

STATES OF JERSEY
PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)
APPEAL OF A DECISION UNDER ARTICLE 108
REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT
by Mr Philip Staddon BSc, Dip, MBA, MRTPI
an Inspector appointed under Article 107

APPEAL BY: Mr K. Bell

AGAINST: Refusal to grant planning permission for a proposal to '*demolish existing pool, pool house, store and greenhouse. Construct 1 No. three bedroom dwelling and pond to South of Site.*' Decision dated 16 April 2015

LOCATION: Belmont, Oaklands Lane, St. Helier, JE2 4JD.

REFERENCE: P/2015/0177

APPEAL PROCEDURE: Hearing – 7 December 2015

SITE VISIT: 7 December 2015

DATE: 4 January 2016

Introduction

1. This report contains my assessment of the appeal made by Mr K. Bell. The appeal is made against the decision of the Department of the Environment on 16 April 2015 to refuse to grant planning permission for the erection of a dwelling in the grounds of the Appellant's home, which is known as Belmont.
2. Belmont is a substantial period property set within a large plot on the south side of Oaklands Lane, situated in the Green Zone to the north of the town of St. Helier. Although there are several other dwellings in the locality, the setting is distinctly rural in character.
3. The appeal site itself is formed of the southern part of the garden of the property and would be accessed from a lane known as Mont Neron, which runs along the western walled boundary of the Belmont curtilage. The main part of the site is rectangular with a width of about 24 metres and a length ranging from 64 – 70 metres. The southern boundary is formed with an existing access track (from Mont Neron) which serves an adjacent dwelling (which sits in a restricted plot), just beyond the eastern appeal site boundary. Part of the site is occupied by a swimming pool and pool room, along with some lawned areas (which include a number of trees), a shed and a greenhouse. Most of the site is currently enclosed by coniferous hedging.
4. Although the application was submitted as an 'outline' proposal, it is supported by drawings of an indicative scheme, which entails a three bedroom dormer bungalow with attached garage / utility block. The gross internal floor area would be circa 265 square metres. The siting of the dwelling would approximate to the position of the existing pool and vehicular access would be gained from the track to the south. The drawings also indicate a range of wildlife features that it is intended to incorporate into the landscape design; these include a pond, a compost pile, bird boxes and a wildflower garden.

The planning history and the refusal

5. There is some Planning history to this appeal proposal, which, in part at least, led me to agree to hold a Hearing to explore the policy issues and arguments raised.
6. An earlier identical proposal was submitted under PP/2014/0474. This application was initially refused by the Department's officers under delegated powers for reasons relating to conflict with the Green Zone policy provisions (the presumption against new houses in the Green Zone). The applicant then made a 'request for reconsideration' and the Planning Applications Panel indicated that it was 'minded to approve' the application. In line with established protocols, the matter was referred to the Minister for Planning and Environment. The Minister did not agree with the Panel's view and, on 10 October 2014, upheld the Department's initial officer decision.

7. I understand that the latest application under reference P/2015/0177 is identical in all respects and has been pursued to enable consideration under the new merits based Planning appeals system. The application was refused by notice dated 16 April 2015 and the Department's reason for refusal stated:

The proposed new dwelling is located within the Green Zone as defined on the Proposals Map of the Adopted Island Plan 2011 (amended 2014). The Green Zone enjoys a high level of protection from development and there is a presumption against all forms of development, including that of new dwellings. The only circumstances under which a new dwelling may be permitted within the Green Zone are where; it would replace an existing dwelling; it would replace an existing employment building; it would be for staff or key agricultural workers; or it involves the conversion of an existing building. The current application does not satisfy any of these criteria, and it is not considered that there are sufficient grounds to justify an exception to policy in this instance. Accordingly, the proposal fails to satisfy the requirements of Policies SP 1, GD 1 and NE 7 of the Adopted Island Plan 2011 (amended 2014).

The Planning Applications Committee considered a 'request for review' of the decision on 11 June 2015. The Committee resolved, by a majority, to endorse the officer recommendation of refusal.

The main issues

8. The main issues in this case relates to whether, and if so the extent to which, the proposal conflicts with the planning policies set out in the Island Plan, most notably in terms of its provisions in respect of the defined 'Green Zone.'

The Island Plan 2011 (Revised 2014) – policy considerations

9. The Island Plan has primacy in decision making on planning applications. There is a general legal presumption that development in accordance with the plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'¹ for overriding its provisions i.e. there is some discretion in decision making.
10. The Plan's overarching spatial strategy is set out in Policy SP 1. It seeks to concentrate new development within the Island's built-up area, which is clearly defined on the Plan's proposals map.
11. The Plan identifies the 'protection of the environment' as one of the key components of its strategic policy framework. Parts of the island are designated as Coastal National Park (CNP) areas, within which development is very strictly controlled. The countryside outside the CNP is defined as the 'Green Zone' and is afforded a high level of protection from development. The majority of the island falls under the Green Zone designation. The appeal site lies within the Green Zone.

¹ Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

12. Policy NE 7 sets out a general policy presumption 'against all forms of development' in the Green Zone. The policy explicitly identifies that new dwellings will not be allowed. However, the policy does allow some very limited exceptions where new dwellings 'may be permissible.'
13. The relevant policy exception category in respect of this appeal is NE 7 (3). The possible exception stated is '*the redevelopment of an existing dwelling and/or an existing ancillary residential building and/or structure, involving demolition and replacement, but only where the proposal would;*
 - a) *not facilitate a significant increase in occupancy; and*
 - b) *give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character.'*

The other new dwelling exceptions (for key agricultural worker accommodation and developments on redundant employment land / premises) are not directly relevant to this appeal.

14. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality.

The Appellant's Case

15. The Appellant contends that the proposal complies with Policy NE 7 and argues that the policy wording does not preclude, and indeed supports, the redevelopment of 'an existing ancillary residential building and/or structure' with a new dwelling. In essence, the Appellant believes that the policy does not prescribe that only a dwelling can be replaced with another dwelling.
16. The Appellant further contends that, even if the proposal is judged to be in conflict with Policy NE 7 (which he does not accept), there is 'sufficient justification' to over-ride any objection.
17. The Appellant also submitted that, if the two Panel votes were aggregated, the majority of votes would have been in favour of the scheme.

Discussion and assessment

The principle of the development

18. The appeal site lies well outside and beyond the built up area and, as I noted above, the setting is distinctly rural. The combined effects of the Island Plan's spatial strategy (Policy SP 1), which directs and concentrates new development into the existing built up area, along with the high level of development restraint in the Green Zone (Policy NE 7), mean that this is not a location where new housing is considered acceptable in principle.
19. Indeed, in such locations there is a powerful presumption against new housing development and an equally forceful presumption that environmental and landscape protection will take primacy.

The NE 7 (3) exception

20. The substantive text of Policy NE 7 is lengthy (it covers four pages) and is supported by a lengthy companion narrative that provides further supporting and interpretative content. When read together, it sets out the general presumption of restraint (against all forms of development) whilst allowing some limited exceptions to accommodate 'the reasonable expectation of residents to improve their homes and businesses to undertake economic activity.'² The exceptions that may be permissible are set out in both the policy and the supporting text.
21. At the Hearing, there was much discussion about the interpretation of the wording of NE 7 (3). The first sentence of NE 7 (3) could, when read in complete isolation, be interpreted in the manner the Appellant suggests (that an ancillary building could be redeveloped for a new dwelling). However, that is not the correct interpretation when read in its fuller context or indeed with the remainder of NE 7 (3) itself.
22. In terms of its fuller context, the high level of protection from development specifically presumes against new dwellings. The exception of 'replacement' dwellings relates to sites where existing homes exist. I do not see how it could be interpreted otherwise when read with the supporting narrative (paragraphs 2.127 – 2.129). I do not see any evidence that would lend support to the view that 'an existing ancillary residential building and/or structure' should be seen as a potential plot for a new dwelling. Indeed, the notion that garden outbuildings and structures across the Green Zone could represent latent dwelling plots would seem to be wholly at odds with the Green Zone policy provisions and with the strategic objectives of the Plan.
23. Although my conclusions above make the remaining provisions of NE 7 (3) largely academic, some comment is appropriate. The policy sets two pre-conditions for this type of development.
24. The first pre-requisite is that such exception schemes must not facilitate a significant increase in occupancy. In terms of existing residential occupancy, there is presently none as the site is simply part of the bottom of Belmont's garden. Introducing any occupancy from a base of zero is, arguably, 'significant'. This is particularly so when assessed in the context of the Plan's spatial strategy and its presumption of a high level of development restraint in the Green Zone.
25. The second pre-requisite is for '*...demonstrable environmental gains, contributing to the repair and restoration of landscape character.*' The illustrative scheme does demonstrate how a wide range of environmental features could be incorporated into the new dwelling. Whilst these are commendable in their own right, they do not deliver the repair and restoration of rural landscape character that I consider is envisaged by the policy.

² Revised Island Plan 2011 paragraph 2.120

26. Accordingly, I do not consider that the proposal conforms with the exception criteria set out in Policy NE 7 (3).

Are there reasons to depart from the NE 7 presumption?

27. The Appellant contended that there was a case for supporting the scheme as an exception (if tension with Policy NE 7 was found). The case made was that the scheme will not cause landscape harm; that occupancy would not materially alter (as the dwelling is intended for a family member and could be 'tied' by Planning condition); that the dwelling would not be readily discernible as it would be well screened; that it would include a suite of environmental improvements and would resolve an eyesore and a death trap (red squirrels had drowned in the pool). There was also some reference made to another development elsewhere in the Green Zone but, as no written evidence had been submitted to me on this matter, I have not been able to consider its relevance and comparability.
28. Whilst I have noted the Appellant's comments, I do not consider that there is a case for departing from the very clear presumptions set out in the Island Plan. It is important to recognise that the spatial strategy and designated Green Zone are of strategic significance and were arrived at through a thorough and open plan making process to provide a clear framework for guiding and controlling development in Jersey.
29. Allowing new 'back garden' housing development that is clearly in conflict with the spatial strategy and the Green Zone policy would create a substantial tension. That is because such developments are considered unacceptable in principle and cannot be readily overcome by hedge screening, good architecture and design and environmental features such as bird boxes and log piles. Even with all of these features (which are easily replicated on other potential Green Zone sites), there is no escaping the fact that the proposal would result in a new family house in a location clearly deemed by the Island Plan as unacceptable in Planning terms.

Conclusion and recommendation

30. The appeal proposal would be in serious conflict with the Island Plan's Green Zone Policy NE 7, which seeks to impose a strong level of development restraint in Jersey's countryside areas to protect the natural environment. The proposals would also conflict with the Plan's spatial strategy and sustainability objectives, which direct new housing to the defined built-up area. There are no exceptional reasons that would provide sufficient justification for departing from the Island Plan's policy provisions.
31. For the reasons stated above, the Minister is recommended to dismiss this appeal and uphold the decision made by the Department of the Environment dated 11 June 2015 (Reference P/2015/0177).

P. Staddon

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