

Planning and Building (Jersey) Law 2002
Article 115(5)

Report to the Minister for the Environment

By

Linda Wride Dip TP MRTPI

an Inspector appointed by the Judicial Greffe.

Appeal

by

Mr William Church

Langley House, Rectory Lane

Application by Mr R Purdie

Langley House, Rectory Lane, St Saviour

- The appeal is made under Article 108 of the Law against a decision to grant planning permission under Article 19
 - The appeal is made by Mr W Church
 - The application Ref PP/2018/1796, is dated 18 November 2018
 - Planning permission was granted by notice dated 4 April 2019 subject to conditions
 - Proposed development: Construct 1 No. five bed dwelling with integral one bed staff unit. Form vehicle access on to Rectory Mews
 - Address: Langley House, Rectory Lane, St Saviour JE2 7NP
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Summary of Recommendation

1. I **recommend** that the appeal should be dismissed and that permission should be granted subject to the conditions included in the Annex to this report.
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Introduction

2. This is an appeal by a third party against the grant of planning permission. The appellant Mr William Church, lives at Aldford, Rectory Lane, a neighbouring property to the site of the development.

The scope of the report

3. Planning permission was granted, subject to conditions on 4 April 2019. Under Article 117(1) & (2) of the Law, the decision remains in effect, but the development may not take place until determination of the appeal.
4. 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.
5. 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 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.

Appeal site and surroundings

6. The appeal site currently forms part of the walled garden at Langley House, an early 18th century detached house located to the north of Rectory Lane, St Saviour. Langley House is a Grade 3 Listed Building. However, the walled garden to the east of the house is not included within the boundary of the statutory listing. It is this area outside, but adjoining, the listed building boundary which comprises the appeal site.
7. A private lane, Rectory Mews, borders the east side of the appeal site. This lane provides access to a terrace of three single storey dwellings (1-3 Rectory Mews) which lie to the north of the walled garden appeal site. This terrace of houses is single storey (and mainly single aspect) where it backs on to the appeal site and two storey when viewed from the front, due to the change in level across the site. Another single storey dwelling, Aldford (where the appellants live) is located on the opposite side of Rectory Mews, with a frontage on to Rectory Lane (its postal address).
8. The appeal site is surrounded by high granite walls on the south, west and east sides and the terrace of dwellings in Rectory Mews on the north side. The western boundary wall between the appeal site and Langley House acts as a retaining wall due to the significant difference in height (approximately 3m) between the walled garden of the appeal site and Langley House to the west.
9. The site is located in St Saviour, within the Built-Up Area as defined on the Island Plan Proposals Map.

Description of proposal

10. The appeal proposal is for a five bedroom detached house with an integrated staff flat. The main part of the building would be on three floors, including two bedrooms the top floor in the roofspace lit primarily by dormer windows, three bedrooms plus bathrooms on the first floor, and reception rooms and associated living accommodation on the ground floor.
11. A single storey wing at the east end of the house projecting towards Rectory Lane and running parallel to the private road, would accommodate a kitchen and sun room. A separate wing at the west end of the house running towards the Rectory Mews terrace would provide garages on the ground floor and 1 bed staff apartment on the first floor, set partly in the roofspace and lit by dormer windows. A new opening would be formed on to Rectory Mews private road to provide access to garages and parking spaces serving the proposed development.
12. The appeal scheme was amended post-submission in response to suggestions made by The Historic Environment Team. The revisions include reducing the height of the roof (eaves and ridge line) and adding chimneys to the proposed dwelling. The appeal permission relates to these revised plans.

13. The walled garden is not flat. The ground rises gently towards Rectory Mews. Although not clear from the original submission, it became apparent at the hearing that the floor slab of the proposed building would be set at the lower level of the gradient across the site, necessitating some excavation towards the Rectory Mews boundary wall. A section across the site provided at my request¹, shows the ground floor slab of the proposed dwelling approximately a metre below the level of Rectory Mews and almost 2m below ground levels around Aldford, on the far side of the Mews.

The Island Development Plan 2011 (Revised 2014)

14. The Island Development Plan has primacy in the determination of planning applications. There is a general legal presumption that development which accords with the Plan will be permitted, whilst development that is inconsistent with the Plan will normally be refused unless there is "sufficient justification"² for overriding its provisions.

15. The Plan identifies the protection of the environment as one of the key components of the strategic policy framework. The Plan's spatial strategy is therefore to concentrate new development in the built up area of the Island, as defined on the Proposals Map (Policy SP 1) and to resist development elsewhere. The general thrust of this strategic policy is carried through in Policy H 6 which supports proposals for new housing in the built-up area, provided the proposal accords with the standards set out in Supplementary Planning Guidance (SPG).

16. Policy SP 2 requires new development to make the most efficient use of resources to deliver sustainable development, while Policy GD 3 requires all developments to achieve the highest possible density of development which is commensurate with good design and without unreasonable impact on adjoining properties, amongst other things.

17. General development considerations set out in Policy GD 1 specifies the criteria all proposals are expected to meet for development to be permitted. These include requirements not to seriously harm the Island's historic environment, have an unreasonable impact on the Island's heritage assets or unreasonably harm the living conditions of nearby residents, having regard to privacy and light levels amongst other things. New development is expected to be of a high standard of design which maintains and enhances the character and appearance of the area (Policy SP 7) and contributes positively to the diversity distinctiveness of the built context (Policy GD 7).

18. The protection of the Island's natural and historic environment is given a high priority in Policy SP 4. The policy states that heritage assets (archaeology, buildings, structures and places) will be a key material consideration in the determination of planning applications. The thrust of this strategic policy

¹ Drawing 1311/029 Rev A

² Article 19 of Planning and Building (Jersey) Law 2002 (as amended)

carries through into Policy HE 1 which embodies a presumption in favour of preserving the architectural and historic character and integrity of Listed Buildings and places, and their settings. It states that permission will not be granted for (amongst other things) changes which would adversely affect a Listed Building and its setting. The supporting text states that conserving the character and setting of a Listed Building will be a material consideration when considering applications in the vicinity of such a building.

19.SPG *Managing change in historic buildings* (SPG 6 June 2008) advises:

Setting is important and can relate to changes to associated structures and to proposals for new-build which might impact on the particular character or appearance of a historic building. It is however impossible to define setting in mathematical terms, as skylines and views / vistas can be vital in some cases with a setting extending to a very wide area. In other cases, setting might be limited to immediately adjacent land where a site is enclosed and the proposal is relatively modest. The only way to assess the impact of any proposal on the setting of a protected building or site is by considering it on site and by being aware of this very important element of any proposal.

Planning background

20. In early 2018, three planning applications were submitted for different schemes at Langley House, including a proposal for the construction of two detached properties within the walled garden. This was subsequently withdrawn after the Department identified concerns with the proposal.
21. At the Hearing, the Department explained that the withdrawn scheme was not comparable to this appeal proposal. It involved the sub-division of the walled garden into two plots and erection of a chalet bungalow on each plot. Officers felt that the combination of built development significantly closer to Rectory Lane and Langley House and the design of the proposed dwellings would have resulted in significant harm to the setting of the listed building.
22. The appeal proposal was designed to address these concerns, with one main building block aligned with the front of Langley House thereby respecting the historic building line and leaving an open garden area fronting Rectory Lane. Designed in a traditional style to respect the character of Langley House, the proposed building incorporates a smaller wing on the common boundary to reduce the impact of the new dwelling on the setting of the listed building.
23. Since approving the appeal scheme, planning permission has been granted³ for works at Langley House which include alterations to the entrance, raising the height of the granite boundary wall fronting Rectory Lane to 1800mm and erecting a fence along the boundary between Langley House and the walled garden. When implemented, these new and altered means of enclosure will further screen the appeal site from the public domain and from Langley

³ P/2018/1556

House and its grounds, thereby reducing the impact of the appeal scheme on the setting of the listed building.

The grounds of appeal

24. In summary, the grounds of appeal are threefold:

- (a) The development would have an overbearing impact on the listed building at Langley House, having regard to its height and location on higher ground
- (b) Having regard to its scale, the proposed dwelling would be out of keeping with bungalows which characterise the local environs
- (c) The development would harm the living conditions of nearby residents due to overshadowing and loss of privacy

The case for the planning authority

25. The planning authority highlights that the appeal site lies within the Built-Up area where there is a general presumption in favour of development. All the concerns raised in the grounds of appeal were taken into account when the application was considered and determined by the Planning Committee at a meeting which was open to the public, following a visit to the site.

26. The committee report acknowledges that the proposed building would be clearly viewed in the context of Langley House and would neither preserve or enhance the setting of the Listed Building, as required by Policy HE 1. However, this must be balanced against the requirements of other policies including SP 1, H 6 and GD 3 and the need to optimise the use of land in the Built-Up area.

27. Given the 12m distance between the proposed building and 1-3 Rectory Mews and the limited number of openings in the elevation of the terrace facing the appeal site, it is not considered that the amenities of Rectory Mews residents would be unreasonably affected.

28. With regard to Aldford, the only windows in the proposed building directly facing this neighbouring dwelling would be in the staff accommodation wing, some 22m away. This is considered acceptable in the Built-Up area. Windows in the north elevation of the proposed dwelling would be closer to Aldford and would allow oblique views towards its rear garden. However, the Department does not consider that these views would result in "unreasonable harm", the test applied in Policy GD 1.

The case for the applicant

29. The applicant did not submit a statement of case in response to the appeal. However, a letter submitted in support of the application draws attention to the large granite wall which physically and visually separates the proposed dwelling from Langley House Listed Building. Other walls around the boundary would be retained (with the exception of the proposed new

entrance on to Rectory Mews private road) ensuring that the property remains private and reducing overlooking of the adjacent properties.

Consultation responses and representations

30. Acting in its capacity for the highway authority for Rectory Lane, the Parish of St. Saviour raised no objection on the grounds of traffic levels or visibility. The Natural Environment section of the Department advised that an ecological assessment of the site was necessary. The Historic Environment Team sought amendments to the scheme to ensure the delivery of a more convincing vernacular design which is not overly dominant in the setting of the Listed Building. No objection was raised to the revised design which is the subject of this appeal, when the amended plans were considered at planning committee.
31. Representations from four immediate neighbours and the National Trust expressed concerns that the proposal represented an over development of the site which would harm the character of the area, the setting of Langley House and the living conditions of neighbours. Concerns were also expressed about traffic arising from the appeal scheme, including noise and disturbance; increased traffic congestion; inadequate turning area and poor visibility at the entrance to the private lane, plus disturbance during the construction phase.

Issue 1: The effect of the development on the setting of Langley House Listed Building

32. The interior of walled garden is not visible in the public domain, being enclosed by tall, solid granite walls. However, the open space is largely free of built development, providing a visual buffer and breathing space in the wider context between the modern buildings to the east along Rectory Lane and the more rural setting of the large detached properties set in substantial grounds which front Rectory Lane to the west and south. When viewed from Langley House, the walled garden also provides a physical and visual buffer between the listed building and its nearest neighbours, Aldford to the east and the dwellings at 1-3 Rectory Mews to the north.
33. The absence of any buildings of substance in the walled garden means that the significant difference in height of some 3m or so between the garden (at a higher level) and Langley House set lower down the hillside is not immediately apparent when viewed from the front of the listed building. The retaining wall between the two plots is not dissimilar in appearance to other high granite walls around Langley House. Together, these create a private, enclosed green space at the front of the house. In my opinion, this open space at the front of Langley House is a key feature in the immediate setting of the listed building which provides a pleasing foil to the elegant facade. This sense of enclosure will be reinforced when the works and alterations at the entrance to Langley House approved in January 2019 are implemented.

34. Inserting a substantial building into the walled garden will inevitably have an effect on the setting of the listed building. Given the significant difference in ground levels between the two areas, the new building would be visible above the intervening retaining wall and fence. As a result, the wider setting of the listed building would neither be preserved (i.e. left unchanged) or enhanced. Consequently, the proposal would not accord with presumption in favour of preservation or enhancement enshrined in Policy HE 1 *Protecting Listed Buildings and Places*.
35. However, the enclosed green open space at the front of the listed building which is a key feature of its more intimate setting would be retained and enhanced by the alterations to the entrance of Langley House approved earlier this year.
36. The impact of the development on the wider setting of the listed building would be mitigated to a degree by siting the main part of proposed new house on the same building line as Langley House, such that it would not project forward of the listed building's façade. An area of open space would be retained between the new house and Rectory Lane (albeit smaller than at present) to continue to provide a visual buffer and breathing space between Langley House and the residential development beyond.
37. In addition, reducing the height and volume of the new house where it adjoins the boundary with the listed building as proposed, would also help mitigate the impact of the new building on the setting of Langley House, whilst the design of the new house - which successfully emulates a traditional building - would not look out of place in this sensitive location, in my opinion.
38. All these design features help mitigate the impact of the new development on the setting of the listed building.

Issue 2: The effect of the development on the character and appearance of the area

39. Having visited the appeal site and surrounding area, I was struck by the diversity of the townscape.
40. There is a wide variety in the age, size, type and appearance of residential development in the environs of Langley House. This includes chalet bungalows, large detached properties set in substantial grounds, smaller detached and semi-detached houses, as well as Aldford (a bungalow) and the traditional granite building which has been converted into the terraced houses at 1-3 Rectory Mews. The diversity in the built environment is reflected in the range of density of development and variety of spaces around and between buildings.
41. In short, there is no consistency in the character or appearance of the area. Insofar as it would have an impact on the public domain, and in its revised form, I consider that the appeal building would make a positive contribution to the diversity of the local built environment in the context described above.

42. In terms of the public domain, perhaps the most noticeable feature in the immediate environs of Langley House is the appreciable change from suburban to semi-rural character on Rectory Lane, at its junction with Rectory Mews. The retention of existing high granite roadside wall which encloses the appeal site along Rectory Lane, combined with the set back of the main part of the proposed building from the road frontage, would help screen the new development in views from the street at this point. As a result, the distinctive change in the character of Rectory Lane would be largely maintained, in my opinion.
43. There would be oblique views of the proposed building looking from Rectory Lane along Rectory Mews. However, the main part of the new development would present its narrow gable end to the mews, whilst the wing which projects forward towards Rectory Lane is single storey only. Due to the proposed change to ground levels within the walled garden, the ground floor and a small part of the first floor of the proposed dwelling would be set below the top of the roadside granite wall which is proposed to be retained. This arrangement would provide a degree of screening in views of the proposed development along Rectory Mews and help assimilate the new building into its immediate context.
44. Taking all these considerations into account, I conclude that the appeal proposal would not harm the character and appearance of the area and would contribute positively to the diversity distinctiveness of the built context, in accordance with Policies SP 7 and GD 7.

Issue 3: The effect of the development on the living conditions of nearby residents, having particular regard to overshadowing and privacy

45. The appellant's main concern related to his own home, Aldford, having regard to privacy and overshadowing arising from the appeal scheme. I was able to visit both the house and garden to see for myself the relationship between his property and the appeal site.
46. Turning first to potential overlooking and loss of privacy, the only windows facing directly towards Aldford would be those serving the first floor staff accommodation in the west wing of the proposed development. Given the distance between these windows and the appellant's house and garden (over 20m) I do not consider that privacy in Aldford would be compromised to an unacceptable degree.
47. Oblique views from ground floor windows in the rear elevation of the main house to the properties on garden would be restricted by the high granite wall on the boundary to Rectory Mews. Above ground floor level, many of the windows on the rear elevation serve non-habitable rooms such as bathrooms, a dressing room and a hall. Whilst bedroom windows above ground floor level would have oblique views across Rectory Mews to Aldford, given the function of the rooms these windows serve, I think it likely that

curtains/blinds would be drawn much of the time when the rooms are occupied at night. During the day, occupiers of the new house are likely to be involved in activities on the ground floor much of the time.

48. For these reasons, I do not consider that the appeal proposal would unreasonably affect the level of privacy that the appellant might expect to enjoy in his house and private rear garden area. Indeed, it would be similar to the level of privacy the occupiers of the new house would expect to enjoy in their rear garden which is overlooked by the raised patio area around the appellant's house and pool.
49. In response to my request, the applicant produced an animated sun path diagram for March and September which was shown at the hearing. This clearly demonstrates that overshadowing of the appellant's rear garden arises from the existing building at 1-3 Rectory Mews, rather than the proposed new house. Based on that information, I am satisfied that the proposal will not unreasonably affect the level of sunlight reaching the appellant's home.
50. I turn now to the effect of the development on the living conditions of the occupiers of 1-3 Rectory Mews, on whose behalf similar concerns were expressed. The houses are orientated towards their gardens on the north side of the building, and are by and large single aspect, looking away from the appeal site. I observed on my visit that there was one opening rooflight and two fixed pane obscure-glazed windows on the single storey south elevation facing the proposed new dwelling. I was advised at the hearing that these windows serve a hall, rather than a habitable room.
51. Taking into account the form and function of windows in the south elevation of 1-3 Rectory Mews, in my opinion, the living conditions of the occupiers of these house would not be unacceptably harmed as a result of the appeal scheme, having regard to privacy and daylight/sunlight.
52. For the reasons stated, I find no conflict with Policy GD 1 in terms of the effect of the development on the living conditions of nearby residents.

Planning conditions

53. In addition to the standard conditions relating to commencement of development and carrying out the development in accordance with the approved plans and details, the permission includes a condition requiring the submission and approval of an ecological assessment and the implementation of approved mitigation measures. This is necessary to ensure the protection of any protected species on the site in accordance with the relevant development plan policies.
54. At the hearing, the Department suggested three additional conditions relating to occupancy, materials and levels.

55. Given that the outdoor amenity space and off street parking are shared, I agree that the occupancy of the main house and staff accommodation should be linked by planning condition. In the interest of visual amenity and in the absence of information, I share the Department's view that details of the proposed cladding of the kitchen wing should be subject to the Department's approval, and only the approved shall be material used.
56. Last but not least, in the light of the discussion at the hearing about setting the proposed house into the gentle slope of the walled garden, I consider it necessary for details of the ground floor slab level relative to a datum point in Rectory Mews to be submitted to and approved by the Department and for the building to be constructed in accordance with the approved levels.

Overall conclusion and recommendation

57. I have found the proposal acceptable in terms of its effect on the living conditions of nearby residents and the character and appearance of the area. However, the effect of the development on the setting of the listed building and consequent conflict with Policy HE 1 remains a concern, notwithstanding the mitigating circumstances I have identified. I have therefore considered whether there is "sufficient justification" under Article 19 of the Law to override the provisions of Policy HE 1.
58. As noted earlier, the appeal site is within the built-up area as defined on the Island Plan Proposals Map. Within the built-up area, permitting the appeal scheme would accord with Policy H 6 which supports proposals for new housing in the built-up area; Policy SP 2 which requires new development to make the efficient use of resources to deliver sustainable development, and Policy GD 3 which requires developments to achieve the highest possible density of development commensurate with good design and without unreasonable impact on adjoining properties, amongst other things. These policies weigh heavily in support of the appeal proposal.
59. Having balanced the impact of the development on setting of Listed Building against the presumption of support for new housing in the built up area, the need to deliver sustainable development and to achieve the highest possible density of development, I have reached the conclusion that there is sufficient justification to override the conflict with Policy HE 1 in this particular case.
60. I therefore recommend that the appeal be dismissed and the decision to grant planning permission made by the Department on 25 March 2019 (Ref P/2018/1829) be upheld subject to the planning conditions set out in the Annex to this report.

Linda Wride

Linda Wride Dip TP MRTPI

31 July 2019

Annex – Planning conditions

1. The development shall commence within three years of the decision date.

Reason: The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.

2. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

3. Prior to commencement of the development hereby approved, an Ecological Assessment of the site must be submitted to and approved in writing by the Department of the Environment. The Ecological Assessment shall be undertaken by a suitably qualified person and to a methodology to be first agreed in writing by the Department of the Environment. All mitigation measures shall be carried out in full and in accordance with the recommendations of the Ecological Assessment.

Reason: To ensure the protection of all protected species in accordance with Policies NE 1, NE 2 and NE 4 of the Adopted Island Plan 2011 (Revised 2014).

4. Prior to its first use on site, a sample of the external material to be used in the cladding of the kitchen wing shall be submitted to and approved in writing by the Department of the Environment. The approved material shall be implemented in full and thereafter retained and maintained as such.

Reason: To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD 1 and GD 7 of the Adopted Island Plan 2011 (Revised 2014).

5. Prior to the commencement of the development, details of the floor slab level of the proposed house relative to a datum point in Rectory Mews shall be submitted to and approved in writing by the Department of the Environment. The building shall be constructed in accordance with the approved slab level.

Reason: In the absence of information relating to existing and proposed ground levels within the site and to ensure a satisfactory relationship between the proposed building, the existing boundary wall and nearby properties in the interest of visual amenity and in accordance with Policy GD 7 of the Adopted Island Plan 2011 (Revised 2014).

6. The self-contained accommodation above the garages shall be occupied by a member of staff or as ancillary accommodation to the main house and shall not be occupied as a separate, independent residential unit without the prior written permission of the Department of the Environment.

Reason: The proposed apartment has no dedicated private outdoor amenity or parking space and is not suitable for independent occupation in the absence of such facilities.

The following plans have been approved:

Location Plan

021 A – Existing Site Layout

022 C – Proposed Site Layout

023 C – Proposed Ground Floor Plan

024 C – Proposed First Floor Plan

025 C – Proposed Second Floor Plan

026 C – Proposed Roof Plan

027 D – Proposed Elevations

028 D – Proposed 3D Views