

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

**Appeals under Article 108 against decisions made under Article 19 to
refuse planning permission**

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellants:

Sea View Investments Limited

Application reference numbers and dates:

RP/2019/0855 dated 3 July 2019 and RP/2019/0900 dated 12 July 2019

Decision Notices date:

21 November 2019

Site address:

Keppel Tower and Elizabeth Cottage, La Grande Route des Sablons, Grouville,
JE3 9FP

Developments proposed:

Both appeals

"REVISED PLANS to P/2018/1250 (Demolition of 2 no. existing dwellings.
Renovation / conservation of existing tower and the construction of 10 units of
accommodation with ancillary facilities, leisure facility and parking)."

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"Extend approved Block B to South and North elevations. Internal alterations to
amended unit layouts. Convert roof space to create habitable accommodation and
construct balcony to East elevation. Various external alterations to Block B to
include install 2 No. rooflights to North and South elevations and alter roof shape.
Amend and extend basement to provide 4 No. additional parking spaces and
stores."

RP/2019/0900

"Divide 1 No. three bed ground floor maisonette residential unit in Block C and
convert approved bin store to form 1 No. two bed ground floor residential unit and
1 No. two bed first floor residential unit. Relocated bin store. Amend and extend
basement to provide 4 No. additional parking spaces and stores."

Inspector's site visit date:

29 September 2020

Hearing date:

30 September 2020

Introduction

1. Application RP/2019/0855 was recommended for approval (subject to the updating of an existing planning obligation agreement), but was refused by the Planning Committee for the following reasons:

“1. The widening of the Block B would result in the strategic views through the site achieved as part of the approved scheme being significantly reduced and therefore the proposed revision fails to satisfy the requirements of Policies GD5 and BE4 of the 2011 Island Plan, (Revised 2014).

2. The widening of Block B, increase in basement size and the changes to the design of the roof to create additional habitable space would result in an overdevelopment of the site which would be detrimental to the character of the area and therefore contrary to Policies GD3 and GD7 of the 2011 Island Plan, (Revised 2014).”

2. Application RP/2019/0900 was also recommended for approval (subject as before), but was refused by the Planning Committee for the following reason:

“The proposed additional residential unit to Block C and the associated enlargement of the basement, would increase the density of the development would result in an overdevelopment of the site detrimental to the area and therefore would be contrary to Policy GD1 of the 2011 Island Plan (Revised 2014).” *[sic]*

Site description

3. The site is a rectangular strip of land between La Grande Route des Sablons and the coastline. It is within the Built-up Area and within the Shoreline Zone, as defined in the Island Plan.
4. At the time when the redevelopment scheme described in application P/2018/1250 was approved, it contained the 2.5-storeys dwelling Elizabeth Cottage, the 1.5-storey dwelling Keppel Cottage and the listed building Keppel Tower, to which Keppel Cottage was attached. Minor amendments to the scheme have since been approved and pre-commencement planning conditions imposed on P/2018/1250 have been discharged.
5. By the time of my visit the redevelopment scheme was well underway. The two dwellings had been demolished and the southern part of the site had been piled and excavated. The works required by the existing planning obligation had been carried out.

Details of the proposals

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6. Block B would be widened by 1m on both its north and south elevations and the roof shape would be altered. Roof lights would be installed on the north

and south roof slopes and a balcony would be constructed on the east elevation. There would also be internal alterations. The changes would enable the roof space to be converted into habitable accommodation, so that Block B would have an extra bedroom and would provide 1 two-bedroom unit and 1 three-bedroom unit.

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7. The three-bedroom maisonette in Block C would be divided to form 1 two-bedroom ground-floor flat and 1 two-bedroom first-floor flat within the same building envelope. The bin store would be incorporated into the ground-floor flat (the relocation of the bin stores onto the road frontage has already been approved as a minor amendment).

Both appeals

8. The basement car park approved by P/2018/1250 would be extended to provide additional parking spaces and stores. These proposals are the same for both appeals and can be carried out separately in association with either or both of the other proposals.

Island Plan policies referred to in the decision notices

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9. Four policies are referred to in the decision notice.

10. Policy BE4 states:

“Within the Shoreline Zone the following types of development proposals will not be approved;

1. new buildings, new structures or extensions to existing buildings, where such development will obstruct significant public views to the foreshore and sea;
2. development involving the loss of open spaces that are considered important for the preservation of public views to the foreshore and sea;
3. development which adversely affects public access to and along the coastline and seafront.”

11. Policy GD3 states:

“To contribute towards a more sustainable approach to the development and redevelopment of land in accord with the Strategic Policies of the Plan (Policy SP 1 'Spatial strategy' and ... Policy SP 2 'Efficient use of resources') the Minister for Planning and Environment will require that the highest reasonable density is achieved for all developments, commensurate with good design, adequate amenity space and parking (bearing in mind the potential for reducing the need for car ownership by the creation of car pooling schemes and other methods) and without unreasonable impact on adjoining properties.

Residential development proposals on sites of more than 0.2 hectares (0.5 acres or 1.125 vergées) will not be permitted unless a minimum density, in accord with supplementary planning guidance, is achieved.”

12. Policy GD5 states:

"The Minister for Planning and Environment will seek to protect or enhance the skyline, strategic views, important vistas, and the setting of landmark and Listed buildings and places.

Proposed development that has a seriously detrimental impact, by virtue of its siting, scale, profile or design, in terms of its affect upon or obscuring of the skyline, strategic views, important vistas, and the setting of landmark and Listed buildings and places will not be permitted."

13. Policy GD7 states:

"A high quality of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and the built context will be sought in all developments, in accord with the principles of good urban design, as set out in policy SP7 'Better by design.'

Where the design of proposed development does not adequately address and appropriately respond to the following criteria, it will not be permitted:

1. the scale, form, massing, orientation, siting and density of the development, and inward and outward views;
2. the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting;
3. the degree to which design details, colours, materials and finishes reflect or complement the style and traditions of local buildings;
4. the use and maintenance of landscape to enhance new development and the degree to which this makes use of local features and an appropriate mix of materials and plant species suited to both the landscape and wildlife interests of the locality;
5. the incorporation of existing site features into the development such as boundary walls, banks and trees;
6. the design of safe pedestrian routes, including for those with mobility impairments, vehicle access and parking; and
7. the incorporation of features to design out crime and to facilitate personal safety and security, in accord with the principles of safety by design, by way of a crime impact statement if required, as set out in supplementary planning guidance."

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14. The only policy referred to in the decision notice is the wide-ranging Policy GD1, which deals with general development considerations. The following extracts from Policy GD1 are relevant to the appeal.

Policy GD1:

"Development proposals will not be permitted unless the following criteria are met such that the proposed development;

1. contributes towards a more sustainable form and pattern of development in the Island in accord with the Island Plan strategic Policy SP 1 'Spatial

strategy'; Policy SP 2 'Efficient use of resources'; and Policy SP 3 'Sequential approach to development'; ...

2. does not seriously harm the Island's natural and historic environment, in accord with Policy SP 4 'Protecting the natural and historic environment', and in particular;
 - a. will not have an unreasonable impact on the character of the coast ... or heritage assets (Policy HE 1 'Protecting Listed buildings and places') and includes where appropriate measures for the enhancement of such features and the landscaping of the site;
 - b. will not have an unreasonable impact on important open space; natural or built features ...;
 - c. will not unreasonably affect the character and amenity of the area, having specific regard to the character of the coast ... and the built environment.
3. does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents ...
- ...
6. is of a high quality of design, in accord with Policy SP 7 'Better by design' and Policy GD 7 'Design quality', such that it maintains and enhances the character and appearance of the Island and that, where appropriate, it makes provision for hard and soft infrastructure that may be required as a result of the development."

Planning history

15. There is an extensive planning history concerning the redevelopment of this site, starting with a permission granted in 2009, but not implemented, and continuing with permissions granted in 2013 and 2014, both of which were quashed by the Royal Court (for reasons that are not related to the current appeals). These events were followed by application P/2017/0162, which was refused by the Planning Committee and by the Minister on appeal.
16. Application P/2017/0162 is the starting point in the current chapter in the planning history of the site's redevelopment. The reasons why this appeal failed focused on the density of the proposed development and its impact on the character of the area (see more details at paragraphs 37 to 41 below). The application P/2018/1250 (see more details at paragraphs 42 to 46 below), which is the subject of the revised proposals now put forward, addressed these matters to the satisfaction of the Planning Committee and, with one exception, was supported by representations from the public and a petition in favour.

Summaries of the cases put forward by the appellants

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17. There would be no conflict with Policy GD5 since there are no protected views and the narrowing of the gap on each side of Block B by just 1m cannot be said to have a "seriously detrimental impact" within the meaning of the policy. Likewise, there could be no conflict with Policy BE4, because there are no significant public views of the foreshore or the sea, no loss of open space that preserves such views and no public access here to the coastline and seafront.

18. Nothing has been identified that would explain why Policy GD3 has not been complied with. Very minor changes in design are proposed that would not be in conflict with any of the criteria in Policy GD7. There would be no material implications for any neighbours or for the character of the area.
19. A balanced planning assessment is required with particular reference to the strategic policy framework, to Policy H6 which promotes housing developments in the Built-up Area and to Policy BE6 which supports alterations and extensions to buildings. The reasons why the proposals in P/2017/0162 were refused should be taken into account as material considerations.

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20. The decision notice states that the proposals would be contrary to Policy GD1 because of the increase in the density of the development and an overdevelopment of the site detrimental to the area, but these are not matters that are specifically dealt with in Policy GD1 and in any event the siting, scale and design of Block C overall would remain as previously approved. The scheme of redevelopment would continue to comply with Policy GD1 because it would contribute towards a more sustainable form and pattern of development, would not seriously harm the natural or historic environment or unreasonably harm the amenities of neighbouring uses, including nearby residents.
21. It is possible that the Planning Committee had in mind Policy GD3 and not Policy GD1. Policy GD3 refers to "the highest reasonable density ... commensurate with good design, adequate amenity space and parking". No concerns have been raised in relation to the amount of car parking or amenity space. No design changes are proposed other than the widening of the doors of the bin store by a very small amount.
22. The provision of a further unit within Block C should be considered to be an attribute, supported by the Policies BE6 and H6 referred to in paragraph 19 above. It could not reasonably be described as overdevelopment. The reasons why the proposals in P/2017/0162 were refused should be taken into account as material considerations.

Summary of the cases put forward by the Growth, Housing and Environment Department

Both appeals

23. Although Policy GD3 seeks to achieve the highest reasonable density of development, this must be commensurate with good design, adequate amenity space and parking and without having an unreasonable impact on adjoining properties. The approved scheme has been referred to as the optimum development of the site. It represents a package of both new development, improvements to the listed Tower and the provision of open spaces, views through to the sea and amenity space for the proposed units. This achieves what was considered the highest reasonable density commensurate with good design, adequate amenity space and parking and without having an unreasonable impact on adjoining properties.

24. The two appeals seek to revisit and dismantle that package. In doing so they would alter the fine balance which had been achieved. In the case of Block B, the increase in the scale of the building and the alterations proposed would undermine the previous scheme and in particular the gaps between buildings which have been required following the dismissal of the previous appeal. In the case of Block C the additional unit, which requires additional car parking and amenity space, would also alter this fine balance of factors. To approve either of the proposals would undermine the reasons for approving the previous scheme and result in a detrimental impact upon the character of the area and an unacceptable density of development, contrary to the Island Plan policies referred to.
25. The Department's Historic Environment Team state that the enlargement of the basement and width of Block B would have no direct impact on the setting of Keppel Tower and the setting of Cyprus House would not be significantly affected. The increase in the size of the basement may affect archaeological deposits, and the removal of material should therefore be monitored by conditions [this is already required by Condition 12 of P/2018/1250]. The Team comment that since the proposals do not appear to make any changes to the external envelope of Block C, the setting of the Tower and other nearby listed buildings would be unaffected. Policy SP4 and Policy HE1 were used to guide the Team's assessments.
26. The Department's Transport Section state in relation to RP/2019/0855 that there would be little additional impact when compared to the approved scheme. As regards, RP/2019/0900, the Section state that there would be more than adequate parking for the proposals and that there would be little additional impact compared to the approved scheme.

Summary of representations made by others

Both appeals

27. The approval P/2018/1250 is the optimum form of development. It delivered finality and closure after a long planning history. The appeals are an attempt to revisit the scheme that was rejected on appeal.
28. The appellants' arguments lack substance and potential purchasers' wishes should not be determinative. Four more parking spaces would add to traffic on an increasingly fast and busy road. Keppel Tower would be dwarfed by new apartment blocks. The visual separation between buildings would be reduced. The settings of other listed buildings nearby must be taken into consideration. Additional underground car parking is not advisable so close to the sea wall.
29. The increase in size is material and would result in development that would be out of scale and style with its surroundings. It would create a precedent for ribbon development that would alter the character of the coastline.

Inspector's assessments and conclusions

Both appeals

30. In view of the planning history and the representations I have received about the planning process, I need to make it clear that the Law does not restrict a developer's ability to submit applications seeking permission to alter approved

schemes, even when those schemes have been previously described as final or optimal at the time of their approval. Nor is it appropriate to make any criticism of an applicant's decision to submit more than one application at a time, since this is a choice open to any applicant.

31. Both decision notices use the words "an overdevelopment of the site" as part of the reasoning for the refusal of planning permission. As far as I am aware, the term "overdevelopment" has not been defined for planning purposes in Jersey. I have drawn on the definition in the English Planning Portal glossary, which is: "An amount of development (for example, the quantity of buildings or intensity of use) that is excessive in terms of demands on infrastructure and services, or impact on local amenity and character".
32. I agree with the conclusions reached by the Historic Environment Team in respect of each of the appeals (see paragraph 25 above). Policies SP4 and HE1 would be complied with.
33. I also agree with the Transport Section's conclusions with regard to the traffic and parking considerations arising from the proposals (see paragraph 26 above).
34. There is no evidence that the additional parking spaces would have any impact on sea defences.
35. In paragraphs 37 to 46 below I have set out the material considerations arising from the recent planning history.
36. In paragraphs 47 to 58 below I have assessed each of the proposals afresh, on its planning merits, taking into account all material considerations.

Previous appeal P/2017/0162

37. This was a proposal to demolish the two dwellings and to redevelop the site with four apartment blocks and an underground car park. Restoration works were to be carried out to Keppel Tower. The application was refused for the following reason:

"The mass and scale of the development, particularly Block B, is out of character with the context of the area, contrary to Policy GD3 of the Jersey Island Plan 2011 (amended 2014)".

38. An appeal was made. The inspector dealing with the appeal stated at paragraph 44 of her report:

"When viewed individually, each of the proposed blocks does not appear to me to be out of scale or proportion with other dwellings in the vicinity. However, despite their individual design elements, they are unmistakably a cohesive group of apartment blocks rather than substantial, individual dwellings. In my view, this acts to emphasise the density of development. Consequently, I consider that when viewed cumulatively they would create a visually dominant addition to the streetscape, which is out of character with the immediate area."

39. At paragraph 49 of her report, she concluded:

"Drawing these points together, I consider that the proposal satisfies the requirements of policy GD3 in relation to provision of adequate amenity space and parking. I also consider that it satisfies the requirements of policy GD1 in relation to not having unreasonable effects upon the amenity of neighbouring properties. The proposals satisfy many of the aspects of good design defined by policy GD7 in terms of their siting, orientation, and use of appropriate materials and finishes. However, for the reasons set out in paragraph 44 above, I consider that the cumulative effect of the four buildings would act to exacerbate the increased density of the scheme and result in the introduction of features more typical of the Main Urban Settlement rather than a Secondary Urban Settlement." [The terms used here are taken from Map 2.2 'Settlement Types' on page 19 of the Island Plan and relate to the hierarchical sequence of the spatial strategy, where St Helier is stated to be the main Built-up Area and the Built-up Area outside St Helier is placed second. The text on page 19 describes the contribution that the 'Other Built-up areas' outside St Helier make to the strategy.]

40. The inspector's overall conclusion in paragraph 84 of the report was:

"There is much to commend this scheme, which satisfies many of the policies of the adopted Island Plan 2011 (revised 2014). However, for the reasons I identified in paragraph 44, when considered as a group the density of the proposed development would not fit with the character of the area. Consequently, I do not consider that it meets the requirements of policy GD3 of the adopted Island Plan 2011 (revised 2014)."

41. She therefore recommended that the appeal should be dismissed. The Minister agreed with her recommendation.

Approved development P/2018/1250

42. The applicants submitted a revised scheme of redevelopment. In response to the reason given for the refusal of P/2017/0162 and the considerations that led to the dismissal of the appeal, the revised scheme made a number of changes, notably to the size and shape of Block B and also to the space between blocks, landscaping and the design of Block C.

43. The Department's Committee report relating to this application focussed on the reason for refusal in P/2017/0162 and the extent to which the new application complied with Policy GD3. The report noted that the policy required a fine balance and that it underlined the objectives of the Spatial Strategy by calling for all developments to achieve the highest reasonable density and so minimise the need for greenfield land to be released, but that it also clearly acknowledged an element of moderation and balance across the range of other planning considerations, including the character of the area and impacts on neighbours.

44. The report stated that, whereas P/2017/0162 was for 14 units and 30 bedrooms, P/2018/1250 was for 10 units and 24 bedrooms. The development would be at the lower end of the recommended density and would take into account the secondary nature of this part of the Built-up Area.

45. As to the character of the area and the need for good design, the report noted that the buildings had been broken into individual entities by reference to scale, architecture, materials and landscape. The basement car parking would

increase the amount of ground floor area within which the buildings could be set and assist in a high quality landscape. The elevations to both the shoreline and the street would remain characterful and appropriate to their location.

46. The application was therefore considered to deliver the appropriate balance called for by Policy GD3 and was recommended for approval subject to detailed planning conditions. The Planning Committee accepted the recommendation and planning permission was granted on 19 February 2019.

Present appeal RP/2019/0855

47. The first main issue is whether there would be a significant reduction in strategic views through the site that are protected by Policies GD5 and BE4. Paragraph 1.21 of the Plan indicates that in locations such as this site, which are within the Built-up Area and within the Shoreline Zone on the east coast, views of the coastline from within the Built-up Area and views from the coastline are of particular importance. Paragraph 4.98 refers to the protection of 'visual access' to the shoreline through the maintenance of open space and gaps between buildings along the coastline of the Built-up Area.
48. The protection of strategic views through the site was not a significant issue when applications P/2017/0162 and P/2018/1250 were decided. Because of existing development, there were no strategic views through the site, or 'visual access' of the kind described above, before the site was cleared. Since the approved development would not create any new ones, the alterations proposed in RP/2019/0855 would not affect any and would therefore not be in conflict with either Policy GD5 or Policy BE4.
49. The second main issue is whether the alterations proposed in RP/2019/0855 would be overdevelopment contrary to Policy GD7 because of their impact on local character. The principal concerns are the changes to Block B that would occur as a result of its widening and the alterations to its roof. The changes to the basement would merely add four parking spaces and rearrange the storage area; they would not have any impact on local character.
50. The size of Block B in application P/2017/0162 was the principle factor leading to planning permission being refused. In this scheme, Block B would have been seen as a wide, dominant structure, with a long roof ridge and gable ends. In the approved scheme P/2018/1250 Block B is reduced in width, so that the gap between Block B and Block A on one side and Block C on the other side is increased to approximately 6m on each side. The prominent roof is replaced by a much less obvious design that is hipped on all sides and rises to a point at its apex. The changes create more space, allow scope for more landscaping and result in a scheme that respects local character.
51. The proposals in RP/2019/0855 would reduce the gap between the blocks to 5m on each side; there would be less space for landscaping; and the roof, whilst remaining hipped on all sides, would be wider and more prominent, and now have a central roof ridge. These alterations have been put forward by the appellants as minor changes, but in the context in which they would occur, they are in my opinion significant.
52. The key provisions in Policy GD7 in this appeal are:

“A high quality of design that respects, conserves and contributes positively to ... the built context will be sought in all developments, in accord with the principles of good urban design, as set out in policy SP7 'Better by design'.” (Policy SP7 indicates that the scale of proposed development should make a positive contribution to local character.)

and

“Where the design of proposed development does not adequately address and appropriately respond to the following criteria, it will not be permitted ... 2. the relationship to existing buildings, settlement form and character ...”.

53. It is clear from the planning history that this is a sensitive location for a redevelopment scheme of the size proposed and that the approved scheme seeks to achieve a delicate balance between the various concerns. I have considered the matter very carefully and have come to the conclusion that the proposals now put forward in RP/2019/0855 would tip that balance, so that the scheme would no longer sufficiently respect the local character and would be contrary to Policy GD7. I have therefore recommended that this appeal should be dismissed.

Present appeal RP/2019/0900

54. The main issue is whether the creation of an additional residential unit in Block C and the associated enlargement of the basement would result in the overdevelopment of the site.
55. I have already recorded at paragraph 49 that the changes to the basement would merely add four parking spaces and rearrange the storage area. They would not constitute “overdevelopment” of the site within the meaning of this term, as described in paragraph 31 above.
56. The external changes to Block C would be limited to the installation of four rooflights and the impact of the building on local character would in my opinion remain as previously approved. No evidence has been submitted to show that the additional residential unit would make demands on infrastructure and services that would not be satisfactorily accommodated or that it would unacceptably affect the amount of on-site amenity space.
57. I have therefore concluded that the additional residential unit would not result in the overdevelopment of the site. There would be no conflict with either Policy GD1, Policy GD3 or Policy GD7 and I have recommended that this appeal should be allowed and planning permission granted. The standard planning conditions should be imposed and the conditions previously imposed on permission P/2018/1250 should be re-imposed. The approved plans will be those listed in the Department's Report to the Planning Committee, namely: Location Plan; Proposed Basement Plan 03/G; Proposed Ground Floor Layout and Site Plan 04/M; Proposed First Floor Layout Plan 05/I; and Proposed Elevations 07/M.
58. In this event, I have been notified that the additional residential unit will attract a request for an additional financial contribution of £1,350 towards the delivery of the Eastern Cycle Network. I understand that the appellants have no objection to this. Provision should therefore be made for a further planning obligation to be entered into before the permission is issued.

Inspector's recommendations

RP/2019/0855

59. I recommend that the appeal is dismissed.

RP/2019/0900

60. Subject to the entering into, within 3 months of the date of the Minister's decision, of a suitable planning obligation under Article 25 of the Planning and Building (Jersey) Law 2002 (as amended) addressing the matter set out in paragraph 58 of this report, I recommend that the appeal is allowed and that planning permission is granted for the following development at Keppel Tower and Elizabeth Cottage, La Grande Route des Sablons, Grouville, JE3 9FP:

"REVISED PLANS to P/2018/1250 (Demolition of 2 no. existing dwellings. Renovation / conservation of existing tower and the construction of 10 units of accommodation with ancillary facilities, leisure facility and parking).

Divide 1 No. three bed ground floor maisonette residential unit in Block C and convert approved bin store to form 1 No. two bed ground floor residential unit and 1 No. two bed first floor residential unit. Relocated bin store. Amend and extend basement to provide 4 No. additional parking spaces and stores",

in accordance with the application RP/2019/0900 and the submitted plans and documents, subject to the standard conditions and reasons A and B relating to the commencement of the development and the carrying out of the development as approved and subject also to the conditions previously imposed on planning permission P/2018/1250 in so far as they are still subsisting and capable of taking effect.

Dated 16 November 2020

D.A.Hainsworth
Inspector