

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

Appeal under Article 108 against a decision made under Article 19 to grant a planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellants:

Héliier and Julie Lucas.

Planning permission reference number and date:

P/2021/0772 dated 21 October 2021

Applicant for planning permission:

Graham Boxoll, Guardian Nursing Services Ltd.

Site address:

Chateau Vermont, Le Mont Sohier, St. Saviour JE2 7HA.

Description of development:

“Change of use of the Lower Ground Floor from Gym/Wellness centre to additional music school spaces to create one cohesive music school, Jersey Academy of Music.”

Inspector’s site visit date:

8 February 2022

Hearing date:

10 February 2022

Introduction

1. This is a third-party appeal against the grant by the Planning Committee of planning permission for the development described above. The application was recommended for approval by the Infrastructure, Housing and Environment Department. The reasons given for the approval state:

“The change of use of the lower ground floor from the established commercial use (that of a gym / spa) into an extension of the existing music academy is

considered to be justified having regard to Green Zone policy which allows for the change of use of employment land and buildings to alternative employment uses.

The proposal represents a de-intensification in the use of the site, compared to the established / authorised use, and the department is satisfied that the proposal will not cause 'unreasonable harm' to the amenities of local residents (the test set by Island Plan policy GD 1)."

2. The permission was granted subject to the standard conditions A and B and to the following additional condition:

"1. Prior to the commencement of the development hereby approved, details relating to the installation (to the interior walls and ceiling of the lower ground floor) of an appropriate scheme of acoustic insulation, shall be submitted to, and agreed in writing by, the Development Control section of Regulation."

The reason given for this condition is "In the interests of the amenity of neighbouring residents, under the provisions of Policy GD 1 of the 2011 Island Plan (revised 2014)."

The Revised 2011 Island Plan and the Bridging Island Plan March 2022

3. The parties' representations up to and including the hearing took into account the policies in the Revised 2011 Island Plan. These policies are no longer relevant to the development following the adoption of the Bridging Island Plan, which replaced the Revised 2011 Island Plan in March 2022. The parties have been consulted about the application of the policies in the Bridging Island Plan to the development and their written representations on this issue have been taken into account in the preparation of this report.
4. The Bridging Island Plan is now the Island Plan for the purposes of Article 19 of the Law. This provides that (a) in general planning permission shall be granted if a development is in accordance with the Plan, (b) it may be granted where it is inconsistent with the Plan if there is sufficient justification for doing so and (c) it may be refused.
5. The planning permission quoted in paragraph 1 above refers to Green Zone policy and to the 'unreasonable harm' policy test then applying to residents' amenities. The corresponding provisions of the Bridging Island Plan are: -
 - The development is in the green zone. The Plan states that it is important that the strongly rural character of the green zone is protected and that development in the green zone should protect or improve landscape character (pages 76-78 & 124 and Policy NE3). Policy SP2 indicates that within the countryside development will only be supported where a countryside location is justified, appropriate and necessary in its location, or where it involves the conversion, extension and/or subdivision of existing buildings; it adds that the appropriate development of previously developed land and of under-utilised land and buildings will be supported. Policy PL5 allows for economic development in the countryside where it involves the reuse of buildings.
 - There is a new Policy GD1 headed "Managing the health and wellbeing impact of new development". The relevant parts of this policy are "All

development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts, and will only be supported where: 1. the development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents, and in particular, will not: ... d. adversely affect the health, safety and environment of users of buildings and land by virtue of ... noise ...”.

6. Policy CI1 “Educational facilities” of the Bridging Island Plan indicates that the development of additional educational facilities and the extension of existing educational premises will be supported where the development is within the grounds of existing education facilities.
7. The Bridging Island Plan through its strategic policies and transport policies seeks to ensure that all development meets sustainable transport principles.

Description of the site and its surroundings

8. Chateau Vermont was built as a private house and was used for many years as such. It is a large 4-storey building in extensive grounds, which include terraces, gardens, woodland and a parking area which now has a capacity for about 70 cars. The surroundings are predominantly rural, but include houses on the eastern and western sides, one of which is occupied by the appellants. As indicated above, the property is in the green zone for planning purposes.

Background and planning history

9. Planning permissions were granted in 2005 for changes of use of the building, firstly into a retirement/nursing home and then, later in the year, into visitor accommodation. It is understood that neither permission was implemented.
10. Permission was then granted in 2008 for the change of use of the three upper storeys of the building into the music academy that currently exists. This permission excludes the lower ground floor the subject of this appeal. Conditions were imposed that limit the number of weddings or other outside events to no more than 12 per year and the number of recitals or other indoor concerts to no more than 12 per year. The conditions also require a management plan to be agreed, before the first wedding/outdoor event takes place, for the purpose of controlling car parking and access, hours of operation and amplified music. There is no record that a management plan was ever agreed. On 17 February 2022 the applicant submitted a proposed management plan to the Infrastructure, Housing and Environment Department for their consideration and approval.
11. Permissions were granted in 2011 and 2013 that authorised the change of use of the lower ground floor to spa facilities and the creation of additional parking spaces. Conditions were imposed that limited the opening hours of the spa to 6:30 a.m. to 8:00 p.m. every day and required any music played in the fitness room to be inaudible at the boundary of any nearby residential premises. These permissions were implemented, but the spa use ceased in 2019. At this time, the applicant states that the spa had 246 members. The lower ground floor is currently unoccupied.
12. Application P/2019/1477 was submitted in 2019 for the change of use of the lower ground floor from a gym and spa to children's day care and nursery. This application was recommended for approval and was approved by the

Planning Committee subject only to the standard conditions. The appellants in the current appeal submitted a third-party appeal against this decision, which succeeded. The Inspector concluded that that there would be no intensification in the use of the building, and that the effect on neighbours' amenities and traffic would be acceptable, but she recommended that the appeal should be allowed because of the potential impact of the proposals on woodland. The Minister agreed with the recommendation and refused to grant planning permission for the following reason:

"The proposed use of a woodland area outside of the curtilage of the building for forest school activities would lead to an increase in the intensity of use, in terms of numbers and frequency of visits, sufficient to represent a material change in use of the woodland. The application does not provide sufficient evidence to satisfactorily demonstrate how, or whether, the proposals would comply with policies NE 1, NE 2, NE 4 and NE 7 of the 2011 Island Plan (revised 2014)."

13. The application which is the subject of the current appeal relates only to the use of the lower ground floor to provide "additional music school spaces to create one cohesive music school". The woodland area referred to in the Minister's decision lies beyond the extensive walled garden at the rear of the building and the application does not include any new proposals for the use of this area.

The case for the appellants

14. The appellants state that the development will unreasonably harm their residential amenities and those of other neighbours because of noise and the impact of traffic; it will therefore be contrary to Policy GD1 of the Bridging Island Plan and planning permission should not be granted. They maintain that the development will add to the numbers attending the premises, that there is a lack of clarity about the use of the grounds of the building and that there is a potential increase in the use of the woodland. They point to the disturbance they have experienced from noise emanating from the Academy, from events taking place in the grounds and from traffic in the car park. They state that they have never been provided with a copy of the management plan required by 2008 permission.
15. The appellants maintain that the Condition 1 imposed by the Committee (see paragraph 2 above) is void for uncertainty because the "appropriate scheme of acoustic insulation" could not be established in the absence of information about current and potential noise levels. They have commissioned a report from a noise consultant, who has concluded that the application was "inadequately considered against policy and guidance relating to noise impact" and that the original permission for the music academy "did not adequately consider noise impact" and should be reconsidered.
16. The appellants support the objection of the Roads Committee of St Saviour. This was made on the grounds that the increase in traffic will be too much for the surrounding roads, causing a strain on the infrastructure. The appellants maintain that the claim that the proposed use will be less intensive than the previous use has not been independently assessed. Their own traffic and road safety impact assessment by a transport consultancy concludes that there will be significant traffic, road safety and environmental impacts and that

sustainable transport policies will not be complied with. It recommends that the application is reassessed.

17. The appellants maintain that the provisions of the Bridging Island Plan relating to the green zone (see paragraph 5 above) will not be complied with because the proposals do not include evidence of need, or landscape improvements, or measures to reduce dependence on the private car.

The case for the applicant

18. The applicant emphasizes that the proposal relates solely to the lower ground floor of the building and is for the same purpose as the remainder of the building. He points out that no external works are proposed; that changes will not be made in the use of the grounds or in the use of the woodland; and that the use of the upper floors of the building and the external activities carried on are already authorised by existing planning approvals, the reconsideration of which he states is beyond the scope of the current application.
19. The applicant asserts that noise will not be an issue in these circumstances and points out that noise was not a reason for refusal when the change of use of the lower ground floor to children's day care and nursery was considered by the Inspector and the Minister in appeal P/2019/1477. He indicates that if it is considered that acoustic insulation is now needed and that Condition 1 requires amendment, the Inspector can recommend this to the Minister.
20. The applicant states that the Transport Assessment submitted in connection with appeal P/2019/1477 is relevant to the current appeal. He points out that the Inspector stated in her report that she was "content that the road network would be able to accommodate the proposed overall increase in vehicle movements" involved in that appeal and that she concluded that the building "can be accessed by means other than the private car" and is "within reasonable distance of public transport".
21. The applicant concurs with the Committee's opinion that the proposal is "a de-intensification in the use of the site, compared to the established / authorised use". He disagrees with the conclusions of the traffic and road safety impact assessment submitted by the appellants, mainly because it treats the proposal as being new floorspace and does not take into account the traffic that would be generated by the approved use of the lower ground floor, but also because the data used in the assessment is disputed and, even if it is accepted, there will still be a net reduction in traffic movements. He points out in relation to the Roads Committee's objection that the Committee supported application P/2019/1477, which would have involved a more intensive use.
22. The applicant maintains that the policies in the Bridging Island Plan relating to the green zone and educational facilities are strongly supportive of the development.

Other representations

23. The Roads Committee's objection has been set out in paragraph 16 above.
24. The other representations received are evenly divided between objectors and supporters. Some objectors have raised issues about noise and traffic associated with the existing Academy and the external events that take place.

They and the remaining objectors have concerns about the Academy's use of the lower ground floor because they maintain it will result in additional noise and traffic and overflow parking onto the public highway and may take place at unsociable hours. Supporters of the Academy's use of the lower ground floor refer in particular to the advantages for music teaching on the Island and maintain that there would not be additional noise or any traffic problems.

The case for the Infrastructure, Housing and Environment Department

25. The Department point out that the approved use of the lower ground floor is for spa facilities and that, when its alternative use as a children's day care and nursery along with external activities was considered in 2019, the Inspector concluded that the effect on neighbouring amenity and the impact of additional traffic would be acceptable. The Minister did not disagree with those conclusions.
26. The Department argue that the use now proposed would have less impact in these respects than either the approved use or the alternative use considered in 2019. The Department's Environmental Health section have no objections, provided that the lower ground floor is used on the same days and times as the rest of the building and that consideration is given to the escape of noise and the potential need for noise insulation.
27. The Department consider that the development would be compatible with the policies of the Bridging Island Plan. They point out that the report from the noise consultant which has been submitted by the appellants does not identify harm to neighbouring amenities within the meaning of the new Policy GD1. The Department agree with the applicant that the traffic and road safety impact assessment submitted by the appellants does not take into account the traffic that would be generated by the approved use of the lower ground floor.

Inspector's assessments and conclusions

28. The development is the change of use of the lower ground floor to provide additional music school spaces; these will be combined with the Academy's use of the upper floors to create one cohesive music school extending throughout the building. There will be no external expansion of the facilities. Policy CI1 clearly supports the development.
29. The development is not in conflict with green zone or countryside policies. The rural character of the zone will not be affected since the building is already there and will not be extended. Policy SP2 indicates that appropriate development within the countryside will be supported where it involves conversion work to an existing building or to an under-utilised building. Policy PL5 allows for economic development in the countryside where it involves the reuse of part of a building. The development complies with these policies.
30. The applicant's and the Department's conclusions about the impact of the development on traffic conditions, road safety and sustainability are more convincing than those of the appellants and the Roads Committee. I do not consider that planning permission should be withheld because of these matters, or new planning conditions imposed in relation to them. It is reasonable to conclude that the development will be a "de-intensification" in the use of the site in these respects, compared with other approved and potential uses, because some of its users will already be attending the

Academy, or can make use of existing transport arrangements to and from the Academy, whereas in the case of the other uses their users will be making freestanding additional journeys to and from the site. The numbers potentially present on the lower ground floor from time to time may also be fewer: the spa had 246 members and the children's day care and nursery was to be for 70 children.

31. I have concluded that the determining issue in this appeal is the effect of the development on neighbours' amenities due to noise. This was the Planning Committee's main concern as well and they therefore imposed the acoustic insulation condition quoted in paragraph 2 above. This condition relates to internally-generated noise only. It is defective because it does not spell out the objective or standard to be achieved by the "appropriate scheme", nor does it include a requirement to implement the scheme when it has been approved. I have therefore given further consideration to noise concerns in the light of this and the other representations I have received during the appeal, as well as from what I saw on my inspection of the site and its surroundings and as a result of the changes made by the new Policy GD1.
32. Residents' representations disclose wider concerns about noise than the Committee's focus on the potential for internally-generated noise from the lower ground floor. They indicate that the use of the site since the planning permission P/2008/1994 was implemented has from time to time resulted in neighbours being disturbed by noise. The most likely cause of the disturbance is the facility afforded by Condition 4 of the permission for the site to be used for up to 12 weddings or other outside events and up to 12 recitals or other indoor concerts, per year, coupled with the failure to comply with Condition 5, which requires a management plan to be approved in order to control the hours of operation and the playing of amplified music at weddings and outdoor events. Residents are concerned that the increase in capacity brought about by the addition of the lower ground floor to the Academy approved in 2008 will result in more noise being generated internally and externally that will affect their amenities.
33. The parties to the appeal have been consulted, on a without-prejudice basis, about the planning conditions that might be imposed in order to meet these concerns. I have taken all the responses into account. In essence, the appellants are looking for a wide-ranging review of the Academy's use of the whole of the site, whereas the applicant (whilst being co-operative) and the Department are focussing their attention on the change of use of the lower ground floor to which the development relates.
34. Article 23 of the Law restricts the planning conditions that may be imposed to those that fairly and reasonably relate to the development. That restriction in my opinion does not exclude consideration of conditions that would fairly and reasonably relate to the applicant's description of the development as combining the use of the lower ground floor with the use of the upper floors to create one cohesive music school extending throughout the building. The conditions can therefore include measures relating to noise that range beyond the lower ground floor if they fairly and reasonably relate to this description, but wider-ranging conditions are excluded.
35. The principal difference between the former Policy GD1 and the new Policy GD1 as regards noise affecting residential amenities is the introduction of a provision that "All development proposals must be considered in relation to

their potential health, wellbeing and wider amenity impacts". The introduction of the terms "potential" and "wellbeing" suggests to me that the new policy is intended to be more protective than its predecessor, and I have therefore applied this reasoning to the development. Nevertheless, it would be unreasonable to withhold planning permission for the development if it is possible to satisfy the new GD1 tests by imposing planning conditions relating to noise that will be effective in protecting neighbours' wellbeing and ensuring that their amenities are not unreasonably harmed by noise or potential noise. The conditions I have recommended below will achieve these objectives.

Inspector's recommendations

36. I recommend that the appeal is allowed and that the planning permission P/2021/0772 dated 21/10/2021 for the change of use of the lower ground floor at Chateau Vermont, Le Mont Sohier, St. Saviour, JE2 7HA from a gym/wellness centre to additional music school spaces to create one cohesive music school, Jersey Academy of Music, is varied by deleting Condition 1 and imposing the following new additional conditions: -
- 1 The change of use shall not take place until a scheme of acoustic insulation to protect adjoining residential development from noise emanating from the lower ground floor has been submitted to and approved in writing by the Chief Officer responsible for planning. All works which form part of the scheme shall be completed in accordance with the approved details before the lower ground floor is occupied for the approved use and shall be retained thereafter.
 - 2 The change of use shall not take place until a management plan relating to the use of the lower ground floor both on its own and as part of one cohesive music school has been submitted to and approved in writing by the Chief Officer responsible for planning. The measures which shall be contained in the management plan shall include restrictions on the hours of use and controls over the use of sound amplification equipment. The management plan shall be implemented as approved at all times thereafter.
 - 3 The restriction imposed by Condition 4 of planning permission P/2008/1994 (which states that "there shall be no more than 12 weddings or other outside events in any 12 month rolling period and there shall be no more than 12 recitals or other indoor concerts in any 12 month rolling period") shall in addition apply to the use of the lower ground floor either on its own or as part of one cohesive music school.
37. The reason for the variations is the protection of neighbours' amenities in accordance with the provisions of Policy GD1 of the Bridging Island Plan of March 2022.

Dated 20 May 2022

D.A.Hainsworth
Inspector