



Planning and Building (Jersey) Law 2002

Article 115(5)

Report to the Minister for the Planning and Environment

by

Jonathan G King BA(Hons) DipTP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Mr Michael Woolley

Site at 3 Rouge Bouillon, St Helier

Written representations case

Unaccompanied Site Inspection carried out on 7th January 2019

Department of the Environment Reference: P/2018/0990

Site at 3 Rouge Bouillon, St Helier

- The appeal is made under Article 108 of the Law against a decision to refuse planning permission under Article 19.
 - The appeal is made by Mr Michael Woolley.
 - The application Ref P/2018/0990, dated 12th July 2018, was refused by notice dated 15th November, 2018.
 - The development isto construct a first floor extension to existing store.
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Summary of Recommendations

1. I **recommend** that the appeal should be **allowed**, and planning permission granted for the construction of a first floor extension to an existing store at 3, Rouge Bouillon, St Helier, subject to the conditions set out in the Annex to this report.
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The scope of the report

2. Article 116 of the Law requires the Minister to determine the appeal and in so doing give effect to the recommendation(s) of this report, unless he is satisfied that 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 he 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.
3. 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 matters raised in the appellant's 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.

Background

4. Permission (ref P/2016/0622) was granted in 2016 to demolish an old outbuilding and to construct a garage and store at the bottom of the garden to No 3 Rouge Bouillon. The proposed building was single-storey, with a pitched roof, to replace an old, smaller, monopitch structure. Later the same year, a revised design with a larger floor area was permitted (ref P/2016/1193) with an asymmetric pitched roof. This has now been built. The appellant indicates that he uses the store in connection with his building business which is run from the house. Although there is a large garage-type door in the back wall, leading to a private car park and access, I understand that no vehicles are kept in the store, as no vehicular access is permitted by the owners of the car park / access.
5. At the time of these permissions, the applicant says that No 3 Rouge Bouillon was categorised as a "Potential Listed Building". However, it has now been formally designated as a Grade 3 Listed Building (LB), the third of 4 categories, meaning that it is of special public and heritage interest to Jersey, being an important, good

quality example of a particular historic period, architectural style or building type, but with alterations that reduce the special interest and / or have particular elements worth listing.

6. In this case, the special interest of the building is stated to be "architectural and historical". The Statement of Significance says that the house is a "*terrace property contributing to streetscape character and retaining original external features. Though altered, with high quality elements in the Edwardian style, the house retains many, increasingly rare, original early nineteenth century internal features*". The external description of the rear elevation, which faces the appeal site, identifies its slate roof, with a nineteenth century 4-paned dormer; a brick chimney; painted render finish with ashlar effect, with various modern extensions. Only 2 original 12 pane (6/6) sashes without horns survive, with the rest being mainly pvc. The Statement makes no reference to the present or former outbuilding
7. The proposal which is the subject of the present appeal was refused under delegated powers by officers of the Department. The Planning Committee upheld the decision following a request for a Review.

Description of the proposals

8. The application form describes the development as follows: *Proposed construction of first floor extension to existing store to create "work from home" office – revised planning application: proposed roof height reduced and roof line set back from south-east elevation, proposed roof lights instead of dormer window.* This was amended by the Department to the short description given in the preamble to this report.
9. The proposed modifications to the outbuilding in brief comprise the creation of a room within a raised roof having an altered form. The appellant says that his secretary occupies one of the rooms of the house as an office for his building business. The proposed room in the outbuilding is intended to be used by the secretary, thereby releasing the room in the house for domestic use.
10. Externally, the eaves would be slightly raised; the angle of both roof slopes increased; and the overall height raised by 935cm and capped by a flat top over the central section. This is described as a "mansard" on the plans, though it does not technically fall within that description. Three roof lights would be inserted into each slope, where none presently exist. Internally, a first floor would be introduced at eaves level.

The reason for refusal

11. The sole reason for refusal is:

Proposals which do not preserve or enhance the special interest of a Listed Building and its setting are not permitted under Policy HE 1 of the adopted Island Plan 2011 (Revised 2014). By virtue of the enlarged and altered roof form, the proposals add significantly to the visual weight of the building, fundamentally altering the small, diminutive characteristics of the previously permitted building, resulting in (an) unduly dominant structure, which fails to deliver the requisite high standard of design and

neither preserves nor enhances the special interest of this Listed Building or its setting. Accordingly, the proposals are contrary to Policies HE 1 and GD 7 of the Adopted Island Plan 2011 (Revised 2014)

The grounds of appeal

12. The appellant's grounds of appeal, as set out on the appeal form, say that:

- The proposal relates to a two-year old building within the site of a grade 3 listed building, which has been treated as if it is the listed building.
- The view is taken that the proposed extension, by virtue of its relatively small increase in building height and volume will not in fact result in a significant increase in the visual height of the building, or provide an unduly dominant and imposing structure.
- In reaching their decision to refuse, the Planning Committee has taken little or no notice of the effect of existing buildings on the immediately adjacent sites.

Planning policy

13. Policy HE1 *Protecting Listed buildings and places* includes a presumption in favour of the preservation of the architectural and historic character and integrity of Listed buildings and places, and their settings. 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.

14. The supporting text to this policy lists the issues that are generally relevant to the consideration of all applications affecting Listed buildings and places, as follows:

- The importance of the building or place; its intrinsic architectural, archaeological, historic or other interest and rarity;
- The particular physical features of the building or place (which may include its design, plan, materials or location which justify its protection);
- The building or place's setting and its contribution to the local scene, which may be very important, e.g. where it forms an element of a group, park, garden, or other townscape or landscape, or where it shares particular architectural forms or details with other buildings nearby; and
- The extent to which the proposed works would bring substantial benefits for the community, in particular by contributing to the economic regeneration of the area or the enhancement of its environment (including other protected buildings or sites).

15. It goes on to say that proposals for change should be in scale with the building or place and respect its character. Extensions to Listed buildings should be subservient to the existing and not conflict with the form, profile or detail of the original building or detract from its character. There is also a need to preserve or enhance the spaces about buildings, and extensions should be sympathetic to their potential impact upon the setting and space around protected buildings

16. Policy GD 7 *Design quality* seeks in all developments a high quality of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and the built context, in accord with the principles of good urban design. A number of criteria for development are set out, amongst which are: the

form, scale, massing, orientation, siting and density of the development; and the relationship to existing buildings, settlement form and character; and the degree to which design details reflect or complement the style and tradition of local buildings.

Main Issue

17. From my assessment of the papers submitted by the appellant and the Department, and from what I noted during the site visit, I consider that there is a single main issue in this case, relating broadly to the reason for refusal:

The effect of the proposed development on the character and appearance of the Listed building and its setting.

Reasons

18. The existing outbuilding has been constructed very recently; and is not referred to either in the statement of significance of the Listing or in the description of the property. Nonetheless, the supporting text to Policy HE 1 states clearly that controls apply to the whole of a protected site, not just the front elevation or the main building. In this case, the formally defined area of the LB includes not only the house, but also its associated land to the front and rear, together with the outbuilding. Even if that building were not included within the listing it has the potential to affect the setting of the house. I therefore conclude first that it is proper to treat the outbuilding as an integral part of the Listed property and to apply the provisions of Policy HE 1 equally to it.
19. The principle of erecting a small modern outbuilding at the rear of the garden has been accepted by the grant of the planning permissions in 2016. I do not know the precise date when the house was listed formally but the potential for it to be Listed was known at the time of those decisions; and it is reasonable to assume that the effect on the setting of the house was considered at the time. The present proposal does not increase the ground floor area of the outbuilding, nor does it alter the external finish of the walls or roof: respectively painted render and slate, reflecting those used on the house. Having regard to the Statement of Significance and the description set out in the schedule of Listing, it is clear that any alteration to the present outbuilding would be incapable of affecting the front of the house; the street scene to which it contributes; or to its internal features of interest.
20. I conclude secondly that the potential for impact on the Listed area relates only to the outbuilding itself, to the rear of the house and to the back garden; and that the dispute in this appeal relates solely to the additional height and the design of the roof.
21. With respect to height, the roof would be raised by 0.935 metre which, in the context of a present overall building height of 4.84 metres, would be an increase of less than 20%. Though not insignificant, I do not consider that it would be perceived as excessive either in absolute or relative terms, nor would it substantially alter the character of the building. Though the proportion of the overall height of the building occupied by the roof would be greater than at present, it would still be considerably less than that occupied by the walls.

22. The building would still be perceived as a single-storey structure, subservient in height, scale and function to the house. In reaching this conclusion, I have had regard to the fact that the present building is already taller and more bulky than the old structure it replaced, and to the Department's arguments concerning the incremental increase in height and mass. But the question is not whether it would be taller and more massive, but whether its height and mass would render it incompatible with its surroundings. I do not believe it would. In my view it is a considerable exaggeration to say – as the refusal notice does – that it would be unduly dominant, either with respect to the house or to the 2- and 3- storey office buildings occupied by the BBC to the rear.
23. I acknowledge that the proposed roof design would take an unusual form, in particular the flat element, which would not be a feature found on a traditional building. Although not being a true mansard, which is characterised by two slopes on each side – the lower one being steeper than the upper – it shares some of the same advantages. In particular it would allow accommodation to be provided in an upper storey without increasing the height of the walls. It would also enable full headroom to be achieved in the roof space while limiting the overall height of the building compared to a conventional pitched roof. I have not been provided with any firm measurements, but I would estimate from the drawings that the flat part would be less than 2.4 metres in depth, barely more than a quarter of the overall depth of the roof at eaves level. Viewed from the ground to front and rear the small flat element would not be visible; and from the sides and in oblique angles, it would not be a significant feature. In my judgment, even taking account of the additional height, I do not believe that it would be significantly more unusual in appearance or more incompatible with its surroundings than the shallow-sloped, asymmetric roof it would replace.
24. Moreover, account should be taken of the fact that the rear of the house is far from being in its original form: it has been very considerably altered by incongruous and anachronistic additions in the form of single- and two-storey extensions, some with flat roofs. In short, while the house is Listed, its rear elevation retains little of architectural or historic interest. While this does not excuse further poor design, it does support my view that the proposed alterations to the outbuilding would not detract significantly from the overall appearance or interest of the house.
25. By reference to the tests contained in Policy HE 1 I am satisfied that the architectural and historic character and integrity of the LB and its setting would be preserved and that the proposal would also preserve its special or particular interest (as set out above) and its setting. I am also satisfied by reference to Policy GD 7 that the proposed development would conserve and contribute positively to the diversity and distinctiveness of its built context no less than the existing building.

Other Matters

26. A number of representations have been made opposing the proposal. My attention has been drawn to a planning document *Businesses run from home*". I believe this is Supplementary Planning Guidance (SPG) Advice Note 15, which resists proposals to set up fully fledged commercial businesses in residential properties; and sets out criteria for determining material changes of use. However, I understand that this is to be reviewed, in common with much of Jersey's SPG which is out of date. I

note that the Department makes no reference to it; and I accord it limited weight in the circumstances. Policy EO 4 of the Island Plan has the same title. That says that where permission is required for the operation of a business from a home, proposals will be permitted provided that they accord with Policy GD 1 *General development considerations*; and that where its criteria are not satisfied, development will not be permitted. I am satisfied that the relevant criteria – for example in relation to protecting the amenity of neighbouring occupiers - would not be breached. The proposed office would not give rise to any significant disturbance or noise; and the proposed roof-lights would be unlikely to cause any loss of privacy. To the front they would look towards the house; and to the rear towards office buildings occupied by the BBC. Although somewhat taller than the present outbuilding, as proposed to be modified it would not be so large as to dominate surrounding buildings or to be visually oppressive for their occupiers.

27. I note that there is a garage type door in the back wall of the present outbuilding. However, the appellant acknowledges that he has no rights of passage for vehicles over the adjoining land which is not in his ownership. Neither the door nor the building as it stands is subject to the present appeal. Objections made on behalf of the adjoining landowner in relation to development affecting a party wall (the rear wall) are matters between the appellant and that owner. These matters are not before me. Should planning permission be granted, the appellant's legal obligations to his neighbours would be unaffected.

Conditions

28. In the event that the Minister decides to allow the appeal, any permission granted should be subject to conditions designed to ensure that the development is carried out appropriately. In addition to conditions applied to all permissions as a matter of course - concerning the timescale for commencement and compliance with the approved plans - the Department has suggested a further condition which seeks to ensure that the use of the outbuilding is controlled by condition to purposes ancillary to the main dwelling, and not as a separate or independent commercial use. As this effectively seeks to control the use of the whole outbuilding, not just the development which is the subject of the appeal, I sought the Department's views with respect to the legal basis for this suggestion, and its implications. Its response was copied to the appellant, and his views sought. However, no comment has been received.
29. It is not essential for a permitted use to be defined by condition; and the Department does not routinely specify a use in a planning condition. This is in line with Section 23(6) of the Law which says "*If planning permission is granted for the erecting of a building, the permission may specify the purpose for which the building may be used but if no purpose is specified the permission shall be construed as including permission to use the building for the purpose for which it is designed*".
30. With respect to the lawful use of the existing outbuilding, the Department says that the application for the present building and the preceding application were considered on the assumption that it was intended to be used for purposes ancillary to the occupation of the main house and not as a separate and / or commercial unit. The applications were submitted on householder application

forms; and there was nothing on the forms, the drawings or in the design statements to suggest that the use would be anything other than for ancillary domestic purposes. The permissions for the outbuilding were granted on that basis, without any explicit restriction or limitation of use.

31. Against that background, and in the absence of any comment from the appellant, I am satisfied that the extant permission(s) for the outbuilding are for ancillary domestic use and do not convey any rights to use it for commercial purposes. It is for the Department to decide whether it is being used in that way. The development which is the subject of the appeal was described on the application form as an *extension ... to create "work from home" office*. The Department says in relation to the appeal that a low-key business run from home may be acceptable; and it has raised no objection in principle to such a use.
32. The Department has argued that, as the proposed development is entirely reliant on the existing building for access, the 2 elements would be physically and functionally linked. Having regard to Section 23(4) of the Law, which states: "*A condition may be imposed on the grant of planning permission: (a) to regulate the development or use of land under the control of the developer (whether or not it is land on which the development is to be undertaken) ... in so far as it appears to be expedient for the purpose of, or in connection with the development authorized by the permission*", the Department takes the view that it would be expedient in this case to restrict the use of both elements of the building to ancillary domestic purposes.
33. I am satisfied that such a condition would be lawful and, in view of the history of the development and the potential for uncertainty, it would also be expedient and reasonable, given the lack of any limitation as to use on the earlier permission. The amenity of adjoining occupiers would thereby be protected.
34. If the Minister is minded to allow the appeal and grant permission, I recommend in the interests of certainty that the condition requested by the Department (condition 1 in the Annex) should be imposed.

Overall Conclusion

35. Overall, having regard to my main issue, the relevant policies and all other matters raised by both parties and others, I conclude that the proposed development would be acceptable. For the reasons given above, I recommend that the appeal should be allowed, and planning permission 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***

- A. The development hereby permitted shall commence within five years of the date of this decision.
- B. The development hereby permitted shall be carried out in full accordance with the approved plans.
- 1. The development hereby permitted, together with the existing outbuilding, shall be used only for purposes ancillary to the main dwelling 3 Rouge Bouillon and not as a separate or independent commercial use.

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