

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 Marcus Stone

Planning Permission Reference Number: P/2020/1741

Decision notice date: 24 June 2021

Location: Portelet Bay Café, La Rue Voisin, St Brelade

Description of Development: Stabilise the cliff-face to North of site. Construct terrace to North elevation. Re-advertised: amended plans received. Alterations to application site boundary. Additional supporting documents received (including engineering details). Changes to the design of the terrace structure.

Appeal Procedure and Date: Hearing, 13 October 2021

Site Visit procedure and Date: Accompanied, 13 October 2021; Unaccompanied, 14 October 2021

Date of Report: 10 January 2022

Preliminary matter

1. The applicant's agent and the Infrastructure, Housing and Environment Department ('the Department') have questioned the validity of the appeal, suggesting that the appellant does not meet the definition of a third party within the terms of the Planning and Building (Jersey) Law 2002 as amended.
2. The Judicial Greffe received a completed application form seeking an appeal of the decision, within the required timescales. The Greffe undertook some verification checks and accepted the appeal and appointed me, as Inspector, to consider the appeal. As such, I am required to consider the appeal, in line with the requirements of the Planning and Building (Jersey) Law 2002 as amended.
3. The grounds of appeal raise issues raise legitimate planning issues, which I have considered below. I sought further written submissions from each party concerning their positions in relation to the status of the appellant and whether he would meet the definition of a third party.
4. The arguments for challenging the validity of the appeal appear to me to be based in the way in which the distance between the appeal site and the appellant's property should be measured; and in how an individual's interest in land should be defined. I consider that some of these matters are related to property law and hence fall beyond the scope of a planning appeal. Consequently, this report considers only

the planning merits of the appeal. A summary of parties' main points in relation to the validity of the appeal are addressed in a supplemental report.

Introduction

5. This is a third party appeal by Mr Marcus Stone against a decision to grant planning permission for works at the property known as Portelet Bay Cafe. Permission for the current scheme was granted by the Planning Committee on 24 June 2021.
6. A summary of the cases presented by the appellant, the applicant, and the Department in relation to the planning merits of the appeal 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

7. The proposals relate to work in and around Portelet Bay Café, which is located towards the rear of Portelet Bay Beach. There is no vehicle access to the café, which is accessed either directly from the beach or from a flight of steps that provide access to the beach from Portelet Lane, close to its junction with La Rue Voisin, via the Portelet Bay Apartments. Supplies are brought to the café by way of an informal path, which runs roughly parallel to, but is segregated from these steps. Access to the beach can also be obtained via steps from La Route de Noirmont at the eastern end of the bay.
8. The café itself is located directly adjacent to the cliff, a few metres above the level of the beach. The base appears to be supported by a retaining concrete and stone wall. A small area of balcony projects forward from the main face of the building at its western end. This is supported by wooden posts, which are supported by the rocky outcrops on the beach.
9. The building is single storey and has internal seating and a kitchen. There is also a small external seating area at the eastern end, which is located between the main entrance door and access from the steps. An area of balcony extends along part of the western face of the building and round the western side, which is for use of the café proprietors.
10. There are two distinct elements to the proposed works; cliff stabilisation and creation of an external seating area.
11. The applicant reports that the stabilisation works are required to address periodic falls of soil and rocks, which have previously fallen against the rear of the café. The proposed approach would involve removing a section of earth behind the café, to re-profile the slope to a shallower gradient. Soil nails and mesh would be used to secure the face of the bank. A reinforced concrete retaining wall would be constructed at the base of the slope behind the building.
12. The second element seeks permission to create an external seating terrace associated with the cliff stabilisation works. This would be located between the building and the cliff. The floor level of the deck would be below the ridge height of the existing building. It would be enclosed by a timber guard rail. The deck area would be accessed via a path which connects to the existing stairs. The deck would also support a small structure, which would encase the existing kitchen flues and provide storage for fridges and a dumb waiter connected to the kitchens.

Case for the appellant

13. The appellant considers that the application should have been refused as it is not only located within the Coastal National Park, but also rests in the cliff face itself. He does not consider that the planning committee properly considered the merits of the objectors' arguments, in the context of both the Development Plan and other material considerations.
14. In particular, the planning committee either failed to apply or give consideration to Policy GD 1 of the Island Plan in safeguarding the Island's natural and historic environment and failed to correctly apply Policy NE 6 in relation to the National Park. The committee was also wrong to conclude that the construction of a terrace was within the exceptions permitted by Policy NE 6.
15. In addition, the planning committee also failed to consider that the Department had relied on the applicant's submission without any independent verification.
16. In relation to planning considerations, the planning committee failed to consider:
 - the implications of the intensification of use within the Coastal National Park;
 - the increased visibility of the proposal;
 - the implications for the topography of this part of the Coastal National Park;
 - the health and safety uncertainties of the proposals;
 - the adequacy of information in relation to effects on landscape character or health and safety of people using the appeal site; and
 - the effects of parking.
17. In addition, the committee failed to adequately ensure that protected species and their habitats are protected and placed an over-reliance on conceptual drawings rather than detailed engineering drawings.
18. The appellant also considers that the planning committee was wrong to ignore Article 8 of the European Convention of Human Rights 2000 (respect for family life). The proposal would result in unacceptable disturbance to residents of the Portelet Bay Apartments.

Case for the Department (and the Planning Committee)

19. The Planning Committee approved the application following the advice contained in the officer report.
20. The Department considers that the proposals are compliant with Policy NE 6 and the Island Plan as a whole. As such, no justification for a departure from either the policy or the Plan as a whole is required.
21. In relation to Policy GD 1, the relevant paragraphs are paragraph 2, which refers to Policies SP 4 and NE 6 in relation to protection of natural features and the Coastal National Park; paragraph 3, which relates to the impact on neighbouring properties; paragraph 4 which relates to policy SP 5 and economic growth; and paragraph 5 which relates to traffic and highways issues.
22. It is not considered that the proposal would give rise to a level of noise, disturbance or other impact on neighbouring properties that would be considered unreasonable. This has been assessed taking account of the distance to the nearest residential

properties and against a background of an existing restaurant facility on the site and existing public access to the beach for a variety of leisure purposes, which may generate noise.

23. The Department considers that the proposals would allow for a relocation of existing seating. It does not consider that the proposals represent significant intensification in the use of the site and hence would not lead to a significant influx of additional customers, resulting in a large volume of additional traffic.
24. Further information was sought and provided in respect of protected species. A condition to safeguard species was appended to the permission.
25. The information about the need for stabilisation of the cliff has been prepared by an appropriately qualified specialist and demonstrates that work is necessary to stabilise the cliff face.

Case for the Applicant

26. There was ample information within the documents to enable the Planning Committee to base its decision upon fact and to conclude that the application fell within the exceptions in Policy NE 6 “and that approval was therefore consistent with the Island Plan and, by extension, the Law”.
27. The applicant has gone above and beyond the statutory requirements to provide detailed information, that would not typically be provided until after planning permission was granted. Any health and safety concerns would be dealt with in conjunction with building control and are not a matter for planning approval.
28. There is no vehicle access to the café, which is its USP. The applicant promotes modes of transport other than the car. The proposed plans would reduce the number of deliveries owing to increased storage onsite, which would reduce road traffic and fuel. There is no disruption to Portelet Bay Apartments as there is no public vehicular access through the estate.
29. The proposals would not lead to intensification as the size of the kitchen is not being increased.
30. The application would not have the effect of increasing noise, disturbance or trip generation as it does not seek to materially increase the capacity of the café. Much of the structure would be hidden.

Consultations

31. The **Department of Health, Environmental Health Team** confirmed that it did not have any objections to the proposal (2 March 2021). It also referred the applicant to guidance to reduce noise, dust and vibration during construction.
32. The **Infrastructure, Housing and Environment, Land Resource Management Team** issued three responses. Its first response (10 April 2021), requested additional reptile surveys; information in respect of protected species; details about the extent of works; and landscaping proposals. The second response (25 May 2021), accepted the findings of the reptile survey, but noted that further surveys may be required if more than specified numbers of particular species were encountered on site. The response also sought additional information in respect of mitigation measures to be

included within a Species Protection Plan, which was to be submitted to and approved by them prior to a decision being reached. The third response (24 June 2021) approved the Species Protection and Ecological Enhancement Plan and included wording for a condition to be appended to any permission that was granted. This requires the measures set out in the Species Protection and Ecological Enhancement Plan to be implemented.

Representations

33. The Department's report states that it received 147 pieces of correspondence from 127 individuals. However, the planning website includes 163 documents from 144 individuals. Objections were received from 37 individuals. This includes eight responses from the appellant and three from MS Planning on behalf of Portelet Bay Management Limited. Issues raised in representations relate to:
- The location within the Coastal National Park and the visual impact
 - Intensification of use and effects on noise and disturbance for neighbours
 - Effects of wood smoke from ovens
 - Effect on parking, failure to provide parking, and effects of this
 - Lack of detailed information in relation to engineering and ecology
 - Proposal would be harmful to wildlife and biodiversity
 - Public safety
 - Lack of consultation with nearby residents.
34. The majority of the responses express support for the application. Several of the representations express their admiration for the work of the café in providing services and improvements to the area. They refer to enjoying the facilities provided by the café and the way in which the proposals would add to these facilities. They also identify and support the need to stabilise the cliff.

Inspector's assessment and conclusions

35. Article 19 of the Planning and Building (Jersey) Law 2002 (the 'law') 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."
36. 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 effect of the proposals on the Coastal National Park;
 - (b) the effect of the proposals on the natural environment, including wildlife and protected species;
 - (c) the effect of the proposals on neighbouring amenity;
 - (d) the effect of the proposals on traffic and parking;
 - (e) adequacy and detail of information submitted in support of the stabilisation works.

Effect of the proposals on the Coastal National Park

37. Policy NE 6 sets out the purpose of the Coastal National Park and provides for its protection. It states that the Coastal National Park "will be given the highest level

of protection from development and this will normally be given priority over all other planning considerations.” The policy continues by stating again that: “In this area there will be the strongest presumption against all forms of development”. (Note, the appellant’s initial grounds of appeal refer to an earlier version of this policy, which omitted the word ‘normally’ from the above sentence).

38. Whilst establishing this strong presumption against development, the policy also identifies ten categories of development where exceptions to this presumption may be permissible, provided this would not result in harm to landscape character. The preamble to the policy explains that these provisions for development have been made in recognition that the National Park is a living landscape and that there is a “need to provide for the reasonable expectation of residents to improve their homes and businesses to undertake economic activity and provide employment, having regard to the capacity of the landscape to accommodate development without harm.”
39. Part 3 of the policy provides exemptions for the extension and/or intensification of use of existing employment buildings. These may be permissible where:
 - “a. the requirement for a coastal or countryside location is adequately justified;
 - b. an extension remains subservient, well-related to the existing building in design and scale;
 - c. an intensification does not create undue noise, disturbance or a significant increase in travel and trip generation; and
 - d. it does not cause harm to landscape value.”
40. Part 8 of the policy allows exemptions for new cultural and tourism development, but only where it:
 - “a. supports the purposes of the Coastal National Park;
 - b. is appropriate relative to existing buildings and its landscape context; and
 - c. does not harm landscape character.”
41. As the proposal would allow the extension of an existing employment building, which is linked to tourism, I consider both parts of the policy to be relevant.
42. Turning first to the requirements of Part 3. I understand that the building was first consented in 1977 and that its use as a café or restaurant is long-established. It seems self-evident that a beach café business must be located at a beach and hence relocation of the business to a non-coastal location is not feasible or appropriate.
43. The applicant has provided photographic evidence of soil and rockfalls that have occurred at the rear of the existing café. I have considered the evidence contained within the reports provided by both the applicant’s and the appellant’s structural engineering specialists. During my site inspection I saw areas of bare soil and the friable nature of the surface of the slopes immediately behind and above the café. Based on this body of evidence, I am satisfied that there are areas of instability within the cliff face and that action is required to stabilise this and to safeguard the existing café.
44. Given the evidence of the instability of the cliff face and the nature of the employment use, which relies on a coastal location, I am satisfied that the requirement for a coastal or countryside location is adequately justified in this instance.

45. During my site inspection I saw that the café is in an area where the cliff edge is slightly recessed. This acts to reduce the visibility of the café in views east and west along the beach. The proposed deck would be located to the rear of the existing café and would sit against the cliff face. It would sit partially over the footprint of the existing building and would be finished with timber and materials consistent with the existing structure. The floor level of the proposed terrace would sit below the level of the ridge of the existing building (although I accept that the fencing around the edge of the proposed terrace would protrude above ridge height). Given the set-back position of the café against the cliff and the consequent limited visibility of the rear of the café, I conclude that the proposed structure would be largely obscured, particularly when unoccupied. Considering its position, area, and height relative to the host building, I conclude that it would appear subservient and well related to the existing building in design and scale, in line with the requirements of criterion b of part 3 of Policy NE 6.
46. Criterion c of part 3 of Policy NE 6 is engaged where a proposal represents an intensification of use. Parties disagree as to whether the proposals represent an intensification of use and this issue was explored at more detail during the hearing.
47. The applicant asserts that the numbers to be accommodated would not increase significantly as part of the proposals. He considers that the kitchen is operating at full capacity and could not accommodate additional covers. However, at the hearing, the applicant was rather hazy about the number of covers that could currently be accommodated and the number of external tables he hoped to provide. He stated that the intention would be to relocate some of the existing external tables from their current location adjacent to the main entrance door and toilet to the proposed deck, but was not willing to be precise about numbers. He stated that the maximum numbers of tables that could be accommodated would be dictated by fire regulations, but was unable to provide a figure for what that number was likely to be.
48. The appellant has provided various estimates of the numbers of tables and customers that could be physically accommodated. He suggests that the seating capacity of the external terrace would increase from 24 to at least 48. In his view, there would be nothing to prevent the new terrace being used in addition to the existing external seating area, thus further increasing capacity, so there could be a trebling or fourfold increase in provision of external seating. He considers that the capacity of the kitchens could be increased through a change in equipment, or changes in processes or menus. He notes that the applicant has not offered to be bound by conditions that would restrict capacity and that there are no conditions restricting noise and music or opening hours.
49. The Department confirmed that it had made its assessment based on area and not seating capacity.
50. Overall, I find the failure on the part of the applicant to provide a clear answer about the predicted change in seating arrangements to be unhelpful and puzzling. Notwithstanding the applicant's statement that the kitchen is currently operating at full capacity, the proposals would plainly provide for an increase in the number of patrons able to be seated outside at one time. These will either be patrons who would otherwise have sat inside, or patrons who would have used the takeaway facilities, or represent new customers. There is no suggestion that tables would be removed from inside the building. Thus, on balance, I accept the appellant's view that the proposal would result in some intensification of use of the café. As such,

criterion c of Part 3 of Policy NE 6 is engaged. In order to satisfy this criterion, it is necessary that the intensification would not create “undue noise, disturbance or a significant increase in travel and trip generation”. I consider these aspects in more detail, later in my report.

51. In determining the acceptability of any proposals for development within the Coastal National Park, the key test is the ability for that development to be accommodated without harm to landscape character.
52. As noted above, during my site inspections, I saw that the appeal site is tucked into a small recess in the cliff face, located roughly half way along the bay. The bay is protected at either end by steep ground and a change in the direction of coastline. The beach itself is characterised by steep cliffs to the rear, which are near vertical in places. This arrangement means that views into and along the bay are limited to the area between each point and from out to sea. I saw that there is limited visibility of the appeal site when accessing the beach from the steps at the eastern end of the bay and reduced visibility when approaching the site from the west. The steps down the cliff which reach the beach adjacent to the east side of the café do not follow a straight course and this, combined with the existing vegetation, means that the roof of the café is not visible until close to the building.
53. When approaching the beach from the eastern end, the dominant views are of the wide panorama of sea, with Janvrin’s Tomb in the foreground. It is possible to see a collection of houses and buildings towards the west end of the bay, but I was unable to see the café itself until I had walked part-way along the beach. I did not see it in the panorama of views from either the cliff top or when descending the steps at the eastern end of the bay.
54. I accept that the proposed cliff stabilisation would cause an alteration to the visual appearance of the cliff in the immediate vicinity of the proposal, through alteration of the existing gradient and removal of vegetation. I conclude that the proposed change in slope would not result in a gradient that it is out of character with the remainder of the cliffs. Any visual effects associated with vegetation loss or soil nailing would be limited in extent and would decrease over time as vegetation colonises the stabilised soil. These changes would also only be visible over a very limited area.
55. Notwithstanding the limited and short-term visual effects of the cliff stabilisation works, I do not consider that the nature or extent of these would be sufficient to alter the essential landscape character. That is, the area would still retain the character of a coastal cliff providing the backdrop to the beach.
56. As noted above, the proposed deck would sit to the rear of the existing building and be below ridge height. Nevertheless, I accept that it would be possible to see people sitting and moving around on the terrace. I also note the appellant’s concerns about the visibility of furniture and sunshades. For the reasons identified above, the café itself is only visible over a short area of the beach and the addition of the terrace would not add significantly to the area over which it would be visible.
57. In addition, the effect of the proposals needs to be considered within its particular context. The café is an existing and well-established business, which already provides outdoor seating, albeit at a lower height above the beach. In addition to serving customers ‘in house’, it provides take away facilities for those using the beach.

58. The proposed terrace would be located close to the existing steps used to access the beach. This generates an established backdrop of people-movement up and down the cliff face. The beach itself is a popular location, attracting people who use it for a variety of leisure purposes, some of whom may bring temporary shelters, sunshades and sporting equipment with them. During my unaccompanied site inspection, which took place on an afternoon of good weather, mid-week and during term time, I observed several other users of the beach, even though the café had closed for the season.
59. Given this existing level and pattern of use of the beach and café, I conclude that the increase in external seating at the café would not result in harm to the landscape character of the Coastal National Park.
60. Part 8a of Policy NE 6 requires that tourism development should support the purposes of the Coastal National Park. These are defined in the policy as: “the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the National Park” and “to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.”
61. Paragraph 2.96 of the Island Plan recognises that there can be tension between these two purposes. It advises that to manage these tensions, new or extended tourism development should be sensitive and proportional to the fragility and vulnerability of its landscape setting.
62. The Department has also directed me to Policy EVE 3 - Tourism support facilities in the countryside. This provides support for tourism or support facilities, including public conveniences and cafes, where the proposals promote informal recreation appropriate to the sensitivity of the countryside. The policy requires that where proposals are for developments within the Coastal National Park, they should accord with the provisions of Policy NE 6.
63. I conclude that the café contributes to the support facilities to enable public enjoyment of the special qualities of the National Park. In addition to the beach, the applicant has identified the presence of Janvrin’s Tomb as a popular local tourist attraction. The roof top terrace would contribute to the external offering of the existing café. As set out above, it would be located mainly within the footprint of the existing building, be partially shielded by the existing building, and as a consequence would have limited visibility. I have concluded that it would not have an adverse effect on landscape character. As such, I also conclude that the proposed development would be sensitive and proportional to the fragility and vulnerability of its landscape setting.
64. Criteria b and c of Part 8 of the policy are similar to the requirements set out in criteria b and d of Part 3 of the policy and have already been addressed.
65. The appellant, in his grounds of appeal, has referred to rulings made by the Royal Court including the ‘Hobson’ case in terms of interpretation of Policy NE 6. In considering the implications of this ruling I am mindful that the wording of Policy NE 6 has changed from that considered by the Court, through the addition of the word ‘normally’ in terms of the priority given to this policy over other planning considerations. It also considered a proposal for residential development, rather than employment use, as is the case here.

66. In conclusion, there is no doubt that Policy NE 6 sets a very strong presumption against development, but as paragraph 2.60 of the Island Plan explains, “it is not an absolute moratorium against development within the Park.” The test is the effect of the development on the landscape character of the Coastal National Park. Subject to my comments on noise, disturbance and trip generation, which I consider below, I find that the proposals would satisfy the criteria set out in Parts 3 and 8 of Policy NE 6. That is, they would not cause harm to the landscape character and would satisfy the circumstances set out in Policy NE 6 for where an exception to the strong presumption against development would be acceptable.

Effect of the proposals on the natural environment, including wildlife and protected species

67. Policy SP 4 supported by Part 2 of Policy GD 1 provides protection for the natural and historic environment. Specifically, GD 1 requires that development should not “seriously harm the Island’s natural and historic environment in accord with Policy SP 4”. Part 2a seeks to ensure that development will not have an unreasonable impact on (amongst other items) the character of the coast and countryside; and biodiversity. Further guidance in respect to effects on the coast and countryside within the Coastal National Park is provided by Policy NE 6, which has been considered above.
68. The proposals have been subject to consultation with the Land Resource Management Team. Following their initial objection to the scheme, further survey information has been provided and a Species Protection and Ecological Enhancement Plan has been prepared.
69. The appellant has queried the adequacy of this plan, suggesting that it is based on incorrect assumptions in relation to access. Whilst I note his concerns about access, I have not given them any particular weight, as a grant of planning permission does not confer any rights of either ownership or access to a site. The Land Resource Management Team was sufficiently satisfied with the Species Protection and Ecological Enhancement Plan as to remove their objection, providing that the implementation of the plan was made a condition of any permission that was granted. I have not been provided with any evidence that the measures included within the plan are unsuitable to safeguard wildlife and protected species. Should the appeal be unsuccessful and the scheme proceed, it would be incumbent upon the applicant to ensure that he can meet all the conditions for implementation of the scheme.
70. At the hearing, the appellant raised a number of other concerns in relation to effects on wildlife, including effects on marine wildlife from boat trips; and the effects of vermin control measures on wildlife.
71. Whilst the applicant accepts that some of its customers arrive by boat, the application does not seek permission for works to the marine environment, nor does it include any aspects particularly targeted at boat visitors. The Land Resource Management Team has not suggested that this is a gap in the information provided. Therefore, I see no justification for requiring additional information about marine wildlife or allowing the appeal on these grounds.
72. Likewise, the Land Resource Management Team has not raised any concerns about effects on wildlife of any vermin control measures. Nor has it raised any concerns about the effects on wildlife of any lighting associated with the café.

73. For the reasons set out above, I am content that the proposals would satisfy the requirements of Policies SP 4 and GD 1 part 2 and would not seriously harm the Island's natural environment or have an unreasonable impact on biodiversity.

Effect of the proposals on neighbouring amenity

74. Policy GD 1 part 3 provides for the safeguarding of the amenity of neighbouring uses. It requires that development "does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents." This relates to the level of privacy and light that owners and occupiers might expect to enjoy. In addition, development should not adversely affect the health, safety and environment of users by virtue of emissions to air, land, buildings and water including light, noise vibration, dust, odour and fumes.
75. The Portelet Bay Apartments sit to the north of the proposed development and comprise some of the closest residential properties to the café. Given the topography, these apartments are at an elevated position in relation to the café. Whilst there is some dispute about the actual distances involved, the distance along the ground is at least 70m between the closest building and the café. Another residential property, Mudros, sits to the north-east of the appeal building.
76. Given the distances involved and relative positions of the buildings, I conclude that there is no scope for effects in terms of patrons of the café overlooking residents of any neighbouring property, or that the terrace would impact on light levels.
77. During my accompanied site inspection, I was invited to view the appeal site from the balcony of one of the Portelet Bay Apartments located above ground floor level. I found that I was not able to clearly distinguish the café from this balcony, nor was the café visible from the external areas around the apartments.
78. Based on the drawings provided by the applicant and my own observations, I conclude that any visibility of the terrace and furniture and its users from the Portelet Bay Apartments would be limited. Visibility would be restricted by both topography and presence of screening vegetation. Even so, the fact that a development is visible does not make it unacceptable, per se. The test set by Policy GD 1 is that a proposal should not result in unreasonable harm on neighbouring amenity. Given the distances involved; that any visual change would be at a lower height than the existing dwellings and form a small part of a wide and impressive panorama; and that these effects would be limited to those times when the café is open, I do not consider that any change would result in unreasonable harm to neighbouring uses. That is, any change would fall far short of the minimum threshold of harm set by Policy GD 1.
79. A degree of noise would be anticipated with the external tables, through people moving and talking. The proposed external terrace would be slightly closer to the neighbouring properties than the current external tables or the beach. However, the levels of noise need to be assessed against the existing background of noise generated by users of the beach and the existing external tables. The applicant has provided an acoustic report, which estimates that the proposals could result in an increase in noise of 1.5 dB(A) above that resulting from the same uses within just the beach area. The report's author considers that such an increase would be barely perceptible and of a low to negligible impact. I note that the report indicates that higher noise levels would be associated with parties or amplified music. Whilst it is accepted that each individual has a different tolerance to noise, given the existing

sources of noise, the marginal increase in noise as a result of the proposal and the distance between the proposed terrace and residential properties, I find that the proposals would not result in an unreasonable effect on neighbouring amenity as a result of noise. In reaching this conclusion, I have taken account of the fact that the Environmental Health Team has not objected to the proposals.

80. Concerns have also been expressed about the effects of wood smoke on residents of the apartments. The applicant has provided the results of a request to the Environmental Health Department concerning complaints in relation to the café over a five-year period prior to 2021. I note that there were five complaints, of which four related to issues of odour and smoke. The latest of these dated to 2018 and the Environmental Health Department has indicated that following investigation, none of the events were close to being considered a statutory nuisance. The appellant has suggested that residents have stopped reporting their concerns. Whether or not that is the case, I have been presented with no evidence that the proposals would result in any change to the existing situation. Given the distances involved and the fact that the Environmental Health Team has not objected to the proposals, I conclude that there would not be unreasonable effects on neighbouring amenity.
81. Two of the complaints documented by the Environmental Health Department referred to the presence of rats. As noted above, the Department has indicated that following investigation there was no statutory nuisance.
82. The appellant has suggested that the proposals would lead to effects on the privacy of residents of the apartments, owing to patrons using the steps adjacent to the café and passing close by their apartments on their way to Portelet Lane and La Rue Voisin. He has also suggested that this could represent a contravention of Article 8 of the European Convention of Human Rights 2000. This position appears to be based on the current experiences of some residents (although, I note that some residents of the apartments have expressed support for the proposals).
83. During the hearing I was provided with reports of noise and disturbance that some residents of the Portelet Bay Apartments have found to be disruptive and anti-social. Whilst any instances of anti-social behaviour are regrettable, I was not presented with any evidence that these previous experiences were linked specifically to patrons of the café rather than users of the beach. In addition, the applicant has provided a response from Jersey Police confirming that it has not received any complaints of unruly behaviour associated with the café over the five-year period prior to 2021. Nor am I persuaded that the proposals, to provide outdoor seating, would increase the risk of any repeat occurrences. Given the location of the apartments, close to a public beach, which has limited access points, some degree of people movement and associated noise and disturbance is to be expected. Hence, I am not persuaded that the proposals would result in any unreasonable effects on privacy.
84. In conclusion, I find that the proposals would not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents and hence would satisfy the requirements of Policy GD 1 part 3.

Effect of the proposals on traffic and parking

85. The appellant has raised concerns about the effect of the proposals on traffic and parking. In particular, he is concerned that existing difficulties with parking would be exacerbated as a consequence of the proposals. These difficulties include members of the public using the private parking associated with the Portelet Bay

Apartments; congestion on La Rue Voisin as a result of public parking; and use of the privately managed car parks at the eastern end of the bay, which are leased by Randalls Brewery for use of patrons of the Portelet Inn.

86. I concluded above, that on balance, I accept that the proposals would represent an intensification of use of the café, through providing additional external seating space. In line with the requirements of Policy NE 6 Part 3c, I am therefore required to consider whether the proposals would result in “a significant increase in travel and trip generation.” Paragraph 2.77 of the Island Plan provides further guidance on this point, noting that “Any proposal that would intensify an existing employment use will need to be assessed having regard to additional travel and traffic, at a strategic level, and noise and disturbance locally, particularly where the outcome could adversely affect the Park’s sense of wilderness, isolation and remoteness.”
87. There is no vehicle access to the café and there is no public car park for either the café or the beach itself. The beach is located outside the main population centres and so the majority of visitors will need to travel to use it and /or visit the café. There is a regular bus service to the eastern end of the beach. The café owners report that some visitors choose to arrive by bike and I note the measures taken by them to encourage access by active transport. I have also been informed that some users may arrive by boat. However, it is not disputed that visitors will also use cars to access the beach and/or café.
88. I acknowledge the existing difficulties that have been reported to me, which have arisen as a result of inconsiderate parking. However, I have been given no evidence of a direct link between the café users and those parking irresponsibly. In any case, it would be unreasonable to hold the café owners responsible for the behaviour of their patrons, in terms of their choice of mode of transport or behaviour when they park.
89. There does not appear to be any information about how many people use a car specifically for the purpose of visiting the café, or the proportion of café users that have arrived by car. It may be that people’s choice of beach is influenced by the presence of the café; but equally the lack of dedicated parking and the location of the café, on the beach, at the foot of a cliff, would act as a deterrent to casual visitors just seeking a café in an attractive location. In the absence of any empirical data at all, it is difficult to draw any robust conclusions about the existing effects of the café on traffic and parking and hence predict how and if this might change as a result of the proposals.
90. Notwithstanding the paucity of data that I have highlighted above, I find that the beach would be a popular location on days of good weather, even if the café were not present. The applicant reports that numbers visiting the café are directly linked to the weather. This suggests that the café is not the only reason for people to visit the beach. As noted above, the scale of potential increase in capacity at the café in terms of absolute numbers is small, particularly given that the external tables may provide for some customers who would otherwise have sat inside or taken food away to eat on the beach. Therefore, I conclude that users would mostly be drawn from people who would have visited the beach anyway. Hence, I do not consider that the proposals would result in a significant increase in the numbers of people who travel to the beach by car.
91. On balance, I consider that the proposals would not result in a significant increase in travel and trip generation at a strategic level. Nor, given the established level of

parking locally, would the proposals adversely affect the Park's sense of wilderness, isolation and remoteness.

Adequacy and detail of information submitted in support of the stabilisation works.

92. Whilst there is agreement between parties that the cliff requires stabilisation, there is some difference of opinion as to whether the approach proposed by the applicant's structural engineers is based on sufficient detailed knowledge in order to provide confidence that it would be effective and safe.
93. The appellant's engineering specialist considers that more detailed investigations are required to develop an appropriate stabilisation approach. In his view, safety is paramount and there may be a need to remove more material over a larger area than is currently proposed in order to achieve this. The extent of hard rock and existing drainage should be explored, and he has particular concerns about the stability of the mid-slope area.
94. It seems to me that the difference in views between the engineering specialists is primarily focused on the timing of the investigation works in relation to the granting of the planning permission. The applicant's specialist does not deny that further investigations are required, but considers that these should come after permission is granted. Based on the current information, the applicant's engineering specialist is content that the proposed approach would be feasible and effective, but may require modification following the results of more detailed testing.
95. I find that it is necessary to draw a distinction between the information required in order to determine the acceptability of a planning application and the information required prior to the detailed implementation of the stability works. For the purposes of the planning application, it is necessary for the decision-maker to have sufficient information to understand whether the proposed use is appropriate and satisfies the policy tests of the Island Plan in general and Policy NE 6 in particular. That is, they require an understanding of the area over which use/change may occur and the nature of those uses/changes in order to assess the effects of the proposal on the landscape of the Coastal National Park.
96. A grant of planning permission does not provide approval for any development at a site; it is limited to the scheme drawings subject to that approval. It may be that further detailed investigations would identify that the appellant's proposed approach is not feasible, or requires modification to cover a different area, create a different angle or slope or requires an alternative technique to soil nailing. In that event, the applicant would need to submit a new application to cover the modified proposals.
97. It is right and proper that any measures to stabilise the cliff should be effective, in the interests of safety. I understand that the safety aspects of any stabilisation works would be subject to consenting and approval through building control. It is these consenting processes that would consider whether the proposals would achieve the necessary levels of safety. This may well require additional, detailed, ground investigations, beyond that required for granting planning consent.
98. I am content that the information submitted as part of the application process is sufficient in order to allow a decision maker to consider its acceptability within the scope of the policy requirements of the Island Plan and for the Minister to reach a

decision on this matter. This conclusion does not preclude the need for further investigations to finalise a scheme that is acceptable for building control.

Other matters

99. The appellant has suggested that there is no public right of access along the steps to the beach that lead from the Portelet Bay Apartments. Whether or not that is the case, I do not consider that is an issue relevant to the determination of this appeal. As noted earlier, a grant of planning consent does not confer any rights of ownership or permission for access.
100. The appellant has indicated that in his view the application contains two separate elements: stabilisation of the cliff and creation of a roof terrace, and that had the application only related to the cliff stabilisation, his views may have been different. Be that as it may, the application before me is a single application, involving both elements and requires to be considered as such.
101. The appellant has also raised other points of concern in his grounds of appeal. These relate to the financial standing of the applicant; the level of pre-application consultation that may have taken place; and the planning status of the unpaved track used by the applicant to transport supplies to the café. I do not consider that these elements are relevant to the determination of the planning application. It is for the applicant to determine whether he has sufficient funds to commission the work. The Department has not made any suggestion that the statutory neighbour notification processes have not been followed. Nor has the Department indicated that the current track is unconsented or that any enforcement action has been commenced in relation to the track.

Conditions

102. At the hearing, I held a 'without prejudice' discussion about the conditions included on the Decision Notice and whether, in the event the appeal failed, additional conditions should be added to the Notice.
103. The Decision Notice included two scheme specific conditions, in addition to the two general conditions relating to the timescale for commencement of construction and adherence to the approved plans.
104. The applicant is seeking a variation to the general condition requiring development to commence within three years of the decision date. Given the length of time that has elapsed since the original decision was granted, he has suggested that this condition should be modified to relate to the date of the Minister's Decision on this appeal. I agree that it would be fair and appropriate to re-set the clock for the assessment of the three-year period to start from the date of the Minister's decision.
105. The first of the specific conditions relates to the information provided by the Natural Environment Team and requires the implementation of the measures set out in the approved Species Protection and Ecological Enhancement Plan. I accept that this condition would be necessary and proportionate in order to address requirements to safeguard biodiversity and protected species, in line with the policies of the Island Plan.

106. The second specific condition requires planting and landscaping works to be completed prior to first occupation of any element of the development. I am content that this condition is necessary and appropriate to maintain the amenity of the area.
107. There was discussion at the hearing about a condition to require approval of the external materials and finishes of the terrace (including the boundary fence) and the materials (including matting) used to stabilise the slope and also the proposed landscaping on the slope. I accept that the choice of materials, particularly those used on the slope would influence the acceptability of the finished design and hence they should be subject to prior approval. I therefore recommend that a condition, which requires that details of all materials and finishes should be submitted to and approved by the Department prior to works commencing, should be appended to any permission that is granted.
108. There was also discussion as to whether there is a need for a condition to limit the number of tables on the proposed terrace specifically, or on the external areas of the café more generally. The appellant also wished to see controls on the ability of the café owners to hold corporate events or play music. The appellant felt such measures would be helpful in controlling any intensification that may occur; the applicant was unwilling to have any restrictions imposed in relation to the arrangement of tables, as this would remove flexibility; and the Department indicated that the only reason for establishing such a condition would be in the interests of residential amenity.
109. I accept that there would be practical difficulties in enforcing a condition in relation to the number of tables. I also accept the Department's position, that the reason for establishing conditions in relation to numbers of tables or type of events would be to avoid adverse effects on neighbouring amenity in terms of noise or disturbance. For the reasons set out above, I do not consider there would be unreasonable adverse effects on neighbouring amenity as a result of the proposals and hence no condition is required.
110. The applicants have been in discussion with the Transport Team concerning the installation of cycle parking close to the public road. Whilst provision of these facilities would support those who choose to access the beach and/or café by bike, I do not consider that these facilities are necessary in order to make the proposal acceptable. Therefore, I do not consider that it is appropriate to require these either by condition or a planning obligation.

Conclusions

111. The proposal is for development within the Coastal National Park, an area where Policy NE 6 sets a strong presumption against development. Whilst this policy seeks to provide a high level of protection for the National Park, it also sets out limited circumstances where development may be permissible.
112. There appears to be some confusion in some of the correspondence as to whether the proposal was consented as an acceptable exemption from the Island Plan itself and if so, the reasons for this. For avoidance of doubt, I conclude that the proposal is in accord with the requirements of the Island Plan and hence planning permission should be granted in line with the requirements of Article 19 of the Planning and Building (Jersey) Law 2002 (as amended).

113. My reasons for reaching this conclusion are set out above. In summary, I conclude that the proposal is compliant with the requirements of Policy NE 6 in satisfying the criteria for an exception to the general presumption against development set by that Policy. I find that it also satisfies the criteria in relation to effects on neighbouring amenity set out in Policy GD 1 and would safeguard protected species as set out in Policies SP 4 and GD 1.

Recommendations

114. I recommend that the Minister should refuse the appeal and that Planning Permission should be granted, subject to conditions. In addition to the conditions attached to the original Decision Notice, I recommend that additional conditions should be appended to the permission. These relate to approval of materials, finishes and landscaping and are required to safeguard the landscape and visual amenity of the National Park, as explained in paragraph 107 above. Suggested wording for these conditions is included in Annex A, below.
115. In addition, the date on which the notice takes effect, should be modified to mirror the date on which the Minister reaches a decision.

Sue Bell

Inspector 10 January 2022

Conditions

General conditions

- A. The development shall commence within three years of the date of the Minister's decision.

Reason: The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.

- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

Specific conditions

1. The measures outlined in the approved Species Protection and Ecological Enhancement Plan (ref. NE/ES/PBC.02, 11th June 2021, Nurture Ecology) shall be implemented prior to commencement of the approved works, continued throughout (where applicable) and thereafter retained and maintained in accordance with the agreed enhancement strategy. Any variations that may be required as a result of findings on site are to be agreed in writing by the Land Resource Management Team prior to works being undertaken.

Reason: To ensure the protection of all protected species in accordance with Policies GD 1, SP 4, NE 1, NE 2 and NE 4 of the Adopted Island Plan 2011 (Revised 2014).

2. All planting and other operations comprised in the landscaping scheme hereby approved shall be completed prior to first occupation of any element of the development.

Reason: To ensure the benefits of the landscape scheme are not delayed, in the interests of the amenities of the area and to ensure a high quality of design in accordance with Policies SP 7 and GD 7 of the Adopted Island Plan 2011 (Revised 2014).

3. Prior to their first use on site, samples of all the external materials to be used shall be submitted to, and approved in writing by, the Development Control section of Regulation. For the avoidance of doubt, this must include the matting to be applied to the bank, the new decking and the fencing. Thereafter, the approved materials shall be implemented in full prior to first occupation of the development.

Reason: To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD 1, GD 7 and NE 6 of the Adopted Island Plan 2011 (Revised 2014).

4. Notwithstanding the details indicated within the approved plans, the development hereby permitted shall not be commenced until there has been submitted to, and approved in writing by, the Development Control Section of Regulation, a planting scheme for the bank to be implemented following the installation of the matting. Thereafter, the approved scheme shall be implemented in full during the first available planting season.

Reason: To ensure that before development proceeds provision is made for a landscaping regime that will enhance the appearance of the development and help to assimilate it into the landscape in accordance with Policies GD 1 and NE 6 of the Adopted Island Plan 2011 (Revised 2014).