

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

Appeal under Article 108 (2) (h) against a decision made under Article 51 to include a building on the List of Sites of Special Interest

Report to the Minister for the Environment

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Mr Sebastien Chiola of Diogenes Trading Company Limited

HER Reference: HE0758

Listed Status and Non-statutory Grade: Listed Building Grade 3

Property name and address: 17 Mulcaster Street, St. Helier

Appeal Procedure and Date: Hearing 7th June, 2016

Site Visit procedure and Date: Accompanied, 6th June,

Date of Report: 7th July, 2016

Introduction and Background

1. This is an appeal against the decision to include the building at 17, Mulcaster Street, St Helier on the List of Sites of Special Interest (Grade 3) under Article 51 of the Planning and Building (Jersey) Law 2002 (as amended).
2. The appellant also has an interest in the adjoining property, No. 16, Mulcaster Street, which was included on the List of Sites of Special Interest (Grade 4) at the same time as the appealed building. The two buildings are inter-connected internally. Whilst the appellant made representations concerning both properties during the listing process, he has only submitted a formal appeal in respect of No. 17, Mulcaster Street. Consequently, this report deals specifically and exclusively with that building.
3. The appeal building has been identified as having some heritage value since 1987, when it was included in the Island Plan as a Building Frontage of Townscape Importance. Since then it has been included in the Historic Building Register as a building of architectural and historical importance (1992), and on the Register of Buildings and Sites of Architectural, Archaeological and Historical Importance as a Building of Local Interest (2001).
4. The appealed listing process commenced in 2011, when the external part of the building was re-surveyed. Its heritage interest was reviewed by Jersey Heritage and the Ministerial Listing Advisory Group in 2012, leading to it being identified as a potential Listed Building. In April 2015 the Department issued a notice of intent to List. Following representations from the owner, the Department reviewed its heritage assessment. Confirmation of the intention to List was issued in October 2015. As the owner maintained his objections to listing, the case was referred to the Chief Executive Officer for determination. The Chief Executive Officer confirmed the

Listing, using his delegated powers, in December 2015, although the decision was not signed until January 2016. It is this decision that is being appealed.

Grounds of Appeal

5. The appellant describes his objections as:
 - the case for the building having special interest has not been fully made, and the alleged special interest has not been properly assessed, specified or justified; and
 - the restrictions that will result from this designation are unreasonable, disproportionate and oppressive.
6. In his original Statement of Case the appellant also raised some questions about the timescale for making an appeal, which were dealt with to the satisfaction of all parties prior to the hearing. These are not considered further in my report.

Is the building of special interest?

The listing process

7. Under Article 51 of the Planning and Building (Jersey) Law 2002, buildings or places that the Chief Officer is satisfied have public importance by reason of their special archaeological, architectural, artistic, historical, scientific or traditional interest should be included on the List of Sites of Special Interest. Advice as to which building should be listed is provided under a Service Level Agreement by Jersey Heritage with assistance from the Ministerial Listing Advisory Group.
8. Guidance concerning selection of those buildings and places for inclusion on the List has been published and adopted by the Minister for Environment ("*Criteria for the listing and grading of heritage assets*" MD-PE-2011-0063 adopted April 2011). I refer to these as the "*Criteria*" throughout the rest of this report.
9. These *Criteria* specify that Listings will cover five broad areas: historic interest, age, architectural interest, archaeological interest, and artistic interest. Evaluation advice is provided in two broad sections: *Principles for Listing Buildings and Listed Places*, set out the issues to be taken into account when considering whether a building should be listed; and *Listing Criteria*, describe the particular features that should be assessed for each of the five broad areas of interest. Guidance on allocating a non-statutory grade, which is an indication of the significance of each Listed Building or Place, is also provided.
10. Notification of the inclusion of a building or place on the List of Sites of Special Interest is made by way of a Listing Notice and Listing Schedule.

Listing Description

11. The Listing Schedule identifies 17, Mulcaster Street as representing special interest in two areas: Architectural and Historical. The building is considered to be of significance "*as an early 19th century shop with integral accommodation above retaining its original external form, scale and elevational proportions, which is of townscape interest and group value. In addition, No. 17 retains an unusual and good quality oval plan form staircase.*"
12. The Listing Schedule also includes the following description of the building: "*Mid terrace, 3 bay, 3 storey shop with accommodation above. The building retains its*

original external form, scale and elevational proportions, although with loss of some original fabric. Front (south) elevation: modest superstructure with hipped slate roof set back behind parapet; rendered chimneys to both party walls. Masonry construction with modern rendered finish. String course below parapet. Regular arrangement of window openings with diminishing scale between 1st and 2nd floors. Replacement windows and shop front. Doorway to left accessing upper floors. The architectural interest is enhanced by the contribution of the building to a larger group. No. 17, together with its neighbours in the block between Wharf Street and Bond Street, and some of the properties on the south side of the street, is of townscape interest forming a collective 19th century street scene sitting between the town church and the weighbridge area.

The only interior feature included within the listing is the oval plan-form mahogany staircase, which is constructed in a tight spiral continuous from ground floor to attic. No. 17 is of historical significance and considerable local interest as an early 19th century shop with integral accommodation above. It is a tangible reminder of the outward growth of the historic core of St Helier in the early-mid 19th century, whose development is bound up with the expansion of the town following the end of the wars with France; a period which had a significant impact on the life and economy of the town and saw the appearance of large scale retail frontages for the first time. Mulcaster Street formed an important connection from the old town to the newly constructed waterfront and harbour. The building is shown on the 1834 Le Gros Map.”

Case for the Department (drawing on advice from Jersey Heritage)

13. The Listing Schedule and Statement of Case were issued by the Department of the Environment, drawing on the advice of Jersey Heritage. In the following section reference to the Department may draw on reports authored by Jersey Heritage.
14. The Department states that it has undertaken a robust and diligent assessment of the building’s heritage value, with specific reference to the listing criteria published by the Minister. In particular, it believes that the building meets the following elements of the listing criteria:
 - Criterion (B) Age, Part 2: “buildings and structures erected between 1700 to 1850 that survive in their original form and which are of a definite character either individually or as part of a group are likely to be Listed.”
 - Criterion (A) Historic Interest, Part 2 Setting: “the context in which a structure sits can be a critical factor in its evaluation. A structure, whose setting has changed adversely, removing the original contextual character, has a weakened case for inclusion.”
 - Criterion (A) Historic Interest, Part 3 Group Value: “is important where a group of buildings together form townscape, streetscape, sit in designed landscape or form a set piece interaction, or a building in its landscape setting, comprise a formal or informal ensemble whose collective quality is more than the sum of the parts.”
 - Criterion (C) Architectural Interest, Part 1 Exterior: “Where buildings are of special interest for their architectural design or style, artistic decoration, craftsmanship, composition, or use of materials and details, whether it be in the vernacular tradition, or as a result of conscious design. Such architectural interest may be enhanced by the contribution of the building to a larger group, or to a townscape or rural setting, or its role as a landmark.”
 - Criterion (C) Architectural Interest, Part 2 Interior: “The survival of substantially complete rooms from before 1700, the major elements of historic interiors from before 1850,are likely to justify Listing. Interior design and detailing can add

to the case for listing. The survival of for example.....staircases...may well contribute to the character of the whole and support Listing....”

15. The Department states that age is a major factor in the evaluation process and as 17, Mulcaster Street pre-dates 1850, it should be considered for listing.
16. The Department considers the building is an example of the early-mid 19th Century shops/residences that provide a tangible reminder of the outward growth of the historic core of St Helier following the end of the wars with France. Whilst the building has lost its original shop front, the Department maintains that it retains its historic elevational architectural proportions and its original contextual character. They consider it contributes to townscape value thus meeting the criteria for setting and group value (see also next paragraph).
17. In the view of the Department, the building’s special architectural interest is related to its early-mid 19th century external form, scale and elevational proportions including the demarcations that are provided by the string course and parapet line. Original features include the masonry shell, the principal elevation, window locations, proportion and scale of the shop front, and the overall layout. This is enhanced by its contribution to a larger group of buildings with heritage and townscape interest. The Department accepts that several original features of the building have been lost: doors, windows, shutters and the original shopfront along with the majority of the original internal fabric. Nevertheless, the Department considers that these losses are outweighed by the building’s contribution to the townscape, provided by its remaining architectural scale and proportion.
18. The Department confirms that the only feature of internal interest is the oval plan mahogany staircase. This is considered to be an unusual feature, with only a couple of other known examples of circular staircases in St Helier. It accepts that the rooflight above the staircase is a modern replacement.
19. The Department considers that there are few surviving early nineteenth century shops without significant alteration to their external fabric in St Helier, although some good examples do survive. It believes 17, Mulcaster Street is part of a finite collection of the town’s earlier architectural heritage that require a careful consideration of its guardianship.
20. The building has been allocated non-statutory Grade 3 because of the staircase.

Case for appellant

21. The appellant does not believe that there has been a robust and diligent assessment of 17, Mulcaster Street against the published criteria. He maintains that the decision to list the building relies too heavily on unsupported assertion and that supporting evidence about retention of original features has not been supplied. The Department’s description of the building as part of a terrace of early C19th shops implies that the shops remain, whereas none have survived.
22. The appellant does not dispute the age of the building, but does question the significance that should be placed upon this; in his view, age is a starting point for the assessment and not a determining factor in the listing process.
23. The appellant maintains that the building has lost many of its external features including the doors, windows, shutters and original shop front, along with the majority of the original internal fabric. In the appellant’s opinion, as so little of the original

fabric remains, the building can no longer be considered a good example. He maintains that there is a point where successive alterations and damage to the external fabric of buildings will seriously undermine the architectural and historical quality and authenticity of the street scene. In his view this point has been reached for Mulcaster Street and that the building is of marginal quality.

24. The appellant states that there is a lack of clarity on the schedule concerning which internal features are included in the listing. He is of the view that the staircase is the only feature that can set it apart from other buildings of its age.
25. In the appellant's opinion the setting of the building has been eroded by the high flanking wall of the Royal Yacht Hotel and traffic levels.
26. The appellant does not believe that the Department has adequately described the remaining elements of the original fabric of the building that make it special or distinguish it from other buildings of this age and type. In his view, other, better examples exist, for example in Bond Street.
27. A Grade 3 listing means that the entire property is designated as a Site of Special Interest, although it is only the staircase that is of interest. This is considered by the appellant to be illogical and anomalous and inconsistent with the Grade 4 listing that has been assigned to the adjoining property at No. 16 Mulcaster Street.

Inspector's Analysis and conclusions

28. I have considered the features of 17, Mulcaster Street against those aspects of the *Criteria* that the Department maintains have been met (see paragraph 15), considering the tests set out by the *Criteria*, including the non-statutory grading.
29. Age: the building appears to pre-date 1850. To be considered for listing it needs also to survive in its original form and have a definite character. Externally, the building retains much of its original form and proportions. The only remaining original internal feature is the oval staircase. There have been changes to the external appearance, particularly in relation to the render finish, loss of original windows, loss of shutters, and loss of the original shop front. In my opinion these represent detrimental changes to the building. The building forms part of a terrace of similar buildings, which are of a definite character.
30. Historic interest and setting: In my view the contextual setting for the building remains substantially unchanged; comprising a block of similar buildings on a road that is a major link between the town centre and the Weighbridge.
31. Historic interest and group value: No 17 forms part of a recognisable group of buildings of similar age and style. Whilst there have been some detrimental changes to its appearance, it contributes to the overall value of the street setting. In my opinion it meets the requirements for group value where the "collective quality is more than the sum of the parts".
32. Architectural Interest: The building is described as an example of an early-mid nineteenth century shop. I consider that it has retained its original scale and proportions. Although it has lost some of its original features, notably the shop front, it is still easily recognisable as an example of its type. I believe that its value is increased by its contribution to the larger group and townscape. The oval plan staircase adds to the architectural features of interest. In my opinion, it is clear from the schedule that the only internal feature of interest is the staircase.

33. There is some agreement between the appellant and the Department about the original features that have been lost or retained; however, in my view there is disagreement about the importance that should be ascribed to these features. The *Criteria* do not provide any guidance as to the weight that should be apportioned to different aspects of the selection process, or indeed, the number of criteria that a building needs to meet before it is considered for Listing.
34. The building meets the age criterion to be considered for listing. In my view there is no doubt that the building has suffered detrimental changes to its external appearance and internal structure. Nevertheless, the fundamental essence of the building in terms of its proportion, scale and arrangement of windows remains and is clearly visible. These features are mirrored in other buildings in the street, and hence its value is enhanced by its contribution to a group of buildings of similar style and age. These buildings do add to the street scene, and in my opinion their setting is substantially unchanged. On balance, I am satisfied that the building meets the criteria for selection as a Site of Special Interest.
35. I understand the appellant's comments concerning the existence of other, better examples of this building type. However, my understanding is that Listing is based upon achievement of a certain minimum standard rather than selection of only a few "best" examples. If this is the case, then it seems inevitable that there will be some variation in quality between Listed Buildings, with some far exceeding the minimum criteria for selection, and others just meeting them. This difference in quality is recognised through the allocation of the non-statutory grades, whose stated purpose is to help determine the significance of the heritage asset to the island.
36. Grade 3 is described as: "*Buildings ore [sic] places of special public and heritage interest to Jersey, being important, good quality examples of a particular historical period, architectural style, building type, or archaeological site; but with alternations [sic] that reduce the special interest and/or have particular elements worthy of Listing.*" Whilst Grade 4 is described as: "*Buildings and places of special public and heritage interest to Jersey, being good example of a particular historical period, architectural style or building type; but defined particularly for the exterior characteristics and contribution to townscape, landscape or group value.*"
37. In my view, the main difference between these two categories is whether a building or place is a "good quality" or a "good" example of its type. However, the Department has advised that if a building has some internal features of interest it cannot be assigned as Grade 4. The basis for this is Ministerial Decision MD-PE-2013-0058 Listing schedule: Grade 4 Listed buildings, dated 17th June 2013, which states: "*The Minister resolved that the Listing schedules for all buildings which are assigned a grade 4 non-statutory status incorporate the provisions such that they explicitly state:*
- *at (iv): Description, 'that it has no interior interest', and;*
 - *at (vi): Restricted activities 'that the carrying on of any activities to the interior of the property, which do not amount to development, do not require the express consent of the Minister'.*
38. In my view, 17, Mulcaster Street is a "good" example of its type, in that it is recognisably of a particular style and era, and contributes to the streetscape, but that the changes and alterations it has received mean that it is not a "good quality" example. This would be a persuasive argument towards a Grade 4 categorisation. However, the internal staircase is an important feature, both in its own right, and in terms of the building as a whole. Indeed, the value of the staircase is not questioned

by the appellant. I agree with the Department's view that there is little point in listing the staircase alone. Given the importance of the staircase, and the requirements of Ministerial Decision MD-PE-2013-0058, I do not see that the Department had any choice but to classify the building non-statutory Grade 3 rather than Grade 4.

Has the case for listing been properly assessed?

Case for the appellant

39. The appellant has questioned whether the assessment process set out in the *Criteria* has been followed. He believes that six of the ten issues listed in the General Principles have not been dealt with and the remainder are only given a cursory examination. He also questions whether or not the interior of the building was inspected prior to listing.

Case for the Department/Jersey Heritage

40. The Department states that the Listing schedules are not required or intended to be a comprehensive survey of all the features or to provide analysis of features mentioned in the schedule. They believe they go beyond the legal requirements of what is required in order to provide owners with a greater understanding of the heritage value and interest of their land or building and why it is important. The Department confirmed that it did not carry out an internal visit for this Listing, but relied upon an external examination of the building and evidence collected during an earlier interior assessment undertaken in 2002.

Inspector's assessment

41. Article 51 (3) of the Planning and Building (Jersey) Law 2002 (as amended) requires the List of Sites of Special Interest to specify the special interest of each site; and to describe the site either in words or by reference to a plan, or both, with sufficient particularity to enable it to be easily identified.
42. These aspects are included in the Listing Schedule for 17, Mulcaster Street by way of sections listing the special interests of the building; a short Statement of Significance; and Description, which provides further information about the special interests.
43. Although in my view there could be clearer links to specify which parts of the *Criteria* are being addressed by different parts of the description, I am satisfied that the information on the Schedule meets the requirements set out in Article 51 (3).
44. I think it is reasonable to rely on information collected during an earlier site visit, providing there are no reasonable grounds for anticipating any change to the features or their condition.

Other issues

45. In his submission, the appellant raised a number of other issues including the effect of the designation on his future use of the building and potential associated costs; and whether Listing was the appropriate method for safeguarding the streetscape. Following the judgement of the Court of Appeal (JCA237, 2013) I do not believe that these are material considerations for the appeal. I believe Paragraphs 17 and 18 of that Judgement are particularly helpful in this respect, and I have included them below.

17. *Article 51(2) provides that the Minister “shall” include on the List “each” building that the Minister is satisfied has public importance by reason of certain matters, including the special architectural or historical interest that attaches to the building. As the Royal Court recognised (paragraph 32 of the judgment), these requirements are mandatory. What they mean is that the Minister is obliged to include a building on the list once he is satisfied that it has public importance because of its special interest. He has no discretion in the matter. He cannot list a building that has no special interest but has public importance for some other reason, such as a hospital. Conversely, once he is satisfied that a building does have public importance because of its special interest, he cannot decline to list it. It follows that he cannot decline to list a building of public importance by reason of its special interest merely because, for example, listing will have adverse financial and planning consequences for the owner. Since he cannot decline to list even if such consequences will ensue, those consequences can make no difference to the decision to list; and since they cannot make any difference to the decision, they cannot be material considerations when the decision comes to be made.*
18. *This position appears to me to be confirmed by Article 52(4)(a), which the Royal Court did not quote and mentioned only in passing. It requires the Minister to take into account any representations made by a person interested in a site “to the extent that they relate to the special interest of the proposed site of special interest”. He is not obliged to take into account representations made by an interested person about any other matter. The adverse consequences of listing mentioned by the Royal Court, such as additional cost and planning difficulties are consequences that will affect only persons interested in the listed site; but the Minister need not take representations about them into account, because they do not relate to the special interest of the site. Since he need not take them into account, they cannot be material to his decision.*

Overall Conclusion

46. For the reasons set out above, I conclude that 17, Mulcaster Street has been subjected to a proper assessment and meets the criteria for inclusion on the List of Sites of Special Interest.
47. In my view, the allocation of a non-statutory Grade 3 meets the current policy requirements.

Inspector’s recommendation

48. For the reasons outlined above, I recommend that the appeal should be dismissed.

Sue Bell
Inspector