

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

Appeal under Article 108 against a decision made to grant a planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Le Sueur

Site address: The Bungalow, 2 Victoria Avenue, St. Helier, JE2 3TB

Application reference number: P/2023/0083

Proposal: 'Construct pitched roof over existing dwelling to create first floor additional residential accommodation. Works to include various internal and external alterations.'

Decision notice date: 27 April 2023

Procedure: Written representations

Inspector's site visit: 6 November 2023

Inspector's report date: 20 December 2023

Introduction

1. This report contains my assessment of the planning appeal made by Mr Le Sueur (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to refuse to grant planning permission for a development at a property known as *The Bungalow*, on Victoria Avenue in St Helier.

Background

2. No 2 Victoria Avenue is a 2-storey detached property, situated within the defined Built-up Area (BUA). It is currently divided into 2 flats, and it forms part of a row of dwellings facing southwards, with views to St Aubin's Bay. The row of properties are mostly detached houses, with painted rendered walls and pitched and hipped roofs, and they are set a uniform distance back from the road. Most have parking, and some soft landscaping, in the front garden areas, and driveways leading to garages and outbuildings in the rear gardens.
3. In the case of No 2, most of its front garden area is hard surfaced for parking, and there is a drive on the east side of the plot which leads to a yard with a car port type structure at the rear of the house. Just beyond this, and accessed from the drive/yard, is a modest single storey flat

roofed¹ dwelling, known as *The Bungalow*, which was permitted in 1969². It contains 2 bedrooms, a kitchen, lounge and bathroom, and an added conservatory at the rear, along with a small enclosed courtyard garden. To the north of the plot, and on higher land, are the mature rear gardens of houses on Seafield Avenue. To the east and west of *The Bungalow* are the rear gardens and outbuildings of neighbouring Victoria Avenue properties.

4. The appeal site, as defined on the originally submitted site location plan³, defines a red lined area which includes *The Bungalow* building and conservatory, its rear courtyard garden, and a small part of the car port structure at the front (the remainder I believe being allocated for the residents of the flats at No 2). I understand this red lined area to be the extent of *The Bungalow* ownership, but later plans and agent email correspondence confirm that *The Bungalow* enjoys 'rights of way to enable turning and access onto and off Victoria Avenue for both cars and pedestrians.'
5. The application, P/2023/0083, was validated on 2 March 2023. In essence, it sought permission to convert the 2-bedroom bungalow into a more spacious 2-bedroom house, by adding a first-floor level of accommodation, contained within a pitched roof structure.
6. The plans show that the upper level would accommodate the 2 bedrooms (with en-suites), each lit by 'cabrio' Velux windows in the southern roof plane. The ground floor level would be replanned to create an open kitchen/living area, with a separate dining room and bathroom. The conservatory would be retained. The planning authority refused to grant planning permission under officer delegated powers on 27 April 2023 for 3 reasons:
 1. *The proposal by virtue of its scale, extensive floor space, bulk, massing, its proximity and relationship to neighbouring buildings, would result in an incongruous, dominant over-developed building, that will have a detrimental material and visual impact on and will fail to preserve the character of the host site and pattern of development of the wider area. The proposal, thereby, fails to meet the strict tests of Policy GD6, of the Adopted Bridging Island Plan 2022.*
 2. *The proposal by virtue of its scale, massing, bulk and height would in obstruct significant views of the protected shoreline from the outlook of Seafield Avenue dwellings to the north of the subject site. The proposal, thereby, fails to meet the strict tests of Policy GD9, of the Adopted Bridging Island Plan 2022.*
 3. *The proposal by virtue of its scale, massing, bulk, height, location and proximity to No.2 Victoria Avenue (to the south), would result in an unacceptable level of overbearing, overshadowing impact and loss of outlook from No.2 Victoria Avenue, significant loss of outlook from*

¹ The roof actually includes a very shallow pitch but can be regarded as 'flat' roofed for urban design assessment purposes.

² Planning permission reference 4/8/5937A

³ Drawing No. (SK)032-BBB

Nos.16,17 Seafield Avenue, unacceptable level of overlooking impact on Nos.1,2,3 Victoria Avenue, detrimental to the amenity of the neighbouring dwellings, contrary to Policy GD1 of the Bridging Island Plan 2022.

7. The applicant submitted a review request which was considered at the 29 June 2023 meeting of the planning committee. The committee resolved to confirm the refusal decision for the 3 reasons set out in the Decision Notice. The appeal is made against that decision.

Summary of the appellant's grounds of appeal, the planning authority's response and the view of interested parties

8. The appellant's case is set out in the appeal form with 9 stated grounds of appeal, and expanded upon in a Statement of Case with appendices, along with a Response document which rebuts the planning authority's case and also responds to 2 submissions from interested parties. The 9 stated grounds of appeal are:
 1. *Incorrect consideration was given to policy GD9 which is not engaged by this proposal.*
 2. *Incorrect consideration was given to policy H9(5) as there is no policy in the Built-up Area which states "in the case of the redevelopment of existing dwellings involving demolition and replacement, the replaced structures ideally should not be larger than the dwelling being replaced in terms of gross floorspace, building footprint and visual impact, except where any increase can be justified having regard to functional needs or necessary improvements to the standard of accommodation." This policy is engaged for **countryside** sites outside the Built-up Area.*
 3. *Inadequate regard was given to the diverse and varied character of the area.*
 4. *Insufficient weight was given to Policies SP1, SP2, PL3 and H2 of the Bridging Plan which encourages residential development in the Built-up Area to make best use of existing land and buildings.*
 5. *Policy GD6 has not been properly considered in full.*
 6. *Insufficient weight was given to the full provisions of Policy GD1 in that no weight was given to the term "that owners and occupiers might expect to enjoy"*
 7. *The proposal does not cause overshadowing or an overbearing impact to 2 Victoria Avenue.*
 8. *Neither 16 or 17 Seafield Avenues' nor 2 Victoria Avenues' outlook is unreasonably affected.*
 9. *Unreasonable overlooking impact would not be caused to 1,2 and 3 Victoria Avenue.*
9. The planning authority's case is set out in a Response document with appendices, which include the officer report. It provides rebuttals to the appellant's grounds and I include appropriate references in my assessment

below. Two interested parties have submitted objections to the appeal proposal and endorse the planning authority's refusal.

Inspector's assessment

Main Issues

10. The appellant's case is wide ranging, but based on my review of the papers, I identify 3 main issues which reflect the reasons for refusal set out in the Decision Notice. These are:
 - The effect of the proposal on the character and appearance of the area, with particular regard to policy GD6 of the Bridging Island Plan (BIP) (adopted March 2022).
 - The effect of the proposal on skyline, views and vistas, with particular regard to BIP policy GD9.
 - The effect of the proposal on living conditions of occupiers of neighbouring properties, with particular regard to BIP policy GD1.

Character and appearance (Reason 1 and appellant's grounds 2, 3, 4, & 5)

11. *The Bungalow* occupies a 'backland' location behind the uniform row of properties on Victoria Avenue, and south of the mature rear gardens of houses on Seafield Avenue. Its appearance is akin to a large outbuilding and its single storey flat roofed design means that it sits relatively comfortably in its context. When viewed from Victoria Avenue, you can see part of its front elevation, including the lounge window, but it appears very discrete and recessive to the 2-storey dwellings on Victoria Avenue and at Seafield Avenue, which can be seen behind it.
12. The appeal proposal would significantly increase the height and bulk of the appeal property. Based on the levels shown on the submitted drawings, the existing flat roof height of 3.345 metres would more than double, to rise to a ridge height of 7.131 metres. Whilst the bulk is mitigated to a degree by the pitched roof form, it would be quite a significant increase in size and height. It would be quite discernible from public views from Victoria Avenue and from surrounding properties. Being located in what is essentially a back garden zone, this height and form of development would appear strident and out of character, and it would jar with the settlement form in the locality. Moreover, the design of the development, employing a gabled pitched roof form, would contrast with the surrounding mature housing, which typically involves hipped and pyramidal roof forms, and this would highlight its less than harmonious fit with its surroundings.
13. In reaching this assessment, I have taken into account that, in the BUA, backland type development is not uncommon, and that dwellings can sometimes appear cheek by jowl with others. However, in this case, the pattern of surrounding development is quite formal and spacious, with a uniform row of dwellings along Victoria Avenue, and a similarly formal pattern around Seafield Avenue, with a mature zone of rear gardens in between. Introducing a 2-storey dwelling on to this particular site would

appear incongruent, and would erode the distinctive characteristics of the surrounding area.

14. I have also taken into account the appellant's submissions that BIP policies SP1, SP2, PL3 and H2 direct and encourage residential development in the BUA and defined Local Centres, and seek to make best use of existing land and buildings. However, the thrust of these policies does not override the need for all development to achieve a policy GD6 requirement of high-quality design that conserves, protects and contributes positively to the distinctiveness of the built environment.
15. On this main issue, I conclude that the proposal would be harmful to the character and appearance of the area, and this would be in conflict with the policy GD6 requirement that all development should achieve a high-quality design that conserves, protects and contributes positively to the distinctiveness of the built environment, including its relationship to existing buildings, the settlement form and local characteristics.

Skyline, views and vistas (Reason 2 and appellant's ground 1)

16. The second reason for refusal alleges conflict with policy GD9 which relates to 'skyline, views and vistas' and it specifically refers to obstruction of '*significant views of the protected shoreline from the outlook of Seafield Avenue dwellings...*'. The appellant challenges this reason and submits that the policy is not engaged at all. The construction of policy GD9 includes 4 component parts, but only the first 3 are relevant in this case.
17. The first part of GD9 states that 'The skyline, strategic views, important vistas, and the setting of listed buildings, places and key landmark buildings must be protected or enhanced.' Given that the appeal site is behind 2 storey housing and there is rising land to the rear (north), there is no impact on skyline. It would also not affect any 'important vistas' and I have not been made aware of any Listed buildings or landmarks that would be impacted. There would be some impacts on outlooks from private property, notably on Seafield Avenue, but I do not agree with the planning authority that such views fall under the scope of GD9, which is intended to protect strategic and important views and vistas; such private outlook impacts are more properly assessed under policy GD1 amenity considerations.
18. The second part of the policy states that where adverse impacts (under the first part) would arise, developments would not be supported unless community benefits outweigh any harm. As I find no adverse impacts on the key factors ('the skyline, strategic views, important vistas, or the setting of listed buildings and places or key landmarks'), this part of the policy is not engaged.
19. The third relevant part of GD9 seeks to control impacts on views of developments within the shoreline zone. I agree with the appellant that, given that the appeal site is not within the shoreline zone, this part of the policy does not apply.
20. On this main issue, I find no direct conflict with policy GD9. However, this is a neutral finding in the overall planning balance.

Living conditions (grounds 6,7, 8, and 9)

21. The planning authority's third reason alleges a range of unreasonable amenity impacts on specified neighbouring properties. These are best separated out for assessment purposes. The key policy under this issue is GD1 and I have taken into account relevant caselaw which essentially confirms that the assessment is context specific.

Overlooking/privacy effects – Nos 1, 2 and 3 Victoria Avenue

22. There is an established spatial relationship between *The Bungalow* and its neighbours. Its front (south) elevation includes a wide lounge window⁴, along with the entrance door, and high-level bathroom window. There is a direct line of sight between the habitable room window (the lounge) and habitable room windows, and the conservatory, at the rear of No 2. The separating distance is quite limited, the planning authority saying it is 'about 10 metres', such that privacy is somewhat compromised between the flats in No 2 and *The Bungalow*. With curtains open it would be possible to see from one habitable room window in No 2 into the appeal property's lounge window and vice versa. However, this is clearly a longstanding established relationship between these residential properties. There are further windows in the rear of the appeal property, but these do not raise any privacy issues with properties to the north at Seafield Avenue, given the intervening boundary wall, rising land, garden vegetation, and the separating distances involved.
23. The additional floor of accommodation proposed would introduce windows at roof level on the north and south roof planes. On the north roof plane, a single skylight serving a stairwell would not create any overlooking issues. On the south elevation there would be 2 'cabrio' windows serving the bedrooms, plus 2 small rooflights serving the ensuites. The cabrio windows, due to their size, design, elevated position and close proximity to habitable room windows in the rear of No 2, would create an intrusive relationship and significant compromised privacy. There would be similar, but somewhat less severe, effects to windows in the rear of the neighbouring properties. Given that the 'cabrio' units are the only windows serving the proposed bedrooms, and future occupants should expect reasonable levels of light, outlook, and access to fresh air, these privacy effects could not be readily mitigated by measures such as obscure glazing or fixed (non-opening) units. The relationship is unacceptable and would result in unreasonable amenity effects. It therefore conflicts with policy GD1.

Overbearing, overshadowing impact and loss of outlook – No 2 Victoria Avenue

24. The appeal proposal would introduce a larger and taller building form to the rear of No 2. However, it would be on the north side of No 2, such that any overshadowing would be limited, and I do not consider any effects to be unreasonable. Notwithstanding my findings on 'character and appearance'

⁴ When I visited in November 2023 the window had been damaged by storm Ciaran and was boarded up, but I was still able to assess the inter-relationship with neighbouring buildings.

and 'privacy' matters above, I do not share the planning authority's view that the building mass itself would be unreasonably overbearing or harmful to outlook from No 2. There would definitely be some harm, as the roof structure would be in relatively close proximity and would reduce views of mature gardens to the north. However, in the context of the BUA, where development is encouraged and all new development will almost always have some effect on neighbours' outlooks, I do not consider that the effects in this case would breach the unreasonable harm threshold under policy GD1.

Loss of outlook – Nos 16 and 17 Seafield Avenue

25. The increased height of the building will have the effect of blocking part of the gap between Nos 2 and 3 Victoria Avenue, when viewed from the north. However, I noted that any effects are confined to private views from the rear of Nos 16 and 17 Seafield Avenue and I was not able to see the gap (between Nos 2 and 3) from Seafield Avenue itself. Moreover, No 17's aspect is south-westwards and No 16 faces the rear of No 3 Victoria Avenue, such that neither property looks directly at the gap. The appeal proposal would result in some diminution in these partial private views, but I do not consider these effects amount to an unreasonable effect, given the BUA location.

Other matters

26. The appellant's ground 2 draws attention to a reference in the officer report to an unrelated policy (H9). However, this policy does not appear in the refusal reasons, and it has had no bearing on my assessment.

Conclusions and recommendation

27. Whilst noting the sustainable location of the appeal site and the thrust of the BIP policies which directs new development to the BUA, I have found that there are good reasons to withhold planning permission in this case, although not to the full extent of the reasons set out in the Decision Notice.
28. I assess that the appeal proposal would be harmful to the character and appearance of the area, and this conflicts with policy GD6, which requires that all development should achieve a high-quality design that conserves, protects and contributes positively to the distinctiveness of the built environment, including its relationship to existing buildings, the settlement form, and local characteristics.
29. Whilst finding harm to the character and appearance of the area, I have found no direct conflict with policy GD9 in terms of impacts on 'skyline, views and vistas'. However, this is a neutral finding in the overall planning balance.
30. I have further assessed that the proposal would result in unreasonable harm to living conditions of neighbouring properties, albeit that I do not agree with all of the harms contended by the planning authority. Specifically, I have found that the development would be in conflict with policy GD1 with regard to unreasonable overlooking/loss of privacy effects from its first-floor

windows to No 2 Victoria Avenue and, to a somewhat lesser extent, to Nos 1 and 3 Victoria Avenue. I am satisfied that, given the BUA location of the appeal site, the proposal would not result in unreasonable levels of harm to living conditions in terms of overbearing effects, overshadowing impact, or loss of outlook to any neighbouring properties.

31. For these reasons, I therefore recommend that the Minister DISMISSES this appeal but reduces and revises the refusal reasons to those set out below:
1. *The proposal, by virtue of its backland siting, size, height and design, would result in an incongruous, strident and over-developed building, that would be harmful to the character and appearance of the area. The proposal, therefore, conflicts with policy GD6 of the Bridging Island Plan (adopted March 2022), which requires new development to achieve a high-quality design that conserves, protects and contributes positively to the distinctiveness of the built environment, including its relationship to existing buildings, the settlement form and local characteristics.*
 2. *The proposal, by virtue of its first-floor bedroom windows in close proximity to neighbouring residential property at Nos 2, 1 and 3 Victoria Avenue, would result in unreasonable overlooking effects and loss of privacy impacts, which would be seriously detrimental to the amenity and living conditions of occupants of these properties, contrary to policy GD1 of the Bridging Island Plan (adopted March 2022).*

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI