



Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Minister for the Environment

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Mr Edward Stuart

Site at 99 Don Road, St Helier JE2 4QD

Hearing held on 8th February 2017 at the Tribunal Offices, Bath Street, St Helier

An accompanied visit to the Appeal site and surroundings was held on 7th February 2017.

Department of the Environment Reference: P/2016/0854

99 Don Road, St Helier JE2 4QD

- The appeal is made under Article 108 of the Law against a decision of the Environment Department to refuse planning permission under Article 19.
 - The appeal is made by Mr Edward Stuart.
 - The application Ref P/2016/0854, dated 16th June 2016, was refused by notice dated 7th October 2016.
 - The development is a two-bedroom dwelling.
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Summary of Recommendations

1. I **recommend** that the appeal should be dismissed.
 2. However, should the Minister disagree with this recommendation and allow the appeal, I **recommend** that planning permission be granted subject to the conditions set out in the Annex to this report.
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The purpose and scope of the report

3. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation of this report, unless he is satisfied that there are reasons not to do so. The Minister may: (a) allow the appeal in full or in part; (b) refer the appeal back to the Inspector for further consideration of such issues as the Minister may specify; (c) dismiss the appeal; and (d) reverse or vary any part of the decision-maker's decision. If the Minister does not give effect to the recommendation(s) of this report, notice of the decision shall include full reasons.
4. The purpose of this report is to provide the Minister with sufficient information to enable him to determine the appeal. It focuses principally on the reason(s) for refusal and the matters raised in the appellants' grounds of appeal. However, other matters are also addressed where these are material to the determination, including in relation to the imposition of conditions, and in order to provide wider context.

Description of site and the proposal

5. 99 Don Road is a mid 19th century, 2-storey terraced property, a Listed Building. To the rear of the adjoining house to the east, No 101, is *Mon Caprice*, a modern dormer bungalow occupied by the appellant and accessed by means of a vehicular way from Summerville Lane to the side. The site of the proposed development comprises land forming the rear part of the curtilage of No 99, lying between *Mon Caprice* and the adjoining rear garden of No 97, from which it is separated by a substantial stone wall. It is presently partly occupied by a shed and informal storage of various items, but is

largely unused and in poor condition. To the rear, the boundary is marked by a another tall stone wall, beyond which the land rises.

6. It is proposed to build a modestly-proportioned 2-bedroom dormer bungalow within the rear part of this small site, next to *Mon Caprice*. Accommodation on the ground floor would be a single sitting / dining / kitchen space, together with a small utility and hallway. The first floor would have 2 double bedrooms, a bathroom, a store and an ensuite toilet.
7. The dwelling would occupy most of the width of the plot, situated hard up to the boundary with *Mon Caprice*, and leaving just sufficient space for pedestrian access on the other side. A similar narrow space would be provided to the rear. To its front would be a roughly square area of about 32 sq metres described as amenity space, with a vehicle turning area alongside that partly extends into land associated with *Mon Caprice*. The remainder of the land up to the rear of No 99 would be occupied by 2 parking spaces, arranged *en echelon*; a 50 sq metre amenity space for No 99, and stores, bin stores and cycle racks to serve both properties. These latter facilities are not identified in the description of the development on the application form. Nonetheless, it was confirmed at the Hearing that they form part of it. Effectively, the application is for the new dwelling together with the provision of facilities to serve both it and No 99. Access to both properties would be via the vehicle access way presently serving *Mon Caprice* and the rear of No 101.

The reason for refusal

8. The Decision Notice gives a single reason for refusal:

1. By virtue of its size, form, siting, design and relationship to existing buildings and cramped nature of the site, the proposal is considered to be an overdevelopment which does not respect, conserve or contribute positively to the landscape and built context contrary to Policies GD1 and GD7 of the Adopted Island Plan 2011.

However, it emerged at the Hearing that it had been the Department's intention to give 5 reasons for refusal but, owing to an error, only the first had found its way on to the formal decision. The others are:

2. The insertion of a house in an area which was once a green and quiet rear garden is not considered to preserve the setting of this Listed Building. The loss of this green open space is not considered to enhance the setting. As such, the proposal fails to satisfy the requirements of Policies HE 1 and SP 4 of the Adopted Island Plan 2011 (revised 2014).

3. The proposal fails to satisfy the requirements of Policy GD 1 and GD 7 regarding parking, vehicle access, safety and manoeuvring space. When opened, the doors of No 99's store will encroach on to

their parking area. With cars parked in both spaces, access to the refuse bins is narrow and difficult to negotiate. The proposed turning area involves manoeuvring over land which is immediately outside of the new dwelling's front door and gate to the garden. Each of these issues reflects the cramped nature of the scheme.

4. By virtue of its size, proximity to boundary, design and relationship to existing buildings, the proposed new building is considered to be overbearing contrary to Policy GD 1.

5. The proposal seeks to replace the green open space of a rear garden with a dwelling and associated parking. As such the proposal is not considered to maintain and strengthen the landscape setting and character of the area contrary to Policy BE 3 of the Adopted Island Plan 2011 (Revised 2014)

Background to the application and procedural matters

Pre-application discussions

9. The appellant undertook pre-application discussions with the Department concerning the proposal. The Department responded positively, and in a letter dated 11th June 2015 concluded as follows:

In summary, the principle of constructing a dwelling on the site is deemed acceptable. The proposal is capable of satisfying 2 of the 3 tests in relation to parking, amenity space and room sizes. The proposal is not considered to cause harm to the streetscene given its recessed location and the design, which is considered to be in keeping with the character of the area. The key hurdle which the proposal will need to overcome is that of the impact on neighbouring properties.

10. In support of this conclusion, it made the following (abbreviated) positive statements:

- *The site is in the Built-Up Area where the presumption is in favour of development.*
- *The Adopted Island Plan seeks to concentrate development within the Built-Up Area.*
- *The proposal accords with Policies SP1, SP2 and SP3.*
- *Policy GD3 requires the highest reasonable density is achieved for all developments, having regard for adequate amenity and parking provisions. An additional unit on this site is considered to make best use of land in the Built-Up Area in accordance with the aims of this policy.*
- *The site is not visible from Don Lane or the wider locality.*
- *The proposed design is considered to make reference to the host dwelling (99 Don Road). As such, the proposal is not considered to cause undue harm to the streetscape or character of the area in accordance with Policy GD7.*
- *The success of the scheme will hinge upon the design of the*

scheme and the materials.

- *The proposed 2 parking spaces for a 2-bedroom dwelling satisfies the Department's parking requirements set out in Planning Policy Note (PPN) 3.*
- *The scheme includes 25sq m of private amenity space which fails to meet the Department's minimum requirement of 50sq m set out in PPN6. However, this can be reduced to 30sq m for a 2-bedroom town house in certain town centre locations. 25sq m is likely to be acceptable.*
- *The proposed 2 bedroom dwelling exceeds the minimum room standards as set out in PPN6.*
- *The proposed dwelling is unlikely to have an unreasonable impact on the neighbouring property "Mon Caprice" by virtue of overlooking, loss of light, nor be overbearing.*

11. Encouraged by this advice, the appellant submitted his application, after making a number of minor revisions.

The grounds of appeal

12. The appellants' grounds of appeal, briefly, are:

- (1) The application was made following positive advice from the Department, which was later reversed in the decision.
- (2) In refusing permission, the Department overrode policies of the adopted Island Plan, based on recent decisions by Inspectors.
- (3) The Inspectors' decisions relied upon by the Department have not been incorporated formally into policy or guidance.
- (4) The appellant has been not been treated reasonably.

Main Issues

13. From my assessment of the papers submitted by the appellant and the Department, I identified a single issue in this case:

1. The effect of the proposed development on the character and appearance of the locality.

14. However, following the clarification with respect to the "additional reasons" for refusal and the discussion at the Hearing, I have identified a second:

2. Whether the proposed development would provide satisfactory living conditions for future occupiers of the dwelling, and of neighbouring properties.

Reasoning

Planning Policy

15. The Island Plan was adopted 2011 and revised in 2014. Its Spatial Strategy focuses development on the Island's built-up areas, particularly St Helier, while respecting its character. In order to seek optimum use of developable land, Policy SP 2 requires development to make the most efficient and effective use of land to help deliver a more sustainable form and pattern of development. The supporting text states that this requires the delivery of higher densities, which if done well, imaginative design and layout of new development can produce a higher density without compromising the quality of the local environment. The density of existing development should not dictate that of new development by stifling change or requiring replication of existing style or form.
16. Policy GD 3 indicates that the highest reasonable density will be required for all developments commensurate with good design, adequate amenity space and parking, and without unreasonable impact on adjoining properties.
17. Policy GD 1 sets out a number of criteria against which development proposals will be assessed. Amongst these are that it should contribute to a more sustainable form and pattern of development; it should not seriously harm the Island's natural and historic environment, including on natural and built features and the character and amenity of the area and the built environment; it should not unreasonably harm the living conditions of neighbouring residents; it should contribute to reducing dependence on the car, including providing a satisfactory means of access, manoeuvring space and adequate space for parking; and be of a high quality design in accordance with Policies SP 7 and GD 7, such that it maintains and enhances the character and appearance of the Island.
18. Policy SP 7 requires the assessment of various components of development in order to ensure that it makes a positive contribution to a number of urban design objectives, of which layout and form; density and mix; and scale, height and massing are of particular relevance.
19. Policy GD 7 similarly seeks high quality design in all development that respects, conserves and contributes positively to the diversity and distinctiveness of the built context. It should respond appropriately to a number of criteria, of which the following are particularly relevant:
 - the scale, form, massing, orientation, siting and density of the development and inward and outward views;
 - the relationship to existing buildings, and settlement form and character, landscape features and the wider landscape setting; and
 - the design of vehicle access and parking.

20. Policy BE 3 sets out criteria relating to development in the Green Backdrop Zone. Development will be permitted only where the landscape remains the dominant element in the scene and where the development would not be visually prominent or obtrusive in the landscape setting; where it retains existing trees and landscape features; and where it presents satisfactory proposals for new planting which serve to maintain and strengthen the landscape setting and character of the area.

The reasons for refusal

21. Until the day of the Hearing, neither the appellant nor I were aware that the Department had intended to refuse permission for 5 reasons rather than just the one given. The other 4 were included in the recommendation at the end of the case officer's report. However, as the error was not brought to my attention, or that of the appellant, it was not unreasonable to assume that a decision had been taken not to pursue all of the reasons. Certainly that was my assumption.
22. I acknowledge that administrative errors can happen. However, I am extremely concerned that in this case no action was taken to inform me or the appellant of the error, even though the Department's officers were aware of it, with the result that my preparation for the Hearing was incomplete and the appellant was potentially disadvantaged.
23. At the Hearing, with the agreement of both parties, I proceeded to examine all 5 reasons, but on the explicit proviso that if the appellant felt at any time that he was being placed at a disadvantage, particularly by reason of not having been able to prepare his case properly, I would give him the opportunity to respond more fully in writing. At the end of the Hearing I asked the agent if his client wished to take advantage of expanding his case in writing. The Department's officers, to their credit, urged him to do so. I called a short adjournment to allow discussions to take place between the appellant and his agent, but they decided not to pursue the matter, being content that everything had been discussed adequately at the Hearing; and that they had not been disadvantaged by the Department's error.
24. I regard these events as being far from satisfactory, but I conclude that, overall, the appellant was not disadvantaged by them. I am therefore content to submit this report confident that I have all of the necessary evidence to reach a properly informed recommendation.

Grounds of the appeal

25. The appellant was naturally disappointed to receive a refusal based in part on matters which he had been led by the Department to believe were acceptable. On questioning the officers concerned, he learned

that the reasoning for the refusal had been based, at least in part, on the findings of Inspectors when considering other cases, in particular "Alanda" (St Lawrence ref P/2015/0274) and "Domus" (St Brelade ref P/2015/0524).

26. The grounds of appeal are largely based on the appellant's perception that he has been treated unreasonably, in that the Department had been encouraging of his proposals prior to submission of his planning application, but then had taken a very different view at the formal stage. He believes that by taking account of the Inspectors' findings on these other cases it has "overridden" planning policy to his disadvantage, because these have not been formally published as guidance for public use.
27. First, while I may have a degree of sympathy for the appellant, the advice given to him by the Department was explicitly without prejudice to the formal consideration of planning matters and any future decision. The letter he received stated that the final decision on any planning matter may not reflect the initial advice given.
28. Second, in my view, the Department has not "overridden" policy. Article 19 of the Law says that, in general, planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan. However, it also says that all material considerations shall be taken into account in the determination of an application for planning permission. It is clear to me that the Department has acted in accordance with the Law. The Inspectors' recommendations on the other cases, and the Minister's decisions based on them, have been made on balance, taking into account both policy and other material considerations. Equally, the Department has then taken these recommendations and decisions as material considerations in the determination of the present case. That is entirely reasonable, proper and lawful, in my view.
29. Third, even if the Department had acted unreasonably – and I make no findings on that matter – that in itself would not provide a proper basis for allowing the appeal. I therefore propose to make my recommendation(s) on the merits of the case by reference to my main issues.

Living conditions

30. The site is small, but Policy GD 3 seeks the highest reasonable density commensurate with good design, adequate amenity space and parking. These considerations will be considered below. The proposed dwelling itself would also be small, but the Department confirms that it would meet its internal size standards for a 2-bedroom dwelling. In terms of its accommodation, it would be akin to a 2-bedroom duplex flat.
31. There are properties to the north and north-east, including Orchid Court about 11 metres away. But these are at a higher level, so that

there would be little potential for the new dwelling to be “overbearing” as the Department asserts. The rear bedroom would be served by roof-lights set above eye height, in order to prevent overlooking towards the neighbours. It is a necessary compromise to protect their amenity, but I do not believe the lack of outlook from that room would have any great effect on the quality of life of the new occupiers.

32. The outside amenity space to be provided for it would be very limited: comparable to a room of moderate size, just large enough to permit the occupiers to sit out. Planning Policy Note (PPN)6 says that in most locations where family houses are constructed (i.e. all dwellings of two bedrooms and above in size), gardens must be provided on the private side of the dwellings where they are screened from public view. It adds that these gardens should never be less than 50 square metres (sqm) in area, even when additional garden areas are provided on the public side of the dwelling. However, there will be exceptional circumstances where it is necessary to forgo the minimum garden size for new family houses in certain town centre and Conservation Area sites, where environmental considerations will take preference. The guidance says it may be more appropriate in such circumstances to reduce the minimum private garden size to 30 sqm for 2 bedroom town houses, which would equate with the requirement for 2 bedroom flats and allow for passive recreation.
33. The Department is content to accept the lower figure in this case. However, the amenity area would not be on the private side of the house; it is not in the town centre and I am not aware that it is within a conservation area. Nor am I aware of any “environmental considerations” or “exceptional circumstances” that might justify a reduced provision as envisaged in PPN6. To my mind, situated to the front of the dwelling, and adjoining the car parking and turning area, it would not be an attractive or private place to use for any amenity purpose. I note that a screen fence has been erected at *Mon Caprice*, between the access way and its only amenity space, which is also small and at the front. To my mind, that clearly demonstrates the undesirability of this kind of arrangement from the point of view of the future occupiers. To my mind, the proposed amenity space would not meet the specifications of PPN6 or the expectations of Policy GD 3 that the need for higher density development should be balanced against the provision of adequate amenity space.
34. At 50sq m, the amenity area for No 99 would meet the PPN6 standard, though in practice it would do little more than formalise the use of the present yard at the back of that property. In my opinion it would not provide a pleasant or private space, situated adjoining the storage, bin storage and cycle racks for both properties awkwardly placed around the car parking spaces.
35. According to the Department, the car parking provision would not meet the standards set out in PPN 3. However, in view of the highly sustainable location within walking distance of St Helier and the availability of local bus services, it considers the proposed provision of

1 space for the new dwelling and another for No 99 to be not unreasonable. I agree that this is a pragmatic approach.

36. However, the proposed location of the parking places hemmed in by the stores, bin stores and bike racks would make access to these facilities difficult. The parking area would also further limit the practical value of the amenity areas of the 2 properties, since it would be located between them and in close proximity. Moreover, the turning area, situated directly in front of the front door to the proposed dwelling, adjacent to its amenity area and encroaching on to the curtilage of *Mon Caprice*, would be both awkward to use and further adversely affect the amenity of the occupiers of the proposed dwelling and that of *Mon Caprice*, contrary to the provisions of Policy GD1.
37. At the Hearing it was suggested that an alternative layout could be drawn up to address these shortcomings. Although it might just be possible to turn a small car within the area between *Mon Caprice* and the rear of No 101 Don Road, it would in my view be a far from satisfactory arrangement. I recognise that Summerville Lane is effectively a cul-de-sac with little traffic and that it would be possible to reverse into or out of it with minimal hazard, thereby obviating the need for a turning area altogether. But in my opinion that too would be less than satisfactory, as drivers would be obliged to reverse through a fairly narrow area which would also provide pedestrian access to 2 dwellings. A revised layout could be required by condition but, in the absence of any firm proposals, I remain concerned that it may not be possible to overcome the shortcomings identified.
38. Although the reduced parking provision may be acceptable and the amenity space for 99 Don Road would meet the specifications of PPN6, I find the layout of the space between the back of No 99 and the front of the proposed dwelling unacceptable for the reasons given above. In short, the cramped nature of the site does not permit the land to be laid out in a way that would make satisfactory provision of useful amenity space, car parking and turning and ancillary storage.
39. I conclude with respect to this issue that the proposed development would represent very poor design, contrary to the provisions of Policies GD 1, GD 7 and GD 3. Although the latter promotes high-density development, it should not be at the expense of design or amenity. In terms of my issue, the development would not provide satisfactory living conditions for future occupiers of the dwelling, or of neighbouring properties.

Character and appearance

40. At the Hearing there was general agreement that the area includes dwellings of a mix of styles and types, with no predominant characteristics. The appearance of the proposed dwelling would not be dissimilar to *Mon Caprice*, with the same ridge height and the use

of dormers to the front. The materials would also be similar, and the Department raises no objection to them. It would be significantly narrower, but I disagree that it would be disproportionately tall relative to its width. The side gables would be blank, but that is not uncommon in housing layouts. Overall I am satisfied that, in architectural terms, it is acceptable.

41. The Department asserts that the dwelling would harm the character of the area generally, particularly in the context of its inclusion within the Green Backdrop Zone (GBZ) identified in the Island Plan. That says that the Zones have been identified with the aim of ensuring that proposed development within them would protect and enhance the landscape backdrop to the urban areas through the careful siting and design of buildings, the retention of existing trees and the use of appropriate new planting to strengthen the landscape setting of these slopes. But when asked to identify defining characteristics of the area, the Department's officers did not identify green space as being among them. Indeed, there is no dispute that, apart from the large Howard Davis Park on the opposite side of Don Road, the immediate locality is dominated by residential development. The Department asserts that backland development is not characteristic of the area. But from my observations, it is clear that several of the properties in this section of Don Road are built up behind; and few have green space of any kind.
42. The Department asserts that the proposed development would replace "green open space of a rear garden". But currently there is no green open space. Indeed, the Department's officers had not personally seen the site in that state, but were relying on aerial photographs which are inconclusive as to the true nature of the greenery. The appellant says that the garden had become very overgrown during the occupancy of No 99 by a particular tenant, during which time it was not maintained. I have no reason to disbelieve this, but again there is no firm evidence. Whatever its previous state, the "garden" is now cleared of vegetation. There is no green space or garden to replace.
43. The site is not visible from Don Road; and may only be glimpsed from Summerville Lane through the access way. But even that view is partially obscured by intervening walling and *Mon Caprice*. It is possible that it may be seen from some viewpoints on higher ground to the north, but my attention was not drawn to any. It is, in short, well hidden by surrounding built development and the lie of the land. Whether in its present cleared state, or as a green garden, or developed as proposed, it would make little or no contribution to any landscape backdrop. Given its siting, I believe the proposed development would make no perceptible difference to the character of the area or to the GBZ. As such, I do not believe that, insofar as it can be applied to this case, the requirements of Policy BE3 would be breached.
44. It is clear from the formal Listing of No 99 Don Road that the identified features of interest lie to the front of the property. The rear

is marred by a modern extension and is of little or no interest; and I note that the Department's Historic Environment Team raised no objection to the proposal. In that context, I am satisfied that the proposed dwelling would not breach Policy HE 1 of the Island Plan which states that development that fails to preserve or enhance the special or particular interest of a Listed building and their setting will not be approved. In my judgment the interest would be preserved; and that is sufficient, as the policy does not require enhancement. In reaching this conclusion I have had regard to the *Herold* case (Royal Court ref [2015]JRC111) which was brought to my attention by the Department. But I am satisfied that I have applied the terms of the policy correctly and that my reasoning does not breach the principles set out in it. I consider the Department's argument that the development would result in the loss of a green space and thereby harm (ie fail to preserve or enhance) the special interest of the Listed Building and its setting is untenable.

45. I conclude on this issue that the proposed development would not be harmful to the character or appearance of the area, including to the GBZ and the adjacent Listed Building.

Other Matters

46. I have had regard to the Inspectors' observations in the cases brought to my attention by the Department. But, as I have not seen those properties nor seen the evidence that was given in those appeals I am unable to say with any certainty that they are directly comparable, even though some similar issues may have been raised. I have therefore concluded on the issues in this case by reference to the policies of the Island Plan and its individual merits.

Conditions

47. In the event that my recommendation to dismiss the appeal is not accepted, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately.
48. The Department has not suggested conditions which it would wish to see imposed in the event that permission is granted. Nonetheless, at the Hearing the matter was discussed on a "without prejudice" basis. A number of conditions were agreed in principle, based broadly on the Department's schedule of standard conditions. In brief, they relate to:
- (1) setting the usual 5 year timescale for implementation. This is necessary in the interests of certainty;
 - (2) removing permitted development rights insofar as they relate to the construction of extensions and outbuildings. This is required because the site is too small to accommodate such development without adversely affecting the living conditions of the occupiers;

- (3) requiring submission of revised details of parking, manoeuvring space, stores, bin stores, cycle racks, type of surfacing and of the means of enclosure of the amenity areas. This is necessary because the submitted details are not satisfactory.

49. To these I have added a requirement that the development shall be carried out in full accordance with the submitted plans, in the interests of certainty and control. The recommended conditions are contained in the Annex attached to this report.

Overall Conclusion

50. Notwithstanding my conclusion with respect to my issue concerning the effect on the character and appearance of the area, I find on balance that the proposed development is unacceptable for the reasons given with respect to the unsatisfactory nature of the living conditions that would be provided.

Recommendation

51. I **recommend** that the appeal should be **dismissed**.

52. However, should the Minister disagree with this recommendation and allows the appeal, I **recommend** that planning permission be granted subject to the conditions set out in the Annex to this report.

Jonathan G King

Inspector

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ANNEX

CONDITIONS THAT MAY BE IMPOSED ON THE PLANNING PERMISSION IN THE EVENT THAT THE APPEAL IS ALLOWED

1. The development shall commence within five years of the date of this decision.
2. The development hereby permitted shall be carried out in full accordance with the approved plans.
3. Notwithstanding the relevant provisions of the Planning and Building (General Development) (Jersey) Order 2006 or any Order revoking or re-enacting that Order, no extensions or outbuildings shall be erected without the prior approval in writing of the Department of the

Environment.

4. The dwelling hereby permitted shall not be occupied until the car parking spaces, vehicle manoeuvring space, stores, bin stores, cycle racks and the means of enclosure for the amenity areas for the new dwelling and for 99 Dob Road have been provided, and the external areas have been surfaced, all in accordance with details which shall have first been submitted to and approved in writing by the Department of the Environment.

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