

Planning - appeal against the decision of the Minister.

[2012]JRC027A

**ROYAL COURT
(Samedi)**

3 February 2012

**Before : J. A. Clyde-Smith, Esq., Commissioner, and Jurats
Morgan and Olsen.**

Between	Ronald Rene Maletroit	Appellant
And	The Minister for Planning and Environment	Respondent

Mr Maletroit appeared in person.

Mr Duncan Mills on behalf of the Minister.

JUDGMENT

THE COMMISSIONER:

1. This appeal has an unusual procedural background; an earlier appeal was withdrawn by the appellant in order to enable a request for a "reconsideration exercise" to be undertaken by the Minister for Planning and Environment. The decision from which the first appeal was brought was made under the delegated powers on behalf of the Minister on 24th September, 2010. On that date the panel considered a planning application submitted by the appellant under the Planning and Building (Jersey) Law 2002 in respect of land to the rear of L'Ecluse, Le Chemin des Hougues, St Mary. The application was for the replacement of a previously demolished cottage. The panel refused the application for the reasons specified on the formal notice dated 24th September, 2010, which read as follows:-

"1. The proposed development represented the erection of a new dwelling within the Green Zone and, in the absence of any demonstrable essential agricultural need, is considered to be contrary to the provisions of Policy C5 of the Jersey Island Plan 2002.

2. The size, bulk and design of the proposed dwelling does not relate to, or satisfactorily respond to, the local settlement form and character, topography, landscape features and the wider landscape setting. Moreover, the submitted plans fail to demonstrate the degree to which the design, colours, materials and finishes reflect or complement the style and traditions of local buildings. Accordingly the Department does not consider that the proposals attain the high standard of design required by the Minister of Planning and Environment and the proposal is, therefore, contrary to Policies G2 and G3 of the Jersey Island Plan 2002."

2. The first appeal was withdrawn by the appellant at the Royal Court hearing on the 31st May, 2011. It was withdrawn in light of the fact that the planning applications panel, when they made their decision, were not properly constituted. The Royal Court gave the option to the appellant of either withdrawing the appeal in light of the planning applications panel not being properly constituted, or to proceed with the Royal Court hearing. The appellant chose to withdraw the appeal and submit a request for reconsideration to the Minister.
3. The Minister has reconsidered the matter and has maintained the refusal. He did so taking into account the Island Plan 2011 which was adopted by the States on 29th June, 2011. The formal notice of refusal dated 13th September, 2011, is in the following terms:-

"1. The site lies within the designated Green Zone wherein there is the strongest presumption against all forms of new development. The Department does not accept that the "ruins" constitute a dwelling and that the erection of a new dwelling either on the site of the ruins, or nearby, without any demonstrable essential agricultural, tourism or rural economy related need, is considered to be contrary to the provisions of Policies NE7, SP1 and GD1 of the Jersey Island Plan 2011.

2. The size, bulk and design of the proposed dwelling does not relate to, or satisfactorily respond to, the local settlement form and character, topography, landscape features and the wider landscape setting. Moreover the submitted plans fail to demonstrate the degree to which the design, colours, materials and finishes reflect or complement the style and traditions of local buildings. Accordingly, the Department does not consider that the proposals attain the high standard required by the Minister for Planning and Environment and the proposal is, therefore, contrary to Policies GD1, GD7 and NE7 of the Jersey Island Plan 2011."

4. L'Ecluse is a large residential dwelling (which is listed as a Proposed Site of Special Interest by Planning) located off La Chemin des Hougues in Mourier Valley in the Parish of St Mary. The site where the new house is proposed to be built is located to the north-west of L'Ecluse on an area of scrubland located near the top of the hill with open views to the north coast and to the adjacent Fields 188 and 187.
5. To the north and east lies an area of dense woodland which runs down to the valley floor. The site would be accessed from La Rue de Maupertuis via an access track which runs between the rear of the existing house at L'Ecluse and Field 187.
6. The ruins of the alleged previous house are located in a different location than the proposed house, being approximately 80 metres away at the bottom of the steep valley side and located just to the west of the road La Chemin des Hougues which runs through the Mourier Valley.
7. Under the Island Plan approved by the States on 11th July 2002, the site lies within the Green Zone and adjacent to a proposed Site of Special Interest Area and has no other Island Plan designations. The principal planning policy under the 2002 Island Plan was Policy C5-Green Zone.
8. This Policy concerns development within the Green Zone. Policy C5 states that within this zone, there will be a high level of protection given and there will be a general presumption against all forms of new development for whatever purpose.
9. However certain types of development may be permitted where the scale, location and design would not detract from, or unreasonably harm the character and scenic quality of the countryside. There are then listed ten types of development that may be acceptable in the Green Zone. None of the criteria listed permit a new dwelling unconnected with agriculture.
10. In the newly adopted Island Plan 2011, the site of the proposed dwelling still lies within the Green Zone and has no other Island Plan designations. The "ruins" of the cottage are located within the Coastal National Park. The principal planning policy is Policy NE7 – Green Zone.
11. This Policy concerns development within the Green Zone. Policy NE7 states that within this zone, there will be a high level of protection given and there will be a general presumption against all forms of development for whatever purpose.
12. However, certain types of development may be permitted where the scale, location and design would not detract from, or unreasonably harm the character of the countryside. There are then listed 13 types of

development that may be acceptable in the Green Zone. Number 3 of the listed types of development that may be permitted is "replacement of a dwelling" and it is this that the appellant relies on.

13. As to the legal test on appeal, it is now well established and can be found in the Royal Court's judgment in Token Limited-v-Planning and Environment Committee [2001] JLR 698 at paragraph 9:-

"The court might think that a Committee's decision is mistaken, but that does not of itself entitle the court to substitute its own decision. The court must form its own view of the merits, but it must reach the conclusion that the Committee's decision is not only mistaken but also unreasonable before it can intervene. There is an element of semantics here but there is, nonetheless, a qualitative difference between finding that the decision is unreasonable, rather than simply mistaken. To put it another way, there is a margin of appreciation before a decision which the court thinks to be mistaken becomes so wrong that it is, in the view of the court, unreasonable."

14. Turning to the grounds of appeal, the appellant states that the decision of the Minister is unreasonable for the following reasons:-

- (i) He points to the Island Plan 2011, Policy NE7 which states the development will be permitted but only where the scale location and design would not detract from, or unreasonably harm the character of the area. He says that since the proposed house would not be visible to the public it would not detract from or harm the character of the area.
- (ii) The reference in item 3 of Policy NE7 concerning the replacement of the dwelling is very clear. He says there is no mention of the condition of the building to be replaced nor its occupancy. It is obvious, he says, that if a building needs to be replaced it is in a poor condition or situated in the wrong place.
- (iii) He says the list of presumptions against development do not refer to the replacement of a dwelling. He goes on to say the Minister has questioned whether the ruin can be regarded as a dwelling even though the Planning Department has acknowledged that it was a dwelling. Nothing in the Planning Law or the Island Plan specifies the condition of the dwelling to be replaced nor is the question of when the dwelling was last occupied mentioned.
- (iv) The appellant also refers us to three similar cases, he says, when permission to rebuild in the Green Zone has been granted. The first is La Fontaine, St Peter's Valley, St Mary, which was partly demolished by the Germans during World War II. It has apparently been rebuilt, extended, and is now a dwelling. The second is Overdale, St Peter's, which was last occupied during the late 1980's and demolished about ten years later. The site is presently being advertised for sale with permission to build two luxury dwellings. The third is Janvrin's Farm, a listed building, was demolished without permission. This commercial building, he says, is now to be replaced by a new dwelling. All of these sites, the appellant says, are situated in the Green Zone and in all of them there is reference to relocated buildings. He submits that the Minister is not being consistent and is therefore being unreasonable.

15. In our view this appeal is entirely without merit. The preamble to Policy NE7 is in the following terms:-

"In planning terms the redevelopment - involving the demolition and replacement for the same purpose in land use - of existing dwellings and other buildings in the Green Zone, where they have an established planning use, would be unreasonable to resist and may provide opportunities to secure improvements and design and local relevance, and reduce the visual impact of existing buildings on the character of the area."

16. In our view there is no existing dwelling and no established planning use. The building that was there was demolished in the 1980's by the Water Works Company long before the Appellant acquired the land and there has been no dwelling there from at least that time. It is now an attractive border of a country lane. The only visual evidence of the former building is, apparently, a wall although that is not something we can see from the photos which were provided to us.
17. Useful guidance on abandonment of use can be found in the judgment of Kennedy LJ in Hughes-v-Secretary of State for the Environment, Transport and the Regions and South Holland District Council [2000] 80 P & CR 397, at page 8:-

***“Evaluating all four factors the inspector was, in my judgment, entitled to conclude as she did, that residential use had been abandoned. That may not have been the intention of Mr Giddings any more than it was the intention of Mr Hughes but the intentions of the site’s successive owners, although relevant, were not and could not be decisive because, at the end of the day, the test must be the view to be taken by a reasonable man with knowledge of all the relevant circumstances. That is, it seems to me, what the authorities suggest and it is a conclusion which, as it seems to me, accords with common sense, otherwise a labourer’s cottage, in which an immigrant and his family left forty years ago, which has been in ruins for years, cannot cease to be regarded as a residence so long as its owner in America or Australia cherishes the dream that some day he will return to live there. There has been in such a situation, in my judgment, a clear abandonment.*”**

Contrast the situation where, for example, there has been a fire and the owner is simply getting together the means to replace the dwelling over a limited period of time or to restore it to its former glory. The objective observer in the latter situation not knowing that the owner’s intentions might temporarily conclude that the use of property as a residence had been abandoned where in reality it had not because the intention factor would be to determinative the other way.

In the former situation, it seems to me, the outcome must in reality be obvious. The place of an objective assessment in this branch of the law is an important one and having regard to what was said by the Master of the Roles in the case of Hartley–v-Minister of Housing and Local Government [1970] 1 QB 413.”

18. Applying that objective test we have no doubt that there is no dwelling to replace, leaving aside the fact that the proposed new home is some 80 metres away, well outside the domestic curtilage of what may have been there many years ago. The fact that there may be granite in the undergrowth is irrelevant.
19. The appellant has, as we have said, referred us to a number of applications that he says have been granted in the past in the Green Zone in relation to old buildings. He says the Minister is being inconsistent. We have no details in relation to those applications but, even if the Minister has been inconsistent in relation to other applications (and we do not say that he has) that does not mean that he was mistaken or unreasonable in his refusal in relation to this application.
20. The appellant has also said that the proposed new building cannot be seen by the public from the road; he said therefore that it does not or would not detract from the character of the area. In our view this is not a relevant consideration for the purposes of Policy NE7 but the point does not arise because we find there is no existing dwelling to replace.
21. The appeal is therefore dismissed.

Authorities

Island Plan 2011.

Planning and Building (Jersey) Law 2002.

[Token Limited–v-Planning and Environment Committee](#) [2001] JLR 698.

[Hughes–v-Secretary of State for the Environment, Transport, and the Regions and South Holland District Council](#) [2000] 80 P & CR 397.

Hartley—v-Minister of Housing and Local Government [1970] 1 QB 413.