

STATES OF JERSEY

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

APPEAL OF A DECISION UNDER ARTICLE 108

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Inspector appointed under Article 107

APPEAL BY: Mr S. Roberts

**AGAINST: Refusal to grant planning permission for a proposal to
'Demolish existing green house to West of site. Construct 1
No. two bed dwelling for a dependent relative with basement
garden machinery store.' Decision dated 21 September 2017**

LOCATION: Gouray Lodge, Le Mont de Gouray, Grouville, JE3 9GH

REFERENCE: P/2017/0273

APPEAL PROCEDURE: Written Representations

SITE VISIT: 11 December 2017

Introduction

1. This report contains my assessment of the appeal made by Mr S. Roberts of *Gouray Lodge*. The appeal is made against the decision of the Department of the Environment on 21 September 2017 to refuse to grant planning permission for a proposal to demolish a large horticultural greenhouse within the grounds of the lodge and to erect a dwelling for a dependent relative on the cleared site.
2. *Gouray Lodge* is set within substantial hillside grounds in the Green Zone to the north of La Chèvre Rue / Le Mont de Gouray. These roads form the boundary which defines the built-up area of the Gouray village settlement to the south and the Green Zone to the north and west. *Gouray Lodge* includes the principal dwelling house, a detached coach-house (containing garaging and staff accommodation), gatehouse accommodation (known as *The Octagon*), a large greenhouse, tennis courts and extensive landscaped grounds that include water features. The house is a Listed Building (Grade 4), the statement of significance on the Listing reads: "*notable house of mid C18 origins, with later additions, with many original stonework features surviving. Interesting historical associations.*"
3. The appeal site itself comprises the area containing the large greenhouse, which is to the west of the house. The greenhouse itself measures about 15 metres wide by 27 metres long¹ and occupies most of the red lined site area, the balance being a small area just to the east of the glasshouse structure. The greenhouse has a triple pitched roof and has a maximum height of about 4 metres. It is enclosed by screen walling and set back about 25 metres from La Chèvre Rue and there is a tennis court in the intervening space. Viewed from the tennis court, only the glazed roof planes are visible above the screen walling.
4. The appeal proposal seeks planning permission to demolish the greenhouse and erect a dwelling, which the application form states would be for a 'dependant relative'. The dwelling's accommodation would be on one floor and appears to be designed to incorporate self-contained staff accommodation (a bedroom, bathroom, living area / kitchen) connected by a corridor to the main accommodation comprising a bedroom, living / kitchen /diner area, and bathrooms. A replacement (much smaller) greenhouse is also proposed at this level, along with external terrace areas.
5. The scheme includes a lower basement area underneath the proposed dwelling, accessed by a vehicular drive dropping down from the main driveway. This basement area is indicated as being for garden and general storage and would include a platform lift to the residential accommodation above.

¹ Dimensions based on measurements from the scaled drawing 'existing site plan' Dwg. No. 01

6. Externally, the building would be of a similar height to the greenhouse it would replace. The walls would be faced in a mix of granite cladding and render. The roof would be part flat with sedum planting and the remainder a shallow mono-pitch, faced in a zinc material.

The Planning History and the Refusal

7. I am advised that there is a long and complex Planning history associated with *Gouray Lodge* but most of the earlier applications are of little direct relevance to this appeal. Of some relevance, is the permission for the tennis court adjacent to the appeal site; this was granted in 2012 under Reference P/2012/1144 and entailed regrading of land, new retaining walls, the construction of the court surface and fencing. The retaining walls included the granite wall on the south side of the appeal site that largely screens the greenhouse in views from the south.
8. The current application (P/2017/0273) was first refused by officers under delegated powers in June 2017. A request for a review of that decision was considered by the Planning Committee at its 21 September 2017 meeting. The Committee resolved to confirm the refusal for the following reason:

The proposed dependent relative dwelling is located within the Green Zone as defined on the Proposals Map of the Adopted Island Plan 2011 (Amended 2014). The Green Zone enjoys a high level of protection from development and there is a presumption against all forms of development, including that which facilitates a separate household. The only circumstances under which accommodation for a dependent relative may be permitted within the Green Zone are where; the proposal relates to the extension of a dwelling (NE7.1) and the new accommodation is capable of re- integration into the principal dwelling (NE7.1cii). The current application does not satisfy either of these criteria and it is not considered that there are sufficient grounds to justify an exception to policy in this instance. Accordingly, the proposal fails to satisfy the requirements of Policies SP1, GD1 and NE7 of the Adopted Island Plan 2011 (amended 2014).

The Island Plan 2011 (Revised 2014) – policy considerations

9. The Island Plan has primacy in decision making on planning applications. There is a general legal presumption that development in accordance with the plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'² for overriding its provisions.
10. The Plan's overarching spatial strategy is set out in Policy SP 1. It seeks to concentrate new development within the Island's built-up area, which is clearly defined on the Plan's proposals map.

² Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

11. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Parts of the Island are designated as Coastal National Park (CNP) areas, within which development is very strictly controlled. The countryside outside the CNP is defined as the 'Green Zone' and is afforded a high level of protection from development. The majority of the Island falls under the Green Zone designation. The appeal site lies within the Green Zone, although, as noted earlier, the grounds of Gouray Lodge abut the defined built-up area of Gorey village to the south.
12. Policy NE 7 sets out a general policy presumption 'against all forms of development' in the Green Zone. The policy explicitly identifies that new dwellings will not be allowed. It further identifies that the 'presumption against' applies to any developments "*facilitating a separate household by means of an extension, conversion or new build (other than to meet changing family circumstances under 1c below*". The reference to 1c relates to an exception to the policy which allows for an extension or conversion of part of an existing dwelling to provide dependant relative accommodation. There are three criteria to qualify for this exception and these are:
 - i. the accommodation is for an elderly relative or a relative who requires a degree of care and/or support for their health and well-being;*
 - ii. the new accommodation is capable of re-integration into the principal dwelling; and*
 - iii. it is designed to lifetime home standards*
13. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality. Policies SP 7 and GD 7 require developments to achieve a high quality of design.
14. Policy HE 1 sets a presumption in favour of preserving heritage assets and their settings. The policy states that proposals "*...which do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved*".

The Appellant's Case

15. The Appellant's case recognises that the proposal '*does not exactly match the guideline criteria*' of Policy NE 7 but contends that there are a number of considerations that weigh in its favour. These are:
 - *The greenhouse exists on the site and the proposal will not result in any increase in the perceived physical presence of the building. It*

must also be noted that the existing greenhouse structure has no architectural merit, with the proposal providing considerable environmental gains in terms of its enhanced appearance on the landscape

- *The proposal provides much needed storage facilities for the equipment required to maintain the extensive surrounding grounds, which are kept to the highest standard and contribute greatly to the environmental landscape of Grouville*
 - *The creation of a unit for a dependent relative is supported under policy as an extension to an existing dwelling. The effect of such an extension (were one to be proposed) in this case would result in an increase in footprint, being effectively a re-use of an existing structure, there is no deleterious effect upon the setting of the existing buildings, and there is no harm arising to the landscape as a result. We would therefore argue that this proposal is a sensitive and appropriate approach to the provision of a unit for a dependent relative, which results in no greater visual impact.*
 - *As stated in paragraph 2.121 of the policy "the key test is the capacity of the site and its context to accommodate development without serious harm to landscape character." We believe that this proposed application could not possibly be seen as causing serious harm to the landscape character, and rather that it fulfils the client's needs for accommodation for a dependent relative in the most subtle and unobtrusive manner possible on this site, and without the need to increase build footprint.*
 - *Paragraph 3a of the policy requires that any development should "not facilitate a significant increase in occupancy". Given the size of Gouray Lodge, the creation of a unit for a dependant relative will not in any way create a 'significant increase' of occupancy on this site.*
16. The Appellant concludes that the proposal is considered to be entirely supportable under Island Plan policies and that the reasons for refusal are erroneous.

The Department's Response

17. The Department explains the presumption against development in the Green Zone and the specific presumption against new dwellings unless they fall within specified exceptions. The Department says that the allowable possible exceptions do not apply in this case. It also sets out that whilst Policy NE 7 does allow for dependent relative accommodation proposals, this is limited to an extension to the main dwelling, which can ultimately be integrated into the host dwelling. The Department also considers that the

development, by virtue of its internal layout, would in effect constitute two self-contained residential units (one for 'staff', the other for the dependent relative). The Department also cites another appeal case³ where the issue of replacing a dwelling with an outbuilding was a main issue and that appeal was dismissed.

18. The Department considers that the proposal would represent a departure from the Island Plan and that there is no adequate justification in this case for departing from the Plan.

Discussion and Inspector's Assessment

The principle of the development

19. The appeal site lies within the Green Zone and is outside and beyond the defined built-up area. The Island Plan's spatial strategy (Policy SP 1), which directs and concentrates new development into the existing built up area, along with the high level of development restraint in the Green Zone (Policy NE 7), mean that this is not a location where new housing is generally considered acceptable in principle. Indeed, in such locations, there is a clear presumption against new housing development and a related presumption that environmental and landscape protection will take primacy.
20. Consequently, the development could only be considered to accord with the Island Plan if it satisfied one of the Green Zone exceptions set out in Policy NE 7.

Policy NE 7 – exceptions for new dwellings (exceptions 3, 9, 10 and 4)

21. The new dwelling exception categories are quite clearly and precisely defined. The proposal cannot qualify as a replacement dwelling under NE 7 (3) as it is not replacing an existing dwelling; the site is not an employment use or building that is a pre-requisite of any NE 7 (9) or (10) exception and no claim is made that the proposal is for key agricultural worker's accommodation under NE 7 (4). Accordingly, I assess that the proposal does not meet any of the specified exceptions that would enable a new dwelling in this Green Zone location.

Policy NE 7 – exception for dependent relative accommodation (exception 1)

22. The Policy NE 7 (1) exception allows for residential extensions within the Green Zone subject to certain criteria. The Policy makes specific provision for dependent relative accommodation under NE 7 (1)(c). However, it is premised on the independent accommodation being provided as an *extension* to the main host dwelling and being capable of re-integration into the principal house. The proposal cannot satisfy these criteria, as it is

³ Application / Appeal Reference – P/2015/0177

neither an extension nor capable of future re-integration as part of the main home. The proposal does not meet the NE 7 (1)(c) exception criteria.

23. The Appellant contends that the proposal is far preferable to an extension for a dependent relative. In particular, he argues that an extension would result in a greater built footprint on the site and that the re-use of an already developed part of the site is preferable, as no harm would arise to the landscape. However, the policy does not allow for hypothetical exception schemes (which are untested through the Planning system) to be 'traded' for developments which breach Policy NE 7. Furthermore, I have not been presented with any evidence to demonstrate that the accommodation needs of the Applicant cannot be met in other ways, without creating any tensions with Policy NE 7.

Other matters

24. Notwithstanding my findings above, I consider that there are a number of positive elements to the scheme that do weigh in its favour. First, the proposal is of a well mannered and good quality design, which accords with the principles set down in Policies SP 7 and GD 7. Second, it is acceptable in heritage terms and at least preserves, and arguably enhances, the wider setting of the Listed *Gouray Lodge*, thereby satisfying Policy HE 1. Third, the proposal would achieve some limited environmental benefits in terms of replacing a large utilitarian glasshouse with a more elegant and refined low rise building.
25. I understand that, in the event that the Minister was minded to grant planning permission, the Appellant would be willing to enter a Planning Obligation Agreement to restrict and control occupancy of the dwelling.

Conclusion and recommendation

26. The appeal proposal would be in conflict with the Island Plan's Policy NE 7, which seeks to impose a strong level of development restraint in Jersey's defined Green Zone in order to protect the natural environment. The proposals would also conflict with the Plan's spatial strategy and sustainability objectives, which direct new housing to the defined built-up area. The proposal does not meet any of the NE 7 Policy exceptions in respect of new dwellings, nor would it meet the NE 7 exception criteria for dependent relative accommodation schemes.
27. Whilst the physical environmental impact of the development would be limited, and there would not be any serious harm to the landscape or the Listed building, the development would result in a new dwelling (and potentially two self-contained dwelling units) appearing in a location outside the built-up area, which is deemed by the Island Plan as unacceptable in Planning terms.

28. In my view, there are no exceptional reasons that would provide sufficient justification for departing from the Island Plan's policy provisions.
29. For the reasons stated above, the Minister is recommended to dismiss this appeal and uphold the decision to refuse planning permission, made by the Department of the Environment on 21 September 2017 (Reference P/2017/0273).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

30 January 2018