

## **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

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#### **Appellant:**

Nigel Sanders

#### **Application reference number and date:**

P/2021/1675 dated 25 November 2021

#### **Decision Notice date:**

20 October 2022

#### **Site address:**

Sunny Brow, La Rue de Haut, St. Brelade JE3 8AR

#### **Development proposed:**

The demolition of the existing 5-bedroom dwelling and garage and the construction of a new 5-bedroom dwelling and garage with a swimming pool and decking.

#### **Inspector's site visit date:**

7 February 2023

#### **Hearing date:**

9 February 2023

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#### **Introduction**

1. This is an appeal against the Planning Committee's decision to refuse planning permission for the development described above. The decision was based on amended plans that had been received: these made various alterations, including the removal of the proposed first-floor studio above the garage, the repositioning of the proposed dwelling away from the western site boundary, fenestration changes and the introduction of a privacy screen. The amended application was recommended for approval by the Infrastructure, Housing and Environment Department.

2. The decision notice records that permission was refused for the following reasons:

“1. It is acknowledged that the site forms part of the Built-Up Area wherein, under the provisions of the adopted 2022 Bridging Island Plan, new residential development will generally be approved. However, in this instance, by virtue of its scale, siting, and design, the proposed development would be harmful to the character of the surrounding area. This includes, in particular, a harmful impact on the character and setting of the nearby Coastal National Park / Protected Coastal Area, as well as a harmful impact on the Green Zone and Built-Up Area. For these reasons, the application fails to satisfy the requirements of Policies SP3, SP4, SP5, PL4, GD6, and NE3 of the adopted 2022 Bridging Island Plan.

2. The applicant has failed to make a sufficient case to justify the demolition of the existing property. For this reason, the application does not comply with the requirements of Policy GD5 (Demolition and replacement of buildings) of the adopted 2022 Bridging Island Plan.”

[NB Describing policies in the Bridging Island Plan as having “requirements” to be satisfied is incorrect. The Plan states in its Introduction that the policies exist “to guide development” and the wording of the policies reflects this approach.]

### **The Bridging Island Plan policies referred to in the Decision Notice**

3. These are:-

- SP3 - Placemaking
- SP4 - Protecting and promoting island identity
- SP5 - Protecting and improving the natural environment
- PL4 - Smaller settlements
- GD6 - Design quality
- NE3 - Landscape and seascape character
- GD5 - Demolition and replacement of buildings

### **Description of the site and its surroundings**

4. Sunny Brow is a large suburban-style 1930s detached house with a detached garage and workshop building. It is at the eastern end of a small group of dwellings of various styles that have been built around a close leading off La Rue de Haut. Garden Court, a larger dwelling with outbuildings and a swimming pool, is in a corresponding position to Sunny Brow on the opposite side of the close. Direct views of Sunny Brow from public vantage points are to a large extent screened by mature hedging on the road frontage, but the house is a prominent feature when viewed from the road across the fields to the south and from the entrance to the close.

5. The house itself and the part of the site that is immediately around it is in the built-up area, this part of which is identified in the Plan as the Smaller Settlement of Les Ruisseaux/Route de Noirmont. The part of the site to the east, which has been used for many years as a garden extension for the house, is in the Green Zone, as are the adjoining fields to the south. The area further to the east on the opposite side of La Rue de Haut is in the Coastal National Park /Protected Coastal Area.

### **The proposed development**

6. The house would be demolished and replaced on the part of the site that is in the built-up area by a family dwelling of a contemporary design, which would take the form of flat-roofed wings with connecting glass links and terracing. The new dwelling would have a larger footprint and provide more floorspace overall than the house, but it would be positioned a little further away from the other dwellings in the close. The two-storey wings of the new dwelling would be more than 4m lower than the house and the three-storey wing would be about 1.6m lower than the ridge of the pitched roof of the house. The privacy of neighbouring residential properties would be protected by the use of obscure glazing and privacy screens where needed.
7. The swimming pool would be to the south of the new dwelling and the decking would be on its eastern and southern sides. There would be improvements in the arrangements for vehicular access and turning space. No development would take place on the part of the site that is in the Green Zone, which would remain as a garden area. The hedging on the road frontage would be retained.

### **Summaries of representations made by the parties and interested persons**

8. The appellant states that the technical reports that have been submitted demonstrate that the demolition of the house would be within the parameters of Policy GD5. He maintains that the proposed development would comply with the other policies of the Plan that have been referred to, because the new dwelling would be well-designed and have less impact on its surroundings than the house and neighbours' residential amenities would be protected.
9. The Department state that the Committee came to a different conclusion for the reasons given in the Decision Notice. The criteria in Policy GD5 would not be met because the house could be repaired or refurbished, which would be a more sustainable option than replacing it with a larger dwelling. The new dwelling because of its size and design would be out of character with the locality and have a harmful impact on its surroundings including land in the Green Zone and the Coastal National Park / Protected Coastal Area.
10. Interested persons have submitted objections supporting the Committee's reasons for refusal. Additional concerns have been raised about light pollution from the proposed development and the impact of the proposed development on the tranquil setting of La Rue de Haut here.

### **Inspector's assessments**

#### *Demolition and replacement – Policy GD5*

11. Policy GD5 is as follows:

**"Policy GD5 – Demolition and replacement of buildings**

*The demolition and replacement of a building or part of a building will only be supported where it is demonstrated that:*

*1. it is not appropriate in sustainability terms, and/or economically viable, to repair or refurbish it;*

*2. the proposed replacement building or part of a building represents a more sustainable use of land having regard to the density of existing and proposed development, overall carbon impact, waste generation, and the use and performance of materials and services; or*

*3. there exists a demonstrable aesthetic and practical benefit to replace over refurbishment.*

*Applications for the demolition and replacement of buildings, or part of a building, must be accompanied by sufficient information which demonstrates that the likely environmental or sustainability, aesthetic or practical benefits of the proposed development outweigh the retention of the existing building."*

12. I have interpreted the policy as if the word "or" had also been inserted between the paragraphs numbered 1 and 2, so that the three examples are all considered to be alternatives. The parties have agreed with this interpretation.
13. The technical reports submitted by the appellant have not been called into question by the submission of any other technical information. They consist of a Structural Condition Report and a Repair and Refurbishment Cost Assessment and a Valuation. The findings in these reports demonstrate that the new dwelling would provide a more environmentally appropriate solution than the repair and refurbishment of the house and that the value of the house after all necessary works of repair and refurbishment had been carried out would be significantly less than the overall costs incurred. Repair and refurbishment would therefore not be a sustainable or economically viable alternative to demolition and Policy GD5 would be complied with.

*Effect of the proposed development on its surroundings*

14. As the Decision Notice recognises, the starting point is that the house is in the built-up area. In particular, it is in one of the smaller settlements where Policy PL4 states that proposals for residential redevelopment will be supported where they, as is the case here, comprise redevelopment of existing sites. This support is, however, subject to the consideration of the other policies in the Plan that are referred to in the decision, all of which relate to the effect of the proposed development on its surroundings.
15. The decision refers to three matters of concern - scale, siting and design - and the other policy considerations relevant to these matters are as follows:-
  - The strategic policy provisions, which state that development must reflect and enhance the unique character and function of the place where it is located (SP3), that it should respect its landscape, seascape or townscape character and make a positive contribution to the local character and distinctiveness of the place (SP4) and that if it could

affect a designated or protected area it will need to protect or improve that area, in accordance with its significance (SP5).

- Policy NE3 which states that development must protect or improve landscape and seascape character and that the highest level of protection will be given to the Coastal National Park and the Protected Coastal Area and their settings, even if the development is not within those areas and is in the built-up area.
  - Policy GD6 which states that a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting will be sought in all developments, in accord with the principles of good design. It states that development will be supported where it can be demonstrated that the design successfully addresses key principles, the first of which is the relationship of the development to the existing buildings, settlement form and distinctive characteristics of the place, having regard to the layout, form and scale (height, massing, density) of the development.
16. The dwellings in the close and along the adjoining road leading from La Route de Noirmont together comprise a finger of residential development which extends the built-up area into countryside and the Green Zone. The boundary of the Coastal National Park / Protected Coastal Area is on the opposite side of La Rue de Haut. These surroundings therefore make Sunny Brow a sensitive site for residential redevelopment.
17. The new dwelling would cover more of the site than the existing house, but it would have a lower profile. I do not consider that the site coverage is itself a significant concern: it would not be out of keeping with Garden Court's. The lower height would be an advantage, since the new dwelling would be less obvious than the existing house when it is viewed from public vantage points. The design of the new dwelling is 'contemporary' but not dissimilar to many others that have been built in Jersey in recent years, whereas the existing house has no intrinsic merit and has the somewhat incongruous appearance in this setting of a large suburban 1930s style dwelling. The design of the new dwelling fully takes into account the need to preserve neighbours' amenities.
18. I do not consider that the concerns about the tranquillity of La Rue de Haut and about light pollution in this area, which has no street lighting, are determining considerations in the appeal. The use of the new dwelling is not expected to lead to an increase in traffic compared to the use of the existing house and the potential for light pollution to occur at the new dwelling is not significantly different to the likelihood of this occurring at the existing house and other dwellings in the locality.
19. All in all, I consider that the new dwelling has been well-designed, would fit in well into its residential surroundings and would preserve or enhance the quality and setting of the landscape, the Green Zone and the Coastal National Park / Protected Coastal Area.

### **Inspector's conclusions**

20. 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 imposition of planning conditions to deal with the matters indicated in the Planning Officer's Report to the Committee, for the reasons set out below.

### **Inspector's recommendations**

21. I recommend that the appeal is allowed and that planning permission is granted for development at Sunny Brow, La Rue de Haut, St. Brelade JE3 8AR consisting of the demolition of the existing 5-bedroom dwelling and garage and the construction of a new 5-bedroom dwelling and garage with a swimming pool and decking, in accordance with the application P/2021/1675 and the amended plans and documents submitted therewith, subject to the following conditions: -

#### *Standard conditions*

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

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 13/09/2022.)

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

#### *Additional conditions*

1. No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the Chief Officer. The scheme shall include details of all existing trees and hedgerows on the site, identify those to be retained and set out measures for their protection throughout the course of the development. All new planting comprised in the approved scheme of landscaping shall be carried out in the first planting season following the first residential occupation of the new dwelling or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years thereafter die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

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

2. No development shall take place until details of all pool plant and equipment to be installed have been submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved details and retained as such.

Reason: To protect the amenities of neighbouring residents pursuant to Policy GD1 of the Bridging Island Plan

3. No development shall take place until details have been 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.

4. No development shall take place until the measures set out in the approved Species Protection Plan (ref: NE/ES/SB.02, 30th September 2021, Nurture Ecology Ltd.) have been 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.

5. Prior to the first residential occupation of the new dwelling, the obscure glazing to windows and the balcony privacy screens shown on the approved plans shall be installed as approved. The obscure glazing and the privacy screens shall thereafter be retained as such.

Reason: To protect the privacy of neighbouring residents pursuant to Policy GD1 of the Bridging Island Plan

Dated 30 March 2023

*D.A.Hainsworth*

Inspector