significant increase from the original starting point of a small 1 bedroom dwelling, and from the more recent starting point for this proposal, being an improved and enlarged 1 bedroom home. I consider that the increase to a potential 3 bedroom home would be in conflict with the relevant policy criterion. In reaching that view, it is important not to lose sight of the overarching 'highest level of protection from development' policy regime and that, even the stated policy exceptions, are caveated by 'may be permissible'.
36. On this main issue, I conclude that the proposal could facilitate a significant increase in occupation when compared to the current 1 bedroom house. This would mean that the proposal would be in conflict with policy NE 6 exception 1 criterion d.

#### *Parking*

37. The property has 2 off-street parking spaces under a car port in the south-west (front) corner of the plot. These spaces are accessed directly from La

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<sup>3</sup> Revised Island Plan 2011 (revised 2014) paragraph 2.65

Vallee de Rozel. The application does not include any additional parking spaces.

38. The final part of the IHE refusal reason states that as the proposal would result in the creation of a 3 bedroom dwelling within a rural location, parking provision would fall short of the number of spaces outlined in the Parking Guidelines<sup>4</sup>. The IHE submits that 3 spaces should be provided to comply.
39. Notwithstanding my findings on the design and occupancy issues above, I have a number of reservations about the IHE's application of these Parking Guidelines in this case. The guidelines are 33 years old and have not been updated in the intervening period. Whilst they state that they are not intended to be inflexible or restrictive, they adopt a rather outdated 'predict and provide' minimum standards approach to parking provision. This is at odds with the Island Plan's strategic policy framework, and policy SP 6 in particular, which seeks to reduce dependence on the car and promote sustainability.
40. It also means that technological, societal and other changes that have occurred in the last 3 decades are not factored in to the assessment of what are appropriate levels of parking associated with development proposals. These changes will include the growth in electric bikes and vehicles; increased home and remote working trends; online / digital technologies; online grocery shopping and delivery; and better public transport services. I consider that the guidelines are out of date and should not be used as the basis for modern day decision making, which should focus on policy SP 6 considerations.
41. Whilst noting the IHE submissions that the site is relatively remote and local services are limited, there is no evidence to suggest that the enlarged property (were it to be acceptable) could not function satisfactorily with the existing 2 spaces, or that it would cause highway dangers or congestion. I noted on my visit that the road, whilst not having footways, is very lightly trafficked and it would be possible to walk the relatively short distance to the bus stops, and limited services, in the village.
42. Although it may be little consolation to the appellant, given my findings on the first 2 main issues, I conclude on this issue that there are no parking related objections to the proposal. Indeed, I consider that meeting the outdated parking guidelines in this location would conflict with policy SP 6.

#### *Other matters*

43. I have noted the appellant's submissions concerning 'landscape character' (ground 3). However, that is only one element (criterion e) of the policy under NE 6, all of which must be met. Hence, demonstrating a lack of specific landscape harm from the proposal does not render the proposal automatically acceptable.

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<sup>4</sup> States of Jersey – *Supplementary Planning Guidance Policy Note 3: Parking Guidelines* – September 1988



44. I have noted and considered carefully the appellant's submissions concerning home working and new working practices as a result of the Covid-19 pandemic (ground 5) and also the points made about meeting housing needs (ground 6). However, these considerations do not overcome the policy conflict and planning harm that I have identified. I should also point out that my findings, if endorsed by the Minister, would not preclude a revised application for a smaller, more sensitively designed, addition to accommodate a home office.
45. I have taken into account the appellant's submission (ground 7) that this case has been dealt with differently to other listed cases. However, the appellant has not submitted any detailed evidence to explain this assertion and, from my own review of the applications listed, each seems to involve differentiating factors from the appeal proposal. I must make my assessment on the merits of the proposal before me.

### **Conclusion and recommendation**

46. For the reasons stated above, I recommend that the Minister dismisses the appeal in respect of the design and occupancy main issues and, in that regard, confirms the refusal of planning permission under reference P/2020/1435.
47. However, I recommend that the final sentence of the refusal reason, concerning parking matters should be deleted. It would also be sensible to correct the typographical error i.e. replacing the reference to policy 'GD 12' with 'GD 1'.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**