

PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)

Appeal under Article 108 against a decision made to refuse to grant Planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Robert Luetkehaus, Les Souers Limited

Site address: *Straven*, Plat Douet Road, St Clement, Jersey JE2 6PN

Application reference number: P/2019/1674

Proposal: 'Demolition of existing dwelling and garage. Construct 4 No. one-bed, 9 No. two-bed and 2 No. three-bed residential units with associated parking and landscaping. Create vehicular access onto Green Road and alter vehicular access onto Plat Douet Road. Create footpath to east of site.'

Decision notice date: 17 April 2020

Procedure: Written Representations

Inspector's site visit: 17 August 2020

Inspector's report date: 21 September 2020

Introduction

1. This report contains my assessment of the appeal made by Mr Robert Luetkehaus of Les Souers Limited, against the decision to refuse to grant Planning permission for a redevelopment proposal which would replace an existing dwelling house, *Straven*, with a development comprising 15 apartments.

Procedural matters

2. The main parties agreed to the Written Representations procedure in this case, and I have considered the appeal on this basis.

The appeal site and its surroundings

3. The appeal site comprises a rectangular plot of land of about 1,800¹ square metres, currently occupied by a detached 2 storey house, *Straven*, and its garden grounds. It is situated to the south-west of the busy signalised

¹ The Appellant's Statement of Case (page 17) quotes a site area figure of 1,803 square metres.

crossroads junction of Green Road and Plat Douet Road, and has frontages to both of these highways. There is a narrow footway outside the site on Green Road, but no footway on the Plat Douet Road frontage. The site is within the defined Built-up Area and about 1.5 kilometres south-east of St Helier town centre.

4. The existing house is a 2 storey post-war dwelling, with rendered painted walls and pitched and hipped tiled roofs. It is situated in the north-western quadrant of the site, such that it is set well back from Plat Douet Road, which its main aspect faces. There is a limited space to the rear of the house leading up to the property boundary. Most of the garden areas are to the south and east of the house. There is also a garage in the north-east corner. Most of the lengths of the site's street boundaries, to Green Road and Plat Douet Road, comprise a granite wall with fencing above and hedging behind. Vehicular access is gained from Plat Douet Road.
5. The surrounding area is residential in land use and character and has a generally suburban and mature feel. There is a mixture of detached, semi-detached and linked houses of a predominantly 2 storey scale and most are set back from the street behind modest front gardens. The immediate neighbouring property to the west, *Chalet Abaco*, is somewhat different and comprises a bungalow with a large pitched roofspace, which appears to house some first floor accommodation; there is a swimming pool in that property's rear garden situated close to the appeal site boundary.
6. To the south of the appeal site appears to be a private road, Beaufort Square, leading to a cluster of residential properties beyond. Further south, along Plat Douet Road, are two storey houses set in a line behind relatively deep front gardens and opposite these (to the east) is a recreation ground comprising sports playing pitches.

The appeal proposal and the refusal decision

7. The appeal proposal would involve the demolition of the existing house and its detached garage and the redevelopment of the site to provide an 'L' shaped complex of apartments. The 2 component legs would front toward the 2 highways of Green Road and Plat Douet Road. The complex would be 3 storeys in height and would accommodate 15 apartments in a mix of 1, 2 and 3 bedroom units (4, 9 and 2 respectively). The scheme does not include any significant green amenity space, but there would be terraces serving ground floor units and balconies and 'residents amenity areas' at the first and second floor levels.
8. The building complex would enclose a 24 space courtyard parking area, with access gained via a tunnel entrance through the building from Green Road. A new bus shelter is indicated near to the proposed access. There would be secure residents' cycle parking (32 spaces) within the building at the ground floor level accommodation, and 2 visitor cycle parking spaces provided externally. Along the Plat Douet Road frontage, the scheme would include a new footway, which would be 2.6 metres wide.

9. There were 12 objections from local residents at the application stage, citing concerns about overbearing impacts, loss of light, over development, loss of privacy, noise impacts from use of the balconies and highways and traffic dangers and issues.
10. There were 3 responses from consultee bodies. First, the Department for Infrastructure – Drainage had no objections on foul and surface water drainage grounds, subject to detailed requirements. Second, the Natural Environment Team advised that an initial ecological assessment of the site was required prior to the application determination, to evaluate potential impacts on protected species. Third, the Operations and Transport team raised no transport objections, but provided some detailed technical advice and informatives.
11. The application was refused on 17 April 2020 for the following reasons:
 1. *The proposed development by virtue of its siting close to the site boundaries, size and scale would be dominant and intrusive, thereby causing harm to the character of the street scene in which it is located, contrary to Policies SP7, GD1 and GD7 of the Island Plan 2011 (Revised 2014).*
 2. *The proposed development by virtue of its size, height, position on the site and its relationship with the neighbouring property of Chalet Abaco, results in an unacceptable overbearing impact and loss of privacy, harmful to the amenities of the occupiers of the neighbouring property of Chalet Abaco, contrary to Policies SP7, GD1 and GD7 of the Island Plan 2011 (Revised 2014).*
 3. *Insufficient information in the form of an initial ecological assessment has been submitted to demonstrate that the proposed development would not be harmful to the ecology of the application site. Without such information it is not possible to judge whether the proposals would meet the requirements of Island Plan policies NE1, NE2, NE3 and NE4 of the Island Plan 2011 (Revised 2014).*
 4. *Insufficient information in the form of details of the surface water drainage of the application site has been submitted to demonstrate that the proposed development would not be harmful to the drainage of the application site and highway. Without such information it is not possible to judge whether the proposals would meet the requirements of Island Plan policies LWM3 and GD1 of the Island Plan 2011 (Revised 2014).*

Summary of cases of the parties

The Appellant

12. The Appellant has produced a detailed Statement of Case with 16 appendices, along with a later 'response' document. These submissions are all based around 12 numbered grounds set out in the initial appeal form, which are:

- 1. Insufficient regard was given to the 'extent' of St Helier as being the primary focus for residential development in accordance with Policies SP1, SP3, SP4, SP6, GD1 and H6 of the Island Plan, and the Built Environment Chapter of the Island Plan.*
- 2. Insufficient weight was given to the presumption in favour of new residential development in the Built-up Area set by Policy H6 of the Island Plan.*
- 3. Insufficient regard was given to the need to make the most effective and efficient use of land and buildings which have previously been developed in preference to the development of greenfield sites, in accordance with Policies SP2 and GD3 of the Island Plan.*
- 4. Insufficient regard was given to the serious housing shortage in the Island, with the need for housing outstripping the provision made in the Island Plan.*
- 5. Insufficient regard was given to the character of the wider area or the character of the street scene in which the site is located.*
- 6. Insufficient regard was given to the improvements to the public realm.*
- 7. Insufficient regard was given to the impact on neighbours caused by the existing building on the site.*
- 8. Insufficient regard was given to the siting, size, scale and design of the proposal in terms of its relationship with Chalet Abaco and its compliance with Policy GD1.*
- 9. Insufficient regard was given to the expectations of privacy in the Built-up Area in the town of St Helier, as prescribed by Policy GD1.*
- 10. The harm to the ecology of the site is a technical matter, and which was being addressed prior to the application's refusal, and will be fully addressed by the time of the Appeal Hearing, in accordance with Policies NE1, NE2, NE3 and NE4.*
- 11. The surface water issue is a technical matter that is resolvable through use of soakaways and sustainable urban drainage systems which is what will be proposed, in accordance with Policy LWM3.*
- 12. Insufficient weight given to other similar recent approvals granted under the tenancy of the previous Island Plan when the presumption in favour of development in the Built-up Area did not exist.*

The Planning Authority

13. The Department has relied on the Officer report as its case. The 'officer summary / conclusion' of that document states:

The proposal is to demolish the existing dwelling and garage and construct a 3 storey residential apartment block comprising 4 No. one-bed, 9 No. two-bed and 2 No. 3 bed residential units.

The site is located in a sustainable location within the Built Up Area close to bus routes and within walking distance of the Town Centre and other amenities like local shops and services.

It is considered that on balance, the principle of demolishing the existing building and constructing a residential apartment scheme is acceptable in this sustainable built up area location.

The character of the area is residential, of generally two storey houses with rear gardens, with a couple of 3/4 storey apartment buildings located to the end of the adjacent roads onto the higher density Coast Road.

The proposed building is 3 storey including mansard roofs, that add to the verticality of the building, that is not sufficiently broken up with set back or differentiation of height across the building elevations. This combined with the siting close to the site boundaries at the front and sides of the building, results in the building filling the site at a high density, which would be overdevelopment of the site, out of character with the prevailing character of the area and therefore for this first reason is recommended for refusal.

The second reason for refusal is regarding overbearing impact and overlooking/loss of privacy from the rear, western elevation to Chalet Abaco off Green Road. There are also concerns to a lesser degree with regard the overbearing impact and overlooking to the nearest properties on Beauport Square, but on balance this impact to Beauport Square is not included in the reason for refusal, as the access drive into Beauport Square, although narrow, helps separate the proposed building further from these neighbouring houses and gardens.

Other parties

14. Five representations were submitted at the appeal stage. These expressed concerns and objections based on the scheme's size, siting and scale; its impact on the character of the area; loss of privacy; overshadowing; noise; and transport matters including parking, congestion and air quality concerns.

Identification of the Main Issues and Inspector's Assessment

15. The decision notice cites 4 reasons for refusal. These reasons capture the main issues in this case and, in summary, are:
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on the living conditions of occupants of *Chalet Abaco*, with particular regard to outlook and privacy.

- Whether the proposal is acceptable in terms of ecological considerations.
 - Whether the proposal is acceptable with regard to drainage.
16. I assess some general principles first and then explore these four main issues in turn.

General principle

17. Much of the Appellant's underlying case, including grounds 1, 2, 3, and 4, is premised on the Island Plan's support for higher density redevelopment in sustainable locations. This is not disputed by the Department and a number of the interested parties have also made submissions which recognise that, in principle, redevelopment could be acceptable on this site.
18. The site is within the defined Built-up Area and, as such, the redevelopment for a significantly greater number of dwellings finds broad support from the Island Plan's high level strategic Planning principles and its related policies. Specifically, the redevelopment supports the spatial strategy as set out in Policy SP 1, which seeks to concentrate new development within the Island's Built-up Area. It also supports the Policy SP 2, SP 3 and SP 6 objectives of using land as efficiently and effectively as possible, directing new development to the most sustainable locations, and reducing dependence on the car.
19. Support is also found in Policy GD 3 which seeks to ensure that '*the highest reasonable density is achieved for all developments, commensurate with good design, adequate amenity space and parking...and without unreasonable impact on adjoining properties.*' Policy H 6 also states a positive presumption that housing development proposals within the Built-up Area will be permitted, provided that they accord with the standards for housing as set out in the associated Supplementary Planning Guidance.
20. This high level 'in principle' support is uncontested and weighs in favour of the proposal. However, it is important to recognise that this does not render the proposal acceptable *per se*. The Island Plan has to be read as a whole and assessments must be made on all relevant Planning matters.

Character and Appearance

21. The site is relatively compact in size and its context is that of a mature residential area with a relatively suburban feel. There is quite a variety of dwelling styles, ages and plot configurations in the area, but most properties are traditional in style and detailing and of a domestic scale, being predominantly 2 storey and with clear gaps between the building blocks.
22. A notable feature is that most properties in the vicinity are set behind front gardens of varying depths, which creates established lines of buildings. These patterns are not all regimented or uniform. However, fairly deep building set-backs from Plat Douet Road are prevalent on its west side (including *Straven* itself) and the dwellings form a distinct line, and give a

spacious feel. Further south, the character changes with more intensive development, some of it recent, towards the A4. The semi-detached properties directly to the east of the appeal site, *West Lea* and *St Catherine*, are also set well back on their plots. Along Green Road, the pattern is more mixed and the setbacks / front gardens are more modest.

23. The appeal proposal would contrast markedly with this established pattern of development and local character. It would introduce a large 3 storey building that would be sited close to its 2 street frontages. Although the Appellant's plans indicate that the blocks would not be higher than the roof ridge of the existing *Straven* property, it would be a much bulkier and imposing building, effectively filling almost all of the site's street frontages.
24. The prominent siting of the building blocks, well forward of the established line of buildings to the south on Plat Douet Road and the immediately adjacent properties to the west along Green Road, would mean that the development would have an unduly domineering and imposing impact on the streetscene. It would be very prominent and imposing at the crossroads junction and at odds with the existing suburban character and domestic scale architecture.
25. I have considered carefully the Appellant's submissions about 'bookend' developments on other corner sites and permitted schemes cited as providing some precedent argument in favour of the appeal proposal. I have also noted the Appellant's submission that some schemes were approved in an earlier Island Plan era when the presumption in favour of development in the Built-up Area was not in place. Whilst I have reviewed those cases, including schemes along Plat Douet Road and Green Road, there are differentiating factors in terms of scale, details and context, and no two cases are identical. It is also important to recognise that whilst the current Policy GD 3 promotes the highest level of density, the policy is mediated and moderated by other Planning considerations, and there is no set mathematical formula for defining the 'right' density on any one particular site. Moreover, it is a longstanding principle that Planning applications are determined on their own individual merits.
26. On this main issue, I conclude that the appeal proposal would be unduly large, bulky and prominent and this would have a harmful effect on the character and appearance of the area. As such the proposal conflicts with Island Plan Policies SP 7, GD 1 and GD 7, all of which require new development to be of a high quality design which, amongst other matters, is of an appropriate layout, scale, height and massing which respects local character and sense of place.

Living conditions - Chalet Abaco

27. *Chalet Abaco* lies immediately to the west of the appeal site, the boundary being formed by a timber fence. To the rear of the property is its main amenity area, which comprises a south facing garden, with a swimming pool and outdoor hard surfaced areas. Due to the siting of *Straven*, relatively close to the boundary, there are some existing overlooking effects from its first floor windows. I viewed *Chalet Abaco* from the first floor windows of

Straven and I was able to see the western parts of the pool and garden areas beyond. The physical presence of *Straven* itself is not unduly imposing, as it is sited mainly to the side of *Chalet Abaco*, such that the sideways view (eastwards) from the rear garden is open and dominated by sky. You can see the roof and chimneys of the semi-detached properties on the other side of Plat Douet Road, and the area just to the south of this is open, being the recreation ground.

28. The appeal proposal would introduce a substantial 3 storey block which would be visible from *Chalet Abaco* and would change its outlook, particularly from its side facing windows and its rear garden.
29. The Appellant has included a 'vertical sky component' analysis in its Design Statement, which sought to assess the effect of the development on the amount of sky visible from the nearest window in *Chalet Abaco*. It says that whilst there will be some reduction (from 37.5% to 30%), this is still above the recommended 27% for good levels of daylight to the side facing window.
30. The 'Appellant's Responses' document also includes drawings which apply the Building Research Establishment (BRE) '25° rule of thumb'² to the relationships with neighbouring buildings and references my findings on another appeal³ several years ago concerning the *Le Squez* Phase 4 development. This guideline, which has no adopted status in Jersey, is a useful barometer to give an indication of impact where a development is directly opposite an existing window (or windows). A line is drawn from the lowest window at an elevation of 25° to define an 'unobstructed zone of daylight' which can inform decision making.
31. With regard to *Chalet Abaca* the drawing seeks to show compliance, i.e. that the new development would fall under the line. However, the line has not been applied in the same way as the *Le Squez* case, as the origin point is taken from the very top of the window, rather than the middle of the window, which is more representative of an occupant's viewpoint. Were it drawn comparably, it appears the proposed building would breach the guideline in respect of *Chalet Abaca*. There would also appear to be breaches of the guideline in respect of the properties to the north on the opposite side of Green Road. The relationship with the houses to the east (*West Lea* and *St Catherine*) is more comfortable, and the building would fall well under the guideline.
32. Although the main apartment building would be set back from the boundary with *Chalet Abaca*, the combined height, mass and bulk across the length of the site would have a profound adverse effect on its outlook. It would appear as an overpowering and dominating feature and would obscure large areas of sky in the eastwards view from the property. This would materially reduce the quality of the living conditions currently enjoyed at the property, in terms of outlook from windows and the garden areas.

² Building Research Establishment (BRE) document Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (second edition).

³ Application / Appeal reference P/2015/0616.

33. In terms of privacy, the scheme has been designed in a manner that seeks to avoid direct overlooking. In the west elevation, facing *Chalet Abaca*, 12 window openings at the first and second floor levels are shown as obscure glazed. There are also obscure glazed windows proposed on the south elevation to avoid overlooking on the neighbouring properties beyond (to the south). A 1,500mm obscure glazed privacy screen is also proposed around the first floor residents' amenity space.
34. Whilst these measures are noted, I have a number of concerns regarding privacy matters. First, many of the proposed obscure glazed windows would serve habitable rooms and may be kept open during warmer months, allowing direct overlooking. Second, the privacy screen around the first floor amenity space will not preclude all overlooking, as the 1,500mm height would allow many individuals to peer over. Third, sideways overlooking from the balconies serving units 9 and 15 would still allow views into the rear parts of the garden of *Chalet Abaca* and the property to the south. Fourth, the number of windows and the elevated position of the amenity area and balconies all combine to create a perception of extensive overlooking.
35. I am mindful that there are further possible design solutions, such as fixed windows, mechanical venting and higher screens, but, to my mind, this becomes increasingly contrived and highlights the conclusion that too much is being squeezed onto this relatively small site. I have also noted the Appellant's submission that the residents of *Chalet Abaca* have not objected to this current application. Due to the States' redactions of addresses on Planning representations, I am unable to confirm if this is the case. However, I must base my findings on my own professional assessment of the building relationships and impacts that would arise, rather than the personal views of neighbours.
36. On this main issue, I conclude that the proposal would cause harm to the living conditions of occupants of *Chalet Abaca*. That harm arises from the overbearing physical impact of the proposed building and loss of privacy through overlooking effects. Moreover, I consider these effects to be unreasonable and unacceptable in Planning terms. The proposal therefore conflicts with Policy GD 1 (3), which requires that new development does not unreasonably harm the amenities of neighbouring uses. It also conflicts with Policies SP 7 and GD 7, which requires the design of new development to respect and respond to its existing context and relationship with surrounding buildings.

Ecology

37. At the application stage, the States' Natural Environment Team issued a consultation response which stated that an Initial Ecological Assessment (IEA) of the site was required to assess potential impacts on protected species. The Appellant commissioned an IEA, but it was not completed and submitted before the application determination date.
38. The completed IEA has been submitted with this appeal. Its findings are that the main house is used by breeding house sparrows; the gardens could provide suitable habitat for toads and hedgehogs; the main house is

considered to have low suitability for crevice seeking bats and, whilst the roof void was not inspected, the lack of external access points makes the presence of void dwelling bats unlikely; and the garage could be used by low numbers of crevice seeking bats, but is considered unlikely due to the close proximity of a street light. The IEA recommends a further dusk emergence or dawn re-entry bat survey. That survey was carried out in May and no bats were observed.

39. The Department has not provided any further comment on the IEA, but I am satisfied that it addresses refusal reason 3. A Planning condition could require the production and adherence to a Species Protection Plan, to remove or reduce any negative impacts during the site clearance and construction stages.

Drainage

40. The Department for Infrastructure's drainage officer issued a consultation response which raised no objection to the proposal, but required that surface water drainage be managed through '*soakaways, permeable paving / Suds systems etc.*' It also set out details of how the new footway / cycleway should be drained.
41. The Appellant has confirmed⁴ that the development would be drained by a soakaway system designed by a civil engineer in accordance with the Building Byelaws (Jersey) Technical Guidance.
42. There is no evidence before me to suggest that suitable site drainage details cannot be designed and agreed. Planning permission should not be withheld for reasons relating to technical matters that can be addressed by Planning conditions. I consider that refusal reason 4 is not supported by the evidence and should be removed.

Other matters

43. A 2018 Royal Court judgment⁵ has drawn attention to the need to undertake, and record, consideration under Policy GD 1 (1a). This states a presumption that a proposal '*will not replace a building that is capable of being repaired or refurbished*'. The judgment refers to GD 1 (1a) as setting a 'light presumption' (against demolition), which must be balanced with other policies and objectives. Notwithstanding my findings on other matters in this case, the benefits of providing a significantly greater number of homes on this sustainably located site would substantially outweigh the 'light presumption' against demolition.
44. The proposed provision of a new footpath along Plat Douet Road and associated public realm improvements are a desirable and positive element of the proposal. There would also be benefit arising from the proposal in terms of the delivery of new homes and economic benefits arising from their construction and subsequent occupation. However, these benefits do not outweigh the harm I have found on other matters.

⁴ Axis Mason letter dated 26 May 2020.

⁵ *Therin v Minister for Planning and Warwick – Royal Court (Samedi Division) [2018]JRC098.*

45. A number of interested parties have raised concerns about traffic generation, congestion and parking. However, there is no compelling evidence to support these concerns and the Department raises no objections in this regard.

Conclusion and Recommendation

46. The appeal proposal finds broad support 'in principle' from the Island Plan's spatial strategy and related policies which seek to concentrate new development within the Island's Built-up Area, use land as efficiently and effectively as possible, and achieve the highest reasonable density. However, I have found that the proposed development is simply too big and bulky to fit comfortably on this relatively compact site, and this would be harmful to the character and appearance of the area, and it would have an unreasonable effect on the living conditions of occupants of *Chalet Abaca*, its near neighbour. Notwithstanding these findings, I assess that ecological matters have now been adequately addressed and that drainage details could be controlled by a suitable Planning condition.
47. For these reasons, I recommend that this appeal should be DISMISSED and that the refusal of the application (reference P/2019/1674) should be confirmed for reasons 1 and 2 stated in the Decision Notice, but that reasons 3 and 4 should be removed.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI