

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

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

### Report to the Minister for the Environment

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

**Appellant:** Mr Les De La Haye

**Planning Permission Reference Number:** P/2019/0970

**Decision notice date:** 21 November 2019

**Location:** De Montford House, La Route de la Cote, St Martin, JE3 6DR

**Description of Development:** Construct ground floor extension to west elevation. Enclose courtyard and construct first floor extension to north elevation.

**Appeal Procedure and Date:** Hearing held 6 March 2020

**Site Visit procedure and Date:** Accompanied 5 March and unaccompanied 5 & 6 March

**Date of Report:** 28 April 2020

---

### Introduction and Procedural Note

1. This is an appeal by Mr De La Haye against the decision to refuse planning permission for extensions and alterations to De Montford House.
2. The application was refused by the Growth, Housing and Environment Department ('the Department') on 24 September 2019. This decision was maintained by the Planning Committee on 21 November 2019.
3. During the hearing, parties referred to rulings of the Royal Court and to the Countryside Character Assessment. As these documents had not been placed before me prior to the hearing, I invited parties to submit further written submissions on these points.
4. A summary of the cases presented by the appellant and the Department during the application and the appeal, together with a summary of the representations and consultation responses received, are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

### The appeal site and surroundings

5. The appeal site lies within a residential area to the north of La Route de la Cote. It is occupied by a substantial three-storey property, finished in white render. It has an eastern wing, which is set back from the main (southern) frontage and a patio to the front elevation.

6. The existing dwelling is located part-way up the cotil and sits to the rear and on higher ground than the other dwellings in the immediate vicinity. The site slopes both north to south and east to west. This results in the 'ground floor' patio to the front (south) elevation being located at a higher position than the road and the neighbouring property to the west.
7. The appeal site sits to the north and has an extensive view over Gorey Pier and Harbour and its associated Listed buildings and westwards across the Royal Bay of Grouville. Mont Orgueil Castle, also a Listed building, is located to the southeast of the appeal site. The land to the north and west of the property and around Mont Orgueil Castle lies within the Coastal National Park.

### **The proposed development**

8. The application would comprise:
  - a two-storey extension with balcony to the west elevation;
  - a ground floor infill extension to create a room of sufficient size to be considered a bedroom on the north elevation; and
  - a first-floor extension to enlarge a bedroom and a dressing room on the north elevation.

### **Case for the appellant**

9. The appellant has raised five grounds of appeal, which are expanded upon in their statement of case:
  - In relation to the first reason for refusal, *“the decision maker has incorrectly applied the policy tests in relation to Policy BE3 Green Backdrop Zone and failed to adequately balance the requirements of Policy BE3 and Policy GD7 in relation to Design Quality with the rest of the Island Plan policy framework, including Policy H6 and Policy BE6”*;
  - In relation to the second reason for refusal, *“the concerns of the decision maker regarding the design and impact on the amenities of the neighbours at The Warren are incorrect and unsupported by evidence, and so the concerns in relation to Policy GD1 and GD7 are unfounded, and have been inadequately balanced with the rest of the Island Plan policy framework”*;
  - In relation to the third reason for refusal, *“a historical and contextual analysis clearly demonstrates that the setting of both Mont Orgueil and Gorey Harbour are preserved by the development, and as such the modest extension proposed in application meets the tests of Policies HE1 and SP4*;
  - In relation to all the reasons for refusal, *“a disproportionate and unreasonable emphasis has been placed on the planning history of the site, this site has been treated in a manner which is inconsistent with other comparable determinations and in the Committee processes the decision maker took account of information which the applicant had not had the opportunity to review”*;
  - *“a balanced policy assessment will conclude that the application accords with the requirements of the Island Plan and as such should be approved.”*

### **Case for the Department and Planning Committee**

10. The Department's refusal was on four grounds. Ground 4, which related to concerns about highway safety, was removed from the Decision Notice during the subsequent review undertaken by the Planning Committee.

11. The Department considers a key factor to be the position, scale and impact of the existing building and therefore the potential impact of any further extension to it.
12. The Department's report acknowledges that the appeal site is located in the Built-up Area where the presumption is in favour of development and policies H6 (Housing development within the Built-up Area) and BE6 (Building alterations and extensions) apply. However, it also lies within an area designated as Green Backdrop Zone, where Policy BE3 applies. The building is visually prominent in the landscape setting, which would be increased by the proposed additions and the proposed western extension would result in the reduction of the open area of the site, failing to retain existing landscape features, hence failing one of the three tests set by Policy BE3.
13. The proposed extension, by virtue of its size, proximity to the boundary and lack of fenestration is considered to be overbearing and results in unreasonable harm to the amenities of neighbouring users. In addition, the proposed location in terms of proximity to the property boundary and the elevated position of the proposed balcony would afford the occupiers of De Montford House views into the neighbouring property, notably into their swimming pool area. The proposed privacy screen is considered insufficient to prevent loss of privacy and hence the proposal would result in unreasonable harm to the amenities of neighbouring users, contrary to Policy GD1 of the Adopted Island Plan 2011 (revised 2014).
14. The proposal site lies within the setting of the Grade 1 Listed Mont Orgueil Castle and the wider setting of the listed buildings in Gorey Harbour. The existing dwelling is considered to negatively impact the setting of the heritage assets in the wider green backdrop of the hillside. The prominence is exacerbated by being built at a higher level than other houses. Further extension of the house would further exacerbate this impact.
15. In response to the appellant's comments about inconsistencies in consideration of this application compared to other consented schemes in the vicinity, the Department notes that the Historic Environment Team is not routinely consulted on all applications that impact the setting of Listed buildings. It is however, a material consideration in determination of any application that impacts setting. In addition, the Department notes that the consented changes to dwellings along the roadside were not considered to harm the setting.

### Consultation Responses

16. In its response (20 August 2019), **Growth, Housing and Environment - Operations and Transport** objected to the proposals on highway safety grounds, owing to a lack of information. The proposals would add a bedroom, which represents an intensification of the site. The access raises serious visibility issues which are compounded by the road layout and roadside parking. Given the intensification of the site, details of the access, in particular visibility, will be required to undertake a proper assessment. Parking capacity and manoeuvrability within the basement parking area are required to be demonstrated.
17. The **Historic Environment Team** also objected to the scheme (10 September 2019). The objections related to the effects of the proposals on the setting of Mont Orgueil, which is a Listed Building Grade 1 and Listed Buildings in Gorey Harbour.
18. Mont Orgueil has exceptional historical, architectural and archaeological significance to Jersey and more than island-wide importance. The proposal site forms part of the back drop to Castle Green and the Castle. The proposed additional length of the

southern elevation of this already super scaled house, added by the western extension, will add to the impact of this dwelling on its local setting, that of the Castle and Gorey Harbour. In addition, the substantial northern extension will require land take which will impact the wooded back drop which is part of the Castle's setting. This extension is likely to be visible from the higher areas of the Castle and overscale the house in its immediate context.

19. As such there is an impact on the setting of Mont Orgueil and Listed Buildings in Gorey Harbour. This impact will be adverse because the added mass of the western extension and new balcony will be a significant change to the cotil backdrop and its landscape. The increased mass of the western wing along with the impact of land take for the northern extension will be visually prominent in longer views from the south.
20. The **Natural Environment Team** did not object to the scheme (28 August 2019).

### **Representations**

21. The five letters of representation to the application raised the following points:
  - Size and scale dominates the green backdrop.
  - Loss of privacy.
  - Loss of light.
  - Destroys the enjoyment of our home.
  - Oversized.
  - Carbuncle on the coastline.
  - Size and scale competes with and dominates Gorey Castle, Bay of Grouville, Gorey Harbour and Mount St. Nicolas.
  - Traffic generation.
  - Overdevelopment.
  - Will have a negative effect on Mont Orgueil Castle and Castle Green.
  - Overbearing of the neighbours.
  - The submitted drawings do not show the development in its context - neighbouring properties are not on the elevations.
  - Fails to satisfy Policy BE3 - Green Backdrop Zone.
  - Is there sufficient parking for the additional accommodation?
  - The house is already large and extending it represents an overdevelopment.
22. Further submissions were received during the appeal on behalf of the neighbouring property to the west, The Warren. These highlight concerns about the size and mass of the proposal on neighbouring amenity in relation to overbearing and overlooking. In addition, they comment on the location and visibility of the proposal and the effects of this on the Green Backdrop Zone and views of Mont Orgueil Castle, Gorey Harbour and the Bay of Grouville in relation to Policy GD5 skyline, views and vistas. They also question whether the plans are sufficient to allow an informed assessment of effects on neighbouring properties.

### **The policy framework**

23. The following policies of the Adopted Island Plan, 2011 (revised 2014) were highlighted by the Department, the appellant and/ or in representations.
24. **SP1 - Spatial Strategy and H6 - Housing Development within the Built-up Area.** The Spatial Strategy establishes that development will be concentrated within the Island's Built-up Area, whilst Policy H6 sets a presumption in favour of proposals for

new dwellings, extensions or alterations to existing dwellings within the Built-up Area, provided that the proposal is in accordance with the required standards for housing set out in supplementary planning guidance.

25. Inspector's comment: It is common ground that the proposal gains positive support from these policies. However, there is disagreement between the Department and the appellant about the weight that has been afforded to them compared to other policies within the Island Plan.
26. Policy BE6 - Building alterations and extensions sets out criteria that must be met in order for extensions to be consented. Proposals should (1) respect or complement the design, detailing and materials of the existing building; (2) be 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.
27. Inspector's comment: The Department's Reports do not identify Policy BE6 as a relevant consideration. However, in its response to the appellant's statement of case, the Department has acknowledged that BE6 is relevant, but needs to be read alongside other policies.
28. GD1 - General Development Considerations and SP4 - Protecting the natural and historic environment. Policy GD1 sets out the criteria that all developments are required to meet. It covers a variety of aspects including: contributing towards a more sustainable form and pattern of development; avoiding serious harm to the Island's natural and historic environment in accord with Policy SP4 and HE1; and avoiding unreasonable harm to the amenities of neighbours. Policy SP4 sets a high priority to the protection of the Island's natural and historic environment.
29. Inspector's comment: The extent to which the proposal accords with the criteria relating to the protection of the Island's natural and historic environment and the amenities of neighbouring uses is a subject of dispute between parties.
30. Policy HE1 Protecting Listed Buildings and Places sets 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."*
31. Inspector's comment: The effect of the proposals on Listed buildings and their settings is a matter of dispute between parties.
32. Policy BE3 - Green Backdrop Zone establishes three criteria for when development will be permitted within the Green Backdrop Zone. Development will only be permitted where: (1) the landscape remains the dominant element in the scene and the proposed development is not visually prominent or obtrusive in the landscape setting; (2) it retains existing trees and landscape features; and (3) it presents satisfactory proposals for new planting which serve to maintain and strengthen the landscape setting and character in the area.
33. Inspector's comment: I do not consider criteria (2) and (3) to be particularly relevant as the proposals would not result in either the loss of trees or new planting. Parties dispute the degree to which the proposal would satisfy criterion (1).

34. Policy GD7 - Design Quality requires development to have a high quality of design, that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and built context. It establishes seven criteria that developments are required to address adequately in order to be considered for approval. These criteria include the scale, form, massing, orientation, siting and density of the development and inward and outward views; and the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting.
35. Inspector's comment: The degree to which the proposed design adequately addresses these criteria is a matter of dispute.
36. Policy EVE2 - Tourist Destination Area sets out support for tourism-related activities.
37. Inspector's comment: Whilst this is listed in the Department's Report, parties agreed at the hearing it was not relevant and hence I do not consider it further.
38. Policy GD5 - Skyline, views and vistas seeks to protect or enhance the skyline, strategic views, important vistas, and the setting of landmark and Listed buildings and places.
39. Inspector's comment: Although this policy was not addressed in the Department's Report, it was raised in representations from Mr Barnes, so I sought parties' views on its relevance at the hearing. I consider this further below.

#### **Inspector's assessment**

40. Based on the written documentation including the grounds of appeal, the representations to the application, my site inspection and discussions at the hearing, I conclude that the main issues in this appeal are:
  - The effects of the proposals on the setting of Mont Orgueil Castle and Listed Buildings in Gorey Harbour and hence the extent to which the proposals accord with Policies HE1 and SP4 of the Adopted Island Plan 2011 (revised 2014);
  - The effects of the proposals on the amenity of the neighbouring property, The Warren, and hence the extent to which the proposals accord with Policies GD1 and GD7 of the Adopted Island Plan 2011 (revised 2014);
  - The visibility of the proposed development within the landscape setting and the extent to which the proposals accord with the requirements of Policies BE3 and GD7 of the Adopted Island Plan 2011 (revised 2014);
  - The balance to be struck between Policies H6, BE6, BE3 and GD7 of the Adopted Island Plan 2011 (revised 2014);
  - The relevance (if any) of Policy GD5 of the Adopted Island Plan 2011 (revised 2014).

The effects of the proposals on the setting of Mont Orgueil Castle and Listed Buildings in Gorey Harbour and hence the extent to which the proposals accord with Policies HE1 and SP4 of the Adopted Island Plan 2011 (revised 2014)

41. During the hearing and subsequent further written responses, the Department and the appellant referred me to three rulings of the Royal Court in relation to the interpretation of Policy HE1: *Herold v Minister for Planning and Environment and Sea View Investments* [2014] JRC 012 (*'Herold 1'*); *Herold v Minister for Planning and*

Environment and Sea View Investments [2015] JRC 111 (*'Herold 2'*); and *Therin v Minister for Planning and Environment and Warwick* [2018] JRC 098 (*'Therin'*). These have all informed my consideration of this issue.

42. During the hearing I asked the Principal Historic Environment Officer to clarify which Listed buildings were affected by the proposals. She confirmed that in addition to Mont Orgueil Castle and Gorey Harbour, which are both Grade 1 Listed buildings, there is an ensemble of Listed buildings associated with the Harbour, all of which would be covered by the provisions of Policy HE1. However, I note that the plan, which accompanies the listing Schedule for Gorey Harbour, does not appear to include any of the buildings along the eastern side of Gorey Pier. Therefore, my assessment is based on the effect of the proposal on Mont Orgueil Castle and Gorey Harbour, which are specifically identified in the Historic Environment Team's objection and in the reasons for refusal of the proposal.
43. Mont Orgueil Castle is described on the Statement of Special Significance as *"a site of exceptional, historical, architectural and archaeological significance to Jersey and of more than Island-wide importance. The site is of outstanding significance in its long associations with the history of the States of Jersey and the conflicts between England, France and, latterly, Germany, which are reflected in its fabric, as well as its landscape contribution to Gorey and the east coast of the Island."*
44. The Statement of Significance for Gorey Harbour describes the special interest as: *"Jersey has a long maritime history and the most significant buildings that illustrate those seafaring traditions are of public and heritage importance. One of the most characteristic features of maritime Jersey is its small historic harbours, which as a group are potentially of more than island wide importance. The harbours also rank as some of the Island's greatest architectural and engineering achievements."*
45. The test established by Policy HE1 is 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"*. Thus, it is clear that Policy HE1 does not apply solely to works to the structure of the Listed building itself, or its curtilage, but also applies to an area around that structure, defined as its 'setting'.
46. The Principal Historic Environment Officer defined setting as the surroundings in which a listed building is experienced, its local context, embracing present and past relationships to the adjacent townscape and landscape. The Royal Court's findings in relation to *'Herold 1'* provides clarification that the setting of a listed building changes by reference to what is around it and how its characteristics are to be appreciated in that context.
47. Whilst this guidance is broadly helpful, it does not provide a clear definition of the geographical extent of the setting for any particular Listed building. Mont Orgueil Castle was designed to be an imposing and intimidating structure. Consequently, it is of no surprise that it is visible and can be experienced over some considerable distance. During my site inspection I observed that it is a conspicuous feature in views along the coast from the southwest across Grouville Bay, from footpaths and roads in the west and from Gorey Harbour to the south. Given its position, I conclude that it would also be experienced from the adjoining areas of sea. I therefore conclude that the setting of the Castle is extensive. Gorey Harbour, is also a conspicuous feature of this part of the coast, which can be experienced from some distance away, including from the coast and sea, and hence could also be considered as having an extensive setting.

48. In this instance, there is no dispute between parties that the proposed development lies within the setting of both Mont Orgueil Castle and Gorey Harbour. There is, however, a difference of opinion as to whether the proposed development would 'preserve or enhance' the special interest of the relevant listed buildings and their settings and how that should be assessed.
49. I saw that the existing building is a conspicuous feature within the setting of Mont Orgueil Castle. Indeed, its mass, bulk and white render finish, together with its elevated position above the main building line, make it difficult to miss.
50. The proposed extension would be two-storey (compared to the existing three-storey building) and set back from the existing front elevation. This would reduce, to a degree, the overall mass of the building when viewed from La Route de la Cote. The proposed wing would also be substantially hidden by the existing building in views from the east. Nevertheless, the proposed western extension would increase the scale and extent of the frontage of the building when viewed from the harbour and pier and would further increase the bulk and mass of the building in views from the west and southwest. It would also reduce the visibility of the green backdrop and hillside behind the property in views northwards from the harbour.
51. I spent considerable time during my site inspection viewing the appeal site from different positions and viewpoints at each elevation within Mont Orgueil Castle. Based on my observations, the proposed extension would be largely obscured by the existing house and would have limited visibility from any viewpoint in the Castle.
52. I conclude that overall, the proposals would increase the prominence of the building resulting in a substantial and imposing structure within the setting of the Castle, which would compete with views of the Castle. These effects would be particularly noticeable when the Castle was viewed from nearby locations from the west and southwest, and in views northwards from the harbour. However, I find that the effects of the proposed extension would decrease with increasing distance from the building. From further away, the extension would become more difficult to distinguish as a separate entity from the main bulk of the existing De Montford House.
53. As noted above, I observed that the proposed extension would be clearly visible from Gorey Harbour and Gorey Pier. The cumulative effect of the extension with the existing property would be the creation of a dominant and commanding structure, elevated above the main building line, above the harbour, which would draw attention away from the harbour and pier itself.
54. In summary, Mont Orgueil Castle can be considered to have an extensive setting. Based on my observations, the visibility of the proposed extension would decrease with increasing distance from the proposal and hence would have a limited effect on the wider setting of the Castle. It would also have little effect on setting, when viewed from the Castle itself. Nevertheless, it would be clearly noticeable within the immediate setting of the Castle, when viewed from the west, the south including from Gorey Harbour and pier and along Grouville Bay to the southwest, which would detract from an appreciation of the Castle. For the same reasons, I conclude that it would detract focus from an appreciation of the Listed Harbour. Thus, the proposals would fail to either preserve or enhance the setting of either Mont Orgueil Castle or Gorey Harbour, contrary to the requirements of policy HE1.



55. In reaching my conclusions, I have considered the appellant's views on how the test established in HE1 should be applied to setting, and in particular that "*the 'preserve' requirement is to 'maintain a state of things' and those 'things' are the special interest within the setting - being set out on the Listing Schedule.*" I interpret this as suggesting that the setting itself must have particular features of special interest in order to be worthy of preservation, rather than just acting as the backdrop and context for the Listed building. I do not agree with that view.
56. It seems to me that the requirement set out in HE1, to **preserve** or enhance the **special or particular interest** of a **Listed building** or place **and their settings** (my emphasis), recognises that Listed buildings do not exist in a vacuum and that the perception of a building is altered by the features (including spaces) that surround it. That is, any development within the setting of a Listed building must not detract from an appreciation or understanding of the special interest of that Listed building. Or, to put it another way, context has a strong effect on the way in which that building is appreciated and understood. I consider this interpretation to be more consistent with the way in which the Royal Court defined and assessed setting in '*Herold 1*'. Thus, I do not consider that it is necessary for the setting to have 'special interest' in its own right or to be specifically included within the description of special interest or statement of significance of the Listed building, in order for policy HE1 to apply.
57. Nevertheless, I do not interpret the requirement to 'preserve or enhance' precludes any development within the setting of a Listed building. However, any changes resulting from that development must preserve the setting of the Listed building in terms of preserving the way in which that Listed building and its special interest can be appreciated and understood. Thus, the extent to which a proposal would preserve the setting would be influenced by the type of proposal and the relationship between that proposal and the relevant Listed building.
58. For the reasons I set out above, I find that the proposed development, by virtue of its scale, mass, elevated position, prominence and proximity to the Listed buildings would have a significant detrimental impact on how Mont Orgueil Castle and Gorey Harbour and their special interest are experienced in close views and hence would fail to preserve their settings.
59. I have also considered the appellant's contention that there has been an inconsistency in approach between the consideration of this application and other proposals to the east, which were not the subject of consultation with the Historic Environment Team. I agree that there should be consistency and a transparency of approach. However, given the proximity and visibility of the development to such important Listed buildings, consultation with the Historic Environment Team should not have been unexpected. In any case, whether or not the Historic Environment Team was, or should have been consulted for the other consented developments, it does not negate their advice in relation to the proposed development. This specialist advice should be given proper consideration.

The effects of the proposals on the amenity of the neighbouring property, The Warren, and hence the extent to which the proposals accord with Policies GD1 and GD7 of the Adopted Island Plan 2011 (revised 2014)

60. Having considered the application plans and visited the site, I am content that there is adequate information on which to assess the likely effects of the proposals on neighbouring buildings.

61. The boundary between the proposal site and the adjoining property to the west, does not describe a straight line perpendicular to the road frontage with La Route de la Cote, but instead curves around the property to the west. The effect of this would be that the proposed western extension would sit substantially behind the neighbouring property to the west. It would also bring the building line significantly closer (7.5 metres) to the common boundary with the adjoining property, but would be set back from it by a distance of approximately 3.6 metres.
62. Whilst the proposal is described as a two-storey extension and the ridge height would be lower than the existing dwelling, the topography of the site, which slopes both north to south and east to west, would result in a substantial blank, white wall close to the external amenity area of the neighbouring property. I consider the height, scale and finish of the wall, combined with its proximity to the boundary would result in overbearing to the external amenity area of the neighbours to the west.
63. The proposals would allow for a balcony located to the south (front) of the western extension. This would be linked to the existing terrace by a narrow link to create a roughly inverted L shaped external walkway along the northern and western elevations. Although these are described as being at ground floor level, because of the topography (described above), they would effectively be elevated above the adjoining property to the west.
64. Given the position and proximity of the proposed balcony and terrace to the boundary with the neighbouring property to the west, combined with its orientation and elevated position, I conclude that these would allow for a degree of overlooking of the adjacent property. In particular, they would allow for overlooking of the swimming pool within the external areas of the neighbouring property.
65. The appellant has proposed installing a privacy screen on the western end of the balcony to prevent overlooking of the neighbouring property. Plan 006-B shows a 1.8 m high glass screen behind the proposed balustrade. This could be conditioned to be obscured in a manner to be agreed with the Department. Nevertheless, it would not prevent views southwards from the balcony or westwards from the connecting terrace into the adjoining amenity areas. I have considered whether a screen could be fitted along the full length and width of the balcony and connecting terrace. However, I consider that this would both detract from the amenity value of the appellant, whilst adding to the impression of overbearing for the neighbour.
66. The appellant suggests that the hedge, which he has planted along the mutual boundary with the neighbouring property, would prevent overlooking. I accept that this does provide a degree of screening between the properties. Nevertheless, I do not consider that this provides adequate surety of mitigation. The hedge may fail and in any case is in the control of the appellant, who would be under no obligation to maintain it. The Department advises that a condition to maintain the hedge would not be enforceable.
67. The test set by Policy GD1 is that development must not cause unreasonable harm to the level of amenity, including privacy, that the owner or occupier of a property might expect to enjoy. This test recognises that some change may occur to these amenities as a result of development and that neighbours may experience some reduction in the level of privacy that they have previously enjoyed or that they would wish to enjoy. The requirement to determine what is 'unreasonable harm' introduces an element of objectivity and has to be assessed on a case by case basis in the light of individual circumstances.

68. Whilst this proposal is within the Built-up Area, it is located on the edge of a settlement, within the Green Backdrop Zone. Consequently, the reasonable expectations of the levels of privacy would be greater than for a property within the centre of a Built-up Area. For the reasons set out above, I conclude that the proposed development, by virtue of its siting, elevated position, proximity to the boundary and outlook would result in an increased and unreasonable effect on the privacy of the neighbouring property to the west as a result of overbearing and overlooking and hence fail to satisfy the requirements of Policy GD1 and GD7 of the Adopted Island Plan 2011 (revised 2014).

The visibility of the proposed development within the landscape setting and the extent to which the proposals accord with the requirements of Policies BE3 and GD7 of the Adopted Island Plan 2011 (revised 2014)

69. During my unaccompanied site inspections, I viewed the appeal site from a number of directions and locations including those viewpoints identified in the written representations from the appellant, the Department and objectors. I observed that the photographs provided by all parties and the 3D massing model provided by the appellant, whilst helpful, appear to reduce the scale and prominence of all buildings compared to when they are viewed directly.
70. As noted above in my consideration of effects on Listed buildings, there is no doubt that the existing building is a prominent and conspicuous feature in both near and more distant views. Its visibility is enhanced by its elevated position above the main building line along La Route de la Cote, the height of the building and its white finish. However, the issue is not whether the existing property is visible, but how that visibility would be altered as a result of the proposed extensions and whether this would satisfy the requirements of the Adopted Island Plan 2011 (revised 2014) and in particular Policies BE3 and GD7.
71. When viewed from along the length of Gorey Pier, I saw that the existing building is already a prominent feature, with the upper storeys projecting above the line of built development associated with La Route de la Cote and partially obscuring views of the hillside behind. From some angles, the existing building is partially obscured by trees, which are located at a lower level, helping to reduce the impact of the incursion into the Green Backdrop Zone.
72. Whilst the height of the proposed extension would be lower than the existing building, based on my observations, I conclude that it would act to obscure a further portion of the vegetated cotil, to the west of the existing dwelling. I consider that the effects of this obstruction of views of the green backdrop would be exacerbated by the concomitant loss of green garden space to accommodate the proposed extension. Whilst this garden area does not appear to have any particular intrinsic features, it provides a continuous green link from the cotil down towards the road, contributing to the green backdrop to the settlement.
73. During my site inspection, I saw that the visual impact of the proposed extension in views from the west decreased with distance from the proposal. In near views westwards along La Route de la Cote, Mont de Gouray and Rue de la Pouclée et des Quatre Chemins, the proposed extension would be a significant addition to the mass and bulk of the building. It would also be a noticeable addition to the bulk of the building in views from parts of the promenade along Gorey Bay and beach. Whilst the existing building is visible in views further to the west, such as from the Royal

Jersey Golf Course, I consider that at these distances the additional visibility of the proposed extension would be marginal.

74. All parties have referred me to a previous appeal case known as 'Pine Grove' (P/2016/1593), and the way in which the Inspector applied Policy BE3 for that site. I have not seen that site or its accompanying paperwork, and it is important that each appeal is considered on its own merits. Nevertheless, I agree with the Inspector's assessment of the interplay between the presumption in favour of development within the Built-up Area and the provisions of Policy BE3; that there is no tension between these policies - the presumption in favour of development remains acceptable in principle, but is tempered by the overriding landscape considerations within the defined Green Backdrop Zone and that it represents sophisticated good planning. In this appeal, for the reasons I highlighted above, I consider that the proposal would result in a structure that is visually prominent and obtrusive in the landscape setting and hence fails to satisfy the requirements of Policy BE3.
75. I do not find the appellant's arguments that the proposals would result in a minimal loss of the Green Backdrop Zone to be compelling. It is not the area of land to be affected that is important, but the degree to which the tests set by Policy BE3 are met. Based on my observations, the proposed extension would obscure part of what is already a fairly restricted view of the escarpment and cotil behind the building line. This would be particularly apparent in views from the open green area just to the south of the building. As noted above, I conclude that the proposed extension would, when viewed in conjunction with its parent building, be visually prominent within the landscape setting and would detract from the landscape remaining as the dominant element of the scene, when viewed from particular locations. Consequently, it would fail to satisfy the tests set out in Policy BE3.
76. In relation to Policy GD7, whilst the design and materials would be in keeping with the host dwelling, I find that the proposed extension would add to the scale and mass of development, in a prominent location and the white finish would contribute to the conspicuousness of the property. For the reasons set out above, I conclude the proposals would fail to respect, conserve or contribute positively to the distinctiveness of the landscape and hence would fail to satisfy the requirements of Policy GD7.
77. Nor am I persuaded by the appellant's arguments that to be consistent with other permissions in the near vicinity, this appeal should be allowed. As already noted, each case must be considered on its own merits and whilst those properties are fairly close by, during the site inspection I observed that they had a different position and orientation within the landscape.
78. During the hearing, parties made reference to the Countryside Character Assessment and I invited parties to clarify their comments in relation to the relevance of this in written representations after the hearing. The appellant considers that as the proposal lies within the Built-up Area, the Countryside Character Assessment has little relevance. Notwithstanding that view, if it did apply, then the appellant considers that type of development proposed i.e. an extension, would fall within the defined guidance for allowable developments within each of the Character Areas within which the site might fall. By contrast Mr Barnes considers it to be relevant in terms of describing the cultural and historical context to the settlement.

79. The Department's submission clarifies that the Countryside Character Appraisal was a background document, used in the formulation of the Island Plan and informed the definition of countryside planning zones, including the Green Zone. I note that proposal 5 on page 68 of the Adopted Island Plan 2011 (revised 2014) states that there will be regard to the Countryside Character Appraisal when determining proposals for development which affect the Island's coast and countryside.
80. I consider that the Countryside Character Appraisal is relevant, insofar as it describes the characteristic landscape features that helped in defining the extent of the Green Backdrop Zone in the vicinity of the proposed development. However, I do not consider that it should play any stronger part than that in the decision-making process for this appeal.

The balance to be struck between policies H6, BE6, BE3 and GD7 of the Adopted Island Plan 2011 (revised 2014)

81. The appellant has questioned the relative weight given to particular policies and how these have been balanced in reaching a decision on the proposal. He contends that compliance with, and positive support from Policies H6 and BE6 should have been referenced in the Department Report and that Policy H6 should have been treated in a similar way and given the same weight as Policy BE3. Further, he considers that the Green Backdrop Zone policy has been mis-applied and given disproportionately excessive weight in the decision-making process. The appellant also considers that a balanced assessment would have given a different, and positive, emphasis to the tests of Policy GD7 and disputes the Department's assessment of assigning negative weight to this in the reasons for refusal.
82. I will deal first with an assessment of Policy GD7. The aspects of design that must be assessed relate to the structure and appearance of the proposed development as well as how it sits as a whole within its proposed location. The proposed extension would be broadly similar in finish and style to the parent building, although there would be differences in relation to the height of the extension and its balcony, styling of the balcony balustrades and window proportions. It would also be set back further from the face of the building than the existing eastern wing. Nevertheless, it would, as the appellant suggests, follow the architectural rhythm of the existing dwelling. However, as previously discussed, the relationship of the proposed extension to the neighbouring property to the west would result in unreasonable effects on amenity. In addition, the mass and siting of the proposed extension, adjacent to an already prominent structure in an elevated position, would not fit comfortably into the landscape, or setting of Listed buildings, and in combination with the existing building would appear overly dominant. Thus, whilst I accept that some aspects of the design would meet the requirements of parts of GD7, on balance, when considered in its entirety I consider that it does not satisfy this policy.
83. In relation to Policy BE6, I agree that this policy has relevance. Unlike Policy GD7, the focus is on the design of the proposed extension itself. As I identify above, the extension would generally fit in with the design of the existing building. Hence, I consider that the proposals gain positive support from this policy.
84. It seems to me that the Department's Report has started from a default position of the proposal being for an extension, within the Built-up Area and hence, in general terms, representing an acceptable type of development within a broadly acceptable location. It identified aspects of the proposal which satisfied the requirements of Policy GD7, but also identified other aspects which would not. In addition, the Department's Report also, rightly, considers the importance afforded within the

Island Plan to the protection of Listed buildings and also the Green Backdrop Zone. Having judged the relative importance of the policies met and not met by the proposal, the Department's Report concluded that the overall objectives of the Island Plan were not met. The Planning Committee accepted this and refused the application.

85. I note the appellant's comments about the information used to inform the decision of the Planning Committee. However, I do not consider that is a matter for this appeal. My conclusions as to the planning judgement to be applied to these policies in relation to the requirements of the Adopted Island Plan 2011 (revised 2014) are set out in the Conclusions.

The relevance (if any) of Policies GD5 of the Adopted Island Plan 2011 (revised 2014)

86. Policy GD5 of the Adopted Island Plan 2011 (revised 2014) was raised in the representations from Mr Barnes, but had not been referenced within the Department's Report, nor was it quoted as a reason for refusal.
87. At the hearing, the appellant stated that the policy was not referenced by the Department nor in the reasons for refusal, and so he did not consider that it was relevant now. However, even if it were relevant, he does not consider the proposal would come close to meeting the threshold of serious detrimental impact that is set by the policy.
88. The Department agreed that this policy could have been referenced as views of the Castle and Harbour are highly recognisable. In this respect, there is a strong link with Policy HE1 in regard to the setting of Mont Orgueil Castle and Gorey Pier and also with Policy BE3 safeguarding the Green Backdrop Zone. Whilst GD5 and HE1 can be applied separately, in this instance there is a degree of overlap.
89. Given that Mont Orgueil Castle has an extensive setting and is described in the Statement of Significance as '*of more than Island-wide importance*', it seems to me that Policy GD5 would be a relevant consideration, particularly in terms of the policy's requirement to consider the effects of the proposal on the setting of landmark and Listed buildings and places.
90. I accept that there is a certain degree of overlap between Policy GD5 and Policy HE1 in relation to assessing the effects of the proposal upon the setting of Listed buildings. However, the policies establish different tests: HE1 requires that proposals should 'preserve or enhance' the setting of Listed buildings; whilst GD5 sets a test of serious detrimental impact on the setting of the Listed building.
91. It is regrettable that Policy GD5 was not explicitly identified nor assessed by the Department during consideration of the proposal. I have already provided a detailed assessment of the effects of the proposals on the setting of Mont Orgueil Castle and also Gorey Harbour in relation to Policies BE3 and HE1. I have concluded that the proposals would detract from an appreciation of both the Castle and Harbour and their special interests, in close views from the south, southwest and west, but the scale of these effects would decline with increasing distance from the proposal. I have further concluded that these effects would fail to preserve the setting of the Listed buildings. It therefore seems axiomatic that the effect of the proposals must also be considered to have seriously detrimental impacts on the setting of the named Listed buildings, counter to the requirements of Policy GD5.

## Conditions

92. During the hearing, I held a ‘without prejudice’ discussion relating to any ‘non-standard’ conditions that should be applied in the event that the appeal was successful and planning permission granted. The discussions in relation to the potential for conditions to mitigate effects on neighbouring amenity through overlooking were discussed above.
93. I have considered the neighbour’s concerns about the effects of disturbance during construction upon their enjoyment of their property. I note the Department’s view that a Construction and Environmental Management Plan (CEMP) would not usually be required to a scheme of this nature. I consider that the general conditions relating to usual operating hours would be sufficient to limit disturbance and that there would be no need for a full CEMP for that purpose.

## Conclusions

94. Article 19 of the Planning & Building (Jersey) Law 2002 provides that, in general planning permission shall be granted if the development proposed is in accordance with the Island Plan. Article 20 provides that planning permission may also be granted where the proposed development is inconsistent with the Island Plan, if there is sufficient reason for doing so.
95. The Adopted Island Plan 2011 (revised 2014) contains many policies, which guide the use and development of land. It is often the case that a particular proposal gains support from some policies, whilst failing to satisfy others. Whilst it is not the case that a particular proposal must satisfy each and every policy provision fully in order to be acceptable, a judgement needs to be made about whether a particular proposal meets the overall objectives of the plan, which requires a consideration of the importance of the policies which are or are not, being met.
96. The settlement strategy of the Island Plan clearly directs development to the Built-up Area and this objective is supported by Policy H6, which sets a presumption for housing in these areas, subject to them meeting the required standards; and Policy BE6, which sets a presumption for extensions to existing dwellings within the Built-up Area. Policy GD1 requires that development proposals should contribute towards a more sustainable form and pattern of development, again reinforcing the presumption towards housing development within the Built-up Area.
97. Thus, the Island Plan contains significant positive support for sustainable development within the Built-up Area. However, it does not provide for unqualified approval of any or all proposals that come forward in the Built-up Zone. The plan includes a number of checks and balances to ensure that valued and sometimes irreplaceable natural and historic assets are not irrevocably lost and that neighbouring amenity is safeguarded. Of particular relevance in this appeal are those checks and balances provided by Policies BE3 (Green Backdrop Zone), HE1 (Protecting Listed buildings and places) and GD1 in relation to effects on neighbouring amenity.
98. I do not consider that these are minor policies that can easily be downgraded or disregarded as subservient to the identification of the Built-up Area as the preferred location for development. Indeed, as noted above, I consider these policies are in place principally to ensure that the presumption for development in these areas does not result in unreasonable harm or impact. They are significant and important

considerations in determining the extent to which an individual proposal complies with the Island plan and hence its acceptability.

99. I have set out above how I consider Policy BE3 should be applied; that it acts to ensure that the presumption in favour of development within the Built-up Area is tempered by landscape considerations. In this case, as explained above, I have found that the proposals would fail to satisfy this policy.
100. Mont Orgueil Castle is considered to be of more than Island-wide importance and Gorey Harbour is also a Schedule 1 Listed building, thus these are valuable assets, whose protection must be given serious consideration. I have concluded that the proposals would fail to preserve or enhance the special interest of Mont Orgueil Castle and Gorey Harbour and their settings, thus failing to satisfy Policies HE1, SP4 and GD1.
101. The proposals would result in unreasonable harm on the amenity of neighbouring uses, contrary to the requirements of Policy GD1.
102. For the reasons set out above, I conclude that the proposed development would not be in accordance with the requirements of the Adopted Island Plan 2011 (revised 2014) and there are no material reasons that would justify granting permission.

#### **Recommendation**

103. I recommend that the appeal should be dismissed and the decision to refuse planning permission should be maintained.

*Sue Bell*

Inspector 28/04/2020