

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Michael Russell against an approval of planning permission.

Reference Number: P/2022/1709.

Site at: La Cote des Petits Sablons,¹ La Grande Route des Sablons, Grouville JE3 9HG.

Introduction

1. I held a hearing into this appeal on 5 July, after a site inspection earlier on the same day.
2. The appeal is against the approval of planning permission for development described in the application as: "Install cladding to north elevation".
3. The application was made by Mr John Falle.
4. The planning authority's stated reason for approval was:
"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. Notably, the proposal's potential impact upon the character of the surrounding area has been specifically considered, with the Department of the view that the prospective cladding will conserve, protect and contribute positively to the distinctiveness of the existing built environment."
5. The approval would have been subject to standard conditions A and B referring to commencement within three years and compliance with submitted plans, drawings and other details.

Format of Report

6. This report refers to some procedural matters, followed by a description of the site and surroundings and summaries of the cases for the appellant and the planning authority. I then set out my assessment, conclusions and recommendations. Comments on possible conditions are included. The full written submissions by all parties are in the case file. All references to the Island Plan and policies are to the current Bridging Island Plan.

Procedural Matters

7. I have obtained the name of the applicant from documents other than the application form published online by the government, where the applicant's name is blacked out. The "redaction" of an applicant's identity in this way (which appears to have been carried out selectively to only some recent applications) is wrong for legal and procedural reasons. I hope this point will be brought to the attention of those responsible.

¹ This is the site address as stated in the application. In the planning authority's decision notice, the address is specified as "La Cote, Les Petits Sablons..."etc. On the application plans, the site location is stated as "La Cote, Fauvic, Grouville".

8. An unusual feature of this case is that no representations were submitted by or on behalf of the applicant. I make further reference to this matter below under the heading "Assessment and Conclusions".

Site and Surroundings

9. The appeal site is on the west (or "inland") side of the pedestrian promenade which runs along the coast in this part of Grouville. The house at the site fronts on to the promenade; vehicular access to the properties in this vicinity is from the west. The north elevation of the appeal property (shown in the photograph on application drawing PL01) is a gable side wall, mostly having a pink-coloured render finish except for the lower part which has a dark blue coloured brick finish up to a height of about 2 metres. The brickwork projects about 30 centimetres out from the upper part of the wall and has an angled outer edge as shown in the cross-section in the application drawing (Proposed Section B-B).
10. There are no window or other openings in the north-facing side wall of La Cote. The south elevation of Beach House is also mostly blank but has two small windows at basement level, both of which are obscure-glazed and appear to be of non-opening type.
11. The ownership boundary between the appeal property and Beach House appears to have a "kinked" alignment, following the outer edge of the projecting brickwork along the building itself at La Cote but elsewhere (ie along the side of the front and rear parts of La Cote's plot) being a projection of the upper part of the gable wall as shown on the Site Plan.
12. The flank walls of the dwellings at La Cote and Beach House are about 1.96 metres apart.² There is no fence or other such boundary feature in the space between these two houses, but at the time of my inspection most of this space was occupied by a single-storey, flat-roofed timber or "hardiplank" shed-like structure. This structure had door openings at the front and rear, enabling access through them between the front and rear parts of Beach House's plot, and appeared to be used for storing items such as garden furniture and tools.
13. Many of the buildings visible from the coastal esplanade in the area around the appeal site have rendered finishes, but there is also variety in style and age of buildings, with materials including Jersey granite, brown stone and what appeared to be imitation timber.

Case for Appellant

14. The property at La Cote would gain nothing from the proposal as the gable is never visible from La Cote, but is entirely visible to Beach House. The cladding would change the visual impact and character of the gable and would not match or complement the rest of the building or Beach House.
15. The proposal would cause structural and safety concerns. Adding stone slips to the side wall of La Cote would harm the safety of pedestrians and animals in the Beach House garden since inevitably in future pieces of cladding would detach and fall into the Beach House garden, causing injury or possibly fatality. The proposed construction work could only be carried out through and over the curtilage of Beach House.

² The flank walls of the buildings here appear to be not quite parallel, and the distance between them varies slightly.

16. Although the planning authority's approval was on the basis of compliance with Island Plan policies GD1 and GD6, the proposal is contrary to those policies. The environment and setting affected is that of Beach House; the gable is never visible from La Cote. Policy GD6 requires designs which conserve, protect and contribute positively to the distinctiveness of the built environment. The proposal would not conserve or protect or contribute positively to the environment for Beach House. The opposite would be so.
17. The proposal would have an overbearing presence in contradiction to the existing finishes. The cladding would contrast visually with adjacent finishes, would be visible at all times to Beach House and be detrimental to the character of Beach House. Why would an applicant make such a design alteration to his property which would never be visible to the owner? There are no other examples of such cladding in the vicinity.
18. Under policy GD1, development must not result in unreasonable harm to neighbours or create a sense of overbearing. The gable wall is 10 metres high, 7 metres wide and only 200mm from Beach House. Introducing such a large area of contrasting material would create an overbearing and oppressive impact over Beach House.
19. In summary, the proposal would have a huge detrimental impact on Beach House and is not compliant with policies GD1 and GD6. Planning permission should not be granted.

Case for Planning Authority

20. The application was decided under the policies of the Island Plan. Under policy SP2, an alteration to a residential property in this area is acceptable subject to meeting other policy tests. The appellant's objections at application stage were considered but as set out in the officer's report, the proposal would not cause an overbearing impact or unreasonably harm neighbouring uses including the appellant's property.
21. As shown on application plan PL01, the proposal would involve using stone cladding known as 'Alexandria' which would have a grey colour which is not dark or oppressive. The cladding would be set by adhesive onto a render backing board fixed over the existing render on the gable wall. The proposal would not cause an overbearing or oppressive sense of enclosure and would be in accordance with policy GD1.
22. The proposed cladding would have a high quality of design and would contribute to the character of the area, where there are buildings with many different materials, colours and finishes. The proposal would be appropriate to the area in scale and nature and would comply with policy GD6. The fact that the cladding would not be visible from La Cote itself is not a reason to refuse planning permission. The impact on Beach House and the wider setting is considered acceptable.

Representations by Other Parties

23. As noted above, no submissions were made by or on behalf of the applicant. The published documents include written comments submitted at application stage by Michael and Karen Russell. (The "comment author" is named at the top of the email as Michael Russell but "Michael and Karen Russell" are named at the end.) The main points made in these comments are similar to those made by Mr Russell as appellant.

Assessment and Conclusions

24. I comment first on some procedural points. The first is that the applicant apparently does not want to pursue his application or carry out the proposed development.
25. About three weeks before the date arranged for the hearing I received a message from the Judicial Greffe advising that Mr Falle wished to withdraw the application, as he does not intend to carry out the proposed development. However, the application for planning permission was not withdrawn before it was decided by the planning authority, and at the stage now reached, with permission having been granted subject to appeal, existing legislation does not enable an application to be withdrawn. (The appeal could have been withdrawn, but that has not happened.) I understand that Mr Falle or his agent or representative has been informed of this. Mr Falle was not present or represented at the hearing or the site inspection.
26. Therefore the situation at the time of submitting this report is that the appeal remains to be decided.
27. The second matter for comment concerns the question posed in the appellant's written statement: "Why would an applicant make a major design alteration to his property which is never visible to him as the owner?"
28. The reason for an application for planning permission is normally of course a matter for an applicant; nevertheless during my preparation for this case I had found it difficult to understand why an owner of the appeal property had sought planning permission for the development proposed, given its apparent lack of benefit to the owner. Then shortly before the hearing I became aware of legal proceedings which had culminated in a judgment by the Court of Appeal of Jersey in July 2022.
29. In summary, the legal proceedings had resulted from an appeal by Mr and Mrs Russell against a decision by the Royal Court referring to Mr Falle's obligation under a deed of conveyance to build the visible element of the northern gable of La Cote in brick and/or stone, and ordering that for the purpose of doing so Mr Falle had a right of access over his neighbour's land, with an implied right to erect scaffolding or to use ladders there. The appeal was dismissed, with judgment and an award of costs against Mr and Mrs Russell. From this background it appears that Mr Falle could have difficulties selling the property as it stands (or might only be able to sell at a reduced valuation) because of a past failure to comply with a deed of conveyance relating to the surface finish of the northern gable wall.
30. The history just described was not mentioned in pre-hearing statements or during the hearing until I raised it and made known that I had become aware of the court proceedings. Then Mr Russell handed in a copy of the Court of Appeal judgment of 27 July 2022. Despite this evidence being submitted at such a very late stage, I accepted it as it helps to explain the background to the appeal.
31. The Court of Appeal evidently sat on 26 July 2022 to consider Mr and Mrs Russell's earlier appeal against a decision of the Royal Court on 29 March 2022. The comment by Mr Russell quoted in paragraph 27 above was made in a statement submitted in February 2023. Obviously by then the court proceedings and judgments were part of the history well known to Mr Russell, so the question posed in his appeal statement (querying why an owner would want to carry out the proposed development) appears to have been artificial, since at that stage Mr

Russell must have known why Mr Falle was seeking planning permission for the proposed development.

32. The shed-type structure mentioned in my site description appears to be of fairly recent construction. Its presence has the effect of obstructing access to La Cote's northern gable wall and could make the erection of scaffolding there difficult or impossible. I refrain from commenting on the possible legal implications of that point, bearing in mind the Court of Appeal judgment.
33. The main planning issues raised by the appeal against the grant of planning permission relate to the visual effect of the proposal and the impact on the appearance or character of the area, having regard to relevant planning policies.
34. Because of the fairly narrow gap between the side walls of the dwellings at La Cote and Beach House, very little of the cladding would be readily visible from most angled viewpoints open to public access along the esplanade or the beach. The main viewpoints would be from the plot of Beach House. From Beach House itself, there would be virtually no view of La Cote's side wall, since the only windows facing in this direction are the obscure-glazed basement windows and any potential visibility from these is now obstructed by the adjacent shed-type structure mentioned in my site description.
35. Taking those points into account, the appellant's description referring to the disputed cladding as being "100% visible at all times to Beach House" and as having an "overbearing and oppressive impact exclusively over Beach House" is open to misinterpretation, as the claims made do not apply to the outlook from Beach House itself. In my judgment the visual impact of the proposal on the outlook from the grounds of Beach House is also overstated. The change from a rendered finish to the proposed stone-clad finish would give the gable wall at La Cote a different appearance, but would not make it significantly more overbearing or oppressive than it is at present, and in any case those descriptions only apply to close viewpoints within the gap between the sides of the houses.
36. I observe in passing that some of Mr Russell's other statements could also be potentially misleading. An example is his reference (at paragraph 9 of the appeal statement, with a similar repetition at paragraph 24) to the cladding "just 200mm from Beach House". A normal interpretation of this would take it to be describing the distance between the proposed cladding at La Cote and the side wall of Beach House, rather than the distance between the cladding and the *site ownership boundary* (or, as Mr Russell states elsewhere, the distance from the garden of Beach House).
37. The appearance of the proposed cladding would not match the rest of the house at La Cote. But the cladding would not be unattractive and as noted in my description, there is some variety of finishing materials in buildings in the locality; and in this setting the random effect of the proposed "Alexandria" finish, with variations in stone size and colouring, would not be harmfully out of character with the area.
38. As Mr Russell points out, those most affected by the development would be the occupiers of Beach House and its plot. It is also necessary to assess the proposal in the light of planning policies. I do not consider that the proposed cladding would have a dominating or overbearing impact on the neighbouring property or cause a sense of overbearing or oppressive enclosure. The proposal would not affect neighbours' privacy or unreasonably harm amenity in any other way. The criteria set out in Policy GD1 of the current Island Plan would be met.

39. Policy GD 6 of the Island Plan provides that (among other things) a high quality of design [which] conserves, protects and contributes positively to the distinctiveness of the built environment will be sought in all developments. This policy also sets out “key principles” which refer to various points including layout, form, scale, materials, details, colours, finishes and impact on neighbouring uses.
40. I judge that the proposal would not conflict with Policy GD6. The development would change the appearance of the gable wall, but given the rather bland appearance of the existing gable, the change would if anything add distinctiveness and would meet other policy criteria.
41. One of Mr Russell’s objections is about safety, and what he regards as the “inevitable and certain” future event of pieces of cladding falling, causing injury or fatality to neighbouring occupiers. To an extent this concern is understandable since the proposed cladding would have an unusual internal structure, involving a backing board fixed to the existing wall surface and an external face of stone pieces which would be so thin as to be more like thick tiles than normal stone blockwork. The labelling on the application drawings (in lettering which as submitted is very small-sized and difficult to read) makes several references to the need for further details and approvals. Examples of this labelling are: “A suitable render backing board is to be fixed over the existing render face in accordance with the stone cladding supplier’s details and recommendations”; and “Engineer to advise on numbers and types of fixings required”.
42. The method of fixing the proposed cladding to the building at La Cote is more appropriately subject to control by the regulations in building bye-laws than by planning law. Whether what is proposed would meet the relevant bye-laws or whether further details would be required for that purpose are matters outside the scope of this planning appeal. The appellant’s concerns about parts of the cladding falling down also appear to be based more on supposition than evidence.
43. In summary, I conclude that the objections raised in support of this appeal do not justify refusing planning permission. Whether a planning permission is likely or unlikely to be implemented does not affect this finding.

Conditions

44. As originally decided by the planning authority, the permission would have been subject to standard conditions A and B. No suggestions were made at the hearing for other conditions in the event that planning permission is granted, and I do not consider any additional conditions would be necessary. As noted above, if the development were to be carried out some details would be subject to non-planning legislation.

Recommendation

45. I recommend that the appeal be dismissed and that the planning authority’s decision to issue planning permission be confirmed, subject to standard conditions A and B covering the time limit for commencement and reference to submitted plans, drawings and other details.

G F Self

Inspector

19 July 2023