

PLANNING AND BUILDING (JERSEY) LAW 2002

Appeal under Article 108 against a decision made under Article 19 to refuse 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

Appellants:

Dandara Jersey Limited

Application reference number and date:

P/2021/1790 dated 21 December 2021

Decision Notice date:

20 October 2022

Site address:

Fair Acre, La Route Orange, St. Brelade, JE3 8GP

Development proposed:

“Demolish existing dwelling and associated structures. Construct 13 No. 2 bed residential units with associated bin store, electrical substation, landscaping and parking. Install solar panels to all roof planes.”

Inspector’s site visit date:

6 February 2023

Hearing date:

6 February 2023

Introduction

1. This is an appeal against the Planning Committee’s decision to refuse planning permission for the development described above. The application was recommended for approval by the Infrastructure, Housing and Environment Department.
2. The decision notice records that permission was refused for the following reason:

“The proposed development by virtue of the demolition of the existing building and its proposed mass and scale would be dominant and intrusive, thereby unreasonably affecting the character and amenity of the area and the environment, contrary to Policies SP3, GD1 GD5, GD6, H1 and H4 of the Adopted Bridging Island Plan 2022.”

The site and its surroundings

3. The site is in a residential location on the south side of La Route Orange and consists of the substantial detached house known as Fair Acre, which is centrally located in its own extensive grounds with trees and landscaping along the boundaries. The site is in the built-up area of Les Quennevais as defined in the Bridging Island Plan (apart from a small appendage at its south-western corner containing a pumping station, which is not affected by the proposed development).
4. La Route Orange is a main road which is part of the Primary Route Network and a bus route. The site is within walking distance of La Moye School to the west and the Red Houses retail and commercial centre to the east. Residential development on the south side of the road in this location is in general more spacious and leafier than the development on the north side.

The proposed development

5. The house, Fair Acre, would be demolished and replaced by a part two-storey/part three-storey apartment block in the centre of the site. The block would have mono-pitched roofs at varying heights and a shallow arc profile as a whole. Parking spaces and a turning area would be provided between the apartments and the road. The existing access from the road would be retained and improved. Garden space or balconies would be provided for each apartment and there would be a communal garden towards the south of the site. There would be some loss of trees, but landscape, ecological enhancement and planting schemes would be carried out.

Summaries of representations made by the parties and interested persons

6. The appellants maintain that the proposed development would accord with the strategic policies in the Bridging Island Plan and that there would not be any unreasonable harm to neighbours' amenities. The demolition of the house is justified within Policy GD5. The apartments would comply with housing standards and would make a contribution towards meeting Jersey's acute housing needs.
7. The Department state that the Committee's decision was finely balanced, the decision to refuse being made in accordance with the agreed procedures that follow a tied vote. The proposed development, when compared to the existing house, would be out of character with the area because of its greater density, height, scale and massing and there would be a loss of landscape character.
8. The objections made by interested persons generally match the reason given for refusing planning permission. Some objectors accept that the site should in principle be redeveloped for housing, but in a manner more appropriate to the character and appearance of the area, and not for flats or apartments. The immediate neighbours on the western and southern sides of the site

additionally object to the impact of the proposed development on their residential amenities.

Inspector's assessments

Strategic policy considerations

9. Policy SP1 (Responding to climate change) of the Bridging Island Plan directs growth to areas of previously-developed land and locations that minimise the need to travel by private vehicle.
10. The second paragraph on page 40 of the Plan reads:

"Les Quennevais [which is defined in the footnote to page 40 as extending to and embracing La Moye, Le Saut Falluet, La Petite Route des Mielles, Tabor Heights and Park Estate] has developed as a secondary urban centre in the island, providing much residential accommodation supported by a good range of community, education and sports facilities, and a secondary island retail centre. As one of the island's main urban centres, Les Quennevais can continue to provide a focus for new development enabling investment and regeneration, and being supported as a sustainable alternative place for new development to happen, which might otherwise be located in St Helier by encouraging the redevelopment of already developed land and buildings at higher densities that are appropriate to the character of the area"

The final paragraph on page 41 states:

"In seeking to secure the most efficient and effective use of land, the plan encourages and enables development at optimum levels of density. As a small island, with significant pressure and competition for the use of land, it is important that planning policies avoid homes being built at low densities in the island's built-up areas, making optimal use of a site's development potential."

11. Accordingly:

Policy SP2 of the Plan (Spatial strategy) states:

"Development will be concentrated within the island's built-up area, as defined on the proposals map. In particular, development will be focused within the island's primary main urban centre of Town which will accommodate much of the island's development needs. Development will also be focused within the secondary main urban centre of Les Quennevais." The Places Policy PL2 (Les Quennevais) indicates that the built-up area of Les Quennevais is the island's secondary urban area and is expected to act as a focus for growth and to help to accommodate the need for residential development.

Strategic Policy SP3 (Placemaking) states:

"All development must reflect and enhance the unique character and function of the place where it is located. New development must contribute to the creation of aesthetically pleasing, safe and durable places that positively influence community health and wellbeing outcomes ..." The Policy adds that new development will be supported where it achieves a list of eight outcomes, which are assessed in this report as far as they are relevant to the development proposed.

12. Although the strategy states that the built-up area of Les Quennevais is expected “to act as a focus for growth and to help to accommodate the need for residential development”, the Plan does not allocate any land to fulfil this objective and no undeveloped land suitable for new residential development has so far been identified in the built-up area. Instead, the implementation of the strategy is dependent on ‘windfall sites’ arising, where existing developed sites will be redeveloped at a higher density. The inescapable outcome is that changes will occur to some existing features of the built-up area and in the intensity of some of its existing residential development.
13. The appeal site is a ‘windfall’ site in a sustainable location with good access by walking, cycling and public transport to a range of services and facilities. Its redevelopment at a higher density is strongly supported by the strategic policies in the Plan, subject to consideration of the effect of the development proposed on the character and amenity of its surroundings.

Effect of the proposed development on character and amenity

14. The existing house has no particular architectural or historic merit. The appellants have submitted reports which demonstrate that its demolition is supported by Policy GD5 (Demolition and replacement of buildings), on the grounds that it is not economically viable to repair or refurbish the house and that the proposed apartments represent a more sustainable use of land.
15. There are (at the date of this report) no adopted minimum residential density standards for redevelopment proposals in the built-up area, but Policy H2 (Housing density) indicates that a “positive design-led approach for the provision of new homes will be encouraged at all sites in the island’s built-up area to ensure optimum efficiency in the use of land”. The policy sets out the factors that will be taken into account in determining the appropriate density for any individual site. These factors are: “the quality of design, relative to the nature of the site and its local context, and the character, capacity and sensitivity of the area to accommodate the development”; “the quality, type and mix of homes being created and its contribution to the creation of sustainable communities”; “the level of accessibility by walking, cycling and public transport, to a range of services and facilities, including the capacity of existing local infrastructure to accommodate the development”; and “the quantity and quality of amenity space and parking, including visitor parking”.
16. The number of apartments proposed is well within the capacity of the site and the existing local infrastructure to accommodate them; the location is highly accessible; and the standards relating to housing, amenity space and parking provision would all be met. The Plan’s policies do not specify a preferred type of dwelling for this location; the immediate surroundings contain detached houses but there are apartment blocks in the wider area. Several detached houses could be built on the site in a conventional layout, but that would probably involve the loss of important boundary features on the road frontage to create a new access road and require a greater proportion of the site to be built upon than is needed for the proposed apartment block.
17. The apartment block would be set back some distance from the road, from which it would be well-screened by existing trees. It would have an interesting design, with the mono-pitched roofs having a lower profile at the sides, stepping up to a three-storey element in the centre, which would be about 1.4m higher than the ridge of the pitched roof of the existing house. In my

opinion, it has been well-designed and makes optimum use of the site without compromising the quality of its surroundings.

18. The appellants have submitted a landscape plan, a tree protection plan and a planting strategy. There are a large number of trees on the site. A few within the site and at the access point would be removed, to enable the block to be built and the access to be improved, but the others would all be retained and extensive new planting would take place near to the site's boundaries with adjoining properties and to the rear of the retained tree screen on the road frontage. These are comprehensive proposals which will assimilate the development into its surroundings and improve its appearance when viewed from adjoining properties.
19. Policy GD1 (Managing the health and wellbeing impact of new development) 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; ..."
20. Sub-paragraphs a. to c. of Policy GD1 would be complied with because the design of the block and the space between it and nearby dwellings results in it not being overbearing or oppressive and preserves neighbours' standards of privacy, sunlight and daylight. There would be some impact on the outlook from Affaric to the west, although this would be reduced by the proposed planting, and the occupiers of this property and of Bracken Hill to the south would be aware of increased activity on the site compared to its previous use as a single dwelling. However, I do not consider that these changes would amount to "unreasonable harm" to amenities within the meaning of Policy GD1, since this is a main-road location in a built-up area where residential redevelopment at a higher density is supported by the policies in the Plan.

Planning conditions and planning obligation agreements

21. The Department advised the Committee that an agreement should be entered into in relation bus shelters, notice boards and traffic calming and that planning conditions were required in relation to visibility splays, parking and manoeuvring, external materials, privacy screens, species protection, landscaping, public art and play space. The parties agreed at the hearing that if the Minister resolves to grant planning permission all these matters should be covered in the decision, with additions to reinforce the landscaping condition and to achieve compliance with Policy ME1 (20% reduction in target energy rate for new development).

Inspector's conclusion

22. For the above reasons, I have concluded that the proposed development would be in accordance with the Bridging Island Plan and that there is insufficient justification for departing from the Plan's provisions. I have therefore recommended that planning permission should be granted, subject to the entering into of a planning obligation agreement and to the imposition of planning conditions to deal with the matters set out in paragraph 21 above.

Inspector's recommendation

23. I recommend that, subject to the entering into, within 6 months of the date of the Minister's decision, of a suitable planning obligation under Article 25 of the Planning and Building (Jersey) Law 2002 (a) to pay £33,250 to provide a bus shelter for town-bound buses and as a contribution towards two bus shelters and noticeboards to the east of the site and traffic calming in the area and (b) to make a Percentage for Art contribution in accordance with an agreed Public Art Statement, the appeal is allowed and planning permission is granted for development at Fair Acre, La Route Orange, St. Brelade, JE3 8GP consisting of the demolition of the existing dwelling and associated structures and the construction of thirteen two-bedroom residential units with associated bin store, electricity substation, landscaping and parking and the installation of solar panels to all roof planes, in accordance with the application P/2021/1790 and the plans and documents submitted therewith, subject to the following conditions: -

Standard conditions

- A. The development shall commence within three years of the decision date.

Reason: The development will need to be reconsidered in the light of any material change in circumstances.

- B. The development shall be carried out entirely in accordance with the approved plans and documents. (Note: The approved plans and documents are listed in the section "Final Drawings (Log)" in the Planning Officer's Report dated 26/08/2022.)

Reason: To ensure that the development is carried out as approved.

Additional conditions

1. Prior to the first residential occupation of any of the units, visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall be retained thereafter and no obstruction to visibility of any kind shall be placed within them above a height of 0.9m.

Reason: To maintain highway safety in accordance with Policy TT1 of the Bridging Island Plan.

2. Prior to the first residential occupation of any of the units, the vehicle manoeuvring area, car parking spaces, bicycle spaces and electric vehicle charging points shall be laid out and constructed in accordance with the

approved plans. These facilities shall be retained thereafter for the sole use of the occupiers of the units and their visitors.

Reason: To provide adequate off-street parking facilities in accordance with Policy TT4 of the Bridging Island Plan

3. No development shall take place until samples of all the external facing materials to be used, including hard landscaping materials, have been submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved samples and retained as such.

Reason: To protect the character and identity of the area and enhance the setting of the development pursuant to Policy GD6 of the Bridging Island Plan.

4. Prior to the first residential occupation of any of the units, the balcony of the westernmost unit type 1 (unit 01-06) in the west elevation at first-floor level shall be fitted with an obscure-glazed privacy screen along the length of its west side to a height of 1.8m above finished floor level. The screen shall thereafter be retained as such.

Reason: To protect the privacy of neighbours pursuant to Policy GD1 of the Bridging Island Plan.

5. Prior to the first residential occupation of any of the units, the balcony of the easternmost unit type 1 (unit 01-06) in the east elevation at first-floor level shall be fitted with an obscure-glazed privacy screen along the length of its east side to a height of 1.8m above finished floor level. The screen shall thereafter be retained as such.

Reason: To protect the privacy of neighbours pursuant to Policy GD1 of the Bridging Island Plan.

6. Prior to the commencement of the development, the measures set out in the approved Species Protection and Enhancement Plan (ref: NE/ES/F.03, 3rd May 2022, Nurture Ecology Ltd.) shall be implemented in full. The measures (where applicable) shall be maintained throughout the construction of the development and shall thereafter be retained as such. Any variations that may be required as a result of findings on site shall be agreed in writing by the Chief Officer prior to the variations being carried out.

Reason: To safeguard the natural environment and biodiversity and geodiversity in accordance with Policies SP5 and NE1 of the Bridging Island Plan.

7. Prior to the commencement of the development, a protection plan setting out details of the methods to be used for the protection of all retained trees on the site for the duration of the construction work shall be submitted to and approved in writing by the Chief Officer. The plan shall include details of: (i) the protective fencing to be erected around each retained tree, including the height of the fencing and the distance from the tree and its crown spread; (ii) the arrangements to be made for the handling and storage of spoil, waste and other materials generated

during construction work in order to protect all retained trees; and (iii) all excavations and trenches for services and drains and their proximity to retained trees. The approved protection plan shall be implemented and maintained in full for the duration of the construction work.

8. Prior to the first residential occupation of any of the units, (i) all hard and soft landscape works indicated on the approved plans shall be carried out in full and (ii) a landscape maintenance and management plan, including long-term design objectives, management responsibilities and schedules of maintenance for all landscaped areas, shall be submitted to and approved in writing by the Chief Officer. The landscape maintenance and management plan shall be implemented as approved.

Reason for Conditions 7 & 8: To protect and improve green infrastructure assets and landscape character in accordance with Policies NE2 and NE3 of the Bridging Island Plan.

9. Prior to the commencement of the development, full details of the play equipment, ground surface treatment and any works of enclosure to be installed in the communal play area shown on the "Proposed Landscape Plan 900 P2" shall be submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved details prior to the first residential occupation of any of the units and thereafter retained as such.

Reason: To provide appropriate play space for the units and to protect neighbours' amenities pursuant to Policies CL8 and GD1 of the Bridging Island Plan.

10. Prior to the commencement of the development, details shall be submitted to the Chief Officer to demonstrate that the development as approved will outperform the target energy rate (i.e. the minimum energy performance for new dwellings required by building bye-laws) by 20%, using the Jersey Standard Assessment Procedure (JSAP) calculator or the Simplified Building Energy Model (SBEM) tool.

Reason: To comply with Policy ME1 of the Bridging Island Plan.

Dated 4 March 2023

D.A.Hainsworth

Inspector