

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

Appeal under Article 108 (2) (a) against a decision 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: Mr David Baker

Planning Permission Reference Number: RP/2021/0193

Decision notice date: 2 June 2021

Location: Blue Fountain, La Route de la Pulente, St. Brelade, JE3 8HG

Description of Development: Revised Plans to P/2010/1569 (Change of use from restaurant to domestic dwelling. Construct first floor extension with balcony): Construct mono-pitched roof to East elevation. Various external and internal alterations.

Appeal Procedure and Date: Hearing 12 October 2021

Site Visit procedure and Date: Accompanied, 11 October 2021

Date of Report: 9 December 2021

Introduction

1. This is a third-party appeal by Mr David Baker against a decision to grant planning permission for works at the property known as Blue Fountain. Permission for the current scheme was granted by the Infrastructure, Housing and Environment Department (“the Department”) using delegated powers on 2 June, 2021.
2. A summary of the cases presented by the appellant, the applicant, and the Department are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

The appeal site and proposed development

3. The appeal site is one of a cluster of buildings located adjacent to La Route de la Pulente in St Brelade, within the Coastal National Park. The appeal property currently comprises a two-storey building with a shallow pitched roof. It has a small balcony at first floor level; a single-storey glass conservatory affixed to the front (western) elevation; and a small single-storey extension to the side (northern) elevation. An Abreuvoir, which is identified as a Listed building, sits between the building and the road.
4. The property was previously used as a restaurant. It benefits from an earlier permission (P/2010/1569), which granted a change in use to a domestic dwelling. That permission also included various building works, including construction of a first-floor extension with balcony.

5. The current application seeks to make changes to the previously consented scheme. These changes include switching the main living space to the first floor and bedrooms to the ground floor; an increase in the height of the main ridge of the roof; the introduction of a gable to the western elevation; removal of the consented extension to the north-east to be replaced by an extension to the north elevation, which would have a hipped roof; and removal of the glass conservatory.

Case for the appellants

6. The appellant has raised four main grounds of appeal. Firstly, he considers that the previous application has lapsed. Secondly, he considers that the proposal would cause harm to the Coastal National Park, contrary to the requirements of Policy NE6 of the Island plan. Thirdly, he considers that the proposal would cause harm to residential amenity and landscape character, contrary to the requirements of Policies GD1 (part 3) and GD7 (parts 1 and 2) of the Island Plan. Fourthly, the appellant considers that the Department made its decision based on insufficient information and detail.
7. The appellant has also identified the presence of a covenant, which he considers would prevent implementation of the proposals.

Case for the Department

8. The Department accepts that the work consented under the previous application has not been completed. Nevertheless, it is content that work has commenced and hence the permission remains extant.
9. The proposed works are wholly related to the extension and alteration of the building and are not considered to significantly increase the scale of the building. Consequently, the Department considers the proposals meet the requirements of Policy NE6 in that they can be accommodated without harm to landscape character of the National Park.
10. The Department considers the proposed design to be acceptable. In addition, it is considered that the proposal would not result in unreasonable harm to neighbouring properties.

Case for the Applicant

11. The existing permission is extant. The revised design has pulled the proposed extension back from the eastern boundary. The approved flat roof is proposed to be replaced by a continuation of the pitched roof, to reduce shadowing to the neighbouring La Fontaine and the hipped end aims to reduce impact on La Fontaine. Windows have also been removed from the north elevation, to respect privacy.
12. The revised application would reduce the footprint of the building by not replacing the conservatory on the west elevation. It has looked to rebuild the southern gable and east wing reducing their footprint in the process.
13. In addition, the presence of the covenant would mean that a further revised application would need to be submitted.

Consultations

14. In its initial response of 29 March 2021, **IHE Drainage** objected to the proposal on the basis that a yard gully had been connected to the foul drainage system contrary to Article 16(3) of the Drainage (Jersey) Law 2005. Following receipt of further information, this objection was withdrawn on 4 May 2021.
15. The response dated 13 April 2021 from the **Historic Environment Team (HET)** requested more information about the design of the balcony and whether there were other proposed improvements in the context of the Abreuvoir, which would help to offset any likely impacts. Following receipt of further details, HET confirmed that it did not object to the proposals (letter dated 14 May 2021).
16. In its response of 5 May 2021, the **Natural Environment Team** identified the potential for the site to support protected species and requested that an informative noting this should be applied to any permission that were granted.
17. The **Infrastructure, Housing and Environment - Transport Team** objected to the proposals on the basis of inadequate visibility for the vehicle access to the site (19 April 2021). However, in reaching that view, the Department acknowledges that the current proposal has the same visibility as that which was consented as part of the extant permission.

Representations

18. Two representations were received, both of which were submitted by the appellant and raise similar issues to those stated in his grounds of appeal.

Inspector's assessment and conclusions

19. Article 19 of the Planning and Building (Jersey) Law 2002 states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Planning permission may also be granted for proposals that are inconsistent with the Island Plan, if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.
20. The current Island Plan is the Jersey Island Plan Adopted 2011 (Revised 2014). Having regard to the policies within that plan and the grounds for appeal, I conclude that the determining issues in this appeal are: (a) the effects of the proposal on the Coastal National Park; (b) the effects of the proposal on the amenity of the neighbouring property to the north (La Fontaine); (c) the effects of the proposal on the Listed building; and (d) the acceptability of the proposed vehicle access.
21. In addition, the appellant's grounds of appeal refer to two procedural matters. I consider these first, before turning to the planning merits of the case. These procedural matters concern the status of the previous permission (P/2010/1569); and the adequacy of the information provided.

Status of previous application

22. The appellant is of the view that the previous permission for the appeal site had lapsed. In support of this position, he has provided a copy of an email sent from the Regulation team of the Growth, Housing and Environment Department, dated 28 January 2021, which clearly states that the permission had expired on 3 April 2016. He also refers to an earlier email exchange with the Department (March, 2018), which stated that the Department “had no record of a Building Control Application having been made which would be required for works to commence.”
23. The Department considers that works have commenced on the site, through implementation of the approved vehicle access. In support of this position, it has referred to an email dated 4 April 2016, which was sent from a member of the Department to the applicant, which states that some demolition work has commenced at the site and that this is sufficient to keep the planning permission alive.
24. During the hearing there was some discussion about the nature and extent of works that would be necessary to qualify as ‘commencement of development’; whether demolition counted as development; and whether there were time-limits for completion of works, once started. The Department referred to the definition of commencement of development contained within “Supplementary Planning Guidance: Policy Note Time limited planning permission” (January 2017) (SPG policy note) and the parties also referred to Article 26 of the Planning and Building (Jersey) Law 2002 (as amended).
25. Having reviewed these documents, I am content that demolition to enable construction of a new vehicle access falls within both the definition of commencement of development as set out in the SPG policy note and ‘develop’ as set out in the Planning and Building (Jersey) Law 2002 (as amended). I accept that it is desirable that development, once commenced, should be completed expediently. S26 of the Planning and Building (Jersey) Law 2002 provides a mechanism for this to be achieved through serving a notice. However, there is no evidence that such a notice has been served in this case.
26. Based on the email evidence provided, I am content that the previous permission is extant and hence the current application requires to be considered in the context of the works consented by that extant permission.
27. I understand the appellant’s frustration concerning the difficulties he experienced in gaining a consistent and factually correct response from the Department concerning the status of the planning permission at this site. In addition, it appears that the Department may have had to source a copy of its own email confirming the status of the application from the applicant, rather than from its own records. This situation is highly regrettable, particularly as it could have led to the appellant being time-barred from participating in the decision-making process. Nevertheless, these are procedural issues for the Department to address.

Details submitted with application

28. The appellant has also questioned whether the level of detail submitted with the planning application was sufficient for decision making and whether it meets the Department’s published minimum standards for such applications.

29. At the hearing, the Department explained that it was content that it had sufficient information on which to reach a conclusion and was also able to draw on material supplied in support of the extant planning application.
30. The submitted material includes scale drawings, which allow for determination of relevant dimensions, areas and heights. There is evidence that the Department sought and obtained additional information in relation to the proposed design and finish of the balcony, prior to reaching a decision. I am therefore content that the Department had the necessary information to reach an informed conclusion.

Effects of the proposal on the Coastal National Park

31. Policy NE6 of the Jersey Island Plan, provides protection for the Coastal National Park. It sets “the strongest presumption against all forms of development.” It also sets out the limited circumstances when development may be allowed.
32. The extension of an existing dwelling is one of the exceptions allowed for under the policy, but only where:
 - a. it remains subservient to the existing building in terms of design and scale;
 - b. it is designed appropriately relative to existing buildings and its context;
 - c. having regard to its planning history, it does not disproportionately increase the size of the dwelling in terms of any of its gross floorspace, building footprint or visual impact;
 - d. it does not facilitate significant increased occupancy; and
 - e. it does not harm landscape character.”
33. In assessing the acceptability of any proposals, the Island Plan stresses the importance of considering the capacity of the site and landscape to accommodate the proposed change.
34. During my site inspection, I saw that the proposal site sits within an existing grouping of buildings used for domestic and commercial use. These buildings vary in height, architectural style, materials and finishes. That is, there is no single, clearly identifiable style for the buildings in this area. In addition, whilst the dwelling is situated adjacent to a road, it is viewed against a backdrop of a high cliff, which itself supports other buildings of varying styles.
35. The ridge height of the appealed proposal would be higher than both the existing ridge height and that within the extant permission. However, given the overall height of the building, and its context, viewed against a backdrop of the dwellings on the cliffs just to the rear (east) of the appeal site, I do not consider that this increase would appear significant or out of context with either the host building or its surroundings.
36. The proposed design would introduce some new features to the building, including a gable to the front (western) elevation and a hipped roof to the north-east extension. During my site inspection I saw other examples of gables facing La Route de la Pulenta, including in the property immediately to the north (La Fontaine). I also saw examples of hipped roofs. I find that the proposed introduced features would appear a harmonious addition to the host building. They would not dominate the building, or appear out of character with either the host structure or the surroundings.
37. I am not persuaded by the appellant’s argument that the proposed revisions would substantially increase the building mass and hence its visual impact. I find that the

proposed alterations would act to consolidate the existing building through removal of the front conservatory to create a building which appears more cohesive, without appearing substantially larger. The removal of the conservatory also means that there would be a small reduction in the overall footprint of the building compared to the extant permission.

38. My detailed comments about the effect of the proposal on the listed Abreuvoir are set out below. Subject to those detailed comments, I am content that the proposed extensions would remain subservient to the existing building; that the proposals are of an appropriate design and would not disproportionately increase the size of the building; and would not facilitate significant increased occupancy. I am also satisfied that the proposals would not harm landscape character. Thus, I conclude that the proposals would satisfy the criteria for an extension within the Coastal National Park as set out in Policy NE6 of the Island Plan. I am also satisfied that they would meet the requirements of Policy GD7 Design Quality.

Effects of the proposal on neighbouring amenity

39. The closest neighbouring property is La Fontaine, which lies to the north of the property. There is a close relationship between the two properties as the private amenity space of La Fontaine lies immediately to the rear of the northern part of Blue Fountain.
40. Policy GD1 sets out general development considerations that all developments must meet. Part 3 of the policy permits development that “does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents.” This includes “not unreasonably affecting the level of privacy to buildings and land that owners and occupiers might expect to enjoy” and “not unreasonably affect the level of light to buildings and land that owners and occupiers might expect to enjoy.”
41. The appellant is concerned that the current proposals would move the first-floor mass much closer to La Fontaine than the extant permission. He considers this change would appear intrusive and dominant and act to significantly reduce light into the garden and rooms of La Fontaine.
42. During my site inspection I saw that the appeal building already forms a substantial part of the western boundary of the external amenity area of La Fontaine. The eastern boundary is formed by the cliff face and the northern boundary by La Fontaine itself. This arrangement means that the external amenity space appears relatively enclosed by tall structures. Whilst the proposals would result in a small increase in the extent of the built area along the western boundary of the external amenity space, this would be situated further away from the boundary than that allowed for by the extant permission. Given the existing enclosed context of the external amenity space, I do not consider that the proposed change would result in an unreasonable effect on neighbouring amenity in relation to over-bearing.
43. I have considered the potential for over-looking of the amenity space from the velux windows, which are proposed in the northern extension. I am satisfied that if these were installed at the standard height (at least 1.7 metres above the finished floor level, measured to the lowest part of the frame), then casual overlooking of the external amenity areas of La Fontaine would be avoided. The Department confirmed that a condition to require this minimum height could be applied to any condition that was granted.

44. Both parties have provided estimates of the effect of the proposals on over-shadowing of La Fontaine. At the hearing, I established that some of the apparent differences between the predicted extent of shading result from the time of year and day when estimates have been made. In the absence of verified shadow predictions that set out how the proposed arrangements would differ from the consented arrangements at different points in the year, it is difficult to give particular weight to either set of the submitted shadow drawings.
45. The wording of Policy GD1 acknowledges that development results in changed relationships between buildings. Hence the test is not that development must avoid any impact on neighbouring properties, but that the development should not result in unreasonable effects on the levels of light or privacy that an owner or occupier might expect to enjoy. This may be different to the levels of light or privacy that an owner or occupier has previously enjoyed, or would wish to enjoy in the future.
46. The proposals would increase the height of the ridge and move this slightly further northwards. However, this roof would be hipped. The proposals would also remove the extension to the north-east, moving the building line back from the boundary with the amenity area of La Fontaine. Having considered these design elements, the views of the Department and the various drawings presented to me, I conclude that the proposals would result in some changes to the extent of shading, but these changes are not likely to result in unreasonable effects when assessed against the extant permission. In reaching this conclusion I have taken account of the fact that any effects would likely to be greatest during the winter months, when the elevation of the sun is lower; that the proposed northern extension has been drawn back from the common boundary, when compared with the extant permission; and that the proposed extension includes for a hipped roof.
47. In conclusion, I am content that the proposal would not result in unreasonable effects on neighbouring amenity in relation to over-bearing, loss of privacy or loss of light and hence would meet the requirements of Policy GD1.

Effects of the proposal on the Listed building

48. The Abreuvoir located on the western edge of the property is a Grade 2 Listed building. As such it receives protection through Policies, HE 1 and SP 4 of the Island Plan. 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.
49. During my site inspection I saw that the existing conservatory sits in close proximity to the Abreuvoir. The proposals would remove this structure, creating space around the Listed building, aiding its visibility. I note that HET has commented on the proposals. As a result of their initial comments, the appellant made modifications to the proposed design and materials of the balcony and that HET has confirmed that these changes have overcome the issues it had identified.
50. For the reasons set out above, I am content that the proposals would satisfy the requirements of Policies HE 1 and SP 4 of the Adopted Island Plan 2011 (Revised 2014).

Acceptability of the proposed vehicle access

51. The proposed vehicle access does not meet current standards. Nevertheless, I note that it is unchanged from that approved as part of the extant permission. The IHE Transport Team acknowledges this in its response. It also notes that there would be no material change in use of the access a result of the revised application. For these reasons, I see no compelling justification for refusing the application on the basis of the vehicle access.

Other matters

52. The appellant has highlighted that there is a Legal Covenant relating to the existing extension located to the north of Blue Fountain. There does not appear to be any dispute between parties about this covenant, or that it falls outside planning considerations for the site. However, I note that the covenant would prevent the implementation of the proposals as currently submitted.

Conditions and informatives

53. The original permission was granted subject to three conditions. These relate to the requirement to submit a scheme of hard and soft landscaping for approval; the materials to be used for the balcony; and submission of details of external materials. I am satisfied that these conditions are proportionate and necessary to safeguard the setting of the Listed Abreuvoir and the landscape character of the National Park.
54. An informative relating to protected species was also appended to the permission. In the light of the response from the Natural Heritage Team, I agree this is necessary.
55. In addition, I consider that it would be necessary to add an additional condition, in respect of the height of the velux windows in the eastern face of the northern extension. This condition should specify that the windows should be installed to be at least 1.7 metres above the finished floor level, measured to the lowest part of the frame. The reason for this condition is to avoid over-looking of the neighbouring amenity space and to safeguard neighbouring privacy.

Conclusions

56. For the reasons set out above, I conclude that the proposal represents a revised application for a previously consented scheme. The revisions to the proposal satisfy the requirements set out in the Adopted Island Plan Adopted 2011 (Revised 2014), and in particular meet the requirements set out in Policies NE6 in respect of the Coastal National Park and GD1 General Development Considerations and GD7 in relation to effects on neighbouring amenity. They also meet the requirements set out in Policy HE 1 in respect of the Listed Aubreuvoir.

Recommendations

57. I recommend that the Minister should dismiss the appeal and that the revised Planning Permission be confirmed. This should be accompanied by the three conditions and informative appended to that permission, and a new, fourth condition, relating to the location of the proposed velux windows. Suggested wording for this is appended to this report.

Sue Bell

Inspector 9/12/2021

Conditions

1. Prior to commencement of the development hereby approved, details in respect of hard and soft landscaping treatment to the South of the approved dwelling 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 and maintained as such thereafter.

Reason: These details are not included in the application and are required to be submitted and agreed by the Department of the Environment to ensure that special regard is paid to the interests of protecting the architectural and historical interest, character and integrity to the setting of the Abreuvoir, in accordance with Policies SP4 and HE1 of the Adopted Island Plan 2011 (Revised 2014).

2. For the avoidance of doubt, the balcony balustrade shall be constructed of galvanised metal work, as illustrated on Drawing 10, and shall not be formed from glass panels.

Reason: This condition is necessary as both a glazed and metal balustrade are indicated on the submitted drawings. A metal balustrade will ensure a satisfactory appearance that will not detract from or affect the setting of the Listed Aberuevoir, to comply with Policy HE1 of the Adopted Island Plan 2011 (Revised 2014).

3. Prior to commencement of the development hereby approved, details of the external materials 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.

Reason: To promote good design and to safeguard the character and appearance of the existing building and surrounding area, in accordance with Policies GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).

4. The velux windows shown on the Drawings must be installed to be at least 1.7 metres above the finished floor level, measured to the lowest part of the frame.
5. Reason: To safeguard privacy of the neighbouring property to the north-east.

Informative:

The applicant's attention is drawn to the fact that the site has been identified as having the possible presence of protected wildlife species. It is the responsibility of the applicant to inform all site workers of the possibility of protected species on site and the implications under the Conservation of Wildlife Law (2000) and you are advised that it is your duty under the Law to stop work and notify Natural Environment on +44 (0)1534 441600 immediately should any species be found.

Drawings

Location Plan
4b Floor Plans and Elevations
5a Site Plan, Elevation and Section
10 Proposed Balcony Detail