

# **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**

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Appellant: Mr and Mrs Burgess (third party appellants)

Site address: *Le Cotil d'Argile*, Le Mont de la Rocque, St. Brelade, JE3 8BQ

Application reference number: P/2023/0723

Proposal: 'Refurbish and extend the existing dwelling to provide new 5 no. bedroom dwelling and 2no. bed guest accommodation with associated parking and amenity. Utilising the existing load-bearing structure of the existing dwelling.'

Decision Notice date: 20 May 2024

Procedure: Hearing held on 22 October 2024

Inspector's site visit: 21 October 2024

Inspector's report date: 28 November 2024

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### **Introduction**

1. This report contains my assessment of the third party appeal made by Mr and Mrs Burgess (third party appellants). The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to grant planning permission for a proposed development at a property known as *Le Cotil d'Argile*, which is close to their home.

### **Procedural matters**

#### *Appeal stage amendments*

2. In the course of the appeal, the applicant (De Gruchy Ltd) sought to submit amended plans. In essence, those amendments would extend the red-lined application area to include the drive that leads to the house, and make adjustments to an approved balcony area. However, at the appeal Hearing, Mr Stein (the applicant's agent) advised that the red-lined area amendment was now retracted.
3. The introduction of amendments at the appeal stage does raise some complications and procedural issues. Whilst I am not aware of any Jersey case law on these matters, UK case law is mature, and has been clarified by a relatively recent ruling. The underlying principle is that the appeal process

should not be used to evolve a scheme, and that it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the planning authority and by interested parties at the application stage. The acceptance of amended plans at the appeal stage is therefore exceptional. In considering whether to accept amendments as an exception, case law<sup>1</sup> has established 2 key tests:

The *substantive* test – whether the proposed amendment(s) involves a substantial difference or a fundamental change to the proposal.

The *procedural* test – whether, if accepted, the proposed amendment(s) would cause procedural unfairness to anyone involved in the appeal. The change need not be substantive or fundamental to require re-consultation and, even potentially beneficial change may need to be subject to re-consultation and may not pass the procedural test.

4. I applied these principles and reached the view that the initially sought amendment to the application area would be a substantial difference and therefore fail the first test. This is now of little consequence, as that particular amendment was withdrawn by the applicant. I have considered the proposal on the basis of the red-lined site location plan<sup>2</sup> that is listed on the Decision Notice. I discuss the appellants' views and concerns about red-line matters under their grounds 6, 7 and 8.
5. With regard to the amendment to the balcony area, the applicant's agent confirmed, at the Hearing, that this remained 'on the table' for consideration. However, he stressed that the amendment was offered as a positive gesture, intended to lessen the appellants' concerns about overlooking, but that it was not a recognition that the 'as approved' scheme was deficient in this regard, when judged against the relevant policy (GD1). Whilst noting the positive intention, accepting such a revision at the appeal stage would fail the procedural test, as other parties have not been given the opportunity to assess and comment on the amendments in the normal way. I have therefore excluded this amendment from my consideration.

#### *Additional plans*

6. At the appeal Hearing, Mr de Sousa, the applicant's architect, produced 2 additional plans<sup>3</sup>. As these did not involve changes to the scheme, and were produced to assist interpretation of the approved drawings, I have accepted and considered this material.

#### *Development description*

7. The development description that appears on the Decision Notice is sourced directly from the application form. It is generally regarded as good practice to use the description stated on the form, unless it is clearly wrong or misleading. In this case there are 2 issues with the description. First, it

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<sup>1</sup> Holborn Studios Ltd v The Council of the London Borough of Hackney (2018), which refined the "Wheatcroft principles" set out in Bernard Wheatcroft v Secretary of State for the Environment (1982).

<sup>2</sup> Drawing No PG665-01RevP1

<sup>3</sup> Drawing PG665-24 RevP3 and Drawing PG665-20 RevP3

creates the impression that a 7-bedroom dwelling is being created when, in fact, the plans show a 5-bedroom property, of which 2 of the bedrooms are intended as part of the guest accommodation. The second issue relates to the use of the terms 'refurbish and extend', when very little of the existing house would in fact remain.

8. I discussed these matters with the main parties at the Hearing. The accuracy matter concerning dwelling size is straightforward to address. With regard to the 'refurbish and extend' matter, I agree with the appellants' submissions that these terms are not appropriate when judged against the facts of this case, and any reasonable definition of those terms. For the applicant, Mr Stein confirmed that he could not really disagree with Mrs Steedman, and recognised that a significant amount of demolition was involved. Based on these discussions, and seeking to minimise changes to the description stated on the application form, I consider the wording below more accurately and precisely describes the development proposal:

*'Part demolition and part retention of existing dwelling to provide new 5 no. bedroom dwelling (including 2 no. bed guest accommodation) with associated parking and amenity. Utilising the existing load-bearing structure of the existing dwelling.'*

### **The appeal site, the appeal proposal, and the application determination**

#### *The appeal site*

9. *Le Cotel d'Argile* is a detached dwelling house situated off Le Mont de La Rocque. It is set on an elevated and sloping plot overlooking St Aubin's Bay. The house itself sits within the higher (western) part of the modest sized irregular shaped plot.
10. I understand that the dwelling dates from the late 1960s and was originally of a 3-bedroom design with the bedrooms contained on the ground floor, and the main living space at first floor level, which opens onto a balcony running along the full width of the front of the house and wrapping around its southern side, from where there are panoramic views of the bay. The guest accommodation is within the northern part of the building and it appears that it can only be accessed externally, i.e., there is no connecting internal door to the main house. The house is of an unremarkable design, with painted rendered walls and concrete tiled roofs. When I visited the property, I observed that it was in a poor condition and appeared to have not been occupied for some time.
11. Access is gained via a driveway, shared with another property, which runs southwards, then westwards from the plot and connects to the road. The approved plans exclude the driveway from the red-lined application site, although it is apparent that this is the only, and longstanding, vehicular access that serves the dwelling, and leads to its garage and parking area at its southern end.
12. The plot includes garden areas to the east of the house, which are set at a lower level and accessed via a staircase. This area includes a concrete

slabbed patio type area with a domestic greenhouse and a shed, and a grassed area. The eastern margin comprises a bank which drops down quite steeply to a garden area attached to the appellants' property below. There is also a small garden area to the north of the dwelling, which contains a small outbuilding structure.

13. In the immediate locality, there are larger detached dwellings to the south (*Saramax*) and beyond that a block of apartments. To the south-east and east of the site is the appellants' property, *Clos de Pins*, and its garden. To the west, and at a notably higher level, is a large property, *La Falaise*, set within a sizeable plot.
14. The red-lined appeal site area includes Bridging Island Plan (adopted March 2022) (BIP) zoning designations for both the Built-Up Area (BUA) and the Green Zone. As this is a matter that relates directly to this appeal, I have reproduced below an overlay map<sup>4</sup>. This helpfully identifies that the house, the parking area to the south of the house, and a small area to the north, fall within the BUA designations. The remaining garden areas, to the east and north, and a slender western margin, lie within the designated Green Zone. It also shows that the *Clos de Pins* house (just below the south-eastern tip of the red-lined area) is within the BUA, but its garden is in the Green Zone.



<sup>4</sup> The plan appears in the applicant's Design Statement (page 5)

*The appeal proposal P/2023/0723*

15. The proposal seeks planning permission for a comprehensive scheme of works that would, in essence, result in a new dwelling. It is fair to say that little of the existing above ground dwelling structure would remain, but the scheme would utilise the existing concrete foundations as the basis for the new dwelling form. The resultant dwelling would occupy a similar position on the site, but its footprint would be longer and wider than the existing dwelling and, notably, it would extend the dwelling, at lower ground level, in an eastward direction into the Green Zone part of the site.
16. At the lower level, the accommodation would include an indoor swimming pool, shower room, store and cinema within the Green Zone part of the site, and a store and a gym<sup>5</sup> within the BUA part of the site. This element would be faced with a 'living wall', and its flat roof would provide a terrace area accessible from the ground floor accommodation. The main part of the dwelling would be largely contained within the BUA part of the site and would include, at ground floor level, a 3-space integral garage, 4 bedrooms (2 within the guest accommodation space), bathrooms, and a kitchen/dining/living space to serve the guest accommodation. At first floor level, there would be a large open plan kitchen/dining/lounge with access to balconies overlooking the bay, the fifth bedroom with en-suite and dressing room, a larder room, and an office.
17. The applicant's Design Statement states that the existing dwelling has a floorspace of 297 square metres Gross Internal area (GIA), and that the extension/refurbishment of the main house will result in a 498 square metres GIA spread over the ground and first floors, with an additional 208 square metres GIA accommodation the pool and 'wellness area' at the lower ground floor. The resulting building will therefore have a total GIA of 706 square metres.
18. The architectural design of the scheme is modern and simple in its composition, with extensive glazing on the main bay facing elevation, all contained under a flat roof. Although longer and wider than the existing house structure, its height would be lower than the current roof ridgeline.

*Application determination*

19. Following an officer assessment which included consideration of consultee responses and 2 representations, planning permission was granted for the proposal under officer delegated powers on 20 May 2024. In addition to the standard time limit and plans compliance conditions, 10 further conditions were imposed. These included requirements in respect of: a demolition/construction environmental management plan; ecological mitigations; provision of vehicle and cycle parking and electrical charging facilities; ensuring that the guest accommodation remained ancillary to the main house; approval of materials; installation of the 'living wall' structure; and a detailed scheme of landscaping.

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<sup>5</sup> Drawing PG665-13 Rev P1 appears to show a small margin of the gym room extending into the Green Zone part of the site, as defined by the existing retaining wall structure.

**Summary of the appellants' grounds of appeal, and the responses of the planning authority, the applicant and interested parties**

The appellants

20. The appellants' case is set out in the appeal form (with appendices), a detailed Statement of Case and a final Response document. The 8 stated grounds of appeal are as follows:

*Ground 1: The development proposed is located in both the Built-Up Area and Green Zone of the Proposals Map of the Bridging Island Plan, 2022. The Appellant considers that the decision made by the Regulation Department does not adequately take into account and has not properly assessed the scheme under the relevant planning policies and supplementary planning guidance.*

*Ground 2: The Appellant considers that the development proposed results in unreasonable harm to their amenities contrary to Policy GD1 Bridging Island Plan, 2022.*

*Ground 3: The Appellant is not reassured that the impact of the development proposed upon ground and surface water management conditions are sufficiently explained and understood to confirm that the development proposed will not have adverse effects upon their property.*

*Ground 4: The Appellant considers that notwithstanding the information that has been submitted with the Planning Application, the development proposed does not result in the protection and improvement of the island's biodiversity and geodiversity, nor the island's natural environment or landscape character in accordance with Bridging Island Plan, 2022 policies.*

*Ground 5: The Appellant is concerned that the impact of the development proposed upon their property and other nearby property as a result of the construction process is uncertain and has the potential to result in harmful effects.*

*Ground 6: The information submitted with the Planning Application is inaccurate and relies on and includes land that is within the Appellant's ownership and control in respect of which the Applicant has not obtained the approval of the Appellant.*

*Ground 7: The information submitted with the Planning Application fails to include land between the Application site land and the public highway required for the purposes of access to and egress from the Application site.*

*Ground 8: The Planning Application and the approved plans fail to explain how future occupiers of the site access the public highway in accordance with the transport policy requirements of the Bridging Island Plan, 2022.*

21. At the Hearing, the appellants' case was led by Mrs Steedman (planning consultant), with contributions from Mr Burgess.

### The planning authority

22. The planning authority has produced a Response document which includes the officer report, and it maintains that the decision to grant planning permission was correct and that the proposal accords with the provisions of the BIP.
23. The Response provides rebuttals to each of the appellants' 8 grounds of appeal and submits that: the proposed dwelling is sited predominantly within the BUA and will be seen in that context (ground 1); that there would be no unreasonable amenity impacts given the distance and relationship with the appellants' property (ground 2); drainage and biodiversity details have been properly submitted and assessed (grounds 3 and 4); that condition requirements control construction/demolition impacts (ground 5); and that there is no change to the existing road access connection (grounds 6, 7, and 8).
24. At the Hearing the planning authority's case was presented by Mr Gladwin.

### The applicant

25. The applicant produced a detailed Statement, with 7 appendices and a Final Responses document, with 1 appendix. These submissions rebut the appellants' grounds and supports the decision to grant planning permission.
26. Specifically, with regard to ground 1, the applicant states that the site is mostly in the BUA and partly within the Green Zone. The BUA is the optimum location for development, whereas the Green Zone is afforded a level of protection against new development, but not as high as the Coastal National Park or the Protected Coastal Area. Moreover, the applicant says that it is significant that policy H9 allows extensions to existing dwellings in the Green Zone.
27. Concerning ground 2, the applicant submits that the appellants' dwelling lies to the south of the site, at a lower level and with its principal elevation facing away from the site, directed towards the views over St Aubin's Bay. It is too distant from, and too oblique to, the proposed dwelling to be affected, and the applicant does not understand why the appellants object.
28. The applicant further submits that drainage and biodiversity matters (grounds 3 and 4) have been properly addressed and found to be acceptable to the planning authorities consultees. The applicant further submits that other matters concerning ownership and access are not material planning considerations, and all of the land within the application area is in the control of the applicant.
29. At the Hearing, the applicant's case was presented by Mr Stein (planning consultant) and Mr Souza (architect).

## **INSPECTOR'S ASSESSMENT**

### **Ground 1 – BUA / Green Zone**

30. The appellants' first ground of appeal raises some complex matters of principle, and whether the planning authority's decision has properly taken account of the relevant BIP policies concerning development within the BUA and the Green Zone.
31. As the Minister will be aware, the BIP continues the concentrated development strategy that has been a central tenet of successive Island Plans. At a strategic level, BIP policy SP2 states that development will be concentrated in the BUA and that, outside the BUA, development will only be supported where a countryside location is appropriate, necessary and justified in its location; or where it involves the conversion, extension and/or subdivision of existing buildings.
32. This is a case where some quite careful planning judgement is required in terms of interpreting and applying BIP policies. Particular complexities arise from the fact that the red-lined site area includes both BUA and Green Zone designated land, and built development is proposed within both. This is further complicated by the nature of the specific proposal which, whilst using some of the existing dwelling's structure, amounts to building a new house; this therefore raises questions about whether certain policy provisions relating to 'extensions' are applicable.
33. The presence of 2 different BIP zones within the relatively modest *Le Cotil d'Argile* plot is unusual, but not unique. Indeed, the appellants' adjacent property *Clos de Pins* is similarly dual zoned, the house being within the BUA, and the garden in the Green Zone. An important point here is that the BIP's zoning is not directly influenced by the private property phenomena of who might own buildings and parcels of land, or what might be regarded as 'curtilage'.
34. The BIP zoning is based on land use planning grounds and considerations, and it is clear to me that policy makers have defined, with a degree of fine grain precision, the BUA extent around *Le Cotil d'Argile* and adjacent properties. The BIP proposals map has significant weight for decision makers in terms of its definition of the BUA, where policies dictate that development is to be concentrated and supported, and the Green Zone, where development is to be generally restricted and controlled by the application of qualifying exceptions and criteria policies.
35. I have noted the planning authority's submissions that the new dwelling would be 'predominantly within' the BUA, where BIP policies SP2 and PL3 offer in principle support. Whilst that is the case in terms of percentage proportions, there is no escaping the fact that the proposal would amount to a very large and spacious new house. It would be substantially larger in footprint and floorspace than the existing dwelling, and sited on a relatively modest sized plot.

36. Although the development would be in a similar location to the existing house, and would indeed utilise some of its substructure and walls, its size means that it could not all be contained within the BUA part of the site. It would expand to involve built development within the Green Zone. The development within the Green Zone part of the site would be the lower ground floor space, largely built over the existing lower terrace area. It would include an indoor swimming pool, a plant room, a store, a shower room, a cinema, and a small element of a gym room (most of which would be within the BUA part of the site).
37. Although this would be a single storey element of the proposed house, it would nonetheless be quite a large building block. I have not been provided with precise area and volume calculations but, from scaling the paper plans, this block appears to be about 23.5 metres long, with a width extending about 6 metres from the retaining wall, and a height of just over 3 metres. With an approximate footprint of circa 141 square metres, and a volume well in excess of 400 cubic metres, along with a balustraded terrace area on its roof, it would therefore be quite a significant structure.
38. In terms of policy SP2, I do not consider that this element could be seen as an extension to an 'existing' building, as the proposal is premised on the virtual demolition of the existing house. I also do not consider that it would meet the test concerning where a countryside location is 'appropriate, necessary and justified' in its location, and there is no convincing case why a replacement dwelling could not be more fully contained within the BUA part of the site. I have noted the views of the applicant and the planning authority concerning the fact that this part of the site is within the existing dwelling's curtilage, and has existing domestic structures within it. However, that is not a persuasive argument in itself, for reasons identified above. It is a matter of fact that the Green Zone contains many existing dwellings and residential gardens, and planning policies are not neutralised or cancelled out by 'curtilage' or ownership considerations.
39. Indeed, the BIP expressly recognises the presence of existing dwellings within the Green Zone. Policy H9(1) establishes the parameters for acceptable additions to homes outside the BUA, which are that, *'it remains, individually and cumulatively, having regard to the planning history of the site, subservient to the existing dwelling and does not disproportionately increase the size of the dwelling in terms of gross floorspace, building footprint or visual impact'*. The supporting narrative explains that, *'It would be unreasonable to resist all forms of development to improve people's homes where they lie outside the built-up area; and where there is the potential to optimise the use of existing dwellings.'* In line with my finding under policy SP2, I do not consider that the applicant can benefit from the engagement of this policy, as the existing dwelling will be, to all intents and purposes, demolished and replaced by a new and considerably larger house.
40. Even if I were to take the view that policy H9(1) were to be engaged, the building element within the Green Zone is significant. Although it may be a proportionately modest part of the overall proposal, the resultant house of which it would be a component part is very large indeed. Some useful comparators to calibrate the significance of the scale of development can be

drawn from adopted supplementary planning guidance. With a floorspace of over 700 square metres, it would be 2.5 times the size of a 'large home' as defined in current guidance<sup>6</sup>. Moreover, the building element within the Green Zone alone, would have a floorspace substantially in excess of a standard 4-bedroom dwelling, as defined in the latest guidance<sup>7</sup>.

41. With regard to landscape and visual impact, the Green Zone building element would be of a single storey scale and would be seen within the context of other dwellings nearby, and to a degree disguised by its 'living wall'. However, it would still result in some limited and localised harm, by developing and urbanising open land within 'Character Area C2' (St Aubin's Bay Escarpment), as defined in the Jersey Integrated Landscape and Seascape Character Assessment (October 2020), and which the thrust of policy SP2, and the Green Zone designation on the BIP proposals map, would presume to remain largely open.
42. Rounding up the above complexity of policy pushes and pulls, I reach the conclusion that whilst the proposed main house elements within the BUA part of the site are acceptable in principle, the significant development proposed within the Green Zone is not, and it raises fundamental conflicts with policy SP2. As these Green Zone building elements are an inextricable part of the development proposal, I regard this policy conflict as fatal to the scheme in planning terms, and that permission should be refused on this basis. Ground 1 of this appeal should therefore succeed.

### **Ground 2 – Living conditions**

43. The appellants consider that the development will harm their amenities, at *Clos des Pins*, due to the overlooking and light pollution effects.
44. The primary policy on these matters is GD1, which covers 'managing the health and wellbeing impact of new development'. The policy requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It cites some particular matters that developments must avoid, the most relevant in this case being: b) unreasonably affecting the level of privacy to buildings and land that owners and occupiers might expect to enjoy. There are similar considerations contained in policy GD6(3).
45. There is a body of Jersey case law<sup>8</sup> concerning how amenity assessments should be made in planning determinations. Whilst these cases related to an earlier Island Plan era, and policy GD1 has evolved somewhat in the intervening period, there is nothing to suggest a departure from the main

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<sup>6</sup> Supplementary Planning Guidance: Housing outside the built-up area (July 2023); Density standards (July 2023); and Residential space standards (October 2023).

<sup>7</sup> Table 1 of the Residential space standards (October 2023) cites a floorspace range of 93 - 102 square metres for a single storey 4-bedroom dwelling.

<sup>8</sup> Boyle and Kehoe -v- Minister for Planning [2012] JRC036; Winchester -v- Minister for Planning and Environment [2014] JRC118

principles that arise from those judgements. These include the recognition that assessments are contextual and relative, and that the key consideration for the decision maker is whether any identified harm crosses the threshold of being 'unreasonable', which is not defined, and is a matter for the decision maker.

46. The planning authority and the applicant have correctly pointed out that within this part of the BUA, there is an existing amount of overlooking from buildings into other buildings and gardens. This is due to the topography and the understandable desire to maximise views of the bay from windows, balconies and outdoor spaces. I noted on my site inspection that the main aspect of the appellants' property is towards the bay, although there are some windows in the side (north) elevation, and it was pointed out that the appellants have secured planning permission for a roof terrace that will overlook other properties.
47. Given the distances involved, along with the levels and orientation, I am satisfied that any overlooking from the windows and terraces within the main BUA part of the proposed house would be acceptable in planning terms. Views from these vantage points would afford some visibility towards other properties, including the appellants' home, but it would not be particularly intrusive or unusual in its context, and it would not be unreasonable.
48. However, I do have serious concerns about the overlooking effects from the terrace area that would be formed on the roof of the Green Zone element of the proposal. This area is shown as having a glass balustrade around its edge. Anyone standing against the eastern edge of this area would have an elevated view directly into the appellants' garden area, in very close proximity to the banked garden boundary. Whilst I do acknowledge that the garden is not entirely private, due to overlooking from more distant neighbouring windows and spaces, the potential for people to stand directly above this amenity area, would be very intrusive and would make the garden a much less pleasant space to use. I do also appreciate that users of the terrace are more likely to have their views drawn towards the bay, but that would not lessen the perception of overlooking and loss of privacy that would be likely to be felt by users of the garden of *Clos de Pins*.
49. With regard to light pollution, there is no evidence to suggest that the development would have any effects that would be unreasonable, particularly given the fact that the site accommodates an existing residential property, and there are neighbouring dwellings, which will all include some artificial lighting.
50. On this ground, I consider that the appeal should succeed, but solely in relation to the privacy/overlooking effects arising from the proposed roof terrace above the lower ground floor accommodation. I consider that other amenity impacts would be reasonable.

### **Ground 3 – Drainage**

51. I have noted the appellants' concerns on ground and surface water management matters. However, a drainage plan was included within the application and I must give weight to the Department for Infrastructure (Operational Services – Drainage) consultation responses, raising no objection to the scheme. There is no evidence to indicate any conflict with any relevant BIP policies, notably policy WER6. Ground 3 should therefore not succeed.

### **Ground 4 – Biodiversity and geodiversity**

52. Through the pursuit of this appeal the appellants have sought to highlight that a number of trees and landscaping were removed from the site prior to the submission of the planning application. They provided photographic evidence to demonstrate how the trees and vegetation on the bank (the eastern part of the appeal site) that were present on the site in 2022 were cleared by 2024, opening up views into the site.
53. It does appear that there has been some clearance work at the site, but none of the garden trees, hedgerows or vegetation was subject to any formal protections. Moreover, the application was supported by an ecology survey report undertaken by competent experts, who recorded that the lower parts of the cotil had been recently cleared of 'predominantly ornamental trees'. This report, and an accompanying schedule for ecological works, were assessed by Land Resource Management officers and considered to be acceptable, subject to securing the identified mitigation and enhancement measures, which were covered by condition 2 on the Decision Notice.
54. The evidence before me does not demonstrate any breach of, or conflict with, the BIP natural environment policies. This ground of appeal should not succeed.

### **Ground 5 – Construction impacts**

55. I have noted the appellants' concerns about construction impacts, and fears about landslides and potential damage to their property. I have also noted submissions concerning geodiversity, and the type of rock formation present. However, these are not matters that would normally result in a planning permission being withheld. Rather, they are matters to be addressed by a Demolition/Construction Environmental Management Plan (which is a requirement of planning condition 1), and legal responsibilities to be held and managed by the applicant and its selected contractor, should the development proceed. Ground 5 should fail.

### **Grounds 6, 7 and 8 – Land control and access**

56. I have considered the appellants' submissions regarding 'red-line' matters, including guidance issued by the planning authority on making planning applications. However, the existing property has an established access via a shared drive which connects to the road. No changes to this access arrangement are proposed, or required, to enable the development to

proceed. There is no convincing evidence before me to suggest that, if permitted, the development could not be built on land within the applicant's control or that it would not be adequately served, in terms of access arrangements for vehicles, cycles and for those on foot. Therefore, in my assessment, grounds 6, 7, and 8 should not succeed.

### **Other matters**

#### *Dwelling size*

57. The appellants' agent has highlighted the overall scale of the dwelling, which substantially exceeds the 279 square metres maximum floorspace suggested in the Residential Space Standards (October 2023) SPG, as the size limit to ensure that homes provided remain accessible to islanders and best meets housing needs. Similarly, the Density Standards (July 2023) SPG, seeks to manage such larger homes to make the best use of valuable urban land; it says that such homes will not be supported in the BUA 'where it is expected that the optimal use of urban land will be achieved by the development of a larger number of good quality homes that provide good standards of living accommodation whilst being more affordable to more people.'
58. Whilst I agree that there is a limited tension between this guidance and the proposal, I do not consider that the guidance was intended to act as an outright ban on large high-end homes *per se*. Rather, it signals a need to manage such proposals on sites which might otherwise achieve a better use of land. In this particular case, the site characteristics, including an existing house which exceeds 279 square metres floorspace, the site topography, Green Zone designation constraints, along with its quite stunning elevated views of the bay, all point to an unlikelihood that this would ever be a site that would be utilised for a greater number of smaller, more affordable, homes. Notwithstanding my findings that the proposal is too large for other policy reasons, i.e. the unjustified incursion into the Green Zone, I do not consider that a larger dwelling development (above 279 square metres) would be unacceptable on this particular site.

#### *Case for demolition*

59. In terms of policy GD5 concerning the demolition and replacement of buildings, I have noted the applicant's submitted detailed assessment and the Housing, Environment and Placemaking consultation response, which confirms that, albeit finely balanced, the policy would be satisfied. I have no reason to depart from this assessment.

#### *Compliance with other policies*

60. I have considered and noted the applicant's submissions concerning compliance with a range of other BIP policies. However, these are largely neutral considerations, as they amount to policy matters and standards that developments are expected to meet. They do not outweigh the planning harm I have identified under grounds 1 and 2.

### **Planning conditions**

61. At the Hearing, I held a 'without prejudice' discussion on planning conditions, in the event that the Minister wished to confirm the grant of planning permission. In addition to the 10 conditions that appear on the notice, the main parties agreed that 2 further conditions, regarding details of precise levels, and external lighting, would be reasonable. Approval of precise levels would be particularly important to provide certainty, notably in the eastern margin of the site, where the plans display some potential ambiguity about the precise boundary and bank profile.
62. I am not persuaded by the appellants' requests for conditions removing permitted development rights; requiring a tree survey; requiring more drainage design details; or specifying the qualifications of the landscape scheme designer.

### **Conclusions and recommendations**

63. With regard to matters of principle (ground 1), this appeal raises some deceptively complex and nuanced policy assessments. In some ways, the appeal site can be seen as something of a microcosm of the BIP's land use strategy, concentrating and promoting development within its BUA parts, and resisting and controlling development in its Green Zone parts. Although the proposal would place the greater amount of the dwelling's floorspace and mass within the BUA part of the site, it would be a very large house in terms of footprint and floorspace, and would include a substantial incursion into the Green Zone part of the site. I have assessed that this Green Zone incursion of built development would not be appropriate, necessary and justified in its location, and cannot be regarded as an acceptable permissible extension to an existing building under policies SP2 and H9. It would therefore involve a fundamental conflict with policy SP2. The appellants' ground 1 appeal should therefore succeed.
64. I have further found that the terrace area above the proposed Green Zone building element would lead to unreasonable loss of privacy (ground 2) by virtue of overlooking of the neighbour's garden at very close quarters. This conflicts with policies GD1 and GD6. In this specific regard, the appeal should therefore succeed under ground 2.
65. I have assessed that the appellants' other grounds concerning drainage, biodiversity and geodiversity, construction impacts and land ownership/control matters, should not succeed.
66. I have noted the applicant's submissions regarding compliance with a range of other BIP policies. However, this is a relatively neutral matter and does not override the planning harm I have identified in terms of development within the Green Zone and impacts on living conditions.
67. Should the Minister agree with my recommendation, it should be apparent to all parties that the matters that I have identified are capable of resolution by a reduced and amended scheme, should the applicant wish to pursue that course of action.

68. For the reasons stated above, my recommendations are:

- A. That the development description be revised to read: *'Part demolition and part retention of existing dwelling to provide new 5 no. bedroom dwelling (including 2 no. bed guest accommodation) with associated parking and amenity. Utilising the existing load-bearing structure of the existing dwelling.'*
- B. That the Minister **ALLOWS** the appeal and **REFUSES** planning permission for the development proposed under application reference P/2023/0723 for the following reasons:

Reason 1: The proposal involves substantial built development in the Green Zone which is not appropriate, necessary and justified in its location, and the proposal is not an extension to an existing building. This fundamentally conflicts with policy SP2 of the Bridging Island Plan (adopted March 2022), which sets out the spatial strategy for Jersey and directs new development to the Built-up Area, and seeks to limit development in the Green Zone in the interests of sustainable development.

Reason 2: The roof terrace above the lower ground floor accommodation would, by virtue of its overall size, elevation and proximity to the garden area of the neighbouring property, *Clos de Pins*, to the east, result in an unreasonable loss of amenity to occupants of that property by virtue of actual and perceived overlooking effects and loss of privacy. The proposal therefore conflicts with policies GD1 and GD6 of the Bridging Island Plan (adopted March 2022), which require developments to avoid unreasonable harm to amenities of neighbouring uses and to be of a high standard of design which respects neighbouring uses.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**