

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, CEng, CWEM,
An Inspector appointed under Article 107

Appellant: Ms Heidi Heath

Planning Permission Reference Number: P/2021/1886

Decision notice date: 13 July 2022

Location: Pine Grove, Le Vieux Mont Cochon, St Helier, JE2 3JQ

Description of Development: Construct 1no. two bedroom dwelling within residential curtilage of Pine Grove. Convert 1no. three bedroom and 1no. one bedroom residential units into 1 no. four bedroom residential unit. Remove roof and construct second floor flat roof extension. Underground extension to the North East on the lower ground floor and construct minor infill between existing gables on South West elevation. Construct balcony to South West elevation. Various internal and external alterations to include: alter fenestration to every elevation, install granite ashlar veneer, remove 3no. chimneys. Various landscaping alterations.

Appeal Procedure and Date: Hearing, 8 November, 2022

Site Visit procedure and Date: Accompanied, 8 November 2022; unaccompanied 9 November 2022

Date of Report: 4 January 2023

Preliminary matter

1. The decision to grant planning permission for the appealed proposal was made by officers of the Infrastructure, Housing and Environment Department ('the Department') using delegated powers. The appellant considers that this decision-making process was flawed and is *ultra vires*. She considers the proposal is a 'major application', which must be referred to the full Planning Committee for determination in line with the 'planning rules' adopted by the Planning Committee.
2. In addition, the appellant has referenced Article 19 of the Planning and Building (Jersey) Law. Part 2 states "in general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Part 3 notes that planning permission may be granted where the proposal is inconsistent with the Island Plan "if the Planning Committee is satisfied that there is sufficient justification for doing so." The appellant considers that the proposals fail to meet the requirements of the Island Plan. Consequently, she considers that the matter should be remitted to the Planning Committee for determination.
3. The Department has stated in its response and at the hearing, that the decision-making processes are not dependent on whether an application is considered to be

‘minor’ or ‘major’. The circumstances when applications are determined by the Planning Committee are set out in “Planning Committee - Procedures and Arrangements” report to Planning Committee 19 June 2018. I was provided with a copy of these procedures and the relevant portion of the Minutes of the Planning Committee Meeting of 5 July 2018, where this approach was endorsed.

4. There are a number of circumstances when the Planning Committee is required to consider an application. These include (amongst other reasons) when there have been 4 or more representations from individuals from separate households and/or when a grant of planning permission would be inconsistent with the Island Plan.
5. At the hearing, the appellant maintained that there were other rules for the decision-making process, which would have triggered consideration by the Planning Committee. The appellant was unable to provide a copy of these rules as she stated they had been removed from the Government website. In discussion, the Department and the appellant were unable to reach a common understanding as to what document was being referred to. The Department does not consider that there are other rules that have been removed from the Government website.
6. Adherence to its procedural processes is a matter for the Department and the Planning Committee. Nevertheless, based on the information provided, it appears to me that the Department’s approach followed the procedures as set out in Appendix 1 of “Planning Committee - Procedures and Arrangements” dated 19 June 2018. Four objections to the proposals were received from three individuals and the Department considered the proposal to be in accordance with the requirements of the Island Plan. Therefore, the application does not appear to meet the criteria for consideration by the Planning Committee.
7. Irrespective of whether the correct procedures were followed to determine the application, planning permission has been granted. That permission remains in place unless either an appeal against the permission is granted by the Minister or there is a successful challenge against the grant of permission in the Royal Court.
8. The appellant has submitted a request to appeal the planning decision as allowed for by Article 108 (2) (b) of the Planning and Building (Jersey) Law 2002 (as amended). Leave to appeal has been granted by the Judicial Greffier and I have been appointed to consider the appeal, in line with the requirements of Article 113 (1) (d). Hence, I conclude that a valid appeal has been submitted. Consequently, my report focuses on the planning merits of the proposal and does not address the procedural elements further.
9. The procedures set out in the Law require me to report to the Minister with my recommendations. Article 116 of the Law notes that the Minister may: allow the appeal in full or in part; refer the appeal back to the inspector; dismiss the appeal; or reverse or vary any part of the decision-maker’s decision.

Introduction

10. This is a third-party appeal by Ms Heidi Heath against a decision to grant planning permission for conversion and extension of the existing property at Pine Grove into a single dwelling and the construction of a new two-bedroom ‘guest cottage’ in the grounds of Pine Grove.
11. Permission was granted by the Department under delegated powers on 13 July 2022.

12. 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 and proposed development

13. The appeal site occupies a large plot on the hill slopes above St Helier, with expansive views across St Aubin's Bay. It currently comprises a detached building, which is sub-divided into two dwelling units. The building sits towards the eastern side of the plot, which comprises extensive landscaped grounds.
14. The property lies within the built-up area, within the 'local centre' of Beaumont/First Tower. It also lies within the Green Backdrop Zone. There are other residential properties to the south, west and north.
15. The proposal would see the two living units combined into a single dwelling. The existing pitched roof would be replaced by a flat roofed extension. This would sit above the existing upper ground floor with terrace. A 'gap' between the south-east gable wing and south elevation would be 'infilled.' There would also be a small extension at lower ground floor level to the north of the property.
16. Within the grounds a new two storey, two-bedroom 'guest cottage' would be constructed in the north-west corner of the site. This would be built-in to the existing slope.
17. The proposals also include for landscaping of the grounds. Sloped areas would be re-graded to form an upper and lower flat lawn separated by Mediterranean-style gardens. There would be new planting around the edge of the site, management of an area of shrubs and woodland on the lower slopes of the site, including planting of new trees and creation of a wildflower meadow.

Case for the appellant

18. The appellant's written statement of case makes reference to the policies of the Adopted Island Plan 2011 (as amended). However, she discussed her concerns at the hearing within the context of the Bridging Island Plan.
19. In addition to her concerns about whether proper procedure was followed in making the decision to approve the proposals (see preamble), the appellant is of the view that the proposal breaches a number of the policies of the Island Plan.
20. She considers that the proposal would involve a significant land take within the Green Backdrop Zone and would have a negative effect upon the sensitive coastline and the setting of many listed properties in the area.
21. In relation to the historic environment and Policy HE1 the appellant considers that there is insufficient detail and/or context in the Design Statement to allow the effects of the proposal on historic buildings to be understood, contrary to the requirements of the policy. She notes the presence of Les Champs House as a Listed Building and considers the wording of Policy HE1, which requires that proposals should preserve or enhance the special or particular interest of a listed building or place and their settings is mandatory.

22. The appellant notes that Les Champs House and Pine Grove are located in the Green Backdrop Zone. She considers that the proposed new two-bedroom property, with its terraces and balcony “would be an oppressive mass causing a significant reduction in the Green Backdrop Zone with greater south facing bulk, discernible even from a significant distance. Overall, she considers the scale of the proposed development would be a major and incongruous component in the landscape.
23. She is concerned that the proposal is for the all but total demolition of Pine Grove, which would have attendant unquantified and unspecified resource consequences. She considers this would be contrary to the requirements of policies GD1 and SP2.
24. The appellant has pointed out the need to consider the effect of the proposals on skyline, views and vistas, in line with policy GD5. She has also set out requirements for safeguarding biodiversity as set out in policies NE1 and NE2 and the law.

Case for the Department

25. The site is located within the built-up area wherein new residential development will generally be permitted and where there is a policy for the efficient use of land which achieves optimum density levels. The site is also within the Green Backdrop Zone where accommodation is permitted provided the landscape character of the zone is not adversely affected.
26. The substantial site can comfortably accommodate the proposed development whilst retaining significant areas of landscaping and open space. It is considered to be in accordance with Policy GD9. An appropriate balance has been struck, taking into account the differing emphasis of zoning constraints.
27. The new unit is to be built into the contours of the site, sitting below the level of the existing landscaping. The proposed modest height and size of the building, high-quality design and landscape proposals would involve no net loss in green infrastructure and not adversely affect the landscape character in accordance with Policy GD8.
28. The proposal takes into account the recent planning history. It will substantially retain the existing building structure. The proposed modifications would modernise the layout and improve its environmental performance. It will not cause unreasonable harm to the residential amenities of neighbouring residents.
29. The application site is within the wider setting of a neighbouring listed building. Consideration has been given to the consultation response from the Historic Environment Team. The extent of listing of Les Champs House is limited to the house and does not include the southern garden closest to Pine Grove. Due to the setting of the house at a much lower level and significant distance away from the listed building, the design proposed and the existing significant areas of landscaping being retained, the development would protect the special interest of Les Champs House listed building and would be in accordance with Policy HE1.
30. Ecological information has been submitted which demonstrates that the proposed development can be managed and mitigated so as to protect wildlife and habitats. Land Resources Management do not object, subject to a condition that the Species Protection Plan be fully implemented.

Case for the Applicant

31. The appellant's response is based on the Revised 2011 Island Plan, which has been replaced by the Bridging Island Plan. Also, the appellant has considered each policy literally and in isolation, which is not the intention of the Bridging Island Plan which states that regard should be had to the plan as a whole. The proposals are considered not to breach any of the policies of the Island plan.
32. The proposal does not involve the demolition and replacement of an existing building, it will remodel and extend the existing building to form a modern dwelling.
33. Careful consideration has been given to effects on listed buildings. The Heritage Environment Team did not object to the proposals. The applicant considers that Les Champs House is the only heritage asset in the vicinity. Having carried out an analysis of the setting of that listed building, it is considered that the guest cottage would not harm the setting of Les Champs House, thus protecting its setting and significance. In addition, the importance of the Pine Grove plot to the significance of the listed building is minimal. Modern views from Les Champs House would be marginally altered as a result of the development, but not to the extent that could harm the setting or significance of Les Champs House. The improvement in the architectural quality of the proposal would provide mitigation in this respect.
34. The site's location in the built-up area is where new residential development is encouraged in accordance with policies SP1, SP2, SP7, PL3, H2 and H3 of the Bridging Island Plan. The site is also within the Green Backdrop Zone. Because of the retention of most existing planting, new additional proposed planting, retention of open spaces within the site and the proposed green roofs, the proposal complies with all provisions of Policy GD8(1) (a to f) relating to this zone. The proposal would not result in loss of green infrastructure.
35. There will not be adverse impacts on the skyline, strategic views, important vistas or setting of listed buildings and places and landmarks because the increase in height of the building is marginal (0.8m) and the flanks of the building would be reduced in scale and mass.
36. Policy NE1 of the Bridging Island Plan seeks for development to deliver biodiversity net gain, where possible. The Land Resource Management Team's response states that provided the mitigation, compensation and enhancement measures are fully implemented these would minimise the identified negative impacts to protected species, replace lost habitat and enhance the site for biodiversity over the long term.

Consultation responses

37. Two responses were received from the Department for Infrastructure - operational services - drainage. Its first response of 7 February 2022, sought further information on various points including any increase in occupancy numbers and treatment of surface water. By its response dated 30 June 2022, it confirmed that the foul drainage proposals were acceptable and it had no objection.
38. The response from IHE Transport (23 May 2022) noted that the site is on a Parish Road and that advice should be sought from them in terms of the road's suitability for the proposed development.

39. The Land Resource Management Team provided comments (7 June 2022) on the Initial Ecological Assessment, Ecological Survey Results Report and Species Protection Plan. It noted that the information provided was sufficient to enable an evaluation of the likely impacts of the proposals on protected species. It advised that a licence would be required to authorise disturbance of common toads in their resting site. It requested that species mixes for the wildflower meadow and green roof should be approved by Land Resource Management and that implementation of measures outlined in the Species Protection Plan should be required by condition.
40. The Historic Environment Team (6 June 2022) did not object to the proposals, but stated that this did not imply support for them under the terms of policies within the Bridging Island Plan relating to heritage setting and landscape impacts. It suggested further amendment in relation to landscape proposals and design of the upper floor extension to assist in ameliorating effects on setting of a listed building. However, the response recognises that these suggestions need to be judged against other material planning considerations, including the planning history of the site.

Representations

41. Four representations were received, two of which were from the appellant. A further objection raises concerns about the loss of privacy through overlooking from the proposed upper floor, and suggests that the trees marked on plans would not achieve the suggested height and would be ineffective anyway in safeguarding privacy. It also suggests that the proposal would alter the character of the neighbourhood. The fourth representation is not opposed to the building works, but seeks clarification as to whether existing trees on the southern boundary of the site are to be removed, as these provide privacy for and prevent over-looking of a neighbouring property.

Key Issues

42. 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.
43. Having regard to the provisions of the Bridging Island Plan and other material considerations, I consider that the key issues in this appeal relate to the effect of the proposals on:
 - the green backdrop zone
 - skyline, views and vistas
 - the Historic Environment
 - biodiversity and protected species
 - the policy position in respect of the proposed works.

The Green Backdrop Zone

44. The green backdrop zone comprises part of the landscaped escarpment around the east, south and west of the island. These areas tend to be prominent in views from the coast and sea and are important in providing a green landscape setting. Some areas support low density residential development and in places, the green backdrop

zone overlaps with parts of the built-up area. Policy GD8 of the Bridging Island Plan seeks to protect the special qualities of this zone.

45. Part 1 of policy GD8 relates to proposals for the extension or replacement of existing buildings. These will be supported, where:
 - a. it does not involve the loss of a previously undeveloped site;
 - b. it does not unacceptably increase the visual prominence of the development, and is well-related to existing development;
 - c. it avoids the skyline and the steepest slopes, where extensive earthworks may be required;
 - d. it is appropriate in scale, design, material and colour, and is designed to minimise light pollution, and is not floodlit;
 - e. existing green infrastructure is retained, and new additional tree planting and landscaping is provided to support the integration of existing and new development into the landscape; and
 - f. it does not contribute to the erosion of gaps between built-up areas.”
46. The proposal involves the remodelling of an existing building on a previously developed site and as such would not alter the relationship of the building to existing development. The proposals would not result in the loss of green infrastructure. Proposals for additional planting, including trees, are set out on the landscaping plans. These could be secured by condition to any permission that were granted. As the proposal only represents a marginal increase in footprint (8 square metres) and this is accounted for as a result of infilling a small area between the south-east extension and the main dwelling, and extension over an existing area of hardstanding to the north of the building, I find that it would not contribute to the erosion of gaps between built-up areas.
47. During my site inspection I saw that there is no single building-style within the wider area. A range of designs, style and building materials are all represented. The proposal would utilise a range of materials including granite, painted render and zinc cladding and aluminium glazing. It would also have a sedum flat roof.
48. Given the variety of styles within the wider area and the unremarkable nature of the existing white-render finishes, I conclude that the proposed design would not appear out of place.
49. I viewed the appeal site from various locations and distances. As I explain further below in my consideration of the effect of the proposals on the skyline, vistas and views, whilst the appeal site is in a prominent location, from a distance it is not easy to distinguish the current dwelling from other detached properties set in large grounds. I note that the proposed nature and mixture of materials would act to break up the visual mass of the building.
50. The proposed sedum flat roof in replacement for the existing pitched roof would allow for additional accommodation whilst increasing the height of the building by 0.8 metres over its full area. This, combined with the nature and mixture of materials of the proposed dwelling leads me to conclude that the marginal increase in height and choice of materials means that the visual prominence of the building would not be increased.
51. Part 2 of policy GD8 relates to new development within the green backdrop zone. This will not be supported except where:

- a. it does not result in the net loss of green infrastructure or adversely affect the landscape character of the green backdrop zone; or
- b. the overall benefit to the community of the proposal demonstrably outweighs the harm.”

52. The appellant has suggested that the proposed guest cottage would meet neither of these tests.
53. Green infrastructure is defined within the Glossary to the Bridging Island Plan as “assets including open spaces such as parks and gardens, playing fields, allotments, woodlands, fields, trees, hedgerows, banques and ponds, as well as footpaths, cycle routes and streams.”
54. The applicant has suggested that gardens, in the context of this definition, refers to public parks and gardens as opposed to private gardens associated with individual dwelling houses. I accept that there is some ambiguity as to whether this requirement relates to all gardens or only those that are publicly owned or which the public have access to.
55. The proposed guest cottage would be located within the curtilage of the existing dwelling. It would be built into the slope, reducing the visual area of the building, particularly from the north, east and west. It would be screened from the south by boundary planting. The structure would not breach the skyline. It would have a sedum green roof, providing new habitat and replacement green space.
56. I saw that part of the area that would be developed for the guest cottage is occupied by a pergola and some hardstanding, which does not contribute visually to green infrastructure. The remaining area is mainly grass. The proposed location of the building, set-back into the slope, coupled with the choice of materials, particularly the sedum roof, means that it would not alter or have an adverse effect on the landscape character of the green backdrop zone, even when viewed from locations around St Aubin’s Bay.
57. Even if I accept that domestic gardens fall within the scope of the policy, the proposal includes for new areas of ‘green’ space in the form of the sedum flat roofs of the proposed cottage and remodelled main house. As such, I do not consider that there would be any net loss in green infrastructure.
58. I am not persuaded by the appellant’s arguments that the proposed terraced gardens would alter the landscape character of the green backdrop zone. They would remain an area of green open space. In any case, a condition to approve the detail of these plans could be applied to any condition that is granted.
59. I therefore conclude that the proposals would be consistent with the requirements of policy GD8.

Skyline, views and vistas

60. Policy GD9 requires that “the skyline, strategic views, important vistas, and the setting of listed buildings, places and key landmark buildings must be protected or enhanced.” It also states “development that will lead to adverse impacts on the skyline, strategic views, important vistas, or the setting of listed buildings and places or key landmarks, by virtue of siting, scale, profile or design, will not be supported

except where the overall benefit to the community of the proposal demonstrably outweighs the adverse effects of any harm.”

61. As already noted, the appeal site is located on a steep slope above St Aubin’s Bay. It is located well-below the ridge and there is existing development further up the slope closer to the escarpment edge.
62. In her original representation, the appellant has provided photographs taken from an extensive range of viewpoints around the bay. Whilst I acknowledge the applicant’s concern that these photographs were not produced using the standard approaches recommended in landscape and visual impact assessment, they are helpful in clarifying the appellant’s concerns about the prominence of the development site and hence her concerns about the visual impact of the proposals.
63. During my unaccompanied site inspection, I viewed the appeal site from a number of viewpoints, including those identified by both the appellant and the applicant. These viewpoints were at varying distances, elevations and orientations from the appeal site and included a number of locations around St Aubin’s Bay. I saw that whilst the site is in a fairly prominent location, it is inevitably viewed within a wider panorama. Whilst the site and existing dwelling contribute to the views as a whole, including the patchwork of ‘green’ open space on the hill slopes above St. Helier, the site itself does not ‘stand out’ as immediately distinguishable. Indeed, its location is best identified in relation to Les Champs House, which is located further up the slope from the appeal site and which has a readily distinguishable profile.
64. Based on my observations of the visibility of the current property, I find that the proposed dwelling house would be no more prominent in distant views of the skyline and slopes above St Helier than the current arrangements. The small increase in footprint of the proposed re-modelled dwelling house as a result of the infill between two parts of the existing structure would be indistinguishable from the current situation. Likewise, an increase in overall height of around 0.8 metres would also appear negligible in these views and would not lead to any obstruction of the skyline or the listed building located further up the slope. The muted materials and flat roof would help the building to recede into the open setting compared to the current situation of white render.
65. The scale, design and position of the proposed guest cottage, means that it would not be prominent in views nor would it break the skyline.
66. The supporting text for policy GD8 notes that the presence of existing buildings or structures that detract from an important skyline, vista or view will not be treated as a precedent for their redevelopment where there is an opportunity to repair the skyline, vista or view with more sensitively scaled and designed development and landscape reparation. The proposal, with its associated landscape proposals, would be less intrusive than the current arrangement. Thus, I conclude that views would be at least protected and potentially enhanced as a result of the proposals.
67. My conclusions in relation to effects on the setting of listed buildings is considered further below.

The Historic Environment

68. Policy HE1 of the Bridging Island Plan sets out updated policy in relation to protecting listed buildings and places, and their settings. It requires that “proposals that could

affect a listed building, or place, or its setting must protect its special interest.” In addition, all proposals should seek to improve the significance of listed buildings and places.

69. Pine Grove is not a listed building, but there is a listed building, Les Champs House, which is located to the north of the appeal site. The special interest of Les Champs House is described as “a distinctive c1920s house of unusual design, which retains its character and integrity.” The extent of listing is limited to the house and does not include the southern garden, which lies closest to the appeal site.
70. The Bridging Island Plan defines setting as relating to the surroundings of a listed building or place and the way in which it is understood, appreciated and experienced by people within its context.
71. There is no dispute between parties that the appeal site lies within the wider setting of Les Champs House. However, there are some differences between the Historic Environment Team and the applicant in terms of the effect of the proposals on the wider setting of Les Champs House.
72. In its response, the Historic Environment Team (HET) notes that Pine Grove forms part of the wider setting of Les Champs House, particularly in long views from the south. It is distinctive in southern views and the closer views from the west from Mont Cochon. In addition, Pine Grove is the only building seen in views south from Les Champs House. HET notes that as it is at a much lower level than Les Champs House, views are restricted to the roof and gables. Consequently, any new development should have a built form that is no higher than existing ridges and the massing managed to have no greater impact.
73. The applicant has explained his understanding of the setting of Les Champs House, highlighting that the principal setting would have been defined by a u-shaped drive to the south of the property, enclosed by boundary planting and a secondary setting to the west and south, including the area occupied by the appeal site. A number of changes have occurred within both the principal and wider settings, including through changes in levels and landscaping works and the construction of Pine Grove. The nature of these changes is such that the land at Pine Grove is no longer clearly legible as being part of the secondary or wider setting of Les Champs House and the importance of the Pine Grove plot to the significance of the listed building is now minimal.
74. Les Champs House is on higher ground than Pine Grove and the existing house and boundary planting are already features in views from Les Champs House. In the applicant’s view, the architecture of Pine Grove is poor and the proposed replacement building is of a high quality of design, which would improve the setting of Les Champs House to a minor degree. The change in design and slight increase in height would have such a limited effect as to not materially affect the modern setting of Les Champs House or long-distance views from that house.
75. The location of the guest cottage means it would physically relate more closely to neighbouring properties to the west than to Pine Grove. It would be well-screened by its design into the slope and by existing and boundary planting. Its visual impact would be minimal and would not harm the setting of Les Champs House.
76. I align with the views of the applicant. There is a considerable difference in levels between Les Champs House and Pine Grove. Taking this into account together with

the distance between the listed building and the proposal, and the marginal increase in height of the proposed building, I conclude that there would be a minor change in the setting as viewed and experienced from the listed building itself.

77. The HET response suggests that the proposal “will not protect the setting of the Listed Building” and that “to comply with Policy HE1 the proposals will need to demonstrate how they improve the setting.” However, that does not appear to me to be the test set by Policy HE1. The policy states that it is the special interest of a listed building or setting that must be protected; not the setting *per se*. This is a distinct change from the wording of HE1 in the previous Adopted Island Plan 2011 (as amended), which sought the preservation of listed buildings and their settings. This recognises that change to listed buildings and their settings “is inevitable due to the need to maintain and adapt them in response to social, economic and technological change.”
78. As noted above, the special interest of Les Champs House is related to it being “a distinctive c1920s house of unusual design, which retains its character and integrity”. I conclude that the proposals would not impact on that special interest - the change in design and marginal increase in height of the proposed building would not alter an understanding or appreciation of Les Champs House as a distinctive c1920s house, nor would it alter the understanding or appreciation of its location within the landscape.
79. During my site inspection I viewed the proposal site from a number of locations to the south-east, south and south-west, around St Aubin’s Bay. I saw that from many perspectives it was difficult to distinguish the appeal site from other properties lying within extensive grounds. However, the distinctive architecture of Les Champs House makes it easier to identify and isolate in wider views. At such distances and when viewed as part of a wider panorama, I conclude that the marginal increase in height of the proposed dwelling would have no discernible effect on the setting of Les Champs House. It would neither obscure nor detract from the special interest of the building and an appreciation and understanding of it as a c1920s house. Likewise, the location and design of the proposed guest cottage would not detract from the special interest of the listed building.
80. During the hearing, the appellant highlighted the last paragraph of Policy HE1, which requires that applications for proposals affecting listed buildings must be supported by sufficient information and detail to enable the likely impact of proposals to be considered. She noted that the assessment has only identified the presence of a single listed building, Les Champs House, but notes that there are at least 13 additional listed buildings in the lanes in close proximity to the proposal site. No information about these listed buildings has been provided and hence no assessment can be made as to the effects on the setting of these buildings.
81. The preamble to policy HE1 notes that Jersey has a rich historic environment. It is therefore not uncommon for any proposal site to be in close proximity to at least one (if not more) listed buildings or places. The policy requires that sufficient information is provided in support of proposals to enable the likely effects on listed buildings to be considered, understood and evaluated. That is, the level of information is likely to be linked to the risk of impact.
82. The Department explained the processes that it employs to identify listed buildings within the vicinity of a proposal which may be affected by that proposal. This includes identifying the location of these buildings using map-based packages. I

understand that other listed buildings are separated from the proposal by intervening development and were not considered to be at risk. In this instance, the Historic Environment Team has been consulted on the proposal, but has not identified any additional listed buildings which need to be assessed in terms of impact from the proposals. For these reasons, I am content that sufficient information has been provided in respect of those listed buildings which may be affected by the proposals to enable a decision to be made.

83. In summary, I conclude that the proposal would be consistent with the requirements of Policy HE1 of the Bridging Island Plan.

Biodiversity and protected species

84. Policy NE1 provides for the protection and improvement of biodiversity and geodiversity. It requires development to “protect or improve biodiversity and geodiversity”. “All development must ensure that the importance of habitats, designated sites and species is taken into account and should seek to improve biodiversity and geodiversity value and, where possible, to deliver biodiversity net gain.” In addition, “applicants will need to demonstrate that a proposal will neither directly nor indirectly; singularly or cumulatively; cause harm to biodiversity or geodiversity value.” The policy also sets out criteria that would need to be met for proposals that could affect biodiversity or geodiversity, but which do not protect or improve it.
85. The proposal was accompanied by an Initial Ecological Assessment (IEA) & Ecological Survey Results report and a Species Protection Plan. These were reviewed by the Land Resource Management Team and accepted as sufficient to enable an evaluation of likely impacts on protected species. It was content that provided the mitigation, compensation and enhancement measures set out in the Species Protection Plan were implemented, these would be sufficient to minimise the identified negative impacts cause by the development works, to replace lost habitat and to enhance the site for biodiversity over the long term. It has requested that this requirement be included as a condition to any permission that is granted.
86. I am therefore satisfied that the importance of habitats and species has been taken into account. The effects of the proposed works have been assessed, that measures to protect biodiversity have been incorporated into the proposals and that there would be an improvement to biodiversity over the long-term.
87. The appellant has noted highlighted the statutory requirements for safeguarding of certain species and their resting places established in the Conservation of Wildlife (Jersey) Law 2021. My attention was drawn in particular to Articles 7, 8 and 11.
88. I accept that there are legal protections to prevent harm to certain species and habitats. A grant of planning permission would not over-ride these statutory requirements. However, the law allows for the issuing of licences to permit works that would otherwise result in an offence. Based on the ecological information submitted and the response from the Land Resource Management Team it is clear that the applicants would be required to apply for the necessary licences in order for the works to proceed. There is no indication in the response from the Land Resource Management Team that an application for the necessary licences would be refused. Notwithstanding the legal requirements established by the law, the Species Protection Plan clearly identifies that licences are required. Adherence to the

requirements of the Species Protection Plan is a condition to the permission that was granted.

89. I have considered the appellant's concerns that the proposal would adversely affect green infrastructure. Policy NE2 states that "development must protect and improve existing green infrastructure assets, and contribute towards the delivery of new green infrastructure assets and wider green infrastructure assets." It sets out five ways in which this can be achieved. It also notes that any development that would have an adverse impact on existing infrastructure will need to demonstrate how the benefit will outweigh the harm.
90. Whether or not the grounds at Pine Grove would meet the definition of green infrastructure for the purposes of the policy, I do not find that the proposal would result in a net loss of green space. The main dwelling house would be confined substantially within the existing footprint. The areas that would accommodate the extensions are already areas of hardstanding. The location of the proposed guest cottage also has areas of hardstanding and a pergola. A small area of grassland and shrubs would be lost to the development; however, this is amenity grassland of low biodiversity value. The proposals include areas of green roof, new meadow planting, and woodland management and planting. These features would be secured by condition to any permission that is granted.
91. The response from the Land Resource Management Team notes that the proposals would result in improvements in biodiversity in the long term. I therefore conclude that the benefits of the proposals would outweigh any short-term harm as a result of implementation of the development.

The policy position in respect of the proposed works

92. Article 19 (2) of the Planning and Building (Jersey) Law 2002 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.
93. The appellant's statement of case made reference to policies within the now superseded adopted Jersey Island Plan 2011 (revised 2014). All discussions at the hearing were within the policy context of the current Bridging Island Plan.
94. Page 3 of the Bridging Island Plan sets out how the plan should be used. It emphasises that 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 that each policy and proposal should not be treated in isolation. It notes: "It is likely that several policies will be relevant to any development proposal and that some policies can, seemingly, pull in different directions. This is not a flaw in the system, but simply a product of a complex and wide-ranging plan, and a reflection of the natural tensions that arise in seeking to meet the community's economic, social and environmental objectives."
95. At the hearing, the appellant questioned whether the proposals had been assessed against all relevant policies within the Bridging Island Plan. In particular, she questioned whether Policies H9, PL5 and ME1 had been considered.
96. Policy H9 relates to housing outside the built-up area. As has already been stated, the proposal site is within the built-up area and consequently this policy is not relevant in the determination of the application.

97. Likewise, Policy PL5 relates to development within the countryside, coast and marine environment. These areas are defined by Figure PL6 of the plan. I am content that the proposal lies outwith the areas to which this policy applies.
98. Policy ME1 sets a requirement for a 20% reduction in target energy rate for new dwellings and other buildings. The guest cottage has been designed with this requirement in mind and that compliance with this policy is also reinforced through condition 5 to the permission. I note that the main dwelling would not meet the 20% reduction stated in the policy. However, I accept that the works to the main dwelling represent an extension and upgrade to an existing building and hence fall outside the scope of the policy.

Other matters

Neighbouring amenity

99. The main dwelling is at some distance from other dwellings. This distance, combined with the difference in ground levels and presence of boundary planting means that there would be no change to any overlooking to neighbouring properties and the main house would not have an overbearing impact.
100. The location of the guest cottage, sunk into the contours and shielded by topography and planting, is such that this would not lead to overlooking or overbearing of neighbouring properties to the west.

Conditions

101. The appealed permission included five conditions. These relate to gaining prior approval of external materials for the development and the hard and soft landscape works; implementation of measures outlined in the Species Protection Plan; gaining approval of plant mixes and a landscape management plan; and submission of details demonstrating how the guest cottage would exceed Building Byelaw requirements in terms of energy efficient homes by 20%. I accept that these conditions are appropriate to the proposed development and necessary. No additional conditions have been proposed.

Planning history

102. I am aware of the previous applications to re-develop the site. Since those applications were determined the policy context has changed with the publication of the Bridging Island Plan. The current proposals have been assessed against the requirements of that plan.

Conclusions

103. The proposal is located within the built-up area. This is the area where policies within the Bridging Island Plan seek to concentrate and support development (Policies SP2, PL3, H2 and H3). Development is expected to contribute to placemaking (Policy SP3) and to be of a high quality of design (Policies GD6, GD8 and H1). It is also expected to respect neighbouring uses (Policy GD1). For the reasons set out above, the proposal is considered to be consistent with these requirements.

104. The appeal site also lies within the Green Backdrop Zone. This ‘double-zoning’ does not undermine the support for development within the built-up area, but does introduce additional factors that require to be considered (Policy GD8). One of these factors, in common with Policy GD9, is the safeguard of green infrastructure. Notwithstanding the ambiguity as to whether the term would apply to a domestic garden, for the reasons set out above I am content that the proposals would not result in a net loss of green infrastructure or adverse effects on landscape character of the green backdrop zone.
105. I have considered the prominence and appearance of the appeal site from various locations. I am satisfied that the proposal would not unacceptably increase the visual prominence of the development, contribute to erosion of gaps between built-up areas, have adverse effects on skyline, views and vistas or have adverse effects on landscape or seascape character.
106. Effects on relevant listed buildings have been considered. For the reasons set out above, I am satisfied that the proposals would protect the special interest of Les Champs House listed building. They would also improve the appearance of buildings within the wider setting of that listed building as required by policy HE1 and SP4.
107. In addition, effects on habitats and species have also been considered. A detailed Species Protection Plan has been prepared, which includes a requirement for licences to comply with wildlife laws. The proposals are considered to provide for a long-term net gain in biodiversity. I am therefore content that they satisfy the requirements of policies NE1 protection and improvement of biodiversity and geodiversity, NE2 green infrastructure and networks.
108. The proposals would not result in any increase in overlooking of neighbouring properties or sense of overbearing, consistent with the requirements of policy GD1.
109. The appellant has suggested that the current building would be almost totally demolished. However, unlike previous proposals, the plans show a retention of much of the existing building structure. The applicant has also provided a technical report confirming that the proposals would retain the original structural integrity of the building. I am therefore satisfied that the proposal represents a more sustainable use of land, consistent with the requirements of Policy GD5 demolition and replacement of buildings.
110. No changes are proposed to vehicle access to the site or levels of parking, which are considered sufficient for the scale of development.
111. For the reasons set out above, I conclude that the proposals would be consistent with the requirements of the Bridging Island Plan.

Recommendation

112. I recommend that the appeal should be dismissed and that the original Planning Permission be confirmed with the conditions attached to that permission.

Sue Bell

Inspector 04/01/2023