



Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Minister for the Environment

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Mrs B Simpson

Site at Hillside Cottage, Le Vier Mont, Grouville JE3 9DS

Written representations case

Accompanied Site Inspection carried out on 6th June 2017

Department of the Environment Reference: P/2016/1168

Site at Hillside Cottage, Le Vier Mont, Grouville JE3 9DS

- The appeal is made under Article 108 of the Law against a decision of the Environment Department to refuse planning permission under Article 19.
 - The appeal is made by Mrs B Simpson.
 - The application Ref P/2016/1168, dated 16th August 2016, was first refused by notice dated 8th December 2016; and secondly following Review by the Planning Applications Committee, on 23rd March 2017.
 - The development is: demolition of existing dwelling. Erect new 4-bedroom dwelling with integral double garage
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Summary of Recommendations

1. I **recommend** that the appeal should be **allowed**, and planning permission granted for the demolition of the existing dwelling and the erection of a new 4-bedroom dwelling with integral double garage at Hillside Cottage, Le Vier Mont, Grouville JE3 9DS, subject to the conditions set out in the Annex to this report.
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The scope of the report

2. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as he may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.
3. The purpose of this report is to provide the Minister with sufficient information to enable him to determine the appeal. It focuses principally on the matters raised in the appellants' grounds of appeal. However, other matters are also addressed where these are material to the determination, including in relation to the imposition of conditions, and in order to provide wider context.

Background

4. According to records, Hillside Cottage was built between 1839 and 1849, fronting the northern side of Le Vier Mont. It would appear that it was subsequently extended. As seen today, it is a single-storey dwelling with both of its bedrooms located in the roof space and having (according to the Department) a floorspace of some 143 square metres (sqm). In 1992, it was included on the Register of Historic Buildings as a Building of Local Interest. Later it was indicated as a Potential Listed Building. Subsequently (2016) a

decision to list the building was appealed successfully. Consequently it is not listed.

5. Following an unsuccessful application to demolish the building and construct a new dwelling in 2013, permission was granted in 2014 (ref: P/2014/0261) to demolish existing extensions and a garage outbuilding and to construct new extensions to north-east elevations which, if built, would create a 4-bedroom dwelling with a floorspace of some 230 sqm (as estimated by the appellant), or 236sqm (according to the Department). This permission has been commenced by virtue of the demolition and remains valid.

Description of the proposals

6. The application was described in the form given in my preamble. On the refusal notice this was altered to: *demolish dwelling and construct 1 four-bed dwelling with associated parking and landscaping*. There is no material difference between the two descriptions. I have considered the appeal on the basis of the plans and details submitted with the application.
7. The proposed dwelling would be T-shaped in plan and of modern appearance, with flat roofs; walls finished in a mixture of granite and painted render; and a substantial amount of glazing. The land falls away to the rear, and the road slopes down from the north-east to the south-west. Together with a degree of excavation where the existing cottage sits, the levels would permit the ground floor to be set lower than at present. Most of the front elevation would be single-storey, with only the crossing of the "T" having an upper floor. The single-storey part would be closer to the neighbouring property "The Spinney" than would be the cottage if it were extended under the 2014 permission, but the other side would be a little further away from the house "Clifton". The single-storey element would be somewhat lower than the eaves of the cottage; and the 2-storey element lower than the ridgeline of its roof by some 1.5 metres. The proposed development would incorporate 4 bedrooms, including 1 on the ground floor, with a total floorspace of some 288sqm.

The reason for refusal

8. The reasons for refusal are:
 1. *The proposed development by reason of its size, scale, massing, design and use of materials would: facilitate a significant increase in occupancy (contrary to Policy NE 7, 3a), not give rise to the required demonstrable environmental gains (contrary to Policy NE 7, 3b) and would cause serious harm to landscape character, contrary to Policy NE 7 of the 2011 Island Plan (Revised 2014).*
 2. *The proposed dwelling would replace a modest vernacular cottage with a contemporary flat-roofed dwelling of larger size, scale and massing on a prominent site close to the roadside, that would be*

out of character with the surrounding area and countryside contrary to Policies SP 4, GD 1 and GD 7 of the 2011 Island Plan (Revised 2014).

The grounds of appeal

9. The appellants' grounds of appeal, briefly, are as follows:

- (1) The proposal is a permissible exception to Policy NE7.
- (2) It will not cause serious harm to landscape character.
- (3) It will not facilitate a significant increase in occupancy.
- (4) The importance of the existing vernacular building is over-stated.
- (5) Insufficient regard has been given to a number of matters:
 - the existing character of the area.
 - the design of the proposal, which is appropriate to the character of the area in accordance with Policies GD1, GD7 and SP4.
 - comparable planning permissions for replacement dwellings which involve an increase in floor area, size and scale and use of render.
 - comparable permissions for modern design in similar character areas.
 - the recently constructed garage granted planning permission to "Clifton", immediately to the north.

Planning policy

10. Policy SP 4 of The Island Plan gives a high priority to the protection of the Island's natural and historic environment. The site is shown in the Green Zone where, under Policy NE 7 there is a general presumption against all forms of development. However, a number of exemptions may be permissible but only where they do not cause serious harm to landscape character. Amongst these is (3) *the redevelopment of an existing dwelling ... involving demolition and replacement, but only where the proposal would (a) not facilitate a significant increase in occupancy; and (b) give rise to demonstrable environmental gains contributing to the repair and restoration of landscape character.* Subject to meeting the relevant criteria, the proposed development would fall within the ambit of this exemption.
11. Amongst other general criteria, Policy GD 1 says that development proposals should not seriously harm the Island's natural environment, including not having an unreasonable effect on the Green Zone; and it should be of a high quality of design, in accordance with Policies SP 7 and GD 7, such that it maintains and enhances the character and

appearance of the Island. Additionally development must contribute to a more sustainable form and pattern of development. This includes not replacing buildings that are capable of being repaired and refurbished.

12. Policy GD 7 similarly seeks high quality design in all development that respects, conserves and contributes positively to the diversity and distinctiveness of the built context. It should respond appropriately to a number of criteria, of which the following are particularly relevant: scale, form, massing, orientation, siting, density and inward and outward views, as well as the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting.

Main Issue

13. From my assessment of the papers submitted by the appellant and the Department, and from what I noted during the site visit, I consider that there is one main issue in this case:

The effect of the proposed development on the character and appearance of the locality.

Reasons

The fall-back position

14. Although the Department's officer report notes the existence of the 2014 permission to extend the building, no effective consideration was taken of this fact in applying the relevant policies. Its response to the appeal is silent on the matter. There is no dispute that the extensions could be lawfully built and the dwelling thereby enlarged. If the current appeal were to be dismissed, I consider there would be a fair likelihood of that taking place. I therefore regard the 2014 permission, or something similar, as representing a reasonable "fall-back" position, which should be taken into account. In that context, I take the view that it is unrealistic for the Department to compare the proposed floorspace only to that of the small cottage seen today. The principle of a significantly extended dwelling on the site, with 4 bedrooms, has already been established, and in my view it is entirely reasonable for comparison to be made to that for the purposes of applying planning policy.

Occupancy

15. Having regard to the requirement of Policy NE 7 (3)(a) that replacement dwelling should not facilitate a significant increase in occupancy, both the cottage as permitted to be extended and the proposed dwelling would have 4 bedrooms and 4 bathrooms (including ensembles / wet room) and one dressing room. The new build would have a single large combined living room / dining room / kitchen,

whereas the extended dwelling would have a kitchen / living room and a separate living room. Additionally, the new build would include a "snug" and a study, together with a small utility, a downstairs WC and an attached double garage.

16. The Department appear to have concluded on the matter of increased occupancy at least in part by comparing the proposed floor area to that of the cottage. However, that is not the policy test.
17. While I appreciate the appellant's argument that the replacement dwelling would not have any additional bedrooms, and so would not directly increase occupancy, the relevant test in the policy is whether increased occupancy would be facilitated. In that connection, the Department has drawn my attention to an extract from an Inspector's report of 2016 concerning an appeal at a property "Windermere", in which the importance of facilitation is highlighted.
18. So far as the proposed garage is concerned, I am satisfied that by means of attaching an appropriate condition, it would be possible to prevent its conversion to habitable accommodation. As for the rest of the house, increased occupancy may be facilitated only by the provision of rooms within the dwelling that could be reasonably converted to sleeping accommodation without affecting the ability of the remainder to function properly. Therefore we need only be concerned with the potential conversion of other rooms to bedrooms.
19. To my mind, the new build would clearly offer some potential for increased occupancy – for example if the study or snug were to be converted to bedrooms. I have no evidence that the appellant wishes to create any more bedrooms but, even if there were no such intentions, the opportunity would remain.
20. The proposed snug and study are each shown with a floorspace of 12sqm. This compares to 10sqm for the smallest of the proposed bedrooms, a single. It would be reasonable, to my mind, to assume that they could also be used as singles. The 4 bedrooms presently proposed (3 doubles and the single), could potentially accommodate 7 people. If the snug and the study were to be converted, the house could in theory accommodate 9, an increase of over 28%. That is not inconsiderable, but the question by reference to the first test of Policy NE 7 is whether a significant increase (my emphasis) in occupancy would be facilitated. In the "Windermere" case, it was concluded that the occupancy "could double quite comfortably" and would consequently be significant. The present case is not comparable in terms of proportional increase.
21. Neither the policy nor its supporting text provide any further assistance in how significance should be assessed in this context. One measure of the significance of the increase in occupancy is to consider the purpose of the policy test. The supporting text says that intensification of domestic use would place more pressure upon a fragile environment, limited infrastructure and services and be likely

to increase trip generation. I do not doubt that such effects could occur in some circumstances particularly if, for example, the local environment were to be considered particularly fragile, or the infrastructure and services were under pressure. However, the Department is silent on these matters and has not suggested that the proposed development would be likely to cause any significant effects in relation to them. In the absence of any such evidence it is not possible to conclude that the increase in occupancy facilitated by the development, should it occur, would be significant.

22. I therefore I conclude on this matter that the proposed development would not breach the relevant test set in criterion (a) of part 3 of Policy NE 7.

Landscape character and design

23. With respect to policy GD 1, as the appeal relates to a replacement dwelling, the contribution it makes to the form and pattern of development would remain broadly unaltered so far as its sustainability is concerned. As for the presumption against replacement in favour of repair or refurbishment, the issue does not form part of the reasons for refusal or indeed the Department's assessment of the proposals. The granting of permission for extensions to the cottage in 2014 would appear to be conclusive that refurbishment would be possible. However, Policy NE 7 recognises that opportunities may arise in the Green Zone for the replacement of existing dwellings, suggesting that replacement should not be regarded as unacceptable in all circumstances, even if repair or refurbishment is possible. I proceed on that basis.
24. In the officer's report and appeal statement the local landscape is described as having a "countryside character" and being "rural in nature", but neither identifies in any detail its defining characteristics. For example, no reference was made to the site being located in Character Area D2 *Eastern Valleys* identified in the Countryside Character appraisal of 1998 or any conflict with the recommendations of that appraisal – ie that the only developments that can be justified in the area are small scale renewals or extensions to existing buildings. The present proposal would represent a renewal of a scale not dissimilar to what could be built under the extant permission to extend the cottage.
25. It is true that the site is some distance outside the urban area and that to its rear the land is undeveloped and the views dominated by trees. But the present cottage is one of a number of dwellings that contribute to discontinuous frontage development along the northern side of Le Vier Mont; and there is also a scatter of houses on the other side of the road. In my judgment, the existence of houses in the locality, including on the appeal site, forms as much a part of the local character as the trees and the open views. In this, I share the opinion of the Inspector who considered the appeal against the Listing of the

cottage in February 2016. While acknowledging that the building was in a rural setting when it was built, he stated that it is now in a substantially built-up frontage that has a suburban appearance. This has been emphasised by the recent erection of a timber garage and tall fencing at "Clifton" directly adjoining the appeal site.

26. That Inspector also considered that there is nothing in the details of the design and construction of the original building to indicate that it has any particular architectural interest. He concluded that the building as it exists is substantially changed from its original built form and fabric; that the changes have not been positive; and they are not part of the building's interest. It is not a rare example and there are better examples of this type elsewhere on the Island. Importantly, so far as the present appeal is concerned, he felt that the building's architectural interest is not enhanced by any contribution it makes to a larger group or as a landmark, nor to a significant extent by the contribution it makes to its setting. I agree. To my mind, the loss of the existing cottage, whether extended or not, would not cause any significant harm to the character of the locality.
27. Moreover, the simple replacement of one dwelling by another on the same site would not in itself inevitably lead to harm to its surroundings. Rather, to have such an effect, there would have to be something particularly harmful about the design of the replacement.
28. There is no doubt that the modern design of the proposed house is very different to that of the existing cottage, whether in its present form or extended, in particular with respect to the use of flat roofs. It would also contrast with the traditional appearance of the neighbouring dwellings. But looking at the broader setting, the other buildings nearby have few common features other than pitched roofs and may loosely be described as "conventional", albeit not of any single style or age. Some display distinctly non-traditional features, such as the asymmetric roof and colonnaded porch at "Chateau de Haut" on the opposite side of the road, and the timber construction of the new garage at "Clifton".
29. But simply contrasting – being different – does not equate to causing harm to landscape character, let alone "serious" harm, which is the test set in Policy NE 7. As the supporting text to Policy GD 7 says, good design need not replicate local traditions, but will respect, re-interpret and be in harmony with the local context. In this case, the proposed dwelling draws on tradition in the use of granite walling and painted render, which are the materials generally used in the locality. Arguably the flat roofs would be less intrusive than the existing concrete roof tiles of the cottage and, together with the lowering of the ground level by the removal of what has been described as a "rock promontory" on which the cottage stands, would permit the new building to have a lower profile with a slighter visual impact. That would allow more extensive views of the trees beyond and a lesser effect on the setting of the neighbouring houses. In my opinion, whether taken alone or in context, the proposed dwelling would be an

attractive and thoughtfully-designed building that would not cause any serious harm to its surroundings, including to the character of the landscape. I therefore I conclude on this matter that the proposed development would not breach the relevant test.

30. As for criterion (b) of part 3 of the policy, having regard to the foregoing, and the factors itemised in the supporting text, I consider that the environmental gains associated with the proposed dwelling would be demonstrable. In particular, the present building, which has few positive features and which could lawfully be extended, would be replaced by another of more sensitive and sympathetic siting and design. When viewed directly from the road, it would appear to have a reduced visual scale and mass (compared to the "extended" cottage), and there would be a more sensitive approach to the use of materials. Taken together, I am satisfied that the replacement dwelling has the capacity to contribute positively to the repair and restoration of the local landscape character.

Other Matters

31. The appellant has drawn my attention to a number of other developments in order to illustrate that modern designs have been found acceptable elsewhere. However, I consider that matters of design are generally best considered on a case-by-case basis and so I have assessed the present appeal on its individual merits.
32. The occupier of "the Spinney", the neighbouring house on the downslope side of the site, has raised concerns about the effect of the proposed excavations including the potential for disturbance and damage to his property. I acknowledge that the removal of the "rock promontory" may involve a degree of excavation rather greater than may be commonly associated with small-scale development. Nonetheless, some disturbance will always be inevitable. In the absence of any clear evidence that the work is likely to cause damage, it would not be appropriate to place any requirements on the developer through the planning system. In my view, it is a private matter to be addressed if necessary between the neighbouring landowners, the developers and their insurers.
33. Concern has also been expressed about the inclusion of a number of trees within the proposed boundary hedge between the site and "The Spinney". Having regard to the considerable difference in levels between the properties, I am sympathetic to these concerns, in particular the potential for overbearing impact and potentially for loss of light. Therefore, while I am content for the remainder of the landscaping scheme be approved as submitted, I would recommend that the planting along this boundary be reconsidered.

Overall conclusion

34. Overall, having regard to my main issue, the relevant policies and all

other matters raised by both parties, I conclude that the proposed development would be acceptable.

Conditions

35. In the event that my recommendation to allow the appeal is accepted, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately.
36. The Department has not suggested any conditions. I have therefore compiled a schedule (in the attached Annex) taken broadly from the Department's list of those commonly applied.
37. In brief: Conditions (1) and (2) relate to the timescale for commencement and compliance with the approved plans. These are standard conditions required in the interests of certainty. Condition (3) provides for the phasing of the landscape works and for the submission of a revised scheme for the boundary with "The Spinney" as discussed above. Conditions (4) and (5) require approval of the external building materials and of the details of windows and doors. Condition (6) concerns the provision of accesses in the interests of road safety, and condition (7) seeks to prevent the use of the flat roofs for amenity use, in order to protect the amenity of neighbouring occupiers. Condition 8 is intended to prevent the conversion of the garage into living accommodation, as discussed above.

Overall Conclusion

38. For the reasons given above, I **recommend** that the appeal should be **allowed**, and planning permission granted subject to the conditions set out in the Annex to this report.

Jonathan G King

Inspector

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ANNEX

CONDITIONS THAT MAY BE IMPOSED ON THE PLANNING PERMISSION IN THE EVENT THAT THE APPEAL IS ALLOWED

1. The development shall commence within five years of the date of this decision.
2. The development hereby permitted shall be carried out in full

accordance with the approved plans.

3. The dwelling hereby approved shall not be occupied until all hard landscape works as indicated on the approved plan have been carried out in full. Prior to first occupation of the dwelling, a revised scheme of planting for the boundary with "The Spinney" shall be submitted to and approved in writing by the Department of the Environment. That scheme, together with the remainder of the soft landscape works as indicated on the approved plan shall be carried out no later than one year following first occupation of the dwelling.
4. Prior to commencement of the development hereby permitted, samples of the materials to be used for the external walls and roofs of the dwelling shall be submitted to and approved in writing by the Department of the Environment. The development shall be carried out as approved.
5. Prior to commencement of the development hereby approved, details of the following shall be submitted to and approved in writing by the Department of the Environment. These works shall thereafter be carried out in full in accordance with such approved details: i) the nature, materials, dimensions and profile of external heads, cills, jambs and mullions (where included) of windows and the heads and jambs of doorways illustrated by a scale drawing at 1:5; and ii) the design or pattern, materials and extent of reveals of external windows and doors illustrated by a scale drawing at 1:5, together with the colour(s) to be employed by reference to a British Standard Classification or its equivalent.
6. No part of the development hereby approved shall be occupied until the means of vehicular and pedestrian access as indicated on the approved plan has been wholly constructed in accordance with the approved plans and shall thereafter be retained as such.
7. The flat roof areas of the development hereby approved shall not be used as a balcony, roof garden or similar amenity area.
8. Notwithstanding the relevant provisions of the Planning and Building (General Development) (Jersey) Order 2006 or any Order revoking or re-enacting that Order, no part of the garage provision shown on the approved plans shall be converted for use as bedrooms or otherwise occupied as principal rooms of the house, without the prior approval in writing of the Department of the Environment.

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