

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (a) against a decision to grant planning permission

Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Nicholas Socrates on behalf of El Cobre Limited

Planning Permission Reference Number: P/2022/1454

Decision notice date: 16 March 2023

Location: Makai (formerly known as La Rousse) La Route de la Baie, St Brelade

Description of Development: construct 1 no 4 bed residential unit with associated parking and amenity space. Create new vehicular access onto La Route de la Baie. Construct swimming pool to west of site.

Appeal Procedure and Date: hearing, 6 June 2023

Site Visit procedure and Date: accompanied, 5 June 2023; unaccompanied 6 June 2023

Date of Report: 3 July 2023

Introduction

1. This is a third-party appeal by Mr Nicholas Socrates on behalf of El Cobre Limited against a decision to grant planning permission for works to the property formerly known as La Rousse, but now called 'Makai'.
2. Permission was granted by the Planning Committee at its meeting on 16th March 2023.
3. A summary of the cases presented by each party during the application and the appeal are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

The appeal site, planning history and proposed development

4. The appeal site is a vacant plot in St Brelade. It sits between the promenade to the south and La Route de la Baie to the north. It is flanked by L'Horizon hotel to the east and El Cobre, a two-storey block of apartments to the west. There is a public footpath along the eastern boundary that sits between the appeal site and L'Horizon. There are residential properties to the north of the site, which face it across La Route de la Baie.
5. The site has an extensive planning history, which is detailed in the Officer Assessment sheet prepared by the Infrastructure and Environment Department ('the Department'). Of particular relevance to the current appeal is permission P/2020/0857, which was initially granted on 15 October 2020. That decision was

subject to a third-party appeal, which was dismissed by the Minister. Confirmation of the planning permission was made on 8 June 2021. That granted permission to “construct 1 no. 5 bed residential unit with associated parking and amenity space. Create new vehicular access onto La Route de la Baie. Construct swimming pool to west of site.”

6. The proposals authorised by permission P/2020/0857 were similar to those granted under an earlier permission P/2017/1370, but altered use of the building from tourist accommodation to a permanent residential dwelling. Both these proposals were assessed under the previous Adopted Island Plan 2011 as amended.
7. Permission P/2017/1370 was accompanied by pre-construction conditions, which were successfully discharged. The applicant subsequently demolished the original cottage, thus implementing the permission. Consequently, the Inspector appointed to consider the appeal for permission P/2020/0857 assessed that the previous permission P/2017/1370 as extant and a viable fall-back position.
8. Following the grant at appeal of P/2020/0857, a further application was submitted. Proposal P/2022/0401 sought to construct a 4-bed residential unit. It was assessed under the current 2022 Bridging Island Plan and was refused on two grounds. The size, scale and form of the development was considered to be contrary to the requirements of policy GD9 - skyline views and vistas of the Bridging Island Plan. There was also an absence of information about potential effects of the proposals on biodiversity, contrary to the requirements of policy NE1 - protection and improvement of biodiversity and geodiversity of the Bridging Island Plan.
9. The current proposal has been developed in response to that refusal. The proposed dwelling would be set towards the east of the site, close to the public footpath and L’Horizon Hotel beyond. It proposes a flat-roofed building (compared to the pitched roof of the extant permission). A living-green wall and green roof are included to achieve biodiversity net gain. Part of the roof would also accommodate solar panels. There would be large expanses of glazing at the first-floor level along the south side, which would wrap around the west side. The first-floor balcony on the south side would wrap around the corner of the building, to create a narrow walkway to this side of the building. There would also be a small Juliet balcony at the northern end of the western face of the first floor. A range of materials are proposed including glazing, painted render, vertical boarding and granite cladding.

Case for the appellant

10. The appellant has appealed on the following four broad grounds:
 - the overall design and appearance of the development and its impact on the character of the area, which is considered in breach of policies SP3, SP4, PL3 and GD6 of the Bridging Island Plan and takes inadequate consideration of the St Brelade Character Appraisal;
 - size of development is in breach of policy GD9 (shoreline zone with St Brelade’s Bay);
 - landscaping and planting privacy screen to prevent overlooking are unrealistic and unachievable in this location;
 - failure of policy GD1 - managing the health and wellbeing impact of new development. The proposals would result in overlooking and continuous impression of overlooking on El Cobre; unreasonable effect on levels of privacy of El Cobre residents; and overbearing effect to neighbours and the pedestrians on the public right of way.

Case for the Planning Committee & Department

11. Key points raised in response to the grounds of appeal are:
- the appeal site is located within the built-up area where new housing development is acceptable in principle, subject to meeting the relevant Island Plan policies;
 - the appeal site also forms part of the Shoreline Zone for St Brelade's Bay (policy GD9) which adds a layer of constraint intended to restrict development opportunities;
 - this proposal represents an alternative to the 3 extant permissions for different developments. The Department and Committee are prepared to take account of these fall-back positions in granting further consent;
 - in broad terms the Department is comfortable with the overall design and appearance of the new dwelling and its impact on the character of the area;
 - the current planning application is not larger than the approved schemes and its visual impact would be less than those previously approved schemes;
 - the submitted landscape plan includes hardy maritime resistant plants, which have purposefully been selected for this location;
 - the department considers that the current proposal would have similar impacts to neighbouring properties as the consented proposals. This is in part due to the fact that the southern amenity area of El Cobre is already completely open to the promenade and has no privacy and there is new proposed planting along the mutual boundary.

Case for the Applicant

12. The key points raised in the applicant's response are:
- the gross floorspace is 6.3% less than the approved scheme and the building footprint has also been reduced to 199.88 square metres (approved area is 200.9 square metres);
 - the overall height of the proposed building would be 620 mm lower than the approved structure near the roadside and 920 mm lower towards the beach;
 - the application aligns with the tests in policy GD9;
 - the proposal is a previously developed brownfield site within the built-up area and fits well with the spatial strategy of the Island Plan. Whilst there is a tension with policy GD9, the plan should be read as a whole and the proposals align with the requirements of that policy;
 - The Ecological Enhancement Plan will ensure the project delivers significant benefits for biodiversity;
 - the proposals are of high quality and will sit comfortably in their context within the bay;
 - El Cobre is already heavily overlooked. It is open to public view from the promenade and the amenity area is overlooked from the balconies of the adjacent L'Horizon Hotel to the east and the first-floor terrace of Carlyon House to the west.

Consultation responses

13. **Environmental Health** issued two responses. The first (6 January 2023) sought further information. Following receipt of this, the second response (20 January 2023) confirmed no objection to the proposals, but requested the addition of a condition relating to noise levels of equipment.

14. The response from the **solid waste** team (18 January 2023) recommended that the applicant provide a solid waste management plan to cover the basement excavation.
15. **IHE Transport** confirmed (13 December 2022) that it did not object to the scheme, subject to the applicant providing a new 1.5 m wide footpath along the roadside.
16. The response from **IHE Drainage** (24 February 2023) requires that the foul sewer connection be protected during demolition and construction; and identifies that consents would be required for building works within 5 m of the surface water sewer located under the pedestrian access alongside the site.

Representations

17. The planning website shows that a total of 19 letters of objection were received from 10 parties at application stage. This differs from the number stated in the Officer Assessment Sheet, which refers to 13 letters from 9 individuals. The main issues contained in objections were:
 - overdevelopment - larger and more imposing than previous scheme/ increased visual impact, failure to adhere to policy GD9 of Island Plan;
 - unsympathetic design/ reduction of design quality compared to the previous proposal, harmful to the character of the area;
 - failure to take account of St Brelade's landscape assessment;
 - greater level of overlooking of neighbours than the previous scheme;
 - overlooking into bedrooms;
 - traffic;
 - landscaping will not work in this environment;
 - drainage concerns;
 - excavation works will cause subsidence.
18. Responses were received from 6 individuals during this appeal. This included a representation from a respondent who had not previously commented at the application stage. However, it does not raise any issues not already covered by the previous submissions. A number of those who had responded attended the site inspection and/or the hearing.

Key Issues

19. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states "In general planning permission shall be granted if the development proposed in the application is accordance with the Island Plan." The current Island Plan is the Bridging Island Plan, dated March 2022 ('Island Plan').
20. Having regard to the provisions of the Island Plan and other material considerations, I consider that the key issues in this appeal relate to:
 - the design of the proposals;
 - the scale and mass of the proposals;
 - the effects of the proposal on neighbouring amenity.

21. In assessing the proposals, I am aware that there are extant planning permissions in place for the site, the most recent of which is P/2020/0857. The period for commencement of that development has not yet elapsed. Hence, I accept this is a feasible fall-back position should the current appeal be successful and the current permission be quashed.

The design of the proposals

22. The proposal site lies within the built-up area, which is where development is directed by policy SP2 - spatial strategy of the Island Plan. It is located within the local centre of St Brelade's Bay, where more limited development is anticipated. Additional restrictions on development in St Brelade's Bay are also established through policy GD9 - skyline, views and vistas of the Island Plan, which I consider further below. Thus, subject to it meeting the particular criteria within these policies, I find that the principle of development would be acceptable.
23. Policy SP3 - placemaking of the Island Plan states all development must reflect and enhance the unique character and function of the place where it is located. It identifies 8 criteria that require to be addressed. Criterion 1 requires that development "is responsive to its context to ensure the maintenance and enhancement of identity, character and sense of place."
24. Policy SP4 - protecting and promoting island identity places a high priority on ensuring that development should promote and protect the island's identity. Criterion 2 requires "all development should respect the landscape, seascape or townscape character of the area in which it is proposed to be located, and make a positive contribution to the local character and distinctiveness of a place."
25. Policy PL3 - local centres supports residential development within the existing built-up areas. It also notes that "any development in local centres needs to be proportionate to the needs of the community, the scale of the built-up area; and appropriate to its context in scale, character and use."
26. Policy GD6 - design quality states "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 sets out 8 key principles for assessing design quality. Of particular relevance for this appeal are: (1) the relationship of the development to existing buildings, settlement form and distinctive characteristics of a place; (2) the use of materials; and (3) impacts upon neighbouring uses.
27. There is a degree of overlap and synergy between these policies, which seek to ensure that any new development fits with and contributes to the character of the area in which it is located. In addition, the proposal site is located within the Shoreline Zone, where particular emphasis is placed on protecting the landscape and seascape character of the area.
28. During my unaccompanied site inspection, I saw that there is no consistent style or design of properties, either along the edge of the bay or higher up the escarpment. Buildings exhibit a range of sizes, heights, roof styles and materials. The properties to the immediate north of the proposal site are mainly two-storey detached bungalows, one of which has a flat-roof. L'Horizon Hotel to the east is an extensive 3-storey, white rendered building. El Cobre, to the west is a 2-storey

apartment block. Elsewhere around the bay I saw both flat-roofed and pitched roof buildings.

29. Concern has been expressed about the proposed flat, green roof, in place of the pitched roof of the extant permission. Whilst I saw that pitched roofs are the predominant form within St Brelade's Bay, I also saw a number of flat-roofed properties, both in buildings adjacent to the promenade and also located higher up the escarpment. Based on my observations, I find that these would provide a visual context for the proposed dwelling. I saw only one example of a green roof, above Pizza Express. However, that is at a lower level than the proposed roof and appears more as an extension of a raised garden area. Nevertheless, I therefore conclude that a flat roof in this location would not appear inconsistent or out of place.
30. Concern has also been raised about the presence of the large windows facing the promenade and light spill from these. However, I note that the most recent extant scheme also includes substantial quantities of glazing. I therefore conclude that the current proposals represent little change from those already consented.
31. It was suggested to me that the design should be assessed by reference to the St Brelade's Bay Landscape Character Appraisal. The background to the development of this document were explained to me at the hearing, but there was no explanation as to how the findings of that document relate to the proposal before me, nor how I should use it in assessing the proposals. Whilst I understand that the findings of the landscape character assessment have helped to inform the policies within the Island Plan, I do not believe that the document has any particular current standing beyond that role. The Department confirmed that the findings have not been adopted as supplementary planning guidance and that there is no requirement to adhere to or follow the recommendations of the assessment in determining planning applications.
32. Notwithstanding my comments above, I note the intention stated within the Island Plan to develop an improvement plan for St Brelade's Bay (Proposal 18 - St Brelade's Bay Improvement Plan). However, that has not yet been completed.
33. In conclusion, there is no single design style for the housing around St Brelade's Bay; there is an eclectic mix of heights, styles, designs and age of development. The proposed design is contemporary, but of a high-quality design and includes many elements which are visible elsewhere in the wider setting, such as the flat roof. Subject to my conclusions in relation to the scale and mass of the proposals, I am content that the overall proposed design would be responsive to its context, respect the character of and be appropriate in its context.

The scale and mass of the proposals

34. The scale and mass form part of the overall design of the building, but are particularly pertinent to this appeal through the provisions of policy GD9 - skyline, views and vistas of the Island Plan. The policy includes three provisions specifically for application to development within the shoreline zone of St Brelade's Bay. Criterion a) states that "the redevelopment of a building for residential use, involving demolition and replacement, where the proposal would be larger in terms of any of gross floorspace, building footprint or visual impact than the building being replaced" will not be supported.
35. In assessing this criterion, it is important to be clear about which building is being replaced and hence should be used as the comparator. As I noted above, there are

extant permissions for the site, of which P/2020/0857 is the most recent. This was granted by the Minister on 8 June 2021, following the third-party appeal. The time period for commencement of works is three years from this date i.e. it would end in 2024. The Department has noted that four of the conditions attached to the permission relate to actions that need to be completed prior to commencement of construction and that these have not yet been discharged. Nevertheless, I consider that permission is extant and could be built. It therefore represents a fall-back position, should the current appeal be successful. Thus, I conclude that it is this building which should be used as the baseline against which the current proposal should be assessed. This approach is consistent with that applied by the Inspector for the previous appeal for this site (P/2020/0857).

36. The Department estimates that the floorspace of the proposed dwelling would be 481.6 square metres, which represents a 6.3% reduction in floor area from that of the consented building (514 square metres). The appellant has suggested that if the balconies are included in the calculation, then the proposal would represent an increase in area. However, the glossary of the Island Plan defines gross internal floorspace / area as “the entire area inside the external walls of a building and includes; internal walls, corridors, lifts, plant rooms, and service accommodation.” This definition does not therefore require inclusion of the balconies.
37. The proposed footprint is no larger than that of the of the extant permission and based on the applicant’s figures it would be a fraction smaller than the consented building (proposed building 199.88 square metres compared to approved area of 200.9 square metres). I conclude that the proposed building would not be larger in terms of gross floorspace or building footprint than the building being ‘replaced’.
38. Whilst the assessment of floor area and footprint are objective measurements, the assessment of visual impact is more subjective. The appellant has suggested that the volume of the proposed building would represent an increase of 7% compared to the consented building. Whilst volume per se is not a criterion under policy GD9, I have considered this in relation to the visual mass of the building.
39. The proposed building differs from that consented in a number of ways. In addition to the incorporation of a flat green roof in place of the consented pitched roof, the proposed building includes for a number of additions or projections including a balcony at first floor level, which extends along the south face and wraps around to the western face. There is also a smaller balcony towards the northern end of the building at first floor level. A brise soleil has been included at second floor level, which would project further south by 1.5 m compared to the consented building. The appellant maintains that these projecting elements would be read as part of the overall profile of the building, and hence increase its visual mass.
40. I note that whilst the overall height of the proposed building would be lower by 620 mm than that of the consented building, the eaves of the proposed flat roof would be higher than those consented. The appellant estimates these to be 1 metre taller than those consented by the extant permission. Whilst this would alter the visual profile of the building, I am not persuaded that it would make an appreciable difference to the visual impact of the building. When viewed from the promenade or beach from the south-west, the proposed dwelling would be viewed against the backdrop of the significantly larger L’Horizon Hotel. As such, I conclude that the flat-roofed design would not present a visual mass appreciably different to that of the consented building.

41. Both the proposed building and that for which there is extant permission are contemporary and striking in their design. The proposed building would use a mixture of material finishes and I am persuaded that these would act to break up the mass of the building. The extant permission already includes provision for a balcony at first floor level. Whilst the projecting elements would obviously be attached to and visually associated with the building, the open design of the brise soleil combined with the choice of materials for the balconies leads me to conclude that these would not be read as projections rather than as part of the main mass of the proposed building.
42. When viewed directly from the beach to the south and also in views along the public footpath to the west of the appeal site, L'Horizon provides a large-scale contextual framework for the appeal site. Against this backdrop, I do not consider that the proposed building would appear as a greater visual mass than that consented. Likewise, whilst the main axis of the proposed building would be perpendicular to El Cobre, it would be read against the bulk of L'Horizon and would be partially obscured by the proposed boundary wall and landscaping. Therefore, I find that the proposal would not result in an increased visual mass of the building from that perspective.
43. During my site inspection I saw that when walking along the promenade from the east, views of the appeal site are substantially hidden by the sweep of the bay and the dominating presence of L'Horizon Hotel. It is visible in more distant views of the whole bay, such as from the point at the east end of the bay. However, from here I do not consider that the visual impact of the proposed building and its flat-roof design would be appreciably different to that of the consented building. Indeed, the green roof may blend with the trees and woodland present further up the escarpment.
44. Thus, for the reasons set out above, I find that the scale and mass of the proposals, combined with its design would not result in an increase in either floor area, footprint or visual mass and hence it would satisfy the requirements of policy GD9.

Effects of the proposal on neighbouring amenity

45. Neighbouring amenity is protected in the Island Plan mainly through the provisions of policy GD1 - managing the health and wellbeing impact of new development. It requires that development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. In particular, development should not create a sense of overbearing or oppressive enclosure; or unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy.
46. The appellant notes that the eaves height of the proposed building is both higher and closer to the boundary than the extant permission. Whilst I accept that is the case, there would remain a substantial distance between the eaves and El Cobre, even allowing for the proposed extension to El Cobre, which has been consented. I do not, therefore, consider that the proposals would result in a sense of overbearing or oppressive enclosure.
47. The appellant is concerned about overlooking from the proposed building into the private amenity space of El Cobre. The test set by policy GD1 is that development should not "unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy". This test recognises that development will result in changed relationships between buildings. It also requires an understanding

of the setting of a development to assess what level of privacy might be expected at a particular location.

48. During my site inspection I saw that the main external amenity space of El Cobre lies to the south of the building. It is situated adjacent to the promenade by a beach in a popular built-up area of the island. There is a low boundary wall that separates the private space of El Cobre from the promenade, but this does little to prevent overlooking from the promenade. I understand that the residents of El Cobre have plans to improve the boundary between the property and the promenade. Even so, I would not expect a high degree of privacy at this location, given its proximity to the promenade. In addition, I note that there are existing windows and balconies at L'Horizon Hotel which can over-look, albeit at a distance, the amenity areas of El Cobre.
49. I accept that the proposal includes for a number of windows which would face towards El Cobre. However, having reviewed the overlooking study and given the distances and angles involved, combined with the extent of overlooking of these amenity areas both from the promenade and Carlyon House to the west, I am not persuaded that the proposals would result in unreasonable effects on privacy of the amenity space that the residents of El Cobre might expect to enjoy.
50. The proposals also include for a boundary wall and proposed landscaping, which would act to further reduce the potential for overlooking.
51. I note the concerns of the appellant about the effect of the exposed conditions and risk of wave-overtopping on survival of plant species proposed as part of the landscaping. During my site inspection I did see areas of vegetation and landscaping in similar locations to that proposed. I understand that the species proposed have been selected to be ones tolerant of the maritime conditions. Concerns about the survival of material could be addressed by a condition to require replacement of plants during a set period post-planting. However, I do not consider that the landscaping is vital to prevent overlooking.
52. I have also considered the potential for overlooking of the properties to the north. These properties have front gardens, which provide separation from the road, but which are open to public view from the road and its associated footpath and from the footpath to the beach on the opposite side of the road.
53. Particular concern has been voiced about the potential to see into bedrooms of the houses to the north from the proposed Juliet balcony. During my site inspection I saw that the houses in question have bedroom windows which face towards the road, but are set back from it by several metres. One house, in particular, appears to have an arrangement of double windows, with an outer glassed-in balcony and the true bedroom windows behind. The frontage of this building and hence the windows are angled slightly to the west and hence away from the appeal building. The aspect from the Juliet balcony would be to the west, rather than towards the front of the houses. The distance between the northern edge of the balcony to the boundary of the proposal site is 24 metres. The roadway is approximately 8 metres wide and the distance to the front elevation of the house with the window is 16 metres. I consider that the distance between the balcony and windows combined with the difference in aspect is sufficient to prevent unreasonable effects on privacy. In reaching that conclusion, I have also taken into account the fact that I saw that L'Horizon Hotel has bedroom windows with balconies at first and second floor levels which face westwards.

Other matters

Community consultation

54. Although not a stated ground of appeal, in his second response to the appeal and at the hearing, the appellant has raised concerns about a lack of community consultation about the proposals.
55. Criterion 8 of policy SP3 notes that where required, development should be informed by engagement with the local community. Policy GD2 - community participation in large-scale development proposals sets out that community consultation should take place for developments of 400 square metres floorspace or more. In such cases, a community participation statement should be submitted as part of the proposal.
56. The scale of the proposal is that it would meet the criterion set out in policy GD2. I accept that the proposal was not accompanied by a community participation statement. Nevertheless, I note that the applicant's architect did meet with the residents of El Cobre prior to submission of the current proposal. I am aware of the extensive planning history at the site, which has enabled interested members of the community to contribute its views on the different iterations of proposals as they have been submitted for approval. The number of representations to this appealed application and attendance at both the site inspection and hearing indicates that the community is well aware of and has been able to contribute views about the proposals. Thus, whilst a community participation statement has not been produced, I find the development has been informed by engagement with the local community.

Flood risk

57. The IHE Officer report notes that the site is located within an inland flood low risk area. A Flood Risk Assessment has been submitted, which is considered acceptable.

Maintenance of the flat green roof

58. The appellant has raised concerns about how the proposed flat roof would be accessed safely and whether additional support rails would be required. As with the management of any roof, such matters are the responsibility of the householder and are not a determining issue in the acceptability of the proposal.

Conditions

59. The Decision Notice for the proposed scheme included standard conditions relating to the commencement of the development and the carrying out of the development in accordance with the approved details. It also included a further five conditions.
60. The first of these conditions relates to the need to submit details demonstrating compliance with policy ME1 in respect of energy efficiency. The second relates to approval of external materials. The third relates to installation of visibility splays for vehicle access and the fourth requires the implementation of the landscaping scheme. The fifth relates to implementation of measures included in the Ecological Enhancement Plan. I accept that these conditions are appropriate and necessary.
61. I have considered the appellant's suggestion that the landscaping condition could be strengthened by requiring planting of more mature plants than currently proposed

or specifying that the landscaping scheme must be implemented to the satisfaction of the Department. I am persuaded that more mature planting may be less able to adapt to the exposed conditions at the appeal site and that younger plants may achieve better results in the long-run. In addition, I do not consider that stating that the landscape scheme should be subject to the approval of the Department would provide sufficiently precise guidance for the applicants in terms of what is required of them. However, I accept that it is important that the landscape scheme is implemented successfully to enable the building to fit well into its context. To that end, I propose that the condition relating to the implementation of the landscape scheme could be modified by the addition of a requirement that any plants which fail during the first two years after planting are replaced.

62. The consultation response from IHE Transport had recommended a condition to include a new 1.5 m wide footpath along the roadside. I saw during the site inspection that there is currently no footpath outside the appeal site or El Cobre. I understand that the extant permission does not include a requirement for a pavement. Therefore, I am persuaded that to request one as part of this proposal would be unreasonable. I note that there is an existing footpath on the opposite side of the road.
63. IHE Drainage included various recommendations in respect of protection of the foul sewer connection and protection of a surface water sewer. I understand that there are separate consenting schemes in place that address these matters. Therefore, I see no need to duplicate these through appending a condition to the permission.
64. The response from Solid Waste recommended that a site waste management plan be prepared to address material produced during the basement excavation. The applicant has explained that much of the material would be re-used in levelling the site. I note that no such condition was appended to the extant scheme and that the volume of material to be excavated under the current scheme would be less than that of the extant scheme. Thus, I do not see justification for such a condition.
65. A condition relating to noise levels of equipment was suggested by the Environmental Health Team. However, I understand that control of noise is subject to separate legal measures. Hence, I do not consider a condition on this matter is necessary.
66. I have considered the appellant's suggestion that a condition should be appended requiring a condition survey prior to works commencing. However, I see no requirement for this. Likewise, I have considered the suggestion of use of frosted glass in certain windows. However, for the reasons set out above, I do not consider that the proposals would result in unreasonable effects on privacy or overlooking and hence I see no need for the condition.

Conclusions

67. In general, proposals that are in accordance with the Island Plan shall be granted planning permission, unless there are material considerations otherwise.
68. The proposal is located within the built-up area, where development will generally be supported by policies SP2, PL3 and H3. However, it is also within the shoreline zone of St Brelade's Bay, which introduces some limitations on the general presumption in favour of development.

69. I have considered the design, scale and mass of the proposals against the relevant provisions of the Island Plan. For the reasons set out above, I find that the proposals would satisfy the tests set by policies SP2, SP3, SP4, PL3 and GD6 in terms of being appropriate and responsive to their context, proportionate in scale, and of a high-quality design. They would also not be larger in terms of gross floorspace, building footprint or visual impact than the building for which there is extant planning permission. Thus, the proposals also meet the requirements of policy GD9 in relation to St Brelade's Bay.
70. I have considered the effects of the proposals on neighbouring amenity, and conclude that these are consistent with the requirements of policy GD1.
71. I accept that the proposal has not been accompanied by a community participation statement as required by policy GD2. However, I am content that there has been ample opportunity for the community to put forward its views on the proposals and that the current design has been adapted in light of those comments in line with the requirements of policy PL3.
72. The introductory text to the Island Plan (p3) states: "when considering whether a development proposal is in accordance with the plan, it is important to have regard to the plan as a whole and not to treat a policy or proposal in isolation." It acknowledges that policies relevant to a particular proposal may appear to pull in different directions, but that this is a product of a complex and wide-ranging plan and a reflection of the tensions that arise from seeking to meet the community's economic, social and environmental objectives. It continues "it is for the decision maker to carefully balance the planning merits of a development proposal with the policy requirements of the plan" and "where policy conflicts do arise, a reasoned judgement must be made as to whether the wider benefits of a proposal outweigh any policy considerations provided by the Island Plan." Considered as a whole, for the reasons set out above, I conclude that the proposal does meet the overall objectives of the Island Plan.

Recommendations

73. For the reasons set out above, I recommend that the appeal should be dismissed and that Planning Permission be granted, subject to the five conditions appended to the original permission, but with a variation to condition 4, as set out in paragraph 61 above. The proposed conditions are included at the end of this report.

Sue Bell

Inspector 03/07/2023

Conditions

In addition to the two standard conditions relating to timescales for development and compliance with the agreed plans, the following conditions should be added:

1. Prior to the commencement of development, details shall be submitted to, and agreed in writing by, the Development Control Section of Regulation, which demonstrate that the new development hereby approved with exceed Building Byelaw requirements, in terms of energy efficient homes, by 20%. Thereafter, the agreed details shall be implemented in full, and retained as such.

2. Prior to the commencement of the development hereby permitted, samples of all of the external materials to be used shall be submitted to, and approved in writing by, the Chief Officer. High quality photographic evidence may be sufficient for some items. Thereafter, the approved details shall be implemented in full.
3. Prior to the development being brought into first use, visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall then be maintained thereafter and no visual obstruction of any kind over the height of 900mm shall be erected within them.
4. 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. Any plants which fail within 24 months of completion of the works shall be replaced. Following completion, the landscaping areas shall be thereafter maintained as such.
5. The measures outlined in the approved Ecological Enhancement Plan (ref. NE/ES/MA.02, 01st November 2022, Nurture Ecology) shall be implemented prior to the commencement of the 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 Land Resource Management Team prior to works being undertaken.

Reason(s)

1. To accord with Policy ME1 of the 2022 Bridging Island Plan.
2. To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies SP3, SP4 and GD6 of the 2022 Bridging Island Plan.
3. In the interests of highway and pedestrian safety, in accordance with Policy TT1 of the 2022 Bridging Island Plan.
4. To ensure 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 SP3, SP4, NE3, and GD9 of the 2022 Bridging Island Plan.
5. To ensure the protection and improvement of biodiversity in accordance with the Natural Environment policies of the 2022 Bridging Island Plan