

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

"Appeal" against a refusal of planning permission.

Reference Number: P/2020/0751

Site at: Balmoral Suites, Clarendon Road, St Helier.

Introduction

1. This "appeal" is against the refusal of planning permission for development described in the application as: "Revised 2 Bedroom Apartment and Terrace to second floor flat roof to the rear North East Wing". In the refusal notice, the development was described as: "Construct third floor to create 1 No. 2 bed residential unit with balcony to South and East elevations".
2. I inspected the site and held a hearing into the "appeal" on 8 March 2022.
3. Four reasons for refusal were stated in the decision notice as follows:
 - "1. The proposed development by virtue of scale, mass and height, would represent a cramped and unsatisfactory overdevelopment of this relatively small site that would be harmful to the character and appearance of the surrounding area. As a consequence the proposed scheme fails to achieve a high standard of design and conflicts with Policies SP3, GD1, H6, SP7 and GD7 of the Adopted Island Plan 2011 (Revised 2014).
 2. By virtue of its siting, scale, height, proximity and design, namely the blank elevation to the North-West and the elevation to the North-East, the proposal would result in overbearing of the neighbouring properties. This would be contrary to Policy SP7, GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).
 3. By virtue of its design and proximity to neighbours, the internal layout of the proposed unit fails to meet the minimum requirements for room sizes and would result in poor living conditions for future occupiers. This would be contrary to Policy H6 of the Adopted Island Plan 2011 (Revised 2014).
 4. The submitted site plan fails to show an increase in the provision of car parking or cycle storage to promote alternative means of travel. Accordingly, the application fails to demonstrate that the proposal will not lead to unacceptable problems of highway safety. As such, the proposal conflicts with Policy SP6, GD1, TT4 of the Adopted Island Plan 2011 (Revised 2014)."

Procedural and Legal Matters

4. After opening the hearing, the first point I raised and invited submissions on was whether there was a valid appeal. I referred to Article 108(3)(e) of the Law under which the right of appeal against a refusal of planning permission lies with the applicant. I drew attention to the facts that the applicant was Washington Hotel Ltd and that the "appellant" was specified in the appeal form as "Alexander Burnett, Director, Balmoral Executive Suites".
5. The agent who submitted the "appeal", Mr Joseph Carney, confirmed in answer to one of my questions that he was the sole agent for the submission. The other

“appellant’s” adviser at the hearing (Ms Claire Smith) drew attention to the existence of a power of attorney.¹ This names various people including a Mr Matthew Godden as attorneys to act on behalf of Alexander Burnett. Mr Godden’s signature is in the place in the appeal form labelled “Appellant(s) Signature”.

6. In the circumstances arising in this case it is necessary to consider whether a purported “appellant” could be treated as having acted as agent for the applicant (thereby in effect converting the named agent into a sub-agent).² However, this possibility is ruled out by four points.
7. The first is Mr Carney’s confirmation that he was the sole agent. The second is the fact that Mr Godden signed the appeal form “on behalf of Alexander Burnett”. The third point is that the power of attorney does not help the “appellant”; indeed the opposite applies. This document confirms that Mr Godden was acting on behalf of Mr Burnett personally - there is no reference to Washington Hotel Ltd.
8. Fourth, although there is no detailed evidence about company directorships, I have allowed for the possibility that Mr Burnett may be a director of Washington Hotel Ltd. It might have been possible to regard Mr Burnett as an agent for Washington Hotel Ltd if the company’s name had at least appeared somewhere in the appeal form. I have dealt with a number of appeals in Jersey where more than one body – for example, an individual and a company – are both named as the appellant, and the “real” appellant having the right of appeal under the Law can reasonably be inferred. But that does not apply in the present case. At a stretch, it might have been possible to take the agent’s covering letter (submitted with the appeal) as identifying the appellant despite what is specified in the appeal itself; but this letter is also no help – it does not mention Washington Hotel Ltd and was evidently copied to a company named Balmoral Executive Suites Ltd as the apparent client.³
9. I have noted that the written statement submitted by the planning consultancy KE Planning refers to the appellant as Washington Hotel Ltd. That may have been based on an unchecked assumption that the appellant must have been the applicant; be that as it may, it is not in line with the appeal form, which is a key document because it is the instrument which lodges an appeal.
10. In summary, Mr Alexander Burnett was not the applicant and did not have a right of appeal. Thus I find that there has never been an appeal against the refusal of the planning permission in this case.
11. Some people might be surprised that this matter did not arise earlier during the appeal process. From what was said in response to my questions at the hearing, it seems that the way appeals are processed within the two relevant parts of the government (the Judicial Greffe and Infrastructure, Housing and Environment) does not include the sort of cross-checks between applications and appeals which could have picked up the discrepancy described above. Thus inspectors dealing

¹ A copy of this is among the submitted documents.

² A limited liability company and director of a company are different legal entities, but a UK court judgment relating to a planning appeal has held that the question of agency still has to be considered. The principle I am applying here is that UK court judgments can be relevant where there are no directly comparable judgments by Jersey courts. In *Bucks CC v SSE & Brown* (QBD 19 December 1997), the court held that a director of a company had no right of appeal on the company’s behalf, though in a later judgment (*R v SSETR Ex Parte Eauville Ltd* [2000] 80 P&CR 85), the court held that the question of agency had to be considered. I mentioned the *Eauville* judgment during the hearing.

³ After the signature to this letter are the words “cc Balmoral Executive Suites Ltd”.

with appeals are apparently the only “long-stop” who may try to make such checks by looking at both application and appeal documents, if what is visible in available documents suggests a need to do so.

12. I have mentioned “what is visible in available documents” because a further problem is that application and appeal documents published by the government are often so heavily “redacted”, with important parts blacked out, that it is difficult for inspectors (and others, including appellants and agents) to study them fully before a hearing.⁴ In this instance I was only able to see an un-redacted appeal form shortly before the hearing.

Outcome for the Purposes of this Report

13. I have to bear in mind that you may take a different view on the points explained above. I am therefore appending to this report the type of information which would normally form part of an inspector’s report, including a site description, case summaries and assessment.⁵

Recommendation

14. I recommend that no further action be taken to decide the “appeal” since there is nothing to either dismiss or allow. However, I suggest that a formal judgment should be issued stating that there is no appeal to be decided.

G F Self

Inspector

⁴ In my view the extent of redaction generally applied to planning appeal documents is much more than is appropriate or necessary and causes disproportionate problems – in some cases, for example, whole sections of documents including all of the information identifying an appellant is blacked out. But the wider implications of this practice are a matter outside this particular case.

⁵ In other jurisdictions with planning law broadly similar to Jersey’s but where appeal decisions are made by inspectors (subject to legal challenge through the courts), I could have closed the hearing after a few minutes and it would not have been necessary to consider the arguments about planning permission put forward by the parties. That was not an option in this case.

APPENDIX TO REPORT

1. For the purposes this appendix from paragraph 2 onwards, I use the term “appellant” without quotation marks on the assumed basis that this part of my report would only become relevant if it is decided that there is a valid appeal.
2. This appendix includes a description of the appeal site and surroundings, summaries of the cases for the appellant, the planning authority and other parties, followed by my assessment of the issues raised. Comments on possible conditions for use if you decide to grant planning permission are also provided. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

Site and Surroundings

Note: Compass point directions on submitted drawings are inaccurately labelled. For example, of the three elevations shown on Drawing 23C the “East Elevation” is more accurately the North-East Elevation, the “South Elevation” is the South-East Elevation, and “North” is North-West.

3. The appeal site is located in a northern part of St Helier, in an area where there is a mixture of mostly residential properties ranging from individual houses to blocks of apartments.
4. Balmoral Apartments is an L-shaped block of apartments fronting Clarendon Road, with a rear section extending north-eastwards. The front part of the building, which is up to four storeys in height, has a projecting central portion with a ridged, low-pitched roof. The rear part where the proposed dwelling would be constructed is lower than the front part and has a flat roof. There is a tarmac-surfaced residents’ car park with its entrance off Clarendon Road, and a garden area within the eastern part of the site.
5. The car park is laid out with parking spaces marked by white lines. One of the spaces is immediately next to the steps which lead up to the front entrance of the building, and a car parked there partly overlaps the width of the steps. Another of the marked spaces is in the eastern corner of the car park (where the label “prop bike park area” appears on the application site plan).
6. The immediate area is quite densely built-up. The adjacent properties include: St Hilda Court, which fronts Clarendon Road and is set back about the same distance from the road as the Balmoral Suites block; The Mews to the north-west (which is physically attached to St Hilda Court but fronts a side street, Palmyra Road, and has a rear car parking area accessed from Palmyra Road); Balmoral Mews to the north, a three-storey building with a roof terrace; St Helier Court, a four-storey building to the north-east; and La Cachette to the east. The first three of those properties appear to be apartment blocks, the last is a house set in a triangular-shaped plot with its rear garden area to the south of the dwelling.

Case for Appellant

7. The main grounds of appeal are, in summary:
 - The information contained in the Planning Statement submitted with the application was not properly considered by the Department. Plans addressing the reasons for refusal of the previous application were not taken into account.

- Policy tests in the Island Plan have not been addressed, and the proposal complies with the policies of the Plan.
- Compared with the previous refused scheme, the size of what is now proposed has been reduced, the northern wall has been moved away from the boundary, the eastern wall has been moved east, the design has been amended to include a curved roof, and the size of the dwelling has been considerably reduced.
- The proposal would not have a cramped arrangement and relationship with neighbouring buildings, and would be compatible with the built character of the area.
- A daylight and sunlight assessment has been made using guidance published by the Building Research Establishment. The findings were presented in drawings, one of which (Drawing No 24) may not have been published. The assessment found that the amount of sunlight and daylight reaching neighbouring properties or amenity would not make the existing situation any worse, or would remain unchanged.
- The size and layout of the proposed dwelling would meet the standards set in SPG 6 for a 2-bedroom 3-person dwelling.
- Changes have been made to the forecourt of the Balmoral Apartments to provide for secure bicycle parking and an electric vehicle charging point.
- The proposal would meet policies aimed at achieving higher density development in the built-up area, the efficient use of resources, reducing car dependence (Policies SP1, SP2, SP3 and SP6). The development would provide high quality design (Policies GD1 and SP7).
- The proposal would deliver an additional dwelling at a site already in residential use in accordance with the Island Plan
- There would be no potential for overlooking from the north. The terrace proposed to the east would have 2metre high screening to prevent overlooking of St Helier Court.

Case for Planning Authority

8. In response, the planning authority make the following main comments.
- There is no objection to the proposal in principle as it would meet Island Plan aims to direct development to built-up areas; but support for higher density development is not unconstrained. The proposed unit would be reduced compared with the previous scheme but would still result in a cramped form of development with an unsatisfactory, overbearing relationship with adjoining dwellings.
 - The design, different from the previous scheme, would be incongruous, and would not meet space standards. The bedroom area would be 11.6sqm, not 12.5sqm as claimed by the appellant.
 - The provision for car parking space and cycle storage would be inadequate. The submitted plans do not show marked-out spaces, but what appears to be a proposed additional parking space next to the main entrance steps could not be accessed if the adjacent parking space was in use.
 - Because of the above points, the development would conflict with Island Plan Policies SP3, GD1, H6, SP7, GD7 and TT4.

Representations by Other Parties

9. Written representations objecting to the proposed development were submitted at application stage by about 12 local residents. In summary, they say that the development is of poor design which would have a negative impact on the area's character and appearance, would cause increased noise, loss of light and loss of privacy.
10. At the public hearing two local residents (Ms M Blanchet of Balmoral Suites and Mr P Rogers of St Helier Court) spoke opposing the proposal. Ms Blanchet said that one of the concerns of Balmoral Suites occupiers was that they had not been informed of the appeal because they had only purchased their apartments recently. They had encountered numerous problems caused by lack of maintenance and were concerned about how the proposed apartment could be built on the top of the building without causing unacceptable disturbance to the existing occupiers. Also all the parking spaces in the Balmoral Suites car park were now owned by the owners of the apartments. This included the parking space next to the entrance steps which the applicant proposed to be allocated to the new dwelling.

Assessment

11. This appeal raises three main issues: first, the design of the proposal and whether it would fit with or detract from the character and appearance of the area; second, whether the proposal would unreasonably harm the residential amenities of neighbouring properties; third, whether the proposed car parking arrangements would be satisfactory.
12. The design of the proposal is unsatisfactory in several ways. The extra floor would add a feature to the top of the building which would be noticeable or prominent in some viewpoints, and the curved roof shape with its dark grey zinc finish would look incongruous when seen in context with the rest of the building. The shape, size and position of the windows would not correspond well with the fenestration on the lower floors. The timber cladding would contrast with the mostly rendered finish of the rest of the building. Although the north-west elevation (labelled west on the plans) would be set back from the lower part of the building, the timber-clad wall would be seen from some nearby viewpoints and would add a further blank feature to this already high, blank elevation. Each of these factors on their own might not be a compelling objection, but taking them all into account I judge that the proposal would significantly detract from the appearance and character of the area.
13. On the second issue, the Planning Statement submitted in support of the application mentions (on page 8) "2m high screening proposed to the east to prevent over-looking between the development proposed and St Helier Court". As shown in the application drawings, this 2-metre screening is proposed on the *north-east* elevation. On the *south-east* elevation, the proposed screen along the outer edge of the terrace or balcony would be about 1 metre high, and 2 metre screen here would not make sense as it would create a claustrophobic balcony with hardly any view or outlook.
14. The position and size of the proposed dwelling has been altered compared with a previous scheme and would be set back from the edge of the roof. Nevertheless the terrace or balcony on the south-east side would project to the same extent as those on lower floors. From here there would be high-level views towards neighbouring properties, including the rear garden of La Cachette about 15 metres away. Although the garden of that property is already partly overlooked by balconies in the lower floors of the Balmoral Apartments, the combination of

fairly close distance and increased height would increase the sense of being overlooked for occupiers of that property and would detract from privacy to what I consider would be an unacceptable degree.

15. As regards car parking provision, the appeal site is within about 15 minutes walk from the centre of St Helier and it could be argued that parking provision for future occupiers might not be needed, in the interests of discouraging private car use. However, that could lead to increased demand for on-street parking, and anyway is not what the appellant has contended: part of the appellant's case is that an allocated parking space would be provided.
16. The available evidence indicates that this would not be practicable for two reasons. First, the available evidence about ownership indicates that the space proposed by the appellant would not be available, and appears unlikely to be available unless there is a change of ownership. Second, even if it were to become available, it is of sub-standard dimensions and almost any car parked there would partially obstruct the access steps to the building. The fact that this situation exists already is not a good reason for formalising it through a planning permission.
17. One of the points made in the planning authority's statement was that the submitted site plans did not show all of the parking spaces to enable these to be measured or compared. In response, Drawing Number 25A was appended to a statement for the appellant "to assist the Department in this regard". However, the drawing hardly "assists" at all - except for the location of a space designated as having a proposed electric charging point, Drawing 25A does not show the layout of the parking spaces.
18. Car parking is not the only problem relating to vehicles. The proposed cycle storage area would be in a location where access would be hindered by closely parked cars. In my judgment this arrangement would be unsatisfactory.
19. With those points in mind I find that the proposed car and cycle parking provision is unclear and contradictory and therefore unsatisfactory.
20. One of the reasons for refusal of planning permission related to the size of the main bedroom in the proposed dwelling, which the planning authority considered would fail to meet minimum room size standards. The authority's statement contended that this room would be 11.6 square metres in area. At the hearing the authority's witness agreed dimensions scaled from the drawings which would mean that that this room would have an area of about 12.5 square metres, in line with the appellant's claimed figure.
21. Other internal aspects of the proposal would be of a poor quality, particularly the corridor-like hallway which would be about 9 metres in length with no external illumination. On balance I consider these internal points to be of supplementary weight, not by themselves such as to justify refusing planning permission.
22. A number of the objections from occupiers of nearby dwellings refer to overshadowing or loss of daylight. Having examined the information submitted for the appellant, including the diagrams showing sunlight angles, I judge that in these respects the proposal would not have an unreasonable impact on neighbouring residential properties. Residents' concerns about disturbance during potential construction are more appropriately a matter for regulations outside planning law. The same applies to the condition or maintenance of the existing building.

23. In considering the points above, I have had regard to relevant planning policies and to the current changing status of the Island Plan. The proposal would accord with some general policies aimed at concentrating residential development into the built-up area, but would conflict with other policies, particularly those relating to design and amenity.
24. From comments made during the hearing it seems that current occupiers of dwellings at and near the appeal site may not have known about the appeal until very recently. When current owners bought their apartments they should have been made aware of the appeal, or at least the potential for an appeal, through normal property search procedures. If that was not so, it is a matter between them and whoever advised them on the legal aspects of their purchases.

Conclusion

25. I conclude that although part of the third reason for the refusal of planning permission (relating to room size and internal layout) was not justified, there are other clear-cut objections, and if there had been a valid appeal in this case I would probably have recommended refusing planning permission.

Possible Conditions

26. During the hearing I invited comments about possible conditions for imposition if you were minded to grant planning permission. Standard condition A covering the implementation period would be appropriate, plus three other conditions. One of these should require that balcony screening to be in place before first occupation of the proposed dwelling, and retained. A second condition should require the submission of a plan showing the layout of proposed parking area with space markings, and the retention of the layout. A third condition (which I consider necessary as a substitute for standard condition B because some of the application drawings have been subject to revision) should require the submission of a complete set of up-to-date plans for the approval of the planning authority, together with a prevention of any development unless and until the issue of such approval, and a requirement that after approval, the development shall be carried out in accordance with the specified plans.

G F Self

Inspector
20 March 2022.