

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

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

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr M Harrison (Third Party Appellant)

Site address: *Oaklands*, Le Chemin des Maltieres, Grouville, JE3 9EB.

Application reference number: P/2020/0681

Proposal: 'Demolish existing 4 bed dwelling and construct 1 no. 4 bed property. Relocate vehicle entrance to South-West elevation'.

Decision notice date: 10 March 2021

Procedure: Hearing held on 14 July 2021

Inspector's site visit: 12 July 2021

Inspector's report date: 23 August 2021

Introduction

1. This report contains my assessment of the third party appeal made by Mr M Harrison (the appellant). The appeal is made against the decision to grant planning permission for a replacement dwelling proposal at a property known as *Oaklands* on Le Chemin des Maltieres in the Parish of Grouville, which is near to the appellant's home.

Procedural matters

2. In the course of the appeal, the applicant submitted new evidence which was not previously presented to officers and the Planning Committee that determined the application. Appendix 3 to the applicant's statement of case is a 'Report on the Viability of Repairs & Refurbishment of the Existing Building', produced by Michael Bravery Chartered Architect and dated 15 April 2021, i.e. about a month after the committee's determination. The report specifically seeks to address the appellant's first ground of appeal, which alleges that the committee failed to correctly apply Revised 2011 Island Plan (2014) policy GD 1 1(a). This part of the policy sets a 'light presumption' against the demolition and replacement of buildings that can be repaired and refurbished.

3. As the Minister will be aware, the Royal Court's judgement in the Pine Grove case¹ has established how that policy should be approached in decision making.
4. The appellant has expressed objections and concerns about the submission of the applicant's further report and drawn attention to guidance and principles from England which establish that, generally, what is considered by the Inspector should essentially be what was considered by the planning authority, and on which interested people's views were sought.
5. Whilst those principles are soundly based, there is a fundamental difference in Jersey, as the Law includes the provision for third party appeals against planning decisions, which does not exist in England. In this case, the appellant's objective is for the appeal to be allowed and for the committee's grant of planning permission to be overturned, which would clearly be a major consequence for the applicant. The applicant's appendix 3 report is seeking to respond directly to the appellant's ground of appeal by rebutting that claim. It is a simple fact that this material was not submitted and published as part of the application process, and that it was not before the determining committee (as it did not exist). However, that does not mean that I should not consider it, as it relates to an important policy matter which I must assess in making my recommendation.
6. An important consideration here is that officers and the Planning Committee appeared to have been satisfied that the case for demolition, under policy GD 1 1(a), had been adequately evidenced by the applicant. At the time of the decision, the applicant could not have known that a third party might subsequently challenge the submitted evidence and its assessment by others. It is therefore only fair that the applicant is able to make his case as he wishes, accepting that the weight that might be attached to such evidence is a matter for the ultimate decision maker, i.e. the Minister.
7. Moreover, the report appeared early in the appeal process and other parties have had the opportunity to make submissions and have done so. Indeed, the appellant has responded in some considerable detail.
8. For the above reasons, I have therefore included the applicant's appendix 3 evidence in the Hearing discussions, and in my assessment.

The appeal site

9. *Oaklands* is a 2 storey detached 4 bedroom dwelling house on the north-west side of Le Chemin des Maltieres in the Green Zone. It is situated at a point where the road turns through a 90° bend, such that the broadly rectangular plot has 2 road frontages, 1 to the front and 1 to the south-western side. It is the end property of a row of detached dwellings on the north-west side of the road, which are set behind front gardens in elevated positions enjoying panoramic south-easterly views (there are no houses on the south-east side of this part of the road). The backcloth to this row of

¹ Therin v Minister for Planning and Environment Royal Court (Samedi Division) 2018.

properties is a distinctive block of mature wooded hillside, which is seen rising above the dwellings when viewed from the road.

10. *Oaklands* appears to date from the 1970s and is of a relatively plain design with painted rendered walls and a pitched tiled roof. It sits towards the back of its relatively large plot, with the area to the rear of the house rising to the wooded hillside beyond. Whilst there are some side and rear windows, the primary aspect of the house is to the front and all of the main ground floor living areas and the 3 first floor bedrooms have front facing windows. The fourth bedroom is on the ground floor and appears to have been converted from part of the original garage / utility block – it does not have a window to the outside.
11. In front of the house there is a hard surfaced area which provides parking and access to garaging on the north-east side of the property. Forward of the hard surfaced area, there is a large front garden which is mainly lawn and includes a large weeping willow tree. The front garden area is enclosed by a hedge to the south-east road boundary and timber fencing to the south-west road boundary.

The proposal and the application determination

12. The application seeks planning permission to demolish the existing dwelling and construct a replacement 4 bedroom dwelling. It would be sited forward of the existing dwelling footprint and towards the middle of the plot, with parking and turning provided behind (north-west) and to the side (north-east) of the proposed new house. The front elevation would be sited a little forward of the line of the appellant's property, *Maison Les Maltieres* on the neighbouring plot.
13. Internally, the proposed house would include an open dining / kitchen, study, lounge and utility room on the ground floor, with 4 bedrooms above. The master bedroom would have a shallow depth balcony. Externally, it would be faced in granite walling at the ground floor level, with painted render at first floor level. It would have a steeply pitched clay tile roof with a front facing gable feature and hipped dormers. The applicant's submitted Design Statement explains the objective of creating light open plan living spaces, but within a traditionally inspired 'arts and crafts' style, rather than a contemporary design.
14. Following a site inspection, the application was determined by the Planning Committee at its 10 March 2021 meeting. The committee heard representations for and against the proposal, including the submissions of the appellant. The committee resolved to grant planning permission. In addition to the standard time limit and plans compliance conditions, the decision notice includes a condition requiring the implementation of the approved species protection plan. The decision notice includes the following 'reason for approval':

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

The approved scheme is for the redevelopment of the site, involving demolition and replacement of the existing dwelling; in principle, this is permitted under the provisions of Island Plan Policy NE 7 (Green Zone).

Owing to the structural condition of the existing building, the Planning Committee is satisfied that demolition and replacement is justified in this instance, having regard to Island Plan Policy GD 1 1.a.

The new dwelling will be a 4-bedroom family home, providing a similar level of accommodation overall to the dwelling it would replace. Architecturally, the new dwelling represents a marked improvement over the existing dated and unremarkable dwelling.

The repositioned building footprint broadly aligns with the general building-line of properties along Chemin des Maltieres, and its overall landscape impact is similar to that at present.

The objections from nearby residents are noted and have been taken into account. In the Committee's view, the new development would not cause 'unreasonable harm' to neighbouring amenity (the test set by Island Plan Policy GD 1). In particular, the relationship with the immediate neighbouring property, Maison Les Maltieres, is considered to be acceptable.

Also, the proposal is considered to be acceptable from a highway safety perspective.'

15. The appeal by Mr Harrison is made against this decision to grant planning permission. For clarity, under the Law² this decision remains in effect, but the development cannot be implemented until this third party appeal has been decided.

Summary of the appellants' grounds of appeal

16. The appellant has submitted an appeal form, which sets out his 8 grounds of appeal, along with a number of enclosures that include a number of letters submitted by his agent at the application stage. This is supported by a detailed statement of case with 4 appendices, which expands on the ground of appeal. It is supplemented by a 'final comments' document with a further 9 appendices.

17. The appellant's 8 grounds of appeal are:

GROUND A

The decision-maker failed to correctly apply Island Plan Policy GD1.1a, in that the demolition of the dwelling was not adequately justified;

² Article 117(1) and (2) - Planning And Building (Jersey) Law 2002 (as amended)

GROUND B

The decision-maker failed to correctly apply Policy NE7 in that the proposal would facilitate a significant increase in occupancy, and the proposal did not provide demonstrable environmental gains (and indeed would cause harm, contrary to Policy NE4);

GROUND C

The decision-maker failed to correctly apply Policy SP6 and Policy GD1 (5) in relation to the continued reliance on the private car;

GROUND D

The decision-maker failed to give sufficient weight to the requirements of Policy GD1 in relation to the unreasonable impacts on the neighbouring property;

GROUND E

The decision-maker failed to give sufficient regard to the requirements of Policy HE1 and Policy GD5 in relation to the setting of Grade 1 Listed Building, Mont Orgueil.

GROUND F

The decision-maker gave undue weight to issues of design (which in itself is inappropriate and contrary to Policy SP7 and Policy GD7) and, in any event, is insufficient justification to merit over-riding the above policy considerations.

GROUND G

The decision-maker made a determination which is inconsistent with other recent comparable determinations, without providing any justification for doing so.

GROUND H

The decision-maker gave undue weight to informal and unpublished Officer feedback to the applicant in relation to an earlier withdrawn application and failed to give sufficient weight to material submissions from the Appellant, which also remain unpublished.

18. At the Hearing, the appellant's case was presented by Mr J. Nicholson (Planning Consultant). The appellant also attended and contributed to the Hearing.

Summary of the applicant's case and responses

19. The applicant rebuts the appellant's grounds of appeal. His case is set out in an initial statement of case document with 4 appendices and a final comments document.
20. The initial statement sets out the applicant's case in favour of the proposal and support for the committee's decision to grant permission. It explains the planning history of the site, including the submission and later withdrawal of an earlier proposal, sets out the details of the current proposal, and the processing and determination of the application. It then undertakes a review of relevant planning policies and an assessment of the proposal against these, including those relied on by the appellant, such as GD 1 and NE 7. The statement then sets out a rebuttal of each of the grounds of appeal.
21. The statement of case includes the following summary points in response to the appeal:

The existing dwelling is a low key 1970s dwelling positioned towards the rear of the Application Site and built up against a wooded hillside. The independent building condition report, commissioned by the Applicant and carried out by Wills Associates Chartered Surveyors identified a number of structural problems with regard to the existing building - these include significant rising and penetrating dampness, subsidence and building cracking. In the surveyor's view, the existing property should be demolished and replaced. The Applicant has provided further assessment to explain and justify why there is a case to justify the replacement of the existing dwelling. This is notwithstanding the support already provided by the Development Control Section of the Regulation Department.

The effect of development proposals upon neighbours has informed design proposals. The proposed dwelling represents a marked improvement over the existing dated and unremarkable dwelling. The Department decided to grant planning permission following a site visit and a hearing at its meeting on 10th March 2021, when the Appellants addressed the Planning Committee. The Applicant has taken particular care through the repositioned building footprint to align with the general building-line of properties along Chemin des Maltieres and its overall landscape impact is similar but overall an improvement on that at present.

The proposed building will be approximately 7.5m away (gable to gable) from its immediate neighbour, (the Appellant's property) and approximately 1.9m further forward. It is not considered that this relationship would cause unreasonable harm to the amenity of this neighbour.

The Applicant has had the opportunity to join the appeal and considers that the decision to approve planning permission has been granted in accordance with Article 19(2) of the Law because the scheme accords with the Island Plan as a whole and there is therefore sufficient justification. It is considered that the decision has been made with a considered assessment

of Island Plan policies and all material considerations and shows compliance with the Island plan.

The primary material consideration in the determination of this application is the Island Plan, which the Applicant considers the development proposed complies with for all the reasons set out within this Statement. The policy tests of the Island Plan to protect the landscape character of the site and surrounding area are complied with. There is no potential for development proposals to cause unreasonably harmful impacts upon neighbours. The Applicant has joined the appeal and considers that on the basis of the information and assessments submitted to support the Planning Application there is sufficient justification for the Minister to uphold the approval of planning permission and dismiss the appeal.

22. At the Hearing, the applicant's case was presented by Mrs Steedman (Planning Consultant) and Mr Bravery (Architect). The applicant and some family members also attended and contributed to the discussions.

Summary of the Infrastructure Housing and the Environment (IHE) Department's case

23. The IHE department submitted a succinct response document with the committee report and minutes appended, along with a second response document which responds to the other parties' statements of case. In essence, these submissions expand on the reason for approval that appears in the decision notice (reproduced at paragraph 14 above) and responds to some of the specific grounds of appeal.
24. With regard to some of the grounds of appeal, the officer response makes a number of submissions. First, whilst recognising that the site is in the Green Zone, replacement dwellings are a permitted exception subject to stated criteria being met and that does not preclude larger buildings, the key test being that potential occupancy must not be significantly increased. Second, the revised siting and design is supported and is considered to achieve architectural improvements, with more muted and sensitive tones and a horizontal emphasis which suits the width of the site and prevents the building appearing overly tall. Third, the department is satisfied that the building condition report justifies demolition and replacement. Fourth, officers do not consider the site forms part of the setting of the Listed Gorey Castle, which is a considerable distance away. Fifth, there would not be any undue impact on the amenities of the appellant's property. Sixth, the proposal would not be likely to result in increased traffic generation and the proposal is considered compatible with policy SP 6.
25. The summary then states: *'...it is considered that due to the structural condition of the existing building, its replacement is justified, that the new dwelling represents a marked improvement over the existing dated and unremarkable dwelling, and that it will not facilitate a significant increase in occupancy, or result in a material increase in vehicle movements or an unreasonable impact on adjoining properties. It is therefore considered that the proposals satisfy the requirements of the relevant policies of the Island Plan.'*

26. At the Hearing, the IHE department's case was presented by Mr Townsend and Mr Davies.

Inspector's assessment

27. The agenda that I prepared for the Hearing translated the appellant's grounds of appeal into a set of main issues and questions. I have used the most relevant issues and questions as sub-headings for my assessment below.

Whether the case to demolish and replace the existing building has been adequately made (Ground A).

28. Policy GD 1 1(a) says that a building capable of being repaired or refurbished will not be replaced. The Minister will be aware that the application of GD 1 1(a) has been illuminated by case law, which is now a material consideration. The case concerned a proposed (larger) replacement dwelling development at a site known as *Pine Grove*, which is located within the Built-up Area. I am very familiar with the case, as I was the appointed Inspector and I provided a supplementary report following the Royal Court judgement. In essence, the Royal Court established that GD 1 1(a) amounts to a 'light presumption' against demolition and replacement of existing buildings. It further clarifies that 'capable' (of being repaired or refurbished) should be seen in terms of economic viability.
29. Paragraph 92 of the *Pine Grove* judgement establishes 3 clear steps in the assessment against GD 1 1(a). The first step is to establish whether the building is capable of being repaired or refurbished. The second step is to assess whether the new development makes such efficient use of resources for the purposes of policy SP 2 that there is no breach, i.e. the negative sustainability effects are more than cancelled out by the sustainability / efficiency of the new scheme. The third step is then to consider whether, under Article 19, there is adequate justification for departing from this policy in the Island Plan.
30. In this case, the applicant submitted a Building Condition Report produced by Wills Associates, a firm of chartered surveyors. The report is not dated but documents that the surveyor inspected the property on 27 August 2019. The report states that the client instruction was to support an application for demolition 'due to the nature of its construction and proximity to the retained ground at the rear of the building'. It explains the 1970s origin of the house and that a small 2 storey granite outbuilding, probably of 19th century origin, was incorporated into the house. The report identifies that the building is thought to be constructed of block cavity walls, externally rendered and painted and internally dry lined. The roof is of a conventional pitched tiled construction with bituminous underfelt.
31. The report assesses the condition of the property and notes that it has been 'tenanted for a reasonable period of time'. It found that the original outbuilding incorporated into the house was showing 'signs of significant rising and penetrating dampness'. It noted that the 1970's structure added to it was showing signs of subsidence and cracking to the gable, front and

rear elevations and speculates that this may be caused by water action on the sloping site causing differential settlement, and says that underpinning will be required along with remedial works to divert ground water. It also found that the roof underfelt was showing signs of significant deterioration and would ideally be replaced, necessitating the removal of the roof covering. It also found condensation mould in the bedrooms which can be attributed to 'poor living', although the construction would have contributed to it. The report considers that services to the dwelling will require upgrading.

32. It concludes that, whilst the property can be upgraded, including the roof, electrical and plumbing systems, the movement will 'in all probability' require underpinning and ground water diversionary works, and that 'the cost and benefit of such work is not considered preferable'. It also concludes that the dwelling is not of architectural interest and the surveyor is "*content to recommend its demolition and replacement with a one-off architect design structure, which is compliant with all current building regulation standards and preferably exceeding them in respect of insulation and other energy saving technologies, which will offset the initial carbon footprint of a new structure and demolition of the existing building.*"
33. In terms of the first step of the GD 1 1(a) assessment, the report does not convincingly evidence that the building is not capable of being repaired or refurbished. Indeed, it confirms that it is capable of being repaired and refurbished. It is plain to see that maintenance of, and upgrades to, the property over its long tenanted period has been limited. However, the faults identified with the house are not unusual for a property of this age and the measures to address them are not novel and would be routine for an experienced builder. Moreover, no costings have been submitted to demonstrate that such works would be prohibitively expensive.
34. On the second step of the GD 1 1(a) assessment, no evidence at all has been submitted to back up the surveyor's concluding remarks that the carbon cost of the development would be offset by energy savings from the proposed new dwelling.
35. In the light of the appellant's challenge, the applicant has, through this appeal, submitted further evidence. This comprises a 'Report on the Viability of Repairs and Refurbishment of the Existing Building' produced by the scheme architect and dated April 2021, along with 4 appendices. The appendices include valuations by Wills Associates (who produced the first report) and Troy Estate Agency, an outline schedule of works and a cost estimate of works, produced by Woodward Burton Associates Ltd.
36. This second report claims that the existing property is valued at £800,000 – £850,000 in its current condition and, once repaired it would be valued at £875,000 – £900,000. It says that the works required to repair and upgrade the property would be approximately £397,000. Based on these prices and values, it concludes that even if all works were carried out, the building would still be one full of compromises, and would never be aesthetically pleasing and that the disproportionate costs of repair mean that the property is not reasonably capable of repair.

37. In my assessment, the findings of this second report are unconvincing for a number of reasons.
38. First, I share the appellant's view that the valuations seem on the low side. Whilst respecting the views of the agents who have provided their estimates of the existing value, these figures are well below the States' published mean and median house price values for a 4 bedroom property³. Moreover, this is a house set on a large attractive plot with panoramic views.
39. Second, much of the 'schedule of works' relates to routine replacement items and reflects limited maintenance over the years. As a result, there is a major maintenance backlog of overdue items relating to windows, rainwater goods, electrical rewiring, plumbing and heating, decoration, kitchen fittings and external works. I do not consider that underinvestment over the years on the dwelling's fabric and infrastructure, provides a convincing basis for demolition and replacement of the house, under policy GD 1 1(a).
40. Third, the key works to repair the property and address the principal matters identified in the first report (underpinning, groundwater works, cracking, damp etc.) appear to involve relatively modest costs. For example, the roof replacement and upgrade is costed at £39,354.25 and the underpinning, tanking, damp prevention works are priced at £66,842.00.
41. I have noted the applicant's architect's submissions that the existing house is 'ugly', but I do not share that view. It is simply plain and, as with similar dwellings of this era and style, it has the potential to be enhanced in its appearance through refurbishment. Aesthetics are not a direct consideration under the first and second steps of the GD 1 1(a) assessment, but could feature in the third step (in terms of justifying a departure from the policy).
42. I have also noted the applicant's submissions that the case for demolition here is similar that made by the appellant's agent on another proposal⁴, but I have not been provided with full details of that case and I must make my assessment on the facts of the current case.
43. Based on the evidence before me, I must conclude that both the first and second reports, individually and collectively, fail to provide the necessary evidence to satisfy the first 2 steps in the policy GD 1 1 a) assessment. The applicant has not justified the demolition and replacement of the existing building. Indeed, the weight of evidence indicates that the building is capable of being repaired and refurbished. This must weigh against the proposal in the planning balance. I will consider the third step in the GD 1 1(a) assessment process, of whether there is an adequate justification for departing from the policy's 'light presumption', in my concluding section.

³ Statistics Jersey reported that the 2020 mean value for a 4 bed property was £1,034,000 and the median £895,000.

⁴ Planning application reference RP/2018/0830 – La Claire Fontaine

Whether the proposal would meet the policy NE 7 requirements for a replacement dwelling within the Green Zone (Ground B).

44. The site is within the designated Green Zone. Policy NE 7 sets out a general presumption '*against all forms of development*' including, specifically, the development of a new dwelling. However, the policy extends to allow the opportunity for some specified exceptions which may be acceptable. Under the 'residential' exceptions, category 3 states:

The redevelopment of an existing dwelling and/or an existing ancillary residential building and/or structure, involving demolition and replacement, but only where the proposal would;

a. not facilitate a significant increase in occupancy; and

b. give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character.

45. Notwithstanding the GD 1 1(a) light presumption against demolition of existing buildings, policy NE 7 does, potentially, allow for replacement dwelling proposals within the Green Zone, subject to meeting both of the above criteria.
46. With regard to the first criterion, 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 Green Zone and the Coastal National Park. This is due to the pressure placed on the fragile environment and infrastructure outside the Built-up Area, and the general issues of sustainability, such as the inevitable car trip generation and dependence arising from people living remote from day to day services.
47. The appellant claims that the proposal amounts to a 63% increase in floorspace, which he contends would facilitate a significant increase in occupancy. Mr Townsend for the IHE department gave a similar figure (61%) but does not consider that this facilitates significant increased occupancy. The applicant says the footprint of the new building would be just 11% bigger than the existing. Policy NE 7 does not define parameters for replacement dwelling proposals in terms of floorspace, footprint or bedroom numbers, and there is no available published guidance to my knowledge. The policy also does not preclude some enlargement.
48. The fundamental policy issue is about occupancy (potential) rather than whether a stated percentage floorspace or footprint figure is the correct one. The existing property is inarguably a 'family home' which has at least 3 good sized first floor bedrooms and a 4th on the ground floor. Whilst the ground floor room is less than ideal in terms of aspect, it has been occupied as a bedroom and could be again and the garage could also be converted to habitable space. I assess the existing maximum occupancy would be 7 persons (2 persons in each of the 3 first floor bedrooms and 1 in the ground floor bedroom) and this could increase to 8 or 9 if the garage were converted to a 5th bedroom as 'permitted development'. The proposed

dwelling, whilst larger, includes 4 double bedrooms with a maximum occupancy of 8 persons. Its internal layout does not lend itself to any obvious repurposing of spaces to allow for further bedrooms, other than that the ground floor study could, perhaps, be used as a small single bedroom.

49. I am therefore satisfied that the likely occupancy of the existing and proposed dwellings would be similar, and that the proposal would not facilitate significant increased occupancy. Criterion a) is therefore satisfied.
50. With regard to the second criterion, paragraph 2.128 of the Island Plan lists some examples of 'environmental gains' including some or all of: reduced visual scale, mass and volume of a building; more sensitive and sympathetic siting and design; materials, colours and finishes more sensitive to the character area.
51. Judged against these factors the building would be larger, bulkier and a little higher than the main 2 storey existing house and would be generally more conspicuous, with its large front gable being a prominent feature. The submitted ecology report indicated that the mature willow tree will be lost and, although the applicant indicated that it could be pollarded and retained, this seems challenging given its proximity to the proposed house and its main windows. These would all be disbenefits rather than gains and weigh against the proposal.
52. However, there would be some benefits. The removal of the garage block would create better spacing and open up slightly more of the view of the hillside beyond. The proposed siting and layout would help to hide parked cars from view. The design is a less plain than that of the existing house and will involve some more sympathetic granite facing materials. Some benefit could also be secured by the implementation of a soft landscaping scheme and this could be required by a planning condition.
53. Overall, I consider that the environmental gains are quite limited and are offset by the increased size and imposing front gable, such that I assess that the end result is neutral. I am therefore not convinced that the development would secure the required 'demonstrable' environmental gains or that it would contribute to the repair and restoration of landscape character, which are the stated requirements of the policy to enable this type of exceptional development in the Green Zone to be favourably determined.
54. In conclusion on policy NE 7, I assess that the proposal satisfies criterion a) in terms of not facilitating significant increased occupancy in the Green Zone, but fails to satisfy criterion b) because it does not deliver demonstrable environmental gains that contribute to the repair and restoration of landscape character.

Whether the proposal would help reduce dependence on the use of the private car as a mode of transport, in line with policy SP 6 and GD 1 5 (Ground C).

55. Policy SP 6 states that applications for development, including housing, must be able to demonstrate that they will reduce dependence on the private car by providing for more environmentally friendly modes of transport. Similar considerations appear in policy GD 1(5).
56. The appellant contends that the proposal fails to achieve these policy objectives and would perpetuate reliance on the private car, given the long distance to the nearest bus stop. The applicant rebuts this and the IHE department is satisfied that there will be no increase in vehicle trip generation and that the long term strategic objective of policy SP 6 is primarily achieved by concentrating new development in the defined Built-up Area.
57. In my assessment, all of the parties make valid submissions that highlight the imperative of, and associated challenges with, a move towards reduced car dependence. Clearly, a replacement dwelling proposal, if otherwise found to be acceptable in policy terms, is constrained by the location of the dwelling it replaces. This means that it cannot usually influence the distance to bus stops, the frequency and quality of bus services, or the presence (or not) of pedestrian and cycling infrastructure, such as footways and cycle paths. However, there are measures that can be accommodated that promote sustainable travel and, at the Hearing, I explained that, in England, it has become routine for planning permissions for new houses to include planning conditions requiring the provision of secure covered cycle storage and electric vehicle charging points. These are seen as important measures to encourage new home occupants to use more sustainable travel modes.
58. In this case, I am mindful that the proposal would reduce the parking capacity at the site, as it would include just 3 spaces whereas the existing prominent parking area and garaging could accommodate more vehicles. The applicant also indicated a willingness to accept conditions requiring the types of measures mentioned above. On this basis, I consider that there would not be any conflict with policy SP 6 and that the development would demonstrate a reduced reliance on the use of the private car.

Whether the proposal would cause unreasonable harm to the living conditions enjoyed by occupants of the neighbouring property to the east (Ground D).

59. Policy GD 1(3) requires that development proposals do not unreasonably harm the amenities of neighbouring use, including the living conditions for nearby residents. The policy lists a set of factors to be considered 'in particular' and these include levels of privacy; light; and health, safety and environment of users.
60. The appellant considers that the demolition and rebuild forward of the building line and with a large first floor balcony, is unreasonable and will be harmful to the amenities enjoyed at his property. He also submits that this

Green Zone location is more sensitive and the measure of what is 'unreasonable' here is not the same as in the Built-up Area.

61. What constitutes 'unreasonable' is not defined and is a matter of judgement for the decision maker. That judgement is an inescapably contextual one as confirmed by relevant case law⁵ and it will differ by location. The locational context here is that, whilst within the Green Zone, *Oaklands* and the neighbouring row of properties to the north-east, comprises a relatively suburban setting. The dwellings sit side by side in a row and share garden boundaries such that occupants in one dwelling will experience the physical presence of their neighbours' properties.
62. I have examined the relationship between the existing and proposed dwelling with the appellant's home. On my site inspection, I looked carefully from the site itself and I visited the appellant's home and inspected the proposal from his balcony. I have also looked at the digital model.
63. In my assessment, whilst recognising that the dwelling would be sited a little further forward than the appellant's house, the relationship between the properties would be acceptable in planning terms and certainly not anywhere near what might be deemed 'unreasonable' given the context. There would be no overbearing effects, as the house would be set a comfortable distance from the appellant's house (about 7 metres according to the applicant's architect). Subject to obscure glazing being required within the 3 small first floor windows on the side (north-east) elevation, there would be no loss of privacy.
64. I am also satisfied that the proposed master bedroom balcony would not be harmful to the appellant's privacy. It is not deep and is designed to facilitate full height glazing, rather than for any significant social / sitting out function. Moreover, being on the front of the property, the eye will be drawn to the distant panoramic view, rather than sideways to neighbour's front gardens and parking. It is little different in amenity terms to the sideways views possible from the appellant's property over *Oaklands'* garden areas.
65. I am satisfied that the proposal will not cause any unreasonable harm to the living conditions enjoyed by occupants at the appellant's property. The proposal satisfies policy GD 1(3).

The effect of the proposal on the setting of the listed building, Mont Orgueil (Ground E).

66. Policy SP 4 establishes a 'high priority' to the protection of the Island's natural and historic environment including "...its archaeology, historic buildings, structures and places...". Policy HE 1 sets a presumption in favour of preserving heritage assets and their settings. The policy states that 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 GD 5 concerns 'skyline, views and vistas' and makes specific

⁵ Boyle and Kehoe v Minister for Planning and Environment [2012] JRC036 and Winchester v Minister for Planning and Environment [2014] JRC118

reference to protecting or enhancing the setting of landmark and listed buildings.

67. The appellant alleges that the proposal will have a significant detrimental impact on how the Listed building Mont Orgueil (Gorey Castle) is experienced and would fail to preserve its setting.
68. There is no doubting the outstanding high heritage value of the Grade 1 Listed Mont Orgueil. Given its scale and imposing landmark status, it clearly has an extensive setting. In planning terms, 'setting' is generally defined as the surroundings in which a heritage asset is experienced. There is no doubt that the immediate area around the castle forms part of its setting. There is also no dispute that locations further out form part of its wider setting and my attention has been drawn to an appeal case concerning an extension on a site on La Route de la Cote⁶.
69. However, *Oaklands* is well over a mile away from the castle. The fact that you can get a fleeting glimpse of the castle from the road passing the site (looking north-eastwards across the existing parking area) does not make the site part of the functional setting of the Listed building for planning purposes. Any experience of the castle from the vicinity of the site could only ever be a fleeting road user's glimpse when moving around a 90 degree bend.
70. The fact that the new building is set somewhat further forward, and might delay that view by a split second, has little relevance. In practice, anyone viewing from this point is likely to be in a vehicle (there are no footways). The driver's eye view will likely be focused on steering their vehicle around a sharp bend, rather than admiring the view. Even for passengers, this glimpse is largely hidden behind existing trees and boundary fencing. It is only when the road turns in front of *Oaklands* and straightens that a distant view of the castle become clearer.
71. For the above reasons, I do not therefore consider that there is any tangible experience of appreciating the castle from this location that would be harmed by the development proposed. I am satisfied that the setting of the castle, located over a mile away, would be preserved and there is no conflict with policy HE 1.

Whether the design of the proposal is acceptable in this location and the weight that should be applied to design matters in decision making in this case (Ground F).

72. Strategic policy SP 7 establishes a requirement that all development achieves a high design quality. This is reinforced by policy GD 7, which sets out a list of detailed design considerations. It is further reinforced by policy GD 1(6).
73. The appellant alleges that the design quality falls short of the required design policy criteria, critiques its arts and crafts style and detailed

⁶ P/2019/0970 – De Montford House, La Route de la Cote, St. Martin, JE3 6DR

execution, and considers that the Planning Committee gave undue weight to design matters. These views are contested by the applicant and IHE officers, who each consider the proposal to represent a marked improvement on the existing building and commend the design approach.

74. In my assessment the design is of an acceptable standard in policy terms. It would represent a higher standard of design than the existing rather plain dwelling and neighbouring dwellings from a seemingly similar era. Whilst being satisfied on the design improvement that would be achieved, I do share the appellant's view that the design does not reach such high standards that it would justify being treated as exceptional, such that this might outweigh other important policy considerations.

Whether the IHE decision to grant permission for the appeal proposal was inconsistent with other comparable decisions (Ground G).

75. The appellant has drawn my attention to the determination of another appeal⁷ and a recent application⁸ concerning assessments relating to the policy NE 7 test concerning whether a proposal facilitates significant increased occupancy. I have set out my views on that policy above and I have taken the other cases into account. However, I found that the circumstances in each case were different and I have made assessment on the merits of the application before me.

The relevance and weight of unpublished documentary submissions (Ground H).

76. The appellant's final ground relates to alleged unpublished material concerning the case for demolition. It does appear that, in the course of the earlier withdrawn application, the appellant was advised that officers were satisfied that the case for demolition under policy GD 1 1(a) was accepted.
77. However, my assessment does not agree with that view and, even with the additional material that has been presented through this appeal, I have concluded that the case for demolition of the existing building has not been adequately evidenced.

Other matters

Interested parties

78. I have taken into account the view of a third party concerning the number of bedrooms at the property.

Planning conditions

79. At the Hearing, I held a without prejudice discussion concerning planning conditions.

⁷ P/2015/1837 – Windermere, La Rue des Platons, Trinity JE3 5AA

⁸ P/2020/0934 Hollycroft House, La Rue du Pont Marquet, St Brelade, JE3 8DS

80. Should the Minister be minded to confirm the planning permission, I do consider that some further planning conditions are reasonable and necessary. These should cover requirements for:

- Obscure glazing of the 3 first floor windows on the north-east side elevation of the new property, to preserve the amenities of the neighbouring property.
- A landscaping scheme and maintenance programme, to safeguard and enhance the character, appearance and biodiversity of the area.
- Secure cycle storage facilities, to promote the reduction in use of the private car.
- An electric vehicle charge point, to promote 'green' travel.
- A construction waste management plan and its implementation, to minimise waste and maximise the re-use of demolition arisings.

Conclusions and recommendation

81. The proposal would entail the demolition of an existing habitable dwelling and its replacement with a larger dwelling. The evidence before me indicates that the existing dwelling could be realistically repaired and refurbished at a relatively modest cost and that would generate less waste and expend fewer resources. There is no convincing evidence to demonstrate that the proposal would contribute to a more sustainable form of development. The proposal therefore fails to satisfy the requirements of policy GD1 1(a) which states that a building capable of being repaired or refurbished will not be replaced. This weighs against the proposal.
82. With regard to policy NE 7, I assess that the proposal satisfies criterion a) in terms of not facilitating significant increased occupancy in the Green Zone. However, I assess that it fails to satisfy criterion b) because it does not deliver demonstrable environmental gains that contribute to the repair and restoration of landscape character. The policy requires both criteria to be met. Given the importance of policy NE 7 in controlling development within the Green Zone, the proposal's failure to satisfy its full requirements weighs heavily against it.
83. I found no conflict with policies concerning sustainable transport objectives, but would recommend conditions requiring sustainable transport measures, should the Minister decide to grant permission. I have carefully assessed the potential amenity impacts of the proposal on the appellant's property and judged that these would all fall into reasonable parameters and that there would be no breach of policy GD 1(3), subject to obscure glazing requirements which could be controlled by a planning condition. I further assess that the proposal would preserve the setting of Mont Orgueil and that there would be no conflict with policy HE 1. I consider the design of the proposal to be satisfactory in design policy terms, but not exceptional in its quality.

84. In terms of the overall planning balance, Article 19 establishes that the Island Plan takes primacy in decision making and that, in general, permission should be granted if the proposal is in accordance with the Plan. However, it is also a fact that the Island Plan must be considered as a whole and this is a well-established legal principle. This is because the Plan seeks to reconcile diverse and numerous conflicting interests, such that it would be difficult to find any project that was wholly in accord with every relevant policy. This requires common sense, balance and judgement.
85. In this case, the failure to fully justify demolition and replacement of the existing house means that the policy GD 1 1(a) 'light presumption', as established by the Royal Court, remains engaged. As a light presumption, it could be outweighed by other positive environmental considerations. However, the breach of policy NE 7 is a weighty one, as it relates to a policy of significant importance in ensuring that only stated exceptional development is allowed within the Green Zone.
86. My findings on other matters, including transport, impacts on neighbour's living conditions, heritage and design, are essentially neutral factors in the planning balance.
87. As there are no material considerations that would outweigh the identified conflicts with policy GD 1 1(a) and policy NE 7, I conclude that the appeal should be allowed on these grounds (A and B), but not on the other grounds (C – H). Accordingly, I recommend that the Minister REFUSES to grant planning permission for the development proposed under application reference P/2020/0681 for the 2 reasons set out below.

Reason 1: The proposed development would entail the demolition of an existing habitable dwelling and its replacement with a larger dwelling. This would entail the production of significant demolition waste from the existing house and significant resources and energy in constructing the new house. Based on the submitted evidence, the existing dwelling could be repaired and refurbished at a modest cost and with the generation of less waste and a more efficient use of resources. There is no convincing evidence to demonstrate that the proposed development would contribute to a more sustainable form of development in this sensitive Green Zone location, given that a habitable dwelling house already exists on the site. The proposal therefore fails to satisfy the requirements of policy GD 1 1(a) of the adopted Island Plan 2011 (revised 2014) which states that a building capable of being repaired or refurbished will not be replaced.

Reason 2: The proposal would fail to deliver demonstrable environmental gains that contribute to the repair and restoration of landscape character in this Green Zone location. This is an essential pre-requisite for allowing an exceptional replacement dwelling proposal within the Green Zone. As such, the proposal conflicts with policy NE 7 of the adopted Island Plan 2011 (revised 2014).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Main Appearances at the Hearing

For the Appellant

Mr J Nicholson (planning consultant)

Mr M Harrison (appellant)

For the Applicant

Mrs S Steedman (planning consultant)

Mr M Bravery (architect)

Mr Carswell (applicant) and Mr and Mrs Plummer (family members)

For the IHE Department

Mr A Townsend

Mr L Davies