

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

Report to the Minister for the Environment

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Christians Together in Jersey Housing Trust

Planning Permission Reference Number: P/2016/0171

Decision notice date: 20th October, 2016

Location: 1-2 Minden Place, St Helier, JE2 4WQ

Description of development: Demolish existing building and construct 3 No. retail units, 26 No. one bed and 5 No. two bed residential units. AMENDED PLANS: Site edge extended to include part of the public highway. Various public realm improvements to the public highway. Various alterations to the external design and appearance.

Appeal procedure and date: Hearing 11th January, 2017

Site visit procedure and date: Accompanied, 10th January, 2017

Date of report: 28th February, 2017

Introduction

1. This is an appeal by the Christians Together in Jersey Housing Trust (CTJ) against a refusal to grant planning permission to demolish the existing retail building at 1 - 2 Minden Place, St Helier, and replace it with a building accommodating three retail units and 31 residential units. The proposal also includes some improvements to the public realm and amendments to the highway.
2. An initial application for planning permission was submitted in February 2016. This was withdrawn and a revised scheme submitted under the same planning reference number in August 2016. It is the decision against this revised scheme that has been appealed.
3. The decision to refuse the application was made by the Planning Committee contrary to the recommendation of the Department. The Department had recommended approval, subject to two planning obligation agreements and six conditions.
4. In summary, the Planning Committee's refusal was on the basis of: (1) the overall scale and design of the building, particularly the use of brick; and (2) the absence of car parking. Further details of the reasons for refusal are provided in paragraphs 12 - 13.

The appeal site and surroundings

5. The appeal site is located in central St Helier, within an area of mixed retail and residential use. The front (southern) elevation faces Minden Place, and occupies the street front between Rue de Funchal to the west and Minden Street to the east. It is located opposite the Jersey Telecom building (to the south) and the Minden Place car park (to the east).
6. The existing property is a 2-3 storey building, comprising a retail unit at ground level and rented accommodation above.

The proposed development

7. The proposal comprises the demolition of the existing property and construction of a new building, which has been designed to be broken into a series of vertical bays on all street frontages to respect the traditional plot widths in the area.
8. The building would extend to different heights on each elevation. The “front” (south) elevation facing Minden Street would extend to five storeys, whilst the side elevations are “stepped down”, to achieve a height of three storeys at the boundary with adjacent properties on Rue de Funchal and Minden Street. It is proposed that the building would have a brick finish.
9. The development would include a total of 31 residential units, comprising 26 No. one-bed and 5 No. two-bedroom units. The accommodation is designed with the specific aim of providing social housing for those who are marginalised in society. A cycle store and laundry would also be included within the design.
10. Three retail units would be accommodated at ground floor level, one of which it is proposed to use as a community room. The two existing loading bays to the south and east would be retained and a further unmarked unloading bay would be included on Rue de Funchal to allow for deliveries to the retail units. The scheme does not include any provision for resident or visitor car parking.
11. In addition, the proposals would include a number of public realm improvements. These comprise widening the existing pavement to allow creation of a covered walkway (colonnade) and planting of trees, together with consequential works to the highway involving raising the road surface on Rue de Funchal to assist with pedestrian access to and across this street.

The Department’s advice and the decision of the Planning Committee (summary)

12. The Planning Committee refused permission for the scheme at a meeting held on 22nd September 2016 and confirmed its decision on 20th October 2016. This decision was against the recommendation of the Department.
13. In recommending the scheme for approval, the Department considered that the scheme was a well-designed proposal, including the improvements to the public realm, and would assist in the regeneration of the area. In its view, provision of parking would make the scheme unviable, and it noted that the scheme was within walking distance of the town’s facilities. The Committee did not agree with this view, expressing concerns about the design of the scheme, particularly its use of brickwork, the scale of the development, its impact on the street scene and the

absence of any car parking. Consequently, the scheme was recommended for refusal for the following two reasons:

Reason 1: By virtue of its overall scale and design, in particular its use of brickwork (an inappropriate contextual material for St Helier) as the main primary external material, the proposed development would result in an overly-large building, lacking in local relevance, which would be harmful to the character of this part of St Helier. Accordingly, the application fails to satisfy the requirements of Policies SP 7, GD 1 and GD 7 of the adopted Island Plan 2011 (revised 2014).

Reason 2: The proposed development fails to provide any on-site car parking in accordance with the standards published by the Department of the Environment. Therefore, the application falls to satisfy the requirements of Policy GD 1 of the adopted Island Plan 2011 (revised 2014).

Case for the appellant (summary)

14. The appellant has provided ten ‘general grounds’ of appeal in addition to addressing the two specific reasons for refusal.
15. The appellant’s general grounds of appeal are based around a belief that insufficient regard and weight has been placed on various factors. These factors are: the need for affordable housing; policies within the 2011 Island Plan (revised 2014) which the appellant believes set a presumption for new development, at higher densities, within St Helier (Policies SP 1, SP 2, SP 3, SP 4, SP 5, SP 6, SP 7, GD 1, GD 3, H6 and Proposals 13, 14, and 29); the positive presumption of Policy H 6; the difficulties in assembling large development sites; the Strategic Plan (2015) and the Sustainable Transport Strategy (2010); the consequences of refusal, which would lead to greater pressure on greenfield sites contrary to Policy SP 4; the opportunity presented to regenerate part of the town; the fact that the proposal site has been identified as appropriate for redevelopment in the North of Town Masterplan; completion of Millennium Park, which is intended to act as a catalyst for regeneration; and the shortage of secondary office buildings for conversion to housing. The appellant also believes that there are few constraints on redevelopment of this site and considers that insufficient regard was given to the positive benefits of the proposed scheme, including improvements to the public realm.
16. In refusing permission, the appellant considers that insufficient regard and weight was placed on the factors highlighted above. They do not believe that sufficient reasons have been quoted to set aside the presumption in favour of development, which they believe is set by these factors.
17. A summary of the appellant’s response to each of the stated reasons for refusal is provided below. Although the refusal notice included two grounds for refusal, the appellant believes that the choice of brick is the main reason for refusal, followed by the lack of car parking; with the scale and design of the proposed building being of lower concern.

Scale, design and proposed materials of the development

18. The appellant believes that the design meets the guidance within the St Helier Urban Character Appraisal in taking cues from the immediate context. They refer to the eclectic mix of architectural styles and variation of building heights and material finishes in the surrounding area. In particular, they identify the presence of tall buildings, notably the Minden Place car park and Jersey Telecom building, which

provide a context for the proposed design height. In the appellant's view, support for buildings of greater than 2 - 3 storeys is provided by guidance in the '*North of Town Masterplan*', and the Development Brief for the adjacent Le Masurier/ Bath Street site. In addition, the appellant maintains that the design follows the principles set out in '*Design guidance for St Helier*', which allows flexibility in design to reinforce local identity. In promoting the scale of the proposal, the appellant stresses that higher housing densities are required, and that the Minister has said that excellent design would be rewarded with higher densities. The appellant believes that the height and massing of the proposed building is appropriate for the setting.

19. In the appellant's view, the proposal to use brick is the main reason that the scheme was refused. This material was chosen partly, for its low maintenance requirements. The appellant states that brick making was an active industry on the island in the 19th century. They disagree with the Department's view that brick is not commonplace on the island or within the town of St Helier. In support of this view they identify approximately 50 brick-built buildings in the town, some of which are Listed Buildings. The choice of brick was supported by the Jersey Architecture Commission. As the Commission provides independent advice to the Department, the appellant believes their opinion should be afforded a strong weighting. The appellant has also referred to the Department's advice to the Planning Committee, which described the application as "*a well-designed proposal*".

Absence of car parking

20. The appellant believes that the Parking Guidelines (1988) are out of date and are in conflict with the Island Plan 2011 (revised 2014) and Sustainable Transport Strategy (2010). Moreover, they believe that the absence of car parking is consistent with policies within the Island Plan (GD 1, SP 6), which seek to reduce dependency on the car. They believe that insufficient regard was given to the support of the Department for Infrastructure for the proposed development, in spite of the absence of car parking. They also note that if parking were to be provided it would make the scheme unviable economically.
21. In addition, the appellant points to other approved schemes for affordable housing in the town where parking standards have been relaxed, although they accept that these do provide some level of parking. They also note that there have been recent approvals for conversion of office buildings to private accommodation, which do not provide any car parking.
22. Moreover, the appellant believes that insufficient regard was made of the central location of the proposed development and the fact that the proposal is for social affordable housing. The proposed development is within easy walking distance of the town's main facilities and work places. This coupled with the provision of cycle storage, means that there is a reduced need for car ownership. Furthermore, the residents are unlikely to own a car.

Representations made by other interested persons (summary)

Parish of St Helier

23. The Parish of St Helier has made representations concerning the current appealed application, and the previous application submitted in February 2016. In its representation to the appealed scheme dated 21st September 2016, the Parish of St Helier's Roads Committee states that it does not support the proposal, owing to issues related to off-street unloading and absence of off-street parking. Specifically,

the Parish finds the provision of an unmarked unloading bay to be unacceptable, as it has no legal standing under the Road Traffic Law. The Parish also considers that the bay is too close to the junction with Minden Place. It believes that the risk of illegal parking of delivery vehicles in either Rue de Funchal or Minden Place is considerable.

24. The Parish also is of the strong view that private off-street parking should be provided. It notes that the recent approval of flats at Waverley House nearby, without any parking, would place considerable pressure on public parking facilities.
25. Rejuvenation of the site is welcomed by the Parish. It is also supportive of the road improvement proposals for Rue de Funchal, noting that this provides the opportunity to create an exciting town avenue. It requests that if the application is approved, then the applicant should explore different options for a revised streetscape in conjunction with the Roads Committee, and that all design works should be subject to independent safety audits.

Transport Policy, Department for Infrastructure

26. Comments in relation to the appealed scheme are contained in the Department for Infrastructure's responses dated 23rd August and 21st September 2016. The Department is supportive of the proposal, subject to the following requirements. If the scheme is consented, the Department requires that the applicant should provide all footway widenings, trees, and associated drainage and appropriate carriageway cross-falls as shown on the applicant's submitted plan number 53700-002E. The footway should be finished in granite. The works are to be delivered by the applicant under a suitable Highway Agreement. In addition, as a condition of any consent, prior to any works commencing, the applicant should be required to submit further details of the design and construction methods to the Department for approval.

Environmental Protection

27. The proposal is considered acceptable, subject to inclusion of conditions relating to implementation of a waste management plan, and a Demolition/ Construction Environmental Management Plan. The applicant was also advised to consider the potential to include SuDS within the scheme.

Strategic Housing Unit

28. Support for the scheme was received from the Strategic Housing Unit. In its response, the Unit stressed the need for this type of housing as evidenced by the Housing Gateway statistics. It also noted that the proposal supports three of the four objectives of the Housing Strategy.
29. The Minister for Housing, Deputy Anne Pryke attended the Planning Committee meeting to express her support for the scheme. She also attended the hearing for this appeal to highlight the need for the scheme.

Jersey Architecture Commission

30. The Jersey Architecture Commission commented on the proposed scheme. They supported the aspiration to provide social housing and also supported the use of brick as a material.

Public comments

31. Two representations were received from members of the public, in response to the February 2016 scheme. One of these states that they believe that the proposals are

for too many homes, which would be very small, which they consider unsuitable for families. They also object to the absence of car parking. The other representation suggests that the site should be developed as an additional public car park for shoppers. No further comments were received in response to the revised scheme, which is the subject of this appeal.

The policy framework

32. The parties have referred to a great number of policies within the Island Plan 2011 (revised 2014) and other guidance documents including supplementary planning guidance. The appellant has stated that insufficient regard has been paid to some of these policies. In addition, there are some differences in opinion between the parties concerning the degree to which policies and other guidance documents have been adhered to. Consequently, I have provided a brief summary of the relevant details of the policies and guidance documents referred to by the Department and/or the appellant in connection with the proposed development.

Policy SP 1 Spatial strategy

This policy directs development to the Island's Built-up Area, particularly the town of St Helier.

Observation: The proposed development lies within the Built-up area of St Helier.

Policy SP 2 Efficient use of resources

This policy requires that development should make the most efficient and effective use of land and other resources to help deliver a more sustainable form and pattern of development. In particular, new development should be designed to limit carbon emissions; and should secure the highest viable resource efficiency in terms of the re-use of land and density of development.

Observations: The development would be located in the centre of town, close to facilities, avoiding the need for car use. It would re-use a previously developed site to produce accommodation at a high level of density.

Policy SP 3 Sequential Approach to Development

Under this policy, development proposals will be subject to a hierarchical and sequential assessment to support a more sustainable pattern of development and the most efficient and effective use of land, energy and buildings.

Observations: The proposed development is within St Helier and consequently is consistent with the requirements of this policy.

Policy SP 4 Protecting the natural and historic environment

This policy places a high priority for the protection of the Island's natural and historic environment including protection of its historic buildings, structures and places.

Observations: The proposed development is not a Listed Building, although there are Listed Buildings nearby. The effects of the proposal on the setting of Listed Buildings have not been contested. There are no features of ecological value.

Policy SP 5 Economic growth and diversification

This policy places a high priority on the maintenance and diversification of the economy and support for business. In particular, it promotes the protection and maintenance of existing employment land and floor space for employment-related use; and the redevelopment of vacant and under-used existing employment land and floor space for new employment uses.

Observations: The proposal would result in the replacement of a single retail unit, by three smaller units, leading to an overall reduction in floor space. The principle of the loss of retail space is not in dispute.

Policy SP 6 Reducing dependence on the car

Development proposals must be able to demonstrate that they will reduce dependence on private cars by providing for more environmentally-friendly modes of transport. In particular, proposals must demonstrate (amongst other requirements) that the development is immediately accessible to existing or proposed pedestrian, cycle or public transport networks; that it does not give rise to an unacceptable increase in vehicular traffic or parking on the public highway; and that appropriate provision is made for car and cycle parking.

Observations: The proposed development is located within the centre of St Helier, within easy walking distance of facilities and access to public transport. Cycle storage is included within the proposed design. There is no provision for car parking within the proposed scheme, which is one of the stated reasons for refusal. Absence of parking was also raised as an issue of concern by the Parish of St Helier and a member of the public. The sufficiency of provision of unloading bays to service the retail units is also a point at issue raised by the Parish.

Policy SP 7 Better by design

Development must be of a high design quality, which maintains and enhances the character and appearance of the area of Jersey in which it is located. The policy defines aspects of design that need to be assessed to ensure that the development makes a positive contribution to the urban design objectives, including local character and sense of place and quality of the public realm. These aspects are: layout and form; elevational treatment and appearance; density and mix; scale, height and massing; external elements and landscaping; and architectural detail and materials.

Observations: The extent to which this policy would be complied with is in dispute.

Policy GD 1 General development considerations

This policy sets out the criteria to be met in order for a development to be permitted. These criteria include contributing towards a more sustainable form and pattern of development; avoiding serious harm to the Island's natural and historic environment; avoiding unreasonable harm to the amenities of neighbours; contributing to or avoiding detracting from the maintenance and diversification of the Island's economy; contributing to reducing dependence on the car; and being of a high quality of design.

Observations: The extent to which the proposed development meets these criteria is in dispute.

Policy GD 3 Density of development

This policy promotes the highest reasonable density for developments, commensurate with good design, adequate amenity space and parking (bearing in mind the potential for reducing the need for car ownership) and without unreasonable impact on adjoining properties.

Observations: The proposed development would achieve a high density. Although one of the public comments to the scheme opposed the density of development, this has not been cited as a reason for refusal. The proposed scheme does not include provision for parking.

Policy GD 4 Planning obligations

This policy allows for the Minister to negotiate with the developer for the provision of appropriate facilities to provide for additional infrastructure or amenities that are required as a direct consequence of a proposed development. Observations: A request by the Department for Infrastructure for a contribution towards off-site improvements has been withdrawn. The Department for Environment has suggested use of a planning obligation agreement to secure the use of the proposed new units for social housing.

Policy GD 7 Design quality

This policy requires developments to meet a high quality of design that respects, conserves and contributes in a positive way to the diversity and distinctiveness of the landscape and built context. A series of criteria that need to be met are specified by the policy. These relate to the scale, form, massing, orientation, siting and density of the development; the relationship to existing buildings, settlement form and character; and the degree to which design details, colours, materials and finishes reflect or complement the style and traditions of local buildings.

Observations: The extent to which the development would meet these objectives is in dispute.

Policy GD 8 Percentage for Art

The policy allows for the Minister to encourage developers to contribute a percentage of design and development costs to provide public art. This can be sought where the scale and location of a new development are appropriate for the inclusion of public art; and the provision of public art would enhance the public's enjoyment of the building, development or space.

Observations: The appellant has agreed to a 0.75% contribution for public art, set at a value of £18, 454.82.

Policy HE 1 Protecting Listed Buildings and Places

This policy establishes a presumption in favour of the preservation of Listed Buildings and places and their settings.

Observations: The site is not a Listed Building, but there are listed and potential Listed Buildings nearby. These include the Jersey Telecom building, which faces the appeal site across Minden Place; the northern entrance to the Fish Market, which lies further down Minden Place; and the Salvation Army headquarters on Minden Street. The effect on Listed Buildings and their settings is not in dispute.

Policy BE 1 Town Centre Vitality

This policy seeks to protect and promote the vitality of the Core Retail Area of the Town Centre as defined on the Town Proposals Map. Proposals that change the use of ground floor premises within this area will only be permitted provided that the proposed use does not detract from the primary shopping function, and contributes to the vitality and viability of the core retail area. Criteria for the assessment of proposals that change use from a shop to other uses are included.

Observations: The proposal would maintain a retail function at ground floor level, albeit that there would be a reduction in the area of retail floor space. The scheme would also include improvements to the public realm, particularly for pedestrians. The loss of retail space is not in dispute.

Policy BE 5 Tall Buildings

This policy defines tall buildings as those either above approximately 18 metres in height, or rising more than 7 metres above their neighbours. Such buildings will only be permitted where the height can be justified in urban design terms.

Observations: The Department did not refer to this policy in its initial report, but refers to it in their statement of case. The application of this policy is in dispute.

Policy E 1 Protection of Employment Land

There is a presumption against loss of employment land unless the site is inappropriate for any employment use to continue, based on market demand; or the overall benefit to the community of the proposed change outweighs any adverse effect on employment opportunities. Evidence of unsuitability must be provided.

Observations: The proposal would retain a reduced area of retail function at ground floor level. Evidence of marketing efforts for the existing single unit was provided to the Department with the original application. The scheme would result in a benefit to the community in providing social housing within St Helier. The loss of the employment land is not in dispute.

Policy H 4 Housing Mix

All new residential development must contribute towards the need for specific types and sizes of home as required in the latest published evidence of need.

Observations: The application includes a mix of one and two bedroom apartments, targeted at the social housing market. The mix of housing provision is not in dispute.

Policy H 6 Housing Development within the Built-Up Area

This sets a presumption for new dwellings, extensions or alterations to existing dwellings within the Built-Up Area, which meet the required housing standards.

Observations: The proposed development is within the Built-Up Area. The dimensions of the dwelling units meet the Department's published standards. One of the stated reasons for refusal is the failure to provide car parking.

Policy TT 4 Cycle Parking

This policy requires the inclusion of cycle parking within all new developments in accordance with published standards.

Observations: The scheme would provide a cycle store.

Policy WM 1 Waste Minimisation and New Development

This policy encourages the reduction of construction waste and promotes recycling, re-use and recovery of materials.

Observations: The application was accompanied by a waste management plan, which identifies opportunities for recycling and recovery of construction waste.

Policy LWM 2 Foul Sewerage Facilities

New developments are required to be connected to the mains public foul sewer.

Observations: The development meets this requirement.

Policy LWM 3 Surface water drainage facilities

Where practicable, Sustainable Urban Drainage Systems (SuDs) should be included within new developments. Surface water run-off should be controlled as close to the source as possible using a drainage hierarchy.

Observations: Surface water would be discharged to the foul drainage infrastructure, which has the capacity to accommodate it. Drainage issues are not in dispute.

33. In addition to the Island Plan 2011 (revised 2014), the Department and the appellant have referenced the following supplementary planning guidance and policy documents:

Revised North St Helier Masterplan (2011)

This supplementary planning guidance identifies sites where appropriate redevelopment could assist in the regeneration of an area. It also provides guidance on the type and architectural design of redevelopment that would be appropriate.

Minden Place car park is identified within the Masterplan as having potential for redevelopment when it reaches the end of its design life in 2020. A 4-storey building used for mixed residential and retail use is suggested. This would have an underground car park for shoppers and residents and a public square. Potential linkages to the Le Masurier site (see below) and improvements to the public realm are also identified.

The Masterplan includes generic design guidance to illustrate the grain and character of anticipated development. The design style has been influenced by the terraces of contiguous houses developed during the first quarter of the 19th century. These buildings had formal groupings of windows and the walls were often rendered to give a more formal appearance. This approach has been chosen as it is considered to work over 5 ½ floors compared to the usual St Helier building height of 2 - 3 floors. The document notes that the general design style would require work to develop this into a more contemporary expression. Observations: The document provides advice for specific sites within the vicinity of the appeal site. The extent to which the design of the proposed development meets the architectural design guidance is a point at issue.

Development Brief for Le Masurier Bath Street site

Supplementary planning guidance in the form of a development brief has been produced for this site, which is identified as an intervention site within the *Revised North of St Helier Masterplan (2011)*. The southern boundary of this site adjoins the appeal site.

Observations: Although this document relates to an adjacent site, it provides guidance about the scale of development likely to be acceptable, including at the boundaries of the site.

Design Guidance for St Helier (2013)

This supplementary planning advice considers how the character of St Helier can be maintained and enhanced through development control. In addition to describing the existing character of each area of St Helier, the document includes guidance relating to design features that are considered to fit with each character area. The guidance relate to thirteen criteria including building line, massing, colour, materials, frontage proportion and scale of detail.

Observations: The appeal site lies just within the northern boundary of Character Area 8. The degree to which the proposed development meets the design guidance is at issue.

Discussion and Inspector's assessment

34. The development lies within the Built-Up area and within the area covered by the revised "North of St Helier Masterplan" (2011). The principles of redevelopment of the site and the loss of some retail floor space are not in dispute.
35. Likewise, the need for the type of social housing proposed for this site is not in dispute. This need was emphasised by Deputy Pryke, Housing Minister, who attended both the Planning Committee meeting and the hearing.
36. The location of the appeal site appears particularly suitable for the type of social housing proposed by the scheme. It is close to those support facilities likely to be required by potential tenants, and is within close proximity to the town centre. All these facilities can be accessed without the need for private transport.
37. Thus, whilst the need for this type of housing and the principle of redevelopment of the site is not at issue, the scale and design of the building, principally the use of brick, together with the absence of any parking provision are the issues on which there are differing views.

The 'general grounds' of appeal raised by the appellant

38. The appellant provided lengthy submissions in support of their case for the proposed scale, design and location of development. The appellant believes that there has been a step change between the policies in the 2002 and 2011 Island Plans, resulting in a presumption for new development, at higher densities, within St Helier.
39. These points are not contested. However, the policies within the Island Plan 2011 (revised 2014) need to be considered as a whole. It is not possible to 'cherry-pick' those policies that support a development and ignore those policies designed to provide checks and balances to prevent inappropriate development. Schemes that meet the overall requirements of the spatial strategy could still be considered unacceptable in terms of specific impacts.
40. In my opinion, the issues at the heart of this appeal relate to the requirements of those policies that provide the checks and balances for development. It is concerned with whether the requirements of these policies are met, and if not, whether there are sufficient planning reasons to allow the development anyway. These issues often involve an element of judgement about what is, or is not acceptable. Indeed, the Department has pointed out that the matters that caused the Committee concern were matters of judgement as to the weight to be attached to the various considerations that have arisen and the application of the planning policies. Further consideration of these issues is given below in relation to each of the two stated reasons for refusal.

Reason 1: By virtue of its overall scale and design, in particular its use of brickwork (an inappropriate contextual material for St Helier) as the main primary external material, the proposed development would result in an overly-large building, lacking in local relevance, which would be harmful to the character of this part of St Helier. Accordingly, the application fails to satisfy the requirements of Policies SP 7, GD 1 and GD 7 of the adopted Island Plan 2011 (revised 2014).

41. This reason is concerned with whether the design is of good quality and would result in a building which sits comfortably within its surroundings. It deals with inter-

related issues relating to building height and mass and the choice of brick as a construction material.

42. Policies SP 7, GD 1 and GD 7 set general requirements for good quality design, and highlight what aspects of design should be considered. Further advice as to what constitutes “good” design in particular areas is provided by supplementary planning guidance: ‘*Design guidance for St Helier*’ (2013) and revised ‘*North St Helier Masterplan*’ (2011).
43. At five storeys, the proposed front (southern) elevation facing Minden Place represents an increase in height compared to the existing two - three storey building. It would be approximately three metres taller than the Jersey Telecom building, which it would face across Minden Place. Although the elevation facing Minden Place is a storey higher than the four storeys recommended for Character Area 8 in ‘*Design guidance for St Helier*’ (2013), the proposed development would be lower than the adjacent Minden Place car park. The side elevations of the proposed development would be stepped down to three storeys, reducing the apparent bulk of the building.
44. The ‘*Design guidance for St Helier*’ (2013) is supplementary planning guidance, which is a material consideration. However, it contains *advice* and not rules; the guidance notes that each individual proposal should be considered on its own merits. It notes that variations from the advice can be acceptable. Any variations in respect of the height of buildings require robust justification against five criteria; appropriateness to location and context; visual impact; impact on views; design quality; and contribution to the character of St Helier. These are considered below.
45. The proposed development has frontages on three different streets. The buildings on these streets in the immediate vicinity of the proposed development do not create a single, cohesive character for the area. They represent a range of building heights, architectural styles and finishes. For example, there are warehouse-style buildings on Rue de Funchal, facing more traditional two-storey buildings. Minden Place is dominated by the tall, rendered walls of the Jersey Telecom building and the taller, functional Minden Place car park. This presents challenges in producing a design that is sympathetic to the surroundings owing to the mixture of styles present.
46. In my view, the proposed development is not inappropriate in this location. The design takes account of the different street settings for each elevation through the stepping down of the height of the building and setting back of the bulk and mass of the building. Although taller than the existing property, the proposed development would not block or inhibit any views for neighbouring properties. Also, it would not result in an overall increase in the height of development in the area.
47. I believe that the proposed development would present a strong design statement in an area which I consider to be rather lacking in a clear architectural identity. In my opinion, the proposed appearance has a clear vertical emphasis, which illustrates influences taken from the revised ‘*North of Town Masterplan*’ (2011). The open colonnades and balconies, combined with the proposed tree planting would act to create a sense of place and reduce the visible bulk of the building. The proposed public art on the corner of Minden Place and Rue de Funchal would create a focal point for drivers travelling eastwards along Burrard Street. I have provided further comments concerning the visual impact of the proposed use of brickwork in paragraphs 50 - 53 below.

48. I am conscious that the street scene is not static. The rear (northern) edge of the proposed development adjoins the southern boundary of the Le Masurier's Bath Street redevelopment area. The '*Design Brief for Le Masurier's Bath Street*' proposes buildings of more than 4-storeys in the centre of the site. Minden Place car park may also be redeveloped in the future. Whilst design guidance for these sites provides an outline intention for future development, there are no firm design proposals or timescale for implementation. Consequently, I do not think that significant weight should be attached to the possible proposals that may be developed for these sites.
49. Although not a quoted reason for refusal, I note that the Department has referred to policy BE 5 Tall Buildings in its written submissions. As the proposed building would not exceed 18 metres in height or be 7 metres taller than adjoining buildings, I do not believe that Policy BE 5 Tall Buildings is a relevant consideration for this development.
50. The choice of brick as the main material appears to be the area where there is greatest divergence in views between the Department and the appellant.
51. The Department does not consider that the use of brick is commonplace on Jersey or within the town. It points to the advice in '*Design Guidance for St Helier*' (2013), which identifies concrete, stucco, granite, glass and steel as characteristic materials for Character Area 8 and suggests that small unit materials such as brick do not complement the character of St Helier. In addition, the planning committee referred the appellant to outline designs for the Minden Place car park in the revised '*North of town Masterplan*', which show the redeveloped car park finished in render. The appellant disagrees with these views, commenting that brick making was an active industry on the island in the 19th century. In addition, the appellant identifies around 50 brick-built buildings within St Helier, some of which are Listed Buildings. The appellant's architect has explained that this material has been chosen to explore the "*revival of brickwork as a Jersey-relevant contextual material*". Brick also has low maintenance requirements, which is a consideration for the CTJ Trust, which is a charity.
52. There is no doubt that the introduction of a brick building into this site would create a bold visual statement, which may not be universally welcomed. Whilst brick is not the commonest material used in St Helier, it is not a rarity. During the site inspection I observed numerous brick buildings within adjoining streets in the character area, some of which can be seen from the proposed site. Some of these blend well into the street scene, whilst others appear harsher. This is due, in part, to the nature of the individual bricks used. This is something which could be subject to further condition, if the scheme were to be approved.
53. Whilst brick would represent a change from the existing rendered building, I note that this material has been used to provide accents of detail on the Jersey Telecom building, which faces the appeal site. The Jersey Architecture Commission has supported the use of brick. As this organisation was set up to provide independent, expert advice to the Department of the Environment on major and sensitive developments in Jersey, I believe that some weight must be attached to this advice.
54. In summary, the overall requirements of policies SP 7, GD 1 and GD 7 are that the design of a scheme should be relevant to its local context and of a high design quality. Supplementary planning guidance aims to reduce the level of subjectivity in

assessing the quality of design. It is important to remember that the test is whether the design is of sufficient quality to meet the requirements and not whether it is the “best possible” design for that location. For the reasons set out above, I believe that the proposed development meets criteria for variation of advice in ‘*Design guidance for St Helier*’, is appropriate for its location and will not increase the overall height of buildings in the area. Consequently, I find that it is of high design quality and therefore would satisfy the requirements of policies SP 7, GD 1 and GD 7.

Reason 2: The proposed development fails to provide any on-site car parking in accordance with the standards published by the Department of the Environment. Therefore, the application fails to satisfy the requirements of Policy GD 1 of the adopted Island Plan 2011 (revised 2014).

55. The proposed scheme fails to meet the adopted standards for car parking (SPG3). Indeed, it fails to make any provision for resident or visitor parking, contrary to the requirements of policy GD 1.
56. Provision of car parking would result in a reduction in the number of accommodation units that could be provided, thus reducing the density of the development. It would also alter the design at ground floor level, possibly leading to a loss or reduction in the public realm improvements. I note the appellant’s comments about the effects of reducing the number of units on the viability of the scheme, but have not afforded that any great weight in my consideration.
57. The current parking guidelines (SPG3) are over 25-years old and pre-date the adoption of the current 2011 Island Plan (revised 2014). At the hearing, the Department reported that new guidance is in preparation, but was unable to provide information as to what this may contain. The Island Plan places a greater emphasis on reducing dependency on the car, whilst recognising that all developments are likely to require some provision of parking. Consequently, there is tension between the parking requirements of the Island Plan and SPG3.
58. Whilst SPG3 remains the starting point for considering parking provision, it is often appropriate to consider a variation from this to meet the stated aims of the Island Plan. Such an approach has been applied in decisions for other housing schemes, some of which have been subject to appeal (e.g. BOA Warehouse site). Flexibility is usually applied through relaxing the number of spaces required. Existing examples of housing development with no provision of parking are rare, and are limited to conversion of existing properties, where parking could not be accommodated within the fabric of the building. As the proposed scheme is for a redevelopment, rather than a conversion, the question is whether there are sufficient grounds to justify an exception to the adopted guidance by not providing any car parking.
59. In assessing whether a variation from SPG3 is appropriate for this proposal, I have considered the stated nature of the accommodation. The development is designed as social housing, particularly suitable for those disadvantaged and marginalised in society. If the scheme was to be consented, the type of tenants could be secured through a planning obligation agreement. These tenants are less likely to be able to afford a car. The central location of the proposed accommodation means that it is within easy walking distance of all facilities. Consequently, the need for a car is reduced.
60. I note the comments raised by the Parish relating to car parking and provision of loading bays. My views on car parking are provided above. I note that there are two

existing loading bays, which I believe should be adequate for the scale of retail development proposed.

61. In conclusion, the development of new housing which does not provide any car parking would be an unusual, if not unique occurrence. However, for the reasons set out above, I believe that in this instance there is sufficient justification to allow a scheme without car parking. It should be noted, however, that this is because of the very specific circumstances presented by this scheme; such an approach would almost certainly not be acceptable if some or all of the residential units were for private housing.

Inspector's conclusions

62. For the reasons set out above, I conclude, that the design of the proposed scheme meets the requirements for a variation from design guidance relating to building height and materials as set out in supplementary planning guidance. Consequently, it would satisfy the requirements of policies SP7, GD 1 and GD 7 of the Island Plan 2011 (revised 2014).
63. The proposed scheme does not make any provision for parking and hence fails to meet the requirements of policy GD 1 and SPG3. However, given the likely circumstances of the proposed tenants and the location of the proposed development, together with the benefits that this project would provide in terms of provision of social housing, and public realm improvements, I believe that there are sufficient planning reasons to allow permission to be granted.
64. If the Minister is minded to allow the appeal and grant planning permission, a number of conditions should be attached to the permission. A planning obligation agreement would also be required to secure the type of tenants eligible to habit the accommodation. I append a note about the content of these below.

Inspector's recommendations

65. I recommend that, in exercise of the power contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended), the Minister should ALLOW the appeal, subject to the appended Planning Obligation Agreements and Conditions.

Sue Bell

Inspector 28/02/2017

Planning Obligation Agreement and Conditions

The original report prepared by the Department for the Planning Committee contained suggestions for two planning obligation agreements and seven conditions. The planning obligation agreements concerned the type of tenants eligible to occupy the proposed development, and provision of £10,000 for off-site transport measures. Since then, the Department for Infrastructure has confirmed via email to the Department of Environment (21st September, 2016) that monies for off-site works are no longer required, hence removing the need for this second planning obligation agreement.

Possible terms for a planning obligation agreement and conditions were discussed at the hearing. As a consequence of those discussions, it is recommended that the following requirements are attached to any notice of approval of planning permission that is issued.

Planning obligation agreement

If the Minister is minded to allow the appeal it is suggested that this is subject to the applicant entering into a suitable planning obligation agreement pursuant to Article 25 of the Planning and Building (Jersey) Law, 2002 (as amended) in order to guarantee the provision of the following:

1. The use of the 31 no. new residential units delivered by this planning application, as affordable rented or assisted ownership housing in perpetuity, to be occupied by eligible persons referred through the affordable Housing Gateway register or otherwise certified by the Minister for Housing.

Conditions

Any grant of planning permission should also be subject to the conditions set out below.

1. Prior to the commencement of development, a **Demolition / Construction Environmental Management Plan (D/CEMP)** shall be submitted to, and agreed in writing by, the Department of the Environment. The D/CEMP shall thereafter be implemented in full until the completion of the development and any variations agreed in writing by the Department prior to such work commencing. The Plan shall include an implementation programme of mitigation measures to minimise any adverse effects of the proposal, and shall include, but is not limited to:
 - a) a demonstration of best practice in relation to **noise and vibration control; and control of dust and emissions** (such as noise and vibration, air, land and water pollution);
 - b) details of a publicised **complaints procedure**, including office hours and out-of-hours contact numbers;
 - c) specified **hours of working** (to include that work which would result in noise being heard outside the application boundary occurs only between 8am and 6pm Monday to Friday, and 8am to 1pm on Saturdays, with no noisy working outside these times, and no noisy work on Bank or Public Holidays);
 - d) details of any proposed **crushing / sorting of waste material** on site;
 - e) details of the proposed **management of traffic and pedestrians** (to include for vehicle wheel washing); and
 - f) measures taken to detect and manage any **asbestos**.

Reason: To ensure the development does not have an adverse impact on public health or the wider environment, in accordance with Policies GD 1, GD 6 and WM 1 of the Adopted Island Plan 2011 (revised 2014).

2. **Waste management** shall be implemented in full accordance with the approved Waste Management Strategy. Any variations shall be agreed to in writing by the Department of the Environment prior to the commencement of such work.
Reason: To protect the amenities of the occupiers of neighbouring properties and the visual amenities of the surrounding area, in accordance with Policies GD 1 and WM 1 of the Adopted Island Plan 2011 (revised 2014).
3. Notwithstanding the indications on the approved plans, prior to the commencement of any construction on site, full details (including samples) of all **external materials** to be used to construct the development shall be submitted to and approved in writing by the Department of the Environment to be thereafter implemented prior to first occupation and maintained for the lifetime of the development. In respect of the new external brickwork, sample panels (measuring at least 1m² and including a corner) shall be constructed, and made available for the inspection of Department officers, prior to agreement of this detail.
Reason: To ensure a high quality of design and in accordance with Policies SP 7 and GD 7 of the Jersey Island Plan 2011 (revised 2014).
4. All planting and other operations comprised in the **landscaping scheme** hereby approved shall be completed prior to first occupation of any element of the development.
Reason: To ensure the benefits of the landscape scheme are not delayed, in the interests of the amenities of the area and to ensure a high quality of design in accordance with Policies SP7 and GD 7 of the Jersey Island Plan 2011 (revised 2014).
5. Any trees or plants planted in accordance with the approved **landscaping scheme**, which within a period of five years from the planting taking place; die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Department of the Environment gives written consent to a variation of the scheme.
Reasons: To mitigate against the potential failure of trees and plants, and the extent to which that failure might threaten the success of the landscaping scheme, in accordance with Policies GD 1 & NE 4 of the Jersey Island Plan 2011 (revised 2014).
6. A **Percentage for Art** contribution shall be delivered on site as part of the development to the value of 0.75% of the costs of construction, which has been calculated as £18, 454.82. Final details relating to the exact form which the contribution would take, must be submitted to, and approved in writing by, the Department of the Environment, prior to the commencement of the development hereby approved. Thereafter, the approved work of art must be installed prior to the first use / occupation of any part of the development hereby approved
Reason: In accordance with the provisions of Policy GD 8 of the Jersey Island Plan 2011 (revised 2014).
7. The applicant must provide all footway widenings and trees, as shown on the Applicant's submitted Plan Number 5370-002E, along with associated drainage and appropriate carriageway cross-falls. The works and all associated costs including design fees are to be delivered in full by the applicant under a suitable Highway Agreement. No occupation of any unit can occur until a timetable for the delivery of these works has been agreed.
Reason: To ensure provision of public realm works.

8. Notwithstanding the indications on Plan Number 5370-002E, prior to the commencement of any construction on site, full details of all **materials** and **construction details** to be used shall be submitted to and approved in writing by the Department for Infrastructure to be thereafter implemented prior to first occupation and maintained for the lifetime of the development.

Reason: To ensure a high quality of design and in accordance with Policies SP 7 and GD 7 of the Jersey Island Plan 2011 (revised 2014).

INFORMATIVES

1. Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware of the possible presence of ASBESTOS within the development site. It is recommended that further advice is sought from a suitably qualified professional prior to the commencement of development so as to reduce the risk to public health.
2. Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should refer to the guidance on the type of information to be provided in a Demolition / Construction Environmental Management Plan (D/CEMP) which can be found online at <http://www.gov.je/industry/construction/pages/construcionsite.aspx>
3. Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should refer to the guidance on The Control of Dust and Emissions from Construction and Demolition, which can be found online at: http://www.london.gov.uk/thelondonplan/guide/npg/bpg_04.jsp
4. Given comments received during the assessment of the application, the applicants are advised of the necessity to agree the final detailed design of the new public realm highway works, with relevant officers of the Department for Infrastructure (Transport) & the Parish of St Helier, prior to the carrying out of any work within the public highway.