

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

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

Appellant: Mr Santos-Costa

Planning Permission Reference Number: P/2023/0027

Date of decision notice: 28 March 2023

Location: Kungsvik, Pontac Common, La Grande Route de la Cote, St Clement JE2 6SX

Description of Development: demolish existing single storey garage and construct double garage with habitable space above to north of site.

Appeal Procedure and Date: site inspection and hearing

Site Visit procedure and Date: accompanied, 5th June 2023

Date of Report: 3 July 2023

Introduction

1. This appeal concerns a refusal to grant planning permission for the demolition of a single storey garage and its replacement by a double-garage with habitable space above. The garage is to serve the property known as Kungsvik.
2. Permission for the current application was refused by the Infrastructure and Environment Department (the 'Department'), on 28 March 2023 because:
 1. The proposed double garage, by virtue of its design, mass and scale, fails to conserve, protect and contribute positively to the distinctiveness of the site's surrounding built environment. This is contrary to policy GD6, of the Adopted Bridging Island Plan 2022, which requires that all developments be of high-quality designs.
 2. The proposed double garage, by virtue of its design, is considered to unreasonably harm the amenities of an adjacent property (La Corniere). In particular, the proposal has been judged as potentially creating a sense of overbearingness for this neighbouring property. This is contrary to policy GD1 of the Adopted Bridging Island Plan 2022.
3. A previous application (P/2021/1392) for the same proposal was submitted in October 2020. That was considered and refused under the provisions of the previous Revised Island Plan 2011. It is understood that a written request for review of that application by the planning committee was submitted, but does not seem to have been received. That application was only refused for a single reason relating to its

design. The Department has explained that changes to policy wording between the two plans has given rise to the additional reason for refusal.

The proposed development

4. The proposal would require the demolition of the existing single-storey garage and its replacement by a two-storey double garage. The building would have solar panels, rooflights and windows. An external circular staircase to the east of the building would provide access to the upper floor. A mixture of contemporary materials are proposed including zinc, to mirror the materials used on the host house, Kungsvik.

Case for the appellant

5. The appellant has stated three grounds of appeal:
 - the proposed development is located in the built-up area where residential development is encouraged to occur by policies SP2, PL3 & H2 which means there is an expectation for this type of ancillary accommodation being acceptable;
 - the proposed development by reason of its siting, size, scale and design would not cause unreasonable harm to the amenities of neighbouring uses and residents, in compliance with policy GD1 of the Bridging Island Plan;
 - having regard to its context, the design of the proposed development is considered to be acceptable, in compliance with policy GD6 of the Bridging Island Plan.

Case for the Department

6. In response to the appeal, the Department has noted:
 - whilst the site is within the built-up area this does not mean it is carte blanche that all proposed development would be approved;
 - the building, which will be larger both in terms of its increase in footprint and building mass, as well as increased height, will severely impact on both the private amenity space to the rear of the property to the north as well as to the outlook from inside the property;
 - effects on the property to the north would be pronounced by the difference in ground levels;
 - the design of the proposed garage is of a disproportionate size, form and scale in contrast with the modest, and subservient, existing garages. The design fails to take account of and conserve the relationship of the development to existing buildings as well as the character and identity of the surrounding area.

Consultations

7. There were no objections from consultees.

Representations

8. Five objections were received at application stage. Four of these respondents sent additional responses to the appeal and two of them attended the hearing. Points raised in representations are:
 - the size of the structure is contrary to those already present;
 - a two-storey garage with pitched roof and spiral staircase would be out of place with the surrounding area and detrimental to the character of the area;

- the proposed garage would facilitate oppressive enclosure to the lower lying properties to the north;
- the spiral staircase would facilitate loss of privacy and be intrusive to properties to the north of the site;
- potential for landslip;
- disruption to access for neighbouring property during construction;
- no details about provision for surface water run-off from proposed roof.

Inspector's assessment

9. Article 19 of the Planning and Building (Jersey) Law 2002 as amended states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Planning permission may also be granted for proposals that are inconsistent with the Island Plan, if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.
10. The current Island Plan is the Bridging Island Plan, March 2022 ('the Island Plan'). Having regard to the policies within that plan and the grounds for appeal, I conclude that the determining issues in this appeal are:
 - the policy context;
 - the design of the proposal and its relationship to the surrounding built environment; and
 - the effect of the proposals on neighbouring amenity.

The policy context

11. Policy SP2 spatial strategy of the Island plan directs development to the built-up area. The policy also establishes a hierarchy of areas for development.
12. The appeal site is located within the Island's built-up area, within the local centre Grève D'Azette - Ville ès Renaulds. Policy SP2 notes that "more limited development will take place within the island's local centres, with the scale of development related to local community need and context, ..." Further clarification is provided by Policy PL3 - local centres, which notes that development within local centres will be supported where it contributes to maintaining and enhancing sustainable local communities. It also confirms that proposals for residential development will be supported within the existing built-up area and that any development in local centres needs to be proportionate to the needs of the community, the scale of the built-up area; and appropriate to its context in scale, character and use. Thus, subject to the proposals being appropriate to its context in scale, character and use, I conclude that the principle of development is acceptable. My comments on how the proposal fits within its proposed context are set out in the next sections.
13. The appellant has highlighted policy H2 - housing density as relevant as it supports the broader objectives of the Island plan in concentrating development within the built-up area. I accept that the Island plan seeks to ensure optimum efficiency in the use of land. Nevertheless, it appears to me that policy H2 is directed at achieving minimum density standards for housing specifically rather than the density of buildings *per se*. As the proposal is for a garage and not a dwelling, I consider that policy H2 has little relevance for determination of this appeal.

The design of the proposal and its relationship to the surrounding built environment

14. Pontac Common is a narrow road, which runs adjacent to the coast in St Clements. It lies to the seaward side of La Grande Route de la Cote, converging with it at its eastern end to create a broadly triangular area between the roads. This is occupied by dwelling houses. Kungsvik lies to the south (sea) side of the road, approximately half way along its length. The proposed garage lies to the north of the road and is located slightly to the east of the host property.
15. During my site inspection, I observed that the settlement pattern and character changes west to east along Pontac Common. To the west, the road is characterised by domestic dwellings to the north and south of the road. These are of varying ages, designs, sizes and heights and include recently refurbished or rebuilt properties as well as older dwellings. Plot size also varies and this means that there is no clearly defined building line to either the north or south of the road and that properties are separated by varying distances. The ground is broadly level and properties to the north and south of the road are located roughly at grade with it.
16. The central portion of the road is open on its southern side, with larger detached properties set back from the road on the northern side. The eastern portion of the road also supports houses of varying ages, styles and designs, but these are confined to the south side of the road. The northern side of the road is fringed by parking areas including a number of mainly single-storey garages. Ground levels fall away steeply to the north of the road beyond the garages. There are a series of dwellings located on this lower land, adjacent to La Grande Route de la Cote. This eastern area coincides with the convergence of Pontac Common with La Grande Route de la Cote. Consequently, the area of land available between the two roads decreases eastwards, resulting in reduced plot size and smaller separation distances between the garages and domestic properties.
17. I saw that the existing garages have little architectural merit. They are, for the most part, single-storey, white rendered buildings, which do not, on the whole, cover the whole parking plot opposite each house that they serve. There are some exceptions to the single-storey/ single garage arrangement, but these occur towards the eastern end of Pontac Common, and are more distant from the appeal site.
18. The Department assesses the current garage to be 4.3 m wide by 4.9 m deep. It has a flat roof at 2.6 m high. The proposed garage would be 8.5 m wide by 7.5 m deep. It would also replace the existing flat roof with a pitched roof. In addition, the proposed garage would have an external spiral staircase, with modesty screen, located to the east side of the building to provide access to the upper floor.
19. Policy GD6 - design quality requires that “a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting will be sought in all developments, in accord with the principles of good design.” It sets out eight key principles that require to be addressed. Three of these have particular relevance to this application:
 - “1. the relationship of the development to existing buildings, settlement form and distinctive characteristics of a place having regard to the layout, form and scale (height, massing, density) of the development;
 2. the use of materials, details, colours, finishes, signs and illumination relative to the character and identity of the area; and its townscape or landscape setting;
 3. its impact upon neighbouring uses, including land and buildings and the public realm;”

20. At the hearing the Department indicated that a fourth principle (4, which relates to integration of the development into the existing area including safe links to local spaces, consideration of needs of those with disabilities, parking and active travel) also had some relevance. However, it provided little evidence on this matter. Given that the proposal is for a replacement garage I am not persuaded that this principle has any particular importance in the determination of this appeal.
21. As noted above, policy PL3 requires that any development in local centres needs to be proportionate to the needs of the community, the scale of the built-up area; and appropriate to its context in scale, character and use.
22. The design, scale and mass of the proposed replacement garage would represent a significant change to the both the existing structure and the other garages within its immediate vicinity. It would broadly represent a doubling of both footprint, height and mass, making it a visually significant addition to the street scene. The proposed external staircase would further increase the visual mass of the proposed building and would introduce a new feature to the street scene.
23. I accept that the garage would be close to Kungsvik, which in its turn is a substantial building, thus providing some perspective for the proposal. Nevertheless, I find that the proposed garage, by virtue of its height and mass, together with the additional structure of the external staircase would appear out of scale with the existing row of garages along this part of the common.
24. The simple and functional design of the existing garages means that they are unremarkable within their setting. I accept that they are not particularly attractive or of a high design quality, which requires to be conserved or protected. Nevertheless, they do contribute to the distinctive character of the eastern part of Pontac Common and hence any change must take account of this, without necessarily duplicating what is already there.
25. The choice of materials of the garage would also represent a change from the simple, mainly white rendered garages nearby. However, I find that these materials would reflect the materials of the host house and to that extent would not introduce novel materials into the street scene.
26. In conclusion, I find that the height, scale, design and mass of the proposed garage would fail to successfully address key principle 1 of policy GD6 in relation to its relationship with the distinctive characteristics of Pontac Common and would fail to contribute positively to the distinctiveness of the built environment, landscape and wider setting. It would also fail to meet the requirements of policy PL3 in relation to its scale.

Effects of proposal on neighbouring amenity

27. Policy GD1 - managing the health and wellbeing impact of new development sets out three criteria. Criterion 1 establishes that “the development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents” and sets out four broad categories of ‘harm’ that must be considered. These include a) - a sense of overbearing or oppressive enclosure; b) the level of privacy to buildings and land that owners and occupiers might expect to enjoy; and c) level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy.

28. During the hearing there was a discussion about the meaning of ‘overbearing’ and how this should be assessed. The term is not defined within the Island plan, nor is there an objective ‘test’ for its assessment. The appellant has directed me to guidance on this issue published by South Gloucestershire Council (Householder Design Guidance, 2021). This appears to link a sense of overbearing with impacts on natural light and outlook. Whilst a building that is overbearing can have effects on light levels, that may not always be the case. My reading of policy GD1 is that it makes a clear separation between effects of a development on light and overbearing impacts. In any case, I understand that the South Gloucestershire Council guidance has no particular standing within Jersey.
29. Factors often identified as contributing to a sense of overbearing are where buildings are dominating, imposing, intrusive or create a sense of oppression. The test set by policy GD1 is that development should not unreasonably harm the amenities of occupants and neighbouring uses. This test recognises that changes in relationships between properties will occur as a result of development, but seeks to avoid those where those changes are deemed harmful. To determine whether or not a change is ‘unreasonable’ it is necessary to consider the context and baseline conditions.
30. As noted above, the land immediately to the north of the appeal site is at a significantly lower level than the appeal site. During my site inspection I estimated that the difference in levels between the appeal site and the external amenity area of the property directly to the north (La Corniere) was in the order of three metres. The angle of slope is steep and I saw that there were supporting structures in place within the garden to prevent collapse of the ground below the appeal site. The effect of this arrangement is to create the equivalent of a green wall. I found that it would be necessary to intentionally look upwards in order to be aware of and look above the top of the existing bank and fence. Even so, the existing garage is barely visible from the rear external amenity areas of La Corniere.
31. Whilst the ridge height of the proposed garage would be nearly twice the height of the existing garage, the height of the eaves adjacent to the boundary would be lower than that. Nevertheless, the proximity of the north wall of the garage to the boundary would mean it would appear as an extension to the already substantial height of the bank at the rear of the garden. It would also extend along a greater portion of the boundary with La Corniere than the existing structure. In addition to the building itself, the proposed staircase would add a further structure above the bank at the boundary. For these reasons, I do not agree with the appellant that the proposal would be a discrete addition. I find that it would act to further increase the height and hence the dominance of the slope at the rear of the garden. The extent of the structure along the mutual boundary, together with the staircase would introduce an imposing structure on the boundary.
32. I am not persuaded by the appellant’s arguments that the proposals are consistent with the grain of development in the area. I saw there is no coherent pattern of spacing between properties along Pontac Common. There is a trend of decreasing space between the rear amenity areas of the properties to the north of the common and the garages to the south, but with the exception of one garage, these are all single storey. I do not see the current arrangement as providing justification for the proposed development, which would be significantly taller than the existing garages and would introduce a new structure (the staircase).

33. The appellant has provided assessments of the effect of the proposals on daylight and sunlight. Whilst these were based on the situation prior to the construction of an extension and associated decking area within La Corniere, I am content that the proposals would not result in unreasonable effects on sunlight or daylight.
34. In conclusion, I find that the proposals, by virtue of their height, proximity and extent along the boundary together with the staircase would result in a structure that would create a sense of overbearing to La Corniere, contrary to the requirements of policy GD1.

Other matters

35. Whilst not raised specifically in the reasons for refusal, there was discussion at the hearing about effects of the proposals on privacy and from overlooking.
36. The test for effects on privacy set out in policy GD1 b) and c) is subtly different to that for overbearing. In this instance, the test is that effects should not unreasonably affect the level of privacy or sunlight or daylight that owners and occupiers might expect to enjoy.
37. Although the appeal site is within the built-up area, where a degree of overlooking might be anticipated, the current arrangements and change in ground levels means that there is currently limited opportunity of overlooking from Pontac Common into the rear amenity space of houses to the north other than from close to the existing boundary. Although there is some mutual overlooking east-west between the gardens on the north side of the common, the effect of the arrangement is to create the impression of an enclosed and private amenity space.
38. The proposed garage would have some windows on the north side at first floor level. However, I am content that these would be located at a height sufficient to prevent casual overlooking of La Corniere. Further mitigation could be provided in terms of requiring these to be either restricted opening and/or of opaque glass if there were concerns about privacy. Therefore, I am satisfied that this element of the development would not result in an unreasonable effect on the level of privacy that the owners of the property of La Corniere might expect to enjoy.
39. I am less persuaded that this would also be true for the proposed staircase to access the first floor of the garage. Whilst the design allows for a privacy screen, this would only prevent overlooking from the upper landing; there would be scope for overlooking as individuals ascend and descend the staircase. The proximity of this activity to the mutual boundary coupled with the elevated viewpoint of those using the staircase, leads me to conclude that it could result in an unreasonable loss of the levels of privacy that the owners and occupiers of La Corniere might reasonably expect.
40. I have also considered the concerns of the owners/ occupiers of the property to the north-west. During my site inspection I viewed the appeal site from their property. The proposed garage would be located to the south-east and set back from their boundary. Whilst the corner of the gable end would be visible from the garden, its proposed location means that it would not act to increase the height of the raised land to the rear of the garden. Nor would it have an unreasonable effect on sunlight or daylight to the property. The first-floor western wall of the proposed garage would have two windows. These would be fixed glazed windows. When considered in conjunction with the orientation of the windows in relation to the garden property

to the north-west I am content that there would not be an unreasonable loss of privacy to the property to the north-west.

41. Although not stated as a reason for refusal of the proposal, I conclude that the external staircase would result in unreasonable effects on the privacy that the owners and occupiers of La Corniere might expect to enjoy, contrary to the requirements of Policy GD1.

Conditions

42. As the Department recommended refusal of the proposal, no conditions were appended to the decision notice. I therefore had a 'without prejudice' discussion about conditions at the hearing.
43. The Department has suggested a condition to require prior approval of materials and finishes. However, I note that details of materials are included on the drawings submitted with the application. In the event that permission is granted, I consider that the standard condition requiring construction in accordance with the approved plans would already adequately cover this aspect.
44. Likewise, details of the proposed privacy screen are included on the submitted drawings and would be covered by a standard condition requiring construction in accordance with the approved plans. However, I accept that a condition could be appended requiring the installation and retention of the screen. The purpose of this would be to safeguard the privacy and amenity of the properties to the north of the appeal site.
45. A condition to restrict the use of the proposed garage to the incidental enjoyment of the main house and to prevent its use being severed from the main property and being used as a separate dwelling was suggested. Whilst the appellant stressed that they have no intention of using the structure as a dwelling, I accept that this would be an appropriate condition to safeguard the amenity of neighbouring uses.

Conclusions

46. For the reasons set out above, I conclude that the proposals fail to meet the requirements of the Island plan, specifically policies GD6, GD1 and PL3.
47. I have considered all other points raised in submissions, but there is nothing that would lead me to change my recommendation.

Recommendations

48. I recommend that the appeal should be dismissed and that planning permission should not be granted.
49. In the event that the Minister decides not to follow my recommendation, any planning permission should be accompanied by conditions to address the matters set out in paragraphs 42 - 45 above.

Sue Bell

Inspector 03/07/2023