

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

Appeal under Article 108 against a decision made under Article 19 to grant a planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Adrian Seymour

Planning permission reference number and date:

P/2021/1273 dated 2 February 2022

Applicant for planning permission:

Tim Evans

Site address:

The Pines, Le Mont Sohier, St Brelade HE3 8EA

Description of development:

"Demolish existing dwelling, associated outbuildings and hard landscaping.
Construct 1 No. two bed dwelling with associated amenity space"

Inspector's site visit date:

13 June 2022

Hearing date:

15 June 2022

Introduction and procedural matters

1. This is a third-party appeal against the grant by the Planning Committee of planning permission for the development described above. The Committee's decision was made in accordance with the recommendations of the Infrastructure, Housing and Environment Department.
2. The reason for approval was given as "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".

3. The permission was granted subject to the standard planning conditions relating to the commencement of the development and compliance with the approved details and to the following additional conditions: -

"1. Prior to commencement of the development hereby approved, a Demolition/Construction Environmental Management Plan shall be submitted to and approved by the Planning Department. The Demolition/Construction Environmental Management Plan shall be thereafter implemented in full until the completion of the development and any variations agreed in writing by the Department prior to such work commencing. The Plan shall secure an implementation programme of mitigation measures to minimise the adverse effects of the proposal on the environment, and shall include but not be limited to:

- A. A demonstration of compliance with best practice in controlling, monitoring, recording and reporting on any emissions to the environment (such as noise and vibration, air, land and water pollution);
- B. Details of a publicised complaints procedure, including office hours and out of hours contact numbers;
- C. Details of any proposed crushing/ sorting of waste material on site;
- D. Specified hours of working.

2. No part of the development hereby approved shall be occupied until the drainage works, including the connection to the foul sewer and soakaway, is completed to the satisfaction of the Planning Department.

3. No part of the development hereby approved shall be occupied until all hard and soft landscape works as indicated on the approved plan have been carried out in full. Following completion, the landscaping areas shall be thereafter maintained as such.

4. The findings and required mitigation measures outlined in the Ecology Assessments shall be implemented prior to the commencement of development, continued throughout the phases of development (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Planning Department prior to works being undertaken.

5. Prior to the commencement of development, full details of any external lighting on the site, shall be submitted to and approved by the Planning Department and thereafter shall be implemented as agreed.

6. No part of the development hereby approved shall be occupied until all the proposed windows in the north elevation at first floor level are fitted with obscure glass and restricted in its/their opening mechanism to no more than 200mm. Once implemented, the obscure glazing and restricted opening mechanism shall be maintained as such thereafter.

7. No part of the development hereby approved shall be occupied until both the terraces in the north elevation at first floor level are fitted with privacy screens and wall to the height and design as shown on the Proposed Elevations Plan on Drawing no. P107. Once constructed, the screens and wall shall be maintained as such thereafter.

8. Prior to their first use on site, samples of all external materials to be used (including any hard landscaping materials) shall be submitted to and approved in writing by the Planning Department. The approved materials shall be implemented in full and thereafter retained and maintained as such.”
4. The reasons given for conditions 1 to 8 were: -
- “1. To ensure the development does not have an adverse impact on public health or the wider environment, in accordance with Policies GD1, GD6 and WM1 of the Adopted Island Plan 2011 (Revised 2014).
 2. To ensure that the property has adequate foul drainage and in order to prevent any pollution of groundwater in accordance with Policy LWM2 of the Adopted Island Plan 2011 (Revised 2014).
 3. To ensure that the benefits of the approved landscaping scheme are carried out and completed, making a positive contribution to the amenities of the site in accordance with Policies GD1, GD7, NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
 4. To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
 5. *[sic]* To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
 6. To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
 7. To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GDI of the Adopted Island Plan 2011 (Revised 2014).
 8. To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).”
5. The policies referred to here are no longer applicable to the appeal decision following the replacement of the Revised 2011 Island Plan by the Bridging Island Plan in March 2022.
6. The appeal is therefore proceeding on the basis that the Bridging Island Plan is now the Island Plan for the purposes of Article 19 of the Law. This article provides that (a) in general planning permission shall be granted if a development is in accordance with the Plan, (b) it may be granted where it is inconsistent with the Plan if there is sufficient justification for doing so, or (c) it may be refused.

The Bridging Island Plan policies

7. The Department state that the thrust of the policies relating to the proposed development have not changed fundamentally in the Bridging Island Plan from

what they were in the Revised 2011 Island Plan. "The site still lies within the designated Built-Up Area where new development is focused. It [is] also part of the Green Backdrop Zone (Policy GD8). Policies SP1 (responding to Climate Change), SP2 (Spatial Strategy), SP3 (Placemaking), SP4 (Protecting and promoting island identity), and SP5 (Protecting and improving the natural environment), also apply. The site is part of the St Brelades Bay Local Centre (policy PL3 – Local Centres), and the following policies are also particularly pertinent – GD1 (Managing the health and wellbeing impact of new development), GD5 (Demolition and replacement of buildings), GD6 (Design quality), H1 (Housing Quality and Design), H2 (Housing density), and H3 (Provision of homes)."

The Pines and its surroundings

8. The Pines is a two-bedroom detached bungalow with a large basement, which is situated in an elevated position on a triangular plot above the dwellings on the south side of Le Mont Sohier. It was constructed in the 1930s using light-weight materials and rests on a series of blockwork columns on sloping ground. The appellant's bungalow, Endsleigh, is a similar structure a short distance to the east of The Pines on slightly higher ground.
9. There is no vehicular access to either of the bungalows. Pedestrian access is by way of a shared footpath leading from Le Mont Sohier at a point next to the entrance to the Biarritz Hotel. The Pines has a garage and a parking space on the road frontage here.

The replacement dwelling

10. The replacement would be a two-bedroom dwelling of a modern design, with a ground floor, an upper floor in the roof space and a large basement. The plans show that the study might be used as an additional bedroom. The dwelling would be a little further away from Endsleigh and from the site's northern boundary than the bungalow. Landscaping and species protection schemes would be established in accordance with the submitted documents and the planning conditions. The arrangements for vehicular and pedestrian access and parking would be unchanged.

The case for the appellant

11. The appellant has three main concerns: (1) that the excavation and foundation works and the access requirements involved in the construction of the new dwelling will cause vibration that will adversely affect Endsleigh, which is also built on high blockwork pillars; (2) that the safety of the shared pedestrian access to Endsleigh will be adversely affected by construction traffic; and (3) that the residential amenities of Endsleigh and the character of the surrounding area will be harmed by the scale, mass, depth and design of the new dwelling.

Other representations

12. Several representations have been received from other near neighbours and from other residents in the area. Most of these representations raise the same concerns as the appellant, with the addition of: - ground stability in general in this location; the impact on road safety of construction traffic and parking on Le Mont Sohier; the effect of construction activity on wildlife; disturbance from

noise; and overlooking. However, there is support for the new dwelling from two persons who consider it would be an improvement to the area when compared to the quality and appearance of the bungalow.

The case for the applicant

13. The applicant appreciates the concerns expressed about groundworks, but points out that the Planning Committee agreed that these were engineering issues not pertinent to the planning process; his plan in any event is to improve the integrity of the hillside, not erode it. As to safe access during construction, he maintains that this issue has been addressed in the planning conditions that have been imposed. He maintains that the bungalow is not reasonably capable of refurbishment because it cannot feasibly be brought up to current building standards due to the poor quality of its construction.
14. The applicant makes the following main points in support of the proposals. The design of the new dwelling is appropriate to the area, which contains several examples of contemporary dwellings. The new dwelling would have only a slightly larger footprint than the bungalow; its design, modest increase in size and offsetting would reduce overlooking and visual impact to a standard that is appropriate to its surroundings, and planning conditions 6 & 7 would also apply. There have been two ecological surveys; a species protection plan and a planting scheme have been accepted and these would be regulated in accordance with conditions 3 & 4. Overall, the building and its curtilage layout would support the principles of the Green Backdrop Zone.

The case for the Infrastructure, Housing and Environment Department

15. The Department consider that the proposals are acceptable for the following reasons. The site is in the built-up area and the new dwelling would be of an acceptable size and standard. The bungalow is of such a poor quality and environmental standard that its demolition and replacement by a new dwelling that would have a high quality of design and materials and environmental standard is justified. The new dwelling would not on balance have an unreasonable effect on the character of the area and the Green Backdrop Zone or on the amenities of neighbours. The parking arrangements are acceptable for a two-bedroom replacement dwelling with a potential third bedroom. The landscaping and species protection proposals are acceptable with the planning conditions that have been imposed.
16. With regard to the concerns expressed by the appellant and others about the excavation and foundation works required and the access arrangements, the Department and the Planning Committee draw a distinction between matters relating to development construction work and ongoing matters arising from completed development, treating the former as matters mainly for those carrying out the work to deal with, or as building controls matters, rather than as determinative planning issues. The Department state that the planning issues relating to construction work have been adequately dealt with by imposing condition 1 which requires the implementation of an approved Demolition/Construction Environmental Management Plan.

Inspector's assessments and conclusions

17. I start by assessing whether the development is acceptable in principle under the Bridging Island Plan's key strategic and locational policies:

- The site is in the built-up area defined in the Plan, where Policy SP2 (Spatial strategy) states that development will be concentrated.
 - Policy H3 (Provision of homes) states that proposals for residential development in the built-up area will be supported. Policy PL3 (Local centres) indicates specifically that proposals for residential development will be supported in the St Brelade's Bay built-up area.
 - Policy SP1 (Responding to climate change) has several applicable provisions. The development would comply with these because it would (a) be in an area of previously-developed land that is accessible by means other than a private vehicle, (b) the bungalow is not reasonably capable of retention and retrofitting and (c) the new dwelling would be a more efficient and sustainable building. It has been demonstrated that the criteria in Policy GD5 (Demolition and replacement of buildings) would be met.
18. I turn now to consideration of the effect of the development on the character and appearance of its surroundings.
19. The immediate area consists of detached housing in a variety of styles on both sides of the road, with trees on the higher ground behind them. The new dwelling has been acknowledged to be well-designed and would not appear out of place in these surroundings. The trees to the south of the bungalow would be unaffected. The approved planting scheme would be an improvement on the quality of the bungalow's present garden. The approved species protection plan seeks to ensure that the layout would support protected species.
20. Policy GD8 (Green backdrop zone) states that proposals for the replacement of existing buildings will be supported where six criteria are satisfied, as they would be in this instance. There would be no conflict with the strategic principles set out in Policies SP3 (Placemaking), SP4 (Protecting and promoting island identity) and SP5 (Protecting and improving the natural environment). The applicable principles in Policies GD6 (Design quality), H1 (Housing Quality and Design) and H2 (Housing density) would all be observed.
21. Proposal 18 (St Brelade's Bay Improvement Plan) states that the Minister will develop an improvement plan for St Brelade's Bay by December 2023, which "will identify potential proactive interventions to enhance the bay and support its role as a valued place for visitors and islanders alike". The development in this appeal would not prejudice the preparation of this plan.
22. I turn now to consideration of the effect of the development on neighbouring residents.
23. Policy GD1 (Managing the health and wellbeing impact of new development) deals with this issue. It states: -
- "All development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts, and will only be supported where:

1. the development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents, and in particular, will not:
 - a. create a sense of overbearing or oppressive enclosure;
 - b. unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy;
 - c. unreasonably affect the level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy;
 - d. adversely affect the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions." ...
24. When the Planning Committee took their decision to approve this development the corresponding provisions of the Revised 2011 Island Plan were also in a Policy GD1. This policy was headed "General development considerations". Significantly, the Bridging Island Plan's Policy GD1 is now headed "Managing the health and wellbeing impact of new development" and includes the words "All development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts", a stipulation that was not in the Revised 2011 Island Plan's Policy GD1.
25. In the context of the current appeal, I consider that the present Policy GD1 calls for consideration to be given to the effect of the development in relation to the following matters: any sense of overbearing or oppressive enclosure; levels of privacy; levels of sunlight and daylight; noise, including construction noise; ground conditions in this locality; vibrations from construction work; access; traffic and parking. I have considered these matters in turn: -
 - Sense of overbearing or oppressive enclosure. The footprint and the height of the roof ridge of the new dwelling would not be significantly greater than the bungalow's, but the use of roof space for bedroom accommodation would make the roof much longer on an east-west alignment. The roof would be hipped at its eastern end. The effect on Endsleigh would not be particularly noticeable since Endsleigh lies on higher ground to the east and the gap between Endsleigh and the new dwelling would be greater than it is between the bungalow and Endsleigh. There are two dwellings immediately to the north of the bungalow on Le Mont Sohier from which the longer sloping roof would be visible. Their main outlook is towards the north and west, however, and there would be slightly more distance between them and the new dwelling than there is between them and the bungalow. In addition, the roof would be seen against a backdrop of trees and this side of the new dwelling would be less brightly coloured than the corresponding side of the bungalow. In the circumstances I have described, I do not consider that the new dwelling would create a sense of overbearing or oppressive enclosure contrary to Policy GD1.
 - Levels of privacy. The bungalow has windows on its northern elevation serving principal rooms, from which there is a clear view of the adjoining properties to the north in Le Mont Sohier; in the new dwelling there would only be much smaller windows on this side that would serve a kitchen and bathroom. The bungalow's projecting balcony on its

western elevation is unscreened; the new dwelling's ground-floor balcony, which would be in a similar position, would be well-screened on its critical northern side. The new dwelling's small additional first-floor balcony, serving a bedroom, would be recessed within the roof space, which would provide screening on both sides. Conditions 6 & 7 would also apply. Endsleigh is on higher ground; it is not overlooked from the bungalow and its privacy would not be harmed by the new dwelling. As is the case with the bungalow, the new dwelling would take advantage of the more open outlook towards the west and the bay. On the whole, the standard of privacy currently enjoyed by neighbours would be maintained. The criteria in Policy GD1 would be complied with.

- Levels of sunlight and daylight. The applicant's Design & Planning Statement indicates that there would be little or no change in the levels of sunlight and daylight currently enjoyed by all the neighbours at all times of the year.
- Noise, including construction noise. Construction noise is a matter that is already covered by condition 1. I do not expect it to be abnormal for development of this kind, although it may be more prolonged because of the limitations on vehicular access. The use of the bungalow's raised decking and gardens already has the potential to generate noise and I would not expect the use of the new dwelling's balconies and gardens to generate more noise sufficient to create a conflict with Policy GD1.
- Ground conditions in this locality. The applicant's Design & Planning Statement acknowledges that further investigation and survey work are required before excavation work for the basement is undertaken, due to likely ground conditions at the site and at the appellant's bungalow, Endsleigh. (See paragraph headed "Stability and bearing capacity" on page 7 of the Statement, where the ground conditions are suspected as being sandy with a granite substrate at a depth of 2m.) The Demolition/Construction Environmental Management Plan required by condition 1 deals in part with this matter, but it should be reinforced by the additional requirements I have recommended in paragraph 29 below, in recognition of the potential wellbeing and wider amenity impacts considerations introduced by the new Policy GD1.
- Vibrations from construction work. This matter is already referred to in condition 1; the additional requirements I have recommended would enable further attention to be given to excavation works and foundation works, with a view to minimising the impact of vibration on Endsleigh and Gavarnie, the property immediately to the north of the bungalow.
- Access. When the new dwelling has been completed the arrangements for access to it would be the same as they are now for the bungalow. Attention has been drawn to the fact that the plans describe the new basement as 'Store/Workshop/Potential Future Garage' but a fresh planning application would be required before a vehicular access could be provided and this notation on the plans would not prejudice its consideration. During the demolition and construction period, the difficulties with access would need to be resolved in a way that does not bring users of the shared access into conflict with works operations. I have dealt with this matter in the additional requirements.

- Traffic and parking. Concerns about these matters have been raised because of the narrowness of Le Mont Sohier and the proximity of bus stops. In paragraph 29 below, in order to comply with Policy TT4 (Provision of off-street parking), I have recommended the addition of a new condition 9 because it would otherwise be possible to use the basement as additional sleeping accommodation, when the off-street parking facilities available here are only appropriate for a two-bedroom dwelling with a study/bedroom. Traffic and parking during the construction period are dealt with in the additional requirements recommended for inclusion in condition 1.
26. For the above reasons, I have concluded that the development would be in accordance with the Bridging Island Plan if the planning permission is varied to deal with the matters I have identified as requiring attention pursuant to Policies GD1 and TT4. This can be done by adding to the planning conditions that have already been imposed, in the way I have indicated. The parties have been consulted about these additions on a 'without prejudice' basis and all comments received have been taken into account.
27. I have therefore recommended that the appeal is dismissed but that the planning permission is varied as set out in paragraph 29 below.

Inspector's recommendation

28. I recommend that the appeal is dismissed.
29. I recommend that the planning permission P/2021/1273 dated 02/02/2022 for development at The Pines, Le Mont Sohier, St Brelade HE3 8EA, consisting of the demolition of the existing dwelling, associated outbuildings and hard landscaping and the construction of one two-bedroom dwelling with associated amenity space, is varied: -
- (i) by the addition to Condition 1 of the following new sub-paragraphs E. to K.:-
- "E. the appointment of a chartered engineer to inspect, approve and monitor the critical elements of both permanent and temporary construction works throughout their duration;
- F. provisions for site management, safety, and supervision;
- G. provisions for the management of construction traffic, access and parking;
- H. the arrangements for the storage of plant and materials to be used;
- I. provisions to ensure the stability of land and buildings and monitor movement;
- J. the engagement of builders and contractors experienced in the carrying out of similar works;
- K. consultation with adjoining owners and occupiers to explain what works are to be carried out, what the implications are for them and what mitigation measures are to be put into place."

and (ii) by the addition of a new condition as follows: -

"9. No part of the basement of the approved dwelling shall be used as sleeping accommodation."

“Reason: To ensure that appropriate parking provision exists for the dwelling,
in accordance with Policy TT4 of the Bridging Island Plan 2022 to 2025.”

Dated 22 August 2022

D.A.Hainsworth

Inspector