

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr D Le Brocq (see "Procedural Matters" below) against a refusal of planning permission.

Reference Number: P/2015/0887

Site at: The Workshop, Archways, La Rue de la Ville au Neveu, St Ouen.

Introduction

1. This appeal is being decided by the written representations procedure. I inspected the site on 4 April 2016.
2. The appeal is against the refusal of planning permission for development described in the application as: "A part change of use from commercial stores to a partly residential apartment retaining some commercial stores. Building to be upgraded and re-clad". The development was described in the refusal notice as: "Change of use from commercial stores to 1 No. one bedroom unit. Re-clad the building".
3. This report provides a brief description of the appeal site and surroundings, summarises the gist of the cases for the appellant and the planning authority, and then sets out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

Procedural Matters

4. An "appeal" (singular) was originally made by Mr and Mrs D Le Brocq, and has been processed on that basis. Since two persons have appealed there were two appeals under the 2002 Law.¹ However, as far as I can tell from the information available to me, the fee paid by Mr and Mrs Le Brocq's agent only covered one appeal. The original application was made by Mr D Le Brocq. I am therefore treating this case as if the appeal had been made solely by Mr Le Brocq.

Site and Surroundings

5. The appeal site is part of a cluster of buildings situated just south of the junction between La Rue de la Ville au Neveu and Le Mont Vibert. The surrounding area has a mainly rural character although there are dwellings and other buildings in the vicinity.
6. The building where the proposed development would be carried out stands across a courtyard from the existing house which is evidently occupied by Mr and Mrs Le Brocq.² Part of the ground floor of the building is open-fronted and appears to be used mostly for storage or as a workshop; part was closed and locked at the time of my inspection. Access to the building is from the courtyard, through the same access from the road as the house.

¹ Article 108(1) provides that "a person [singular] may appeal....".

² The appearance of the building can be seen in the photographs on Drawing Number MSP-1937-PL02

Case for Appellant

7. The appellant explains in his representations that Mr and Mrs Le Brocq would like to provide the proposed apartment for their own occupation so that their daughter and her family could move into the main house at Archways. The reasons for refusal of a previous proposal had been resolved and it was unfair that new reasons had been introduced relating to the lack of environmental benefits.
8. The proposal would create environmental benefits by improving the appearance of the building, reducing commercial activity and unsightly storage, removing asbestos from the building, introducing rainwater harvesting, and providing soft landscaping to enhance the landscape. There was no policy requirement to reduce floorspace as claimed by the planning authority. The site was surrounded by development and was not in a sensitive part of the Green Zone.
9. A new dwelling in Grouville had recently been allowed because it was considered that the proposal would not have any landscape impact. Green Zone policy allowed for redundant employment buildings to be replaced. If the low-intensity storage use in the proposed building were to be an issue Mr and Mrs Le Brocq would be happy to use the ground floor units as domestic garages for the apartment and Archways.

Case for Planning Authority

10. In response, the planning authority says that the proposal would involve two uses (residential and commercial stores) in place of a single commercial use. The flat would be a separate dwelling, whether or not occupied by a family member. The site is within the Green Zone where under Island Plan policy NE7 there is a presumption against development. There are provisions for exceptions including the redevelopment of redundant employment buildings, but the policy criteria were not met in this case because the proposal would not give rise to such environmental gains as would justify an exception to the presumption against development.
11. The development would increase the size of the building and the intensity of use. The offer to remove the commercial use of the ground floor was not in the application, and the appeal could only consider the application proposal. The refusal of the previous proposal had not referred to commercial use of the building because at the time it was not evident that the building was in separate commercial use.

Assessment and Conclusions

12. The main matter of dispute in this case concerns the interpretation and application of planning policy towards development in the area designated in the Island Plan as Green Zone. Both sides refer in particular to Policy NE7 of the Revised 2011 Island Plan. The supporting text of this policy states that the creation of new dwellings will generally be resisted in the Green Zone, and that such development is regarded as contrary to the strategic objectives of the plan relating to sustainable patterns of development.
13. As far as the building itself is concerned, the proposed development would not have any significant visual impact on the countryside or on the rural quality of the surrounding area. Nevertheless it would involve the provision of an additional dwelling, and it has to be remembered that policies on development in rural areas are not just concerned with visual impact. Translating policy jargon into more everyday language, the Island Plan is seeking to resist development in the

countryside, particularly new dwellings, and to guide such development into existing built-up areas so as to reduce the need to travel and so as to be able to provide facilities such as schools or shops more efficiently.

14. The proposal as described in the application would provide a one-bedroomed dwelling plus floorspace to be used as "store" on the ground floor. The intended use of the "store" is not clear, but appears to be commercial storage, the nature and intensity of which could vary. The appellant has suggested that this could involve storing vintage cars, but if planning permission were granted it would be very difficult or impossible to ensure that a "storage" use remained permanently of a type which would generate little traffic or other activity.
15. More recently, the appellant has stated that this part of the building could be used as garages or parking by residents of the proposed dwelling or the existing house. The planning authority say that this idea was not part of the application, and although it may seem a rather strict approach, I agree with the authority that the idea cannot properly be considered as an alternative at appeal stage - what was applied for would involve partly residential and partly commercial development, and a development scheme excluding the commercial element would be materially different, especially taking account of the size of the two areas labelled "store" on the application plans. Each area would be much bigger than a normal double garage, and the proposed dwelling would be provided separately with its own double garage.
16. Policy NE7 provides that there is a general presumption against development, subject to exceptions. One exception, set out in paragraph 9 of the policy is:

"The change of use of employment land or buildings (involving conversion of a building) to non-employment uses but only where:

 - a) the redundancy of employment use is proven in accord with Policy E1....or where the development involves office or tourism accommodation; and
 - b) it gives rise to: demonstrable environmental gains, contributing to the repair and restoration of landscape character; reduced intensity of occupation and use; and improved design and appearance of the land and building(s); or
 - c) it secures a viable alternative use for a traditional farm building in accord with policy ERE4."
17. I have some doubt whether this proposal could justifiably be regarded as a "conversion" of a building, since the development would involve virtually rebuilding the existing structure. On balance, it is probably reasonable to give the appellant the benefit of the doubt on this point. In this case there is also no dispute about the criteria in sub-paragraphs (a) and (c) above - the planning authority have accepted that the building is redundant for employment use, and criterion (c) does not apply as this is not a "traditional farm building".
18. Of the three criteria in sub-paragraph (b), the last one (improved design and appearance of the building) would be met. I judge that the first criterion would not be met, because as I have already noted, the proposed building would not have any significant visual impact on the surrounding countryside - indeed, part of the appellant's case is that the site is largely hidden, being "surrounded by existing development". The landscaping suggested as part of the proposal would be fairly minimal as there is such limited space within the site, and I do not see this as making any significant or demonstrable contribution to "the repair and restoration of the landscape character" of the area. The effect of the development in this respect would be roughly neutral. The second criterion would

also not be met, because the combination of residential and commercial storage uses would not be likely to "reduce the intensity of occupation and use".

19. I can understand why the appellant considers it unfair that after planning permission was refused for a previous scheme (which included a three-bedroomed dwelling), the planning authority introduced a new reason for refusal. I cannot comment on the previous proposal; I can only properly judge whether the planning authority's objections to the appeal proposal are sound. Similarly, although I note the appellant's comments about the grant of planning permission for a new dwelling in Grouville, I do not know all the conceivably relevant factors which led to that decision. In any case, I do not consider that the development at Grouville has set a precedent which should now be followed.
20. The appellant contends that in interpreting Policy NE7, only one of a number of environmental improvements listed need to be achieved. However, criterion (b) in paragraph 9 of the policy, which I have quoted in paragraph 16 above, refers to three tests (each of which is actually a combination of tests). The first is repair and restoration of landscape character. The second is reduced intensity of occupation and use. The third is improved design and appearance of the land and building(s). The syntax of this part of the policy is significant - the second and third tests are linked by the word "and" after a semi-colon, which means that all three tests have to be met in order to comply with the policy as a whole. The proposal would not reduce the intensity of occupation and use; nor would there be any material effect on the area's landscape character.
21. There are evidently family reasons why Mr and Mrs Le Brocq would like to be able to have a dwelling close to the house at Archways. Nevertheless as the planning authority point out, the development would provide a separate independent dwelling which could be sold or let and has to be treated as such. The dwelling is not intended to be temporary and this is not the sort of proposal which could be satisfactorily controlled by a personal occupancy condition.
22. I conclude that the proposal would be contrary to Island Plan policy under which there is a presumption against development in the Green Zone, and that the planning authority's decision to refuse planning permission should stand.
23. If you decide to grant planning permission, the standard conditions appropriate to a full permission with submitted application plans should be imposed.

Recommendation

24. I recommend that the appeal be dismissed.

G F Self

Inspector

14 April 2016.