

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: La Mielle (St Aubin) Holdings and Mr N Swindell and Ms C Coburn (third party appellants)

AGAINST: Grant of planning permission for a proposal to "*Convert 4 No. dwellings into 1 No. four bedroom dwelling. Demolish extensions to North West and South West elevations. Create vehicular access onto La Route de la Haule. Construct two storey extensions to South East and North West elevations. Various external alterations.*" Decision dated 28 January 2016

LOCATION: Villa Nuova, La Route de la Haule, St. Brelade, JE3 8BA

REFERENCE: P/2015/1476

APPEAL PROCEDURE: Hearing – 8 June 2016

SITE VISIT: 8 June 2016

DATE: 29 July 2016

Introduction and procedural matters

1. This report contains my assessment of the 'third party' appeal made by Le Mielle (St Aubin) Holdings and Mr N Swindell and Ms C Coburn against the decision of the Department of the Environment to grant planning permission for a proposal at Villa Nuova, St Brelade. The proposal would convert, extend and alter the building, which is currently divided into four flats, to create a single family dwelling house with associated parking.
2. The Appellants are neighbours to Villa Nuova, Mr Swindell and Ms Coburn occupying La Floriana immediately to the east, and La Mielle (St Aubin) Holdings representing residents of the flats to the rear of the site.
3. On a procedural point, I am aware that, on other Planning appeals, views have been expressed that an Appellant must be a single person. Article 106 (i) does define 'appellant' as 'a person' but it is often the case in the interpretation of law that the singular and plural can be interchangeable. However, as far as I can see, this is not specifically stated in the Planning and Building (Jersey) Law 2002 (as amended).
4. I have considered this case at face value as a jointly made appeal that has been accepted as valid by the Judicial Greffe. In any event, my remit is to consider the application proposal on a *de novo* basis and that must include an assessment of all material considerations i.e. not just those made by one of the Appellants. In due course, it would be useful if the single / joint Appellant issue could be clarified, perhaps when other amendments to the law are proposed and, once clarified, included in the guidance to prospective Appellants.
5. I visited the site accompanied by the parties on the morning of 8 June 2016 and held a Hearing thereafter on the same day. The participants at the Hearing included the Appellants and their Planning Consultant, the Department's officers and the Applicants and their architect.

The appeal site

6. Villa Nuova is a pair of early Victorian (1840's) sea facing houses situated on the north side of La Route de la Haule. Although originally built as a pair of semi-detached houses, the building was converted into four flats some time ago. The building is of 2.5 storey scale and accommodates three levels internally (a semi-basement, a raised ground level and a first floor). Externally, it retains its period appearance and features with painted render walls, hipped slated roofs, a central chimney, fenestration, elevated side entrance porches and original front boundary walls and railings.
7. The building sits within what appears to be the original plot of the pair of semi-detached houses. This includes a front garden area of about 7 metres depth by about 17-18 metres width and a quite long (34 metres) tapering rear garden.
8. The neighbouring properties are a hotel to the south west (The Lyndhurst) and a substantial Grade 3 Listed dwelling called La Floriana to the north-east (occupied by two of the Appellants). La Floriana is set much further

back from the road than Villa Nuova (and the Lyndhurst hotel) and has a large front garden. There is also an associated cottage located in the western part of the rear garden of the house and this abuts the rear garden boundary with Villa Nuova. To the rear (north-west) of Villa Nuova is La Mielle flats complex, which rises to a much higher level.

Planning history

9. An earlier proposal to demolish Villa Nuova (P/2014/0787) and to construct a new residential development was submitted in 2014. That scheme would have entailed three units of accommodation with semi-basement parking and an area of roof terrace, along with the formation of a new vehicular access. It was refused on 18 September 2014 for two reasons:

Reason 1 - By virtue of its design, size, scale, siting & loss of privacy to surrounding residents, the application would result in a cramped overdevelopment of the site which would be harmful to the general residential amenity of surrounding properties as well as being detrimental to the character of the area. Therefore, the application fails to satisfy the requirements of Policies GD 1, GD 3, GD 7, SP 7 and H 6 of the Island Plan, 2011:Revised (2014).

Reason 2 - The application would result in a detrimental impact on the setting of the surrounding Listed Buildings contrary to Policies SP 4 and HE 1 of the Island Plan, 2011:Revised (2014)

10. The circumstances surrounding this application and its refusal are important and relevant, as they are linked to some of the grounds of appeal. At the time when application P/2014/0787 was submitted, Villa Nuova was not Listed. However, in the period when the application was 'live', a heritage review was undertaken that resulted in the property being granted provisional protection as a Potential Listed Building (before the application had been formally determined). I understand that this review was prompted by calls from several neighbours who were objecting to the proposed demolition of the building.
11. In the light of this change in circumstances, officers had recommended an additional reason for refusal, based on the Island Plan's presumption against the demolition of Listed buildings (which also applies to those with 'potential' Listed building status). However, the Planning Applications Panel did not accept this additional reason and considered that imposing it would be unfair on the Applicants, given the timing of the Listing assessment. However, the Panel did still refuse the application for the reasons stated above i.e. amenity impacts and harm to the settings of surrounding Listed buildings.
12. The Listing of Villa Nuova was formally confirmed on 16 December 2014. The Statement of Significance contained in the Listing documentation sets out that the building is "**A pair of 1840s houses which retain their external historic character and architectural features of the period, and contributing to the streetscape.**" The documentation gives a fuller description of the architectural features and history and sets out that the

interior is not of interest and that the non-statutory grade is 'Listed Building Grade 4'. The Listing plan limits the designation to the main body of the building (but excluding the later rear extensions) and the front garden area. It does not include the rear garden areas.

The appeal proposal

13. Following the earlier refusal and the Listing decision, the application proposal (P/2015/1476) sought permission for a scheme that retained Villa Nuova and converted it into a single family dwelling. The scheme was subject to some amendment in the course of the application, but essentially involves a comprehensive proposal to re-order the existing accommodation and add extensions and alterations to create a 4 - 5¹ bed family home.
14. To the front of the building, a low balcony area is proposed at the raised ground floor level. The main proposed living spaces (kitchen / dining / living) would open onto this balcony area and its seaward views. To the rear of the house, the existing annexes would be removed and replaced with a larger extension. At the lower (semi-basement) level, this extension would provide a store / workshop, accessible from inside the house, along with some further (reduced height) storage accessible from the outside. The extension would project just under 6 metres from the rear of the house and have a width of about 10 metres (slightly less than the width of the house).
15. Above this accommodation, at the main ground floor level, a smaller footprint sunroom is proposed. This would project about 3 metres from the rear of the house and be 7 metres wide, with doors opening on to the remaining area (the flat roof of the proposed stores below) which would form a terrace. A set of stairs would link this terrace to the garden level below.
16. The main house itself would be externally refurbished and this would include a new slated roof covering. The door and window opening on the front elevation would be retained, as would the side porches. To the rear some rationalisation and re-ordering of window openings is proposed.
17. To the front of the property, the garden area would be laid out as a parking and turning area, with a new vehicular access set behind a new front wall and railings.
18. The application was approved by the Planning Applications Committee at its 28 January 2016 meeting.

The grounds of appeal

19. The Appellants' submissions in support of its case are comprehensive and detailed. However, there are three principal grounds of appeal cited. These are:

¹ Although the plans notate 4 bedrooms, a first floor 'study' could potentially be a fifth bedroom

Ground 1 – that there were flaws or inconsistencies in decision making on the Listing status of Villa Nuova which is a matter of key importance in assessing subsequent Planning applications. In particular, the Appellants contend that Villa Nuova should have been Grade 3 listed as originally recommended by Jersey Heritage and that the Listing should have been applied to the whole site (not just the building and front garden).

Ground 2 – the Planning Applications Committee made a ‘fundamental flaw’ when refusing the first application (P/2014/0787) by ‘setting aside’ a policy of the Island Plan which protects Listed buildings from demolition. The Appellants contend that this flawed decision making ‘inevitably influenced’ the way in which the later (appeal) proposal was considered.

Ground 3 – that there were flaws and inconsistencies in the officer assessment and the Committee’s decision on P/2015/1476. Under this ground, the Appellants contend many failings. These include failure to re-advertise amended plans; failure to undertake a site visit to the most affected properties; that the roof terrace now proposed is not materially different to the earlier scheme; that the harmful effects of the parking / forecourt proposals had not been properly assessed; that the overlooking impacts of the sunroom / terrace on La Floriana had not been properly assessed; that the proposal would result in a net loss of three residential units contrary to Policy H 11 of the Island Plan; that the parking arrangements are unlikely to be workable and may result in safety issues and that the loss of the front gardens to parking is contrary to Policy BE 8.

The Island Plan 2011 (Revised 2014) – policy considerations

20. The site lies within the defined built-up area. The main policy considerations in this case are set out below.
21. 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.
22. Policies SP 7 and GD 7 require developments to achieve a high quality of design. GD 7 includes a detailed set of criteria against which schemes will be assessed.
23. Policy HE 1 states that there will be a presumption in favour of the preservation of the architectural and historic character and integrity of Listed buildings and places, and their settings. It also makes plain that proposals which do not preserve or enhance the special or particular interest of a Listed building or place and their settings will not be approved.
24. Policy BE 6 sets out the criteria for ‘building alterations and extensions’ and states that proposals will be approved where they:
 1. *respect or complement the design, detailing and materials of the existing building;*
 2. *are sympathetic to the form, scale, mass and proportions of the existing*

building;

3. complement the design of adjoining buildings and the quality of the surrounding area; and

4. respect the space between buildings where it contributes to the character of the building group or surrounding area.

25. Policy BE 8 deals with frontage parking and states that proposals involving the loss of front gardens, and their boundary features, to provide for frontage parking with direct access off the public highway will not be approved where this would have a detrimental impact on the character and appearance of the street scene or on highway safety.
26. Policy H 11 seeks to prevent the loss of housing units and states that such proposals will not be permitted except where certain criteria are met. These include the replacement of sub-standard accommodation, better meeting the Island's housing needs and maintenance / enhancement of the historic environment.

Discussion and assessment

27. This is a minor development proposal to refurbish and extend a recently Listed (Grade 4) building to create a family home. The main Planning issues in this case relate to heritage and amenity considerations. I explore these, along with some other related matters and issues, using the Appellants' principal grounds of appeal.

Ground 1 – Listing 'flaws and inconsistencies'

28. Whilst I have considered and noted the Appellants' views that a higher grade and more geographically extensive Listing should have been made, these are matters beyond my remit in this appeal.
29. It is simply a Planning fact that Villa Nuova is now Grade 4 Listed and that the Listing does not include the rear garden. It is clear to me that a process had been followed, and that an informed decision had been made. I recognise that the Appellants may maintain a degree of disagreement with the official Listing outcome. However, this is not a Listing appeal and I have assessed the proposal on the facts before me, which include the Listing schedule dated 16 December 2014.
30. Accordingly, the appeal under Ground 1 fails.

Ground 2 – the Planning Applications Committee's alleged 'fundamental flaw' when refusing the first application (P/2014/0787)

31. It is not my role to reconsider the first application. However, it is of some background relevance, particularly as the Appellants contend that the manner of its determination skewed the consideration of the later (appeal) proposal.

32. I do share the Appellants' view that the first application, which involved demolition of a potentially Listed building, conflicted with Policy HE 1. Officers shared that view and recommended to the Committee that an additional (Policy HE 1) reason for refusal be added in respect of the proposed demolition of Villa Nuova.
33. The Committee did not agree and did not impose the recommended additional reason. I do not think that the Committee's reasoning, seemingly about perceptions of fairness to the Applicant in the light of the timing of the Listing assessment, has any Planning basis. In my view, a proper Planning determination should have included the HE 1 reason for refusal, setting out the clear conflict with the Island Plan's presumption that Listed Buildings will not be demolished and will be protected.
34. However, these matters are now of limited relevance for a number of reasons. First, the demolition / new build proposal is not being pursued. Second, the effect of the Listing potential, and its subsequent confirmation, have now protected the building. Third, the current application falls to be assessed on its individual Planning merits (including through my assessment of this appeal). Although the Appellants may allege that the determination of the first application 'inevitably influenced' the consideration of the current proposal, I can see no tangible evidence to support that view and it certainly has no bearing on my impartial assessment.
35. Accordingly, whilst I agree that the demolition of the potential Listed building (that would have resulted from the P/2014/0787 proposal) was in conflict with HE 1, it is of limited relevance to this appeal. The appeal under Ground 2 fails.

Ground 3 – that there were 'flaws and inconsistencies' in the officer assessment and the Committee's decision on P/2015/1476

36. Under Ground 3, the Appellants raise a wide range of matters, some of which are overlapping. I explore the key issues below under thematic sub-headings.

Amenity impacts - La Mielle flats

37. I have noted the concerns expressed about amenity impacts on the flats to the rear of the site, including possible noise from the proposed rear terrace. However, the spatial separation is considerable at over 30 metres from the closest point of the terrace to the La Mielle building. In my view, there will be no unreasonable amenity impacts on the apartments arising from the application proposals and no conflict with Policy GD 1.

Amenity impacts - La Floriana

38. The existing relationship between the front of La Floriana and the rear of Villa Nuova is such that there is already oblique overlooking between the respective windows (and the existing first floor balcony at La Floriana). This is also the case with an upper window in the gable end of La Floriana Cottage.

39. The owner of La Floriana explained that their front garden was a private area, which was now much used and valued as a living space, including for family dining. Whilst I do not doubt this, the area could at best be described as 'semi-private', given that it is open to view from the street. Indeed, during my site inspection, two double decker buses passed and upper deck passengers have a full view into this area.
40. There is some potential for overlooking effects from the proposed terrace to the rear of Villa Nuova. As proposed, it would be possible to stand on the terrace and look sideways to the front first floor windows and balcony at La Floriana and, indeed, into some parts of the semi-private front garden.
41. From the nearest corner of the (Villa Nuova) proposed sun room to the nearest point of the (La Floriana) balcony is a distance of about 15 metres and the angle of view would be about 45° (from the straight down the garden view line). Some overlooking is therefore possible, and could occur, from and to both properties. Such views would not be screened by the existing intervening wall and planting.
42. In my assessment, such overlooking effects are not severe or altogether unreasonable and would not justify withholding permission under Policy GD 1. However, the relationship could be improved and made more neighbourly. At the Hearing, it was accepted that, notwithstanding other matters, a requirement for a privacy screen along the north-eastern edge of the proposed terrace would obviate most overlooking effects. This could be required by the imposition of an additional Planning condition. It was also suggested that further screen planting should be required, but I am unconvinced that this is necessary in addition to a screen.

The parking / forecourt proposals

43. The existing four flats do not have any off street parking facilities. The proposed creation of a parking area in the front garden raises three important issues.
44. First, in terms of technical acceptability, there were revisions to the proposals in the course of the application's consideration. The revisions to the access details satisfied the States' highways officers. Although I note Appellants' views that the parking arrangements may be unworkable, I consider that problems would only occur if more than two vehicles were present at one time (which would frustrate the ability to turn vehicles and exit in forward gear). This could be addressed by a Planning condition requiring manoeuvring / turning areas to be kept clear in the interests of highways safety.
45. Second, the loss of the existing wall and railings. The Listing description identifies that "*the houses are fronted by small gardens and a roadside boundary wall, with curved inset gateways. Rubble granite with rendered coping, and piers scored in imitation ashlar with pyramidal caps. Intricately patterned cast iron gates, and simpler bar railings with swan-neck uprights.*" The front boundary treatments are important and, as currently proposed, would be largely lost, although it is proposed to refurbish and re-

instate the pedestrian gate. Although the proposed replacement wall and railings are sympathetic in style, I am concerned that parts of the historic fabric are being lost unnecessarily and this would create a tension with Policy HE 1. I consider that the original railings could (and should) be re-used. Such re-use will not replicate the existing situation entirely and some detail will be lost (such as the semi-circular gate setback) but a more appropriate and higher quality outcome would be achieved. A Planning condition could require these revisions and, in my view, such an approach would accord with Policy HE 1, particularly when the greater benefits of the refurbishment and secured future of the Listed building are considered in the round.

46. Third, in terms of Policy BE 8, the restriction on frontage parking is not absolute. It is based on the two considerations of streetscene and highways safety. I have dealt with the latter above. With regard to the streetscene considerations, this section is characterised by low walls punctuated with occasional pedestrian gates and single width driveways. The proposals would reflect and maintain that character and the strong sense of definition between public and private space. I am satisfied that the proposals will not cause any serious harm to the streetscene, whilst balancing the reasonable needs of a family home to accommodate some on-site parking provision.

Policy H 11 issues

47. Policy H 11 seeks to protect the housing stock from other development proposals, given the importance of, and demand for, housing in Jersey. In this case, no part of the housing stock is under threat. All that is proposed is that a building in a certain form of residential occupation (4 small flats) is proposed to be reconfigured into another form of housing i.e. a 4/5 bedroom family home. In practice, the capacity of the building to house occupants may be similar. I was advised that officers could recall no comparable example of Policy H11 being applied in the manner suggested by the Appellants, as that was not the policy's intent or purpose.
48. I do not consider that there is a Policy H 11 objection to this proposal.

Process matters

49. I have noted the Appellants concerns about the Committee site inspection and revised plan notifications. However, these are very much matters for Members and Officers and do not affect directly my assessment.

Conclusions and recommendation

50. This is a minor development proposal to refurbish, extend and reconfigure a building, currently in use as four flats, to a family home. It would secure the future of a Grade 4 Listed building.
51. I do not consider that the grounds of appeal based on criticism of the Listing process or the assessment / determination of the earlier application should succeed. With regard to the more specific merits of the proposal, I consider the design of the extensions and alterations to be generally well mannered,

and to be in line with Policies BE 6 and GD 7 and the broad principle of preserving and enhancing the Listed building.

52. However, I do share some of the Appellants' concerns with regard to detailed matters concerning amenity impacts arising from the roof terrace and the loss of the historic fabric comprising the front boundary wall / railings. However, I consider that these matters can be addressed by the imposition of additional Planning conditions and that such requirements would improve the quality and acceptability of the scheme.
53. The additional conditions I recommend are i) a requirement for a privacy screen along the north-eastern edge of the sun terrace ii) a requirement that the parking / manoeuvring areas be kept free and unobstructed and iii) that revised details of the front boundary treatment, re-using as much of the existing wall / railings as possible, are submitted to the Department for approval and implementation thereafter.

Recommendation: That the Minister upholds the Planning Permission granted P/2015/1476 subject to the imposition of the following additional conditions:

Additional Conditions

1. Prior to the commencement of development, precise details of a privacy screen to be erected along the north-east of the proposed terrace to the rear of the property shall be submitted to and approved in writing by the Department of the Environment. Such details as are approved shall be implemented prior to the terrace being brought in to use and maintained in place thereafter at all times.

Reason: To avoid overlooking effects between the Villa Nuova rear terrace and the neighbouring property La Floriana, in the interests of the amenities of both properties.

2. The two parking spaces indicated on the approved plans shall be maintained for parking purposes at all times and the adjacent manoeuvring and turning areas shall be kept clear and unobstructed at all times.

Reason: To ensure that parking, manoeuvring and turning areas are maintained for their intended purpose to enable vehicles to exit the site in forward gear in the interests of highways safety.

3. Prior to the commencement of development, revised details of the front boundary wall and railings, which shall involve the careful re-use, restoration and adaption of the existing historic wall, railings and gate, shall be submitted to and approved in writing by the Department of the Environment. Such details as are approved shall be implemented and maintained thereafter at all times.

Reason: To preserve the historic fabric in accordance with Policy HE 1 and to preserve the appearance of the streetscene.

P. Staddon **Mr Philip Staddon BSc, Dip, MBA, MRTPI**