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

Appeal under Article 108 against a decision made to grant a planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Paul Troy (Third Party Appellant)

Site address: Mayfair, La Rue de la Mare Ballam, St. John JE3 4EJ

Application reference number: RP/2022/0949

Proposal: *'REVISED PLANS to P/2021/0536 (Construct two Storey extension to South and East elevations to form one bed ancillary accommodation. Widen existing vehicle access onto La Rue de la Mare Ballam): Construct two-storey extension and detached garage. Minor external alterations.'*

Decision notice date: 1 December 2022

Procedure: Written representations

Inspector's site visit: 3 April 2023

Inspector's report date: 5 May 2023

Introduction

1. This report contains my assessment of the third party appeal made by Mr Paul Troy (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (I&E) to grant planning permission for a development at a dwelling known as *Mayfair* in the Parish of St John. The appellant lives next to the appeal property.

Procedural matters

Appeal documentation submissions

2. The appellant raised concerns that the I&E Statement of Case and appendices [it is actually titled 'Response'] was only received at the further comments procedural stage. He therefore had no opportunity to assess and respond to the I&E case made in response to his grounds of appeal. The applicant had also expressed his disappointment at the absence of an initial Statement from I&E in its further comments document.

3. I considered this matter and assessed that, whilst the I&E primary case was set out in the officer report, which is a document on the public record, the I&E responses to the appellant's grounds of appeal should have been set out earlier, in order that the appellant and the applicant could consider them, and decide whether to make a further response. In the interests of

fairness, I allowed a further period for the appellant and applicant to make further comments on the I&E Response document. I have taken into account the appellant's further comments and noted that the applicant chose not to add anything further.

Appeal procedural route

4. The appellant requested that this appeal be conducted by the written representations route.

5. Third party appeals do not fall under the types of appeal listed under Article 114(1) which are to be determined by way of written representations. Article 114(4) has the effect that all other appeals, including all third party appeals, default to being determined by way of an appeal hearing. However, Article 114(5) does allow the Inspector some discretion in the use of the written representation procedure in other cases, but it requires consultation with the parties.

6. The appellant's agent explained that the reasons for seeking the written representations route were that the appellant and applicant were related and the proposal had created sensitive issues in the family; that the written submissions contain a good deal of information, and that a site inspection would be essential to understand the issues. Following consultation on these reasons, the applicant and I&E confirmed that they were also content with the written procedure. In the light of these views, and the fact that the appeal relates to a minor development proposal, I have adopted the written representations procedure.

'Revised plans' application and the development description

7. There are procedural matters concerning the 'revised plans' (RP) label and the development description that form part of the appellant's case. I therefore deal with these matters later in this report.

The appeal site, planning history, the appeal proposal and the application determination

The appeal site

8. *Mayfair* is a modest semi-detached dormer bungalow situated on the east side of La Rue de la Mare Ballam. It is one of a small cluster of dwellings in the Green Zone, about 1 kilometre to the south of the village of St John. The other half of the semi, to the north, is a dwelling known as *Sonas*, occupied by the appellant. The 2 properties are set well back on their plots, such that they have quite deep front gardens, which contain driveways to each dwelling.

9. On the ground floor *Mayfair* includes a kitchen, living room, WC/shower room, utility room and an attached single storey flat roofed garage. There are 3 bedrooms and a bathroom at first floor level. There are a number of freestanding storage units stationed in the rear garden.

Planning history

10. There is some planning history associated with the property. In March 2021, an application[1] to construct two storey extensions to the east and south elevations of *Mayfair* was refused on landscape impact grounds.

11. In November 2021, permission was granted[2] for a scheme described in the decision notice as *'Construct two storey extension to south and east elevation to form one bed ancillary accommodation. Widen existing vehicle access onto La Rue de la Mare Ballam'.*

12. The approved extension comprises a two storey L shaped addition which would wrap around the dwelling's southern side and part of its rear (east). The ground floor would house an entrance hall, WC, kitchen/living space and access to a utility room, which would be shared with the host dwelling. At first floor level there would be a bedroom and bathroom, a link corridor to the main house, plus a new bathroom to serve the main house. The permission is subject to a Planning Obligation Agreement (POA) controlling the use of the 'dependent relative accommodation' and preventing its separation from *Mayfair*. This permission remains extant.

The appeal proposal and application determination

13. The appeal relates to an application submission with the development description stating: *'REVISED PLANS to P/2021/0536 (Construct two Storey extension to South and East elevations to form one bed ancillary accommodation. Widen existing vehicle access onto La Rue de la Mare Ballam): Construct two-storey extension and detached garage. Minor external alterations.'* The bracketed part of this description is that used on the 2021 decision notice and the phrase following that, which I have underlined, has been added and appears in the decision notice for the current application, which is the subject of this appeal.

14. Issues surrounding the status, scope and meaning of a RP application are contested in this appeal. I deal with these matters later in this report under my assessment of 'ground 1' (see paragraphs 21 – 24). However, based on the submitted drawings, the main changes from the extant scheme include:

    - A reconfigured and redesigned two storey extension on the southern end of *Mayfair,* with the dependent relative's accommodation now all contained at ground floor level.
    - A single storey addition on the front (west) of the dwelling (extended living room and entrance hallway) which would project 2.75 metres and would run alongside the property boundary with *Sonas*.
    - A single storey addition on the rear (east) of the property (extended kitchen and dining areas).
    - A detached double garage in the south-east corner of the site.

[1] P/2020/0809
[2] P/2021/0536

15. The above components of the development are not fully captured by the description used in the decision notice, which makes no reference to the single storey additions, does not make clear that the dependent relative accommodation is now confined to the ground floor, and that the other additions are domestic extensions for *Mayfair* itself. That said, I am satisfied that no prejudice arises, as it is quite apparent from the appellant's submissions at the application stage that he was fully aware of the various elements of the extensions shown on the drawings.

16. At the application stage 4 letters of objection were received, including representations from the appellant's planning consultant. These raised concerns with regard to a wide range of matters including loss of light, overbearing impact, overdevelopment, Green Zone policy, noise from the air source heat pump, and foul sewage capacity.

17. I&E officers assessed the proposal to be acceptable under the provisions of the Bridging Island Plan (adopted March 2022) (BIP). They granted planning permission on 1 December 2022, subject to standard conditions regarding the time limit (3 years) and compliance with the approved plans and documents, along with an additional condition requiring structures in the 'rear/east' of the site to be removed prior to the first use of the extension. A modification to the POA was also entered on the 1 December 2022, in essence, binding the 'dependent relative accommodation' in the new permission to the same restrictions on use as those for the November 2021 permission. Mr Paul Troy's appeal is made against this decision.

18. For clarity, under the Law[3] the decision to grant permission remains in effect, but the development cannot be implemented until this appeal has been decided.

Summary of the appellant's grounds of appeal

19. The appellant's case is set out in the appeal form, a more detailed Statement of Case and further submissions. The appeal form cites 7 grounds, which are:

    Ground 1 – Article 19 of the Planning and Building (Jersey) Law 2002 (the Law) advises that planning permission may be granted in detail or in outline only. There is no provision in the Law for the granting of a 'Revised Plans' permission. The application submitted and the permission granted appear to be invalid.

    Ground 2 – The proposal would result in unreasonable harm to the appellant's enjoyment of his property. The appellant does not agree that the proposed development can be implemented in accordance with policies SP7 and GD1 of the adopted Island Plan.

    Ground 3 – The proposal would result in a substantial increase in floorspace, building footprint and visual impact of the existing dwelling,

[3] Article 117(1) and (2) - Planning and Building (Jersey) Law 2002 (As Amended)

contrary to policies SP3, SP4, SP7, GD6, GD8, GD9, NE3, H1 and H9 of the adopted Island Plan.

Ground 4 – The proposal is likely to result in the loss of a mature tree which makes a material contribution to the character and landscape of the area. The loss of this tree would be contrary to policies NE1, NE2 and NE3 of the adopted Island Plan.

Ground 5 – The proposal fails to provide appropriate access and parking, contrary to policies TT1 and TT4 of the adopted Island Plan. This lack of parking would harm the appellant's enjoyment of his property contrary to policies SP7 and GD1 of the adopted Island Plan.

Ground 6 – The proposal would result in the creation of a new independent dwelling within the countryside of the Green Zone, outside of any defined built-up area, contrary to policies SP1, SP2, PL5, H3 and H9 of the adopted Island Plan.

Ground 7 – The permission granted does not contain a planning condition requiring the approved access, parking area, garage, cycle parking, and landscaping to be implemented prior to the occupation of the extensions and new dwelling. Notwithstanding the other grounds of appeal, these elements are required to reduce the impact of the proposed development.

20. Both the applicant and I&E have provided rebuttals to the appellant's grounds and I include appropriate references in my assessment below.

Inspector's assessment

Ground 1 – 'Revised Plans'

21. RP applications are a quirk of the planning system as operated in Jersey. I agree with the appellant that a RP application is not related to any specific provision within the Law, which simply states that planning permission may be granted (a) in detail or in outline only; and (b) unconditionally or subject to conditions which must be specified in the grant of permission[4].

22. However, I do not agree with the appellant that the application made in this case, or the permission granted, is invalid. The application is clearly made in detail and that detail has been granted permission pursuant to the I&E decision. I&E has confirmed that RP applications use the same application form and follow the same publicity and processing as any other application. The applicant makes much the same points in his submissions and points out that the RP label is 'administrative terminology', that well over 100 RP applications have been made in each of the last 3 years, and that the appellant's planning consultants would be aware of this.

23. Whilst I agree with I&E and the applicant that a valid detailed application has been submitted and determined, the published guidance on RP submissions which appears on the Government website is confusing. It appears to give the impression that a RP application amends the original

[4] Article 19(4) Planning and Building (Jersey) Law 2002 (as amended)

planning permission rather than, as is actually the case, amounts to a fresh grant of planning permission for the revised scheme, with a new 3 year standard time limit for the commencement of its implementation. The guidance also states[5] that *'an alteration to the size of a development will require a new planning application',* even though a RP application is a new application. The published guidance is clearly confused and misleading and would benefit from being clarified and updated.

24. On this ground, I assess that a valid detailed application has been submitted and determined, and this ground should therefore fail.

Ground 2 – Appellant's living conditions

25. Policy GD1 covers 'managing the health and wellbeing impact of new development' and requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It cites some particular matters that developments must avoid, which include: creating a sense of overbearing or oppressive enclosure; unreasonably affecting the level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy; and adversely affecting the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electro-magnetic fields, effluent or other emissions.

26. The appellant considers that the proposed single storey extensions on the east and west sides of *Mayfair* would cause loss of light and be overbearing. He further considers that noise from the proposed air source heat pump, in the north-east corner of the plot, will harm his amenity. He is also concerned that I&E did not inspect the proposal from his property when making its amenity assessments.

27. With regard to light, whilst acknowledging that the extensions would be to the south of *Sonas* and built next to the property boundary, both additions are of very modest proportions and limited height. Indeed, albeit that the height would be above the fence level, and above that which would be allowed as 'permitted development', the additions would be of a scale, height and appearance that would not be unusual to see at a residential property. Limited elements of the west addition would be visible from the *Sonas* conservatory, but this has obscure glass on this flank side. Furthermore, the extension will not cause any significant loss of light to the conservatory, and in my assessment, it will still enjoy good levels of light and sunshine for its occupants to enjoy. The rear (east) single storey addition would also be partly visible above the fence, when seen from the glazed door to the rear of *Sonas* and its patio area, but it would only cast marginally more shadow in a limited area than the existing fence; the effect would not be unreasonable in my judgment.

[5] https://www.gov.je/PlanningBuilding/MakingApplication/Planning/PlanningApplicationProcess/pages/revisedplanningapplications.aspx

28. I have noted the applicant's submissions that the shadowing effect in the mid-summer/mid-afternoon scenario would be no different from the originally approved scheme under P/2022/0253, and the shadowing effects of existing buildings and landscaping. However, this is only a snapshot, at a time when the sun will be high in the sky, and some shadowing from the additions may be experienced at other times. However, for the reasons outlined above, I consider that any such effects would be very limited, and not close to the GD1 threshold of being unreasonable in this particular site context.

29. Concerning physical impacts, for similar reasons I do not assess that the modest extensions close to the boundary would be overbearing.

30. With regard to possible noise impacts from the air source heat pump, I note that whilst this installation is notated on the submitted drawing[6], it is not explicitly stated within the development description. Furthermore, it is my understanding that the installation of air source heat pumps would be 'permitted development' under the terms of the Order[7], and subject to a noise rating limit. I also note that the appellant has provided no substantive evidence to support the claim of a potential noise nuisance from the air source heat pump, the installation of which is now increasingly commonplace. I have also noted the appellant's concern that the additional accommodation may increase intensity of use, but any such increase in activity arising from the modest addition is likely to be very limited and unlikely to cause unreasonable loss of amenity in this case. In the light of the above assessments, I find no evidenced conflict with policy GD1 concerning likely noise impacts.

31. Overall, I find no conflict with policies GD1, GD6 and SP7 which set out requirements for amenity protection and design of new developments. I therefore assess that ground 2 should not succeed.

Ground 3 – Increase in floorspace, building footprint and visual impact

32. The property is located within the Green Zone, where the BIP presumes against many forms of new development. However, extensions to dwellings situated outside the built-up area are within the scope of permissible development under SP2.

33. This strategic policy approach is complemented by policy H9 which addresses 'housing outside the built-up area' and it adopts a presumption against such development, other than that falling within 6 specified exceptions.

34. Only the first 2 exceptions are relevant to this appeal. Exception 1 allows for a home extension provided that 'it remains, individually and cumulatively, having regard to the planning history of the site, subservient to the existing dwelling and does not disproportionately increase the size of the dwelling in terms of gross floorspace, building footprint or visual impact'.

[6] Drawing number MSP-3026-PL04

[7] Schedule 1, Part 4, Class B.1 of the Planning and Building (General Development) (Jersey) Order 2011

35. Exception 2 allows for an extension or where it involves the sub-division of part of an existing dwelling that would lead to the creation of separate households subject to a) the accommodation being required to provide independent accommodation for someone who requires a high degree of care and/or support for their personal wellbeing and health; or b) the accommodation is capable of allowing the creation of additional households, where they meet minimum internal and external space standards and specifications for homes, within the existing or extended dwelling; and c) it does not facilitate a significant increase in potential occupancy; and d) where the accommodation is capable of re-integration into the main dwelling.

36. The H9 policy construction treats exceptions 1 and 2 as discrete, albeit there is clearly some overlap between the 'size' parameters of exception 1 and the 'potential occupancy' test of exception 2. In this case, given that the development incorporates both conventional home extensions and dependent relative accommodation (which could later be incorporated into the host dwelling), it seems appropriate to assess the proposal under both exceptions.

37. With regard to the policy H9 exception 1 for home extensions, the appellant and applicant dispute the figures for the increase in size of the proposed floorspace. The applicant submits that the existing floorspace is 169.7 square metres, and this would rise by 26 square metres (or 15%) to 195.7 square metres. The appellant claims a 52.2 square metres total addition (or 36%) increase. I have also noted the I&E submission that an imposed planning condition requires the removal of existing stores in the rear garden. I am unclear how some of these figures have been arrived at but, based on my assessment of the plans, I am satisfied that the increases in floorspace and footprint are modest and would not be disproportionate. I am also satisfied that the additions are subservient to the host dwelling and, being neatly designed and contained within a well-sized garden plot, will not result in any undue increased visual impact.

38. Concerning policy H9 exception 2 (dependent relative accommodation), I have not been provided with details of the dependent occupant's needs. The appellant has questioned whether the needs meet that set out in the exception, i.e., for someone who requires a high degree of care and/or support for their personal wellbeing and health. However, in the absence of evidence to the contrary, I have no basis to doubt that the need for this element of the proposed accommodation is genuine and falls within the scope of the exception. Given my findings above on 'size' and the dependent accommodation being limited to the addition of 1 bedroom (shown as a single) to this family sized property, I am satisfied that it would not result in a significant increase in potential occupancy. The internal design of the dependent person's accommodation, including a shared utility room and doorways linking to the main house, satisfies the policy requirement that the accommodation is capable of future re-integration into the main dwelling.

39. I therefore find that the proposal is compliant with policy H9 as allowable exceptional development outside the built-up area. I note that the appellant

has cited a long list of other policies under this ground of appeal (SP3, SP4, SP7, GD6, GD9, NE3, and H1), but has provided little explanation for the implied conflict. I have reviewed the proposal against all of these listed policies and find no tension or conflict with any of them. I therefore assess that ground 3 should fail.

Ground 4 – Loss of tree

40. The applicant has confirmed that a tree in the south-east corner of the site would be removed, rather than relocated, as it has honey fungus, and other similarly affected trees in the vicinity have also been removed. Whilst noting the appellant's view that the tree makes some contribution to the character of the area, it is not protected by a Tree Preservation Order and it could be removed without any required planning approval, particularly given its diseased condition. In the circumstances, I assess that none of the policies cited by the appellant under this ground (NE1, NE2 and NE3) provide any basis for withholding permission for the development due to the loss of a single unprotected, and seemingly diseased tree. I have noted suggestions of an additional landscape condition, but do not consider this necessary in this case.

41. I assess that ground 4 should fail.

Ground 5 – Access and parking

42. The appellant is concerned that the proposal fails to provide appropriate parking and access. However, the site already has an established access to La Rue de la Mare Ballam and off-street parking facilities. The proposal would enhance those facilities, with garaging, parking and secure electric bicycle storage. Given the relatively modest scale of the extensions proposed, which do not amount to an additional dwelling as alleged by the appellant, there is no evidence to suggest that parking demands would be significantly greater than the existing situation.

43. I assess that ground 5 should not succeed.

Ground 6 – New independent dwelling

44. The appellant asserts that the proposal would result in 'a new independent dwelling within the countryside of the Green Zone, outside of any defined built-up area, contrary to policies SP1, SP2, PL5, H3 and H9 of the adopted Island Plan'. However, this assertion is clearly at odds with the facts. The combination of the development description, the POA (as modified) and the details set out on the drawings, all confirm beyond any doubt, that the relevant ground floor space would be 'dependent relative accommodation' which would be inseparable from the host dwelling and, if ever no longer required for the dependent person's occupation, can be readily assimilated into the host dwelling.

45. I assess that ground 6 should therefore not succeed.

Ground 7 – Planning conditions

46. In planning terms, I have assessed the proposed additions to the *Mayfair* dwelling to be acceptable in their own right. I therefore do not agree with the appellant's argument that planning conditions should be imposed to enforce the implementation of other elements of the scheme (access, parking area, garage, cycle parking, and landscaping) prior to the occupation of the extensions. Whilst I have no reason to doubt that the applicant will wish to complete the development in its entirety, there is no planning necessity to impose the suggested pre-occupation condition requirements.

Conclusions and recommendation

47. I am satisfied that the proposal is acceptable in terms of the relevant BIP policies. I therefore recommend that the Minister dismisses this appeal and confirms the grant of planning permission under reference RP/2022/0949.

48. This case has highlighted some confusing procedural issues concerning the use of the RP label and the accuracy of development descriptions. I further recommend that the Minister considers asking officers to look into these matters and update, where appropriate, the guidance and procedures.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI