

STATES OF JERSEY

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

APPEAL OF A DECISION UNDER ARTICLE 108

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Inspector appointed under Article 107

APPEAL BY: Mr and Mrs Miller

AGAINST: Approval of planning permission for development - 'Demolish existing single and two storey extension to North elevation. Replace with two storey extension. Reconfigure existing residential layout. REVISED PLANS: replace existing elevation to south and east with cavity blockwork walls. External alterations. Decision dated 14 April 2015

LOCATION: The Cedar, The Swallows, The Paddock, Popin Farm, La Rue de la Sergente, St. Brelade, JE3 8HA

REFERENCE: RP/2015/0159

APPEAL PROCEDURE: Hearing – held on 14 October 2015

SITE VISIT: 12 October 2015

DATE: 26 October 2015

Introduction

1. This report contains my assessment of the Appeal made by Mr and Mrs Miller against the decision of the Department of the Environment on 14 April 2015 to grant planning permission for a 'revised plans' application in respect of a development proposal on a site adjacent to their home.

The appeal site and the surrounding area

2. The appeal site forms part of a former family farm located within the 'Green Zone' in St. Brelade. Immediately to the west of the appeal site is the original farmhouse (Popin Farm House) which, I was told, has origins dating back to about 1830. It remains in residential occupation and it is an attractive traditional building, particularly when viewed from the south; on its north side is a later flat roofed extension.
3. To the east of the farmhouse, and physically attached to it, is a substantial two storey building of similar traditional construction (rendered granite walls and a slated pitched roof). The building is actually larger in footprint than the house and, by my calculation, is some 146 square metres (compared to the farmhouse footprint of 104 square metres). This building is believed to be about a hundred years old and was originally constructed as the main barn to serve the farm business. I was advised that its main function was for stabling and for use as a packing shed for produce.
4. Over the years, the barn's original functions declined and it became used for residential purposes. Although it is not altogether clear when the various conversion works and extensions took place, the end product was three small houses. The extensions are on its north side and are largely single storey but with a small two storey element (which adjoins the extension to the farmhouse). The three houses were known as The Cedar, The Swallows, and The Paddock. I understand that two of the units had one bedroom and the other had two bedrooms. The homes were occupied in this form for some time but are now vacant. The applicant advised that a complete new roof structure was installed about 8 years ago.
5. Immediately to the north east of the former barn is the Appellant's home, Popin Cottage. The cottage and the barn are about 2 metres apart at the closest point. There are other residential properties to the south and west of the appeal site.

The 2013 development scheme

6. In August 2013, planning permission was granted for a development proposal under the reference P/2013/0722. This scheme involved removing the flat roof extensions on the north side of the original 'barn', replacing them with a new two-storey addition across the building's full width. The southern roof plane and ridge would follow the existing profile, but the northern roof plane would be extended to provide a pitched roof over the new extension (giving it a shallower pitch and the roof an asymmetric profile). Internally, the accommodation would be reconfigured into 3 no. 3 bedroom houses, which would include a bedroom in each unit within the extended roof level.

7. The 'new' northern elevation (of the extension) would be faced in granite, whilst the remaining two exposed retained barn walls (east and south) would be retained in their existing rendered form. The new northern roof plane would be faced in natural slate to match the existing. Windows would be timber casement designs and 'conservation' type rooflights.

The 2015 'Revised Plan' development scheme

8. In April 2015, the Department granted planning permission for a 'revised plans' proposal under reference RP/2015/0159 (the appeal proposal). The proposal was described in the decision notice as follows:

Demolish existing single and two storey extensions to North elevation. Replace with two storey extension. Reconfigure existing residential layout. REVISED PLANS: Replace existing elevation to south and east with cavity blockwork walls. External alterations.

9. The Hearing sessions established that the 'revisions' actually amounted to a complete demolition of the barn (all of its walls, roof and even the removal of the original foundations) and its replacement with a new build scheme. In my view, this was not apparent from the application or the description used. The appropriateness of the 'revised plan' procedure is a key issue in this appeal, which I return to later.

The Island Plan 2011 (Revised 2014) – policy considerations

10. The Island Plan has primacy in decision making on planning applications. There is a general legal presumption that development in accordance with the plan will be permitted. Development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'¹ for overriding its provisions.
11. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Parts of the island are designated as Coastal National Park (CNP) areas, within which development is very strictly controlled. The countryside outside the CNP is defined as the 'Green Zone' and is afforded a high level of protection from development; the appeal site lies within the Green Zone.
12. Policy NE 7 sets out a general policy presumption 'against all forms of development' in the Green Zone. The policy explicitly identifies that new dwellings will not be allowed. However, the policy does allow some very limited exceptions under defined development categories. Under the 'residential' category, extensions may be allowed subject to specified criteria. The most relevant criteria, in this particular case, include being of an appropriate design and not resulting in significantly increased occupancy.
13. There is a separate category, which allows for the redevelopment of an existing dwelling through 'demolition and replacement'. The policy sets two pre-conditions for this type of development. The first is the same test (as with extensions) of not significantly increasing occupancy. The second, is a

¹ Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

requirement, that such proposals would *'...give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character.'*

14. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality. Of particular relevance to this appeal is the Policy GD 1 approach on sustainability, which states that proposals must not *'replace a building that is capable of being repaired or refurbished.'*
15. Policy GD 7 requires a high quality of design and use of appropriate materials. Policy BE 6 sets out the requirements for well mannered building extensions and alterations.
16. Policies NE 1 and NE 2, which cover biodiversity and species protection, are of some relevance, but the considerations, in this particular case, are covered by a Planning condition included in the Decision Notice (and are not central to this appeal).

The grounds of appeal

17. The Appellants' ground of appeal can be summarised:
 - That the implications of the revised proposal against The Island Plan's policy considerations have not been fully and properly assessed (Ground 1).
 - That the loss of character / original architecture conflicts with Policy GD1 (Ground 2).
 - That structural damage to neighbouring properties has not been assessed and considered (Ground 3).

Discussion and assessment

That the implications of the revised proposal against The Island Plan's policy considerations have not been fully and properly assessed (Ground 1).

18. This ground of appeal relates to whether different policy approaches apply to the consideration of the appeal proposal (the demolition and new build scheme), compared to the earlier substantive conversion and extension scheme (the 2013 permission). Before exploring the policy implications, it is necessary to comment on the development description and on the use of the 'revised plans' procedure.
19. In my view, the description of development employed was misleading. It did not clearly articulate the true nature of the 'revised' proposal in Planning terms. The development would have been more accurately described as: *"demolition of existing building and erection of 3 no. 3 bedroom dwelling houses."* When accurately described, I fail to see how such a proposal could be treated as a 'revision' to a substantive scheme which was based on the

extension and reconfiguration of a former barn building. At the Hearing sessions, the Department's officer made reference to the Supplementary Planning Guidance on 'revised plans' submissions. I have now reviewed this document and note that it makes clear that a revision '*should not seek to substantially alter the terms of that permission.*'² In my view, the original and revised proposals are very substantially different in Planning and legal terms.

20. On a procedural point, the Appellant considers that had the proposal been more explicitly described, more public objections would have been lodged which would have triggered a consideration by the Planning Applications Panel (which may have reached a different decision). I cannot say whether that would have been the case and, notwithstanding these procedural matters, I have made my assessment based on the Planning merits of the revised proposal.
21. In policy terms, the central issue here is whether the 'revisions' make any difference. The Department's officer expressed the view that the policy considerations under NE 7 for extensions (of existing homes) and replacements were much the same and, as the end product is considered to be essentially the same, there would be no policy issue. The Applicant and his architect shared this view and explained that they considered the revisions would make the construction simpler, less expensive and result in a better building.
22. Whilst there are some similarities in the policy approach between the two categories of residential 'extensions' and 'replacements', there are important differences. The main similarity is that both should not substantially increase residential occupancy. On this particular point, I do not consider it necessary to explore what is 'substantial', given that the occupancy potential of the 'revised' scheme is no different to that contained in the extant permission.
23. However, one of the key differences in the NE 7 policy approach to 'demolition and replacement' dwellings is a requirement that they deliver '*demonstrable environmental gains, contributing to the repair and restoration of landscape character.*' Indeed, it is logical that such proposals are subject to this 'higher bar' in the Green Zone, for reasons of sustainability and to prevent the loss of traditional buildings. There is also a strong link with the Policy GD 1 presumption against the demolition of buildings capable of repair or refurbished.
24. In my view, the revised proposal does not satisfy the NE 7 policy requirement in respect of delivering demonstrable environmental gains. It is at best neutral and arguably negative (if one were to consider the loss of traditional building fabric as constituting part of the rural landscape). Furthermore, the rationale for the revisions, which is based on cost and convenience (rather than necessity), conflicts with the GD 1 principle that presumes against the demolition of buildings capable of conversion and re-use. Whilst I have noted the Applicant's concerns about damp and the

² Paragraph 3 of States of Jersey – Supplementary Planning Guidance – Practice Note: 2 (June 2015).

complexities of underpinning traditional foundations, I have seen no evidence to suggest that these technical matters cannot be addressed. From my admittedly superficial inspection, the building appears entirely capable of refurbishment and re-use, as indeed the 2013 scheme proposed.

That the loss of character / original architecture conflicts with Policy GD1 (Ground 2)

25. This second ground of appeal is closely linked to, and to an extent a subset of, the first ground. The Appellant considers that a 'look alike' replacement building is being proposed for reasons of costs savings, when policies suggest that the traditional building should be retained.
26. The building is attractive and traditional. It has some heritage interest and was once listed. It was de-listed in July 2001, although the reasons for this are not recorded but may relate to changed Listing criteria and alterations to the building.
27. It was acknowledged that the replication of the appearance of traditional *pierre perdue* (render on granite) wall treatment on modern blockwork was not easy and would require a skilled craftsman.

That structural damage to neighbouring properties has not been assessed and considered (Ground 3)

28. At the Hearing sessions, the parties understood and accepted my advice that private property matters were beyond the remit of this Planning appeal. That said, the Hearing provided a useful opportunity for the Applicant's architect to offer reassurances about the care that will be taken in undertaking works (whether that be the 2013 scheme or the appeal proposal).

Conclusions and recommendation

29. The revised proposal is substantially different to the earlier proposal. It involves the complete demolition and removal of a traditional building and its replacement with three new build houses. Whilst the end product would look similar to the earlier approved scheme it would not be the same.
30. The revised proposal raises substantial new Planning policy issues. The proposal fails to satisfy the requirements of Policy NE 7, which requires replacement dwellings in the Green Zone to deliver demonstrable environmental gains. It further conflicts with Policy GD 1, which makes a presumption against the demolition of buildings that are capable of repair or refurbishment.
31. For these reasons, the Minister is recommended to allow this appeal in respect of Grounds 1 and 2 and to refuse planning permission for application reference RP/2015/0159 for the following reason:

Reason: The proposal involves the demolition of a traditional building and its replacement with three new houses in the Green Zone as defined in The Revised 2011 Island Plan. The proposal fails to satisfy the requirements of

Policy NE 7, which requires replacement dwellings in the Green Zone to deliver demonstrable environmental gains. The proposal further conflicts with Policy GD 1, which makes a presumption against the demolition of buildings that are capable of repair or refurbishment.

32. I also recommend that the Decision Notice is amended to reflect the accurate development description i.e. *Demolition of existing building and erection of 3 no. 3 bedroom dwelling houses.*

P. Staddon

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