

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr J Lamont against a decision to grant planning permission.

Reference Number: P/2021/1450.

Site at: Highview, La Rue de la Houquette, St Clement, JE2 6LD.

Introduction

1. I held a hearing into this appeal on 6 December 2022 and inspected the site on the same day.
2. The appeal is against a decision to grant planning permission for development described in the application as: "Demolish existing dwelling and construct new dwelling". In the planning authority's decision notice, the development was described as: "Demolish existing dwelling and construct new dwelling. AMENDED PLANS RECEIVED. Alterations to gable on west elevation and to ground level". The stated reason for approval was:

"Permission has been granted having taken into account the relevant policies of the approved Bridging Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received."
3. The application was made by Mr Mark Brown. The planning permission which would have been granted would have been subject to nine conditions, covering (in summary) the following topics:
 - (i) Details of external building finishes, roof tiles and windows to the west elevation.
 - (ii) Energy efficiency in relation to building byelaw requirements.
 - (iii) Methods to reduce, re-cycle and re-use construction and demolition waste.
 - (iv) Ecological enhancements contained within a bat survey report.
 - (v) Details of bicycle parking.
 - (vi) Landscape works (including visibility splay).
 - (vii) Surface water drainage strategy.
 - Viii) Storage, sorting, recycling and disposal of refuse.
 - (ix) Removal of normal permitted development rights (covering the erection of any building, extension, means of enclosure and various other specified items).

Format of Report

4. This report contains a description of the site and surroundings, followed by a brief note on procedural matters and summaries of the cases for the appellant, the planning authority and the applicant. Representations by other parties are also reported. I then set out my assessment, conclusions and recommendations. Comments on possible conditions are added, with more detail in an appendix.

5. Both the appellant and applicant engaged consultants to present their cases, but have also both made representations themselves at various stages during the application and appeal process. This is reflected in the case summaries reported below; the full written submissions are in the case file.
6. All references to the Island Plan or are to the current Bridging Island Plan. Where references are made to policies, these are policies of the Bridging Island plan unless otherwise specified.

Procedural Matters

7. In Section 4 of the appeal form, the appellant is named as Mr J Lamont. On the third page of the appeal form, two persons (James Smith Lamont and Gillian Ann Lamont) are named as appellants (plural). I am taking Section 4 of the form as specifying the appellant; that is why I refer only to Mr Lamont in the heading above and elsewhere in this report.¹ However, I have regarded written material stated to be submitted jointly (ie partly on behalf of Mrs Lamont) as part of the appellant's case. Similarly, I am treating written comments by Mr and Mrs Brown as part of the applicant's case although Mrs Brown was not an applicant.

Site and Surroundings

8. The appeal site is located on the west side of La Rue de la Houquette, which is a narrow (mostly single-vehicle width) road located between the A5 to the north and Rue du Hocq to the south. The area is predominantly rural or semi-rural in character, although the appeal property is one of four neighbouring residential properties on the west side of Rue de la Houquette. From north to south, these four properties are named Huguenot House, Highview, Le Chachibis, and Les Buissonnets. Le Cachibis is a single-storey bungalow (described in evidence as having three bedrooms). Les Buissonnets is a substantial two-storey house.
9. The plot sizes of these properties varies, as does the position of the houses within their plots, in such a way that there is a larger gap between the houses at Le Cachibis and Les Buissonnets towards the south than between the other three towards the north. Huguenot House occupies most of its plot, which is roughly triangular and narrows towards the north; the other houses have more spacious settings in their plots.
10. The Mont Ube lighthouse, which has a mostly steel framework structure, stands on the east side of the lane opposite the southern part of Highview's site.² The topography of the area varies but is mostly gently undulating and rises on the east side of the road to a high point (a hill apparently known as La Houquette). The land slopes down away from the site towards the west, in which direction there are views across agricultural land towards built-up areas and the coast beyond. The appeal site is also at a slightly higher level than nearby land to the north and south.
11. The site at Highview is partly occupied by a bungalow.³ It has two bedrooms, a lounge, a bathroom, kitchen/dining room, a utility room, and a sun-room or conservatory extension on the south side. The dwelling stands towards the north of its plot, and partly abuts the north boundary of the site.

¹ Mr Lamont is also referred to as the appellant in agent's correspondence and written statements.

² The Listing Schedule for the lighthouse is in Appendix F of the appellant's agent's appeal statement.

³ The Design Statement contains photographs of the bungalow. The building in the background on the front page of this document is the appellant's property, Huguenot House.

12. There is a small front garden and other garden areas west and south of the dwelling. A timber outbuilding stands near the southern boundary. Also in the southern part of the site is a hard-surfaced driveway off La Rue de la Houquette.
13. Huguenot House is a detached property which was evidently built in about 2015 and replaced a former joinery workshop. This dwelling has two storeys with central gables facing east and west and dormer-style windows in the northern and southern parts of the building.
14. La Rue de la Houquette, which is evidently classified as a "green lane", is of single-vehicle width (between about 2.5 and 3 metres wide in the vicinity of the appeal site) and is subject to a signed 15 mph speed limit. There are no footways on either side. The carriageway is bordered on the east side opposite Highview by a grass bank.
15. The vehicular access into the appeal site is close to the access to Le Cachibis, being separated by a straggly, mostly low boundary hedge. (This can be seen in the photograph in the top right-hand corner of Drawing Number 2693 P11 Revision A; the bungalow visible in this photograph is Le Cachibis; the access to the appeal site is in the bottom right-hand corner of this photograph.)
16. Seen from the appeal site's driveway, the extent of the view along La Rue de la Houquette varies depending on the set-back distance (ie the position of an observer in the driveway) and whether the field of view is taken to extend across frontage land next to the access, particularly the part of Le Cachibis's plot nearest the road. To the south the field of view along the road from a set-back distance of 2.4 metres is about 7 to 8 metres assuming no view over the boundary vegetation, but by looking above the low hedge across the corner of the adjacent plot a view is obtainable for a longer distance. To the north, where a visibility splay is partly across land within the appeal site, a longer visibility splay of around 17-18 metres is available.

Case for Appellant

17. The summary here is mostly based on the grounds of appeal, which are expanded in the statement headed "Statement from the Appellant" and further expanded in the "Response Comments from the Appellant" (both of which are dated October 2022 in the page footers). Because of the length of the latter two documents (37 pages and 34 pages respectively) I only summarise here their main points, so you may wish to read them.
18. During the processing of the application various other submissions were made by and on behalf of the appellant. The "Officer Assessment Sheet" appended to the planning officer's report,⁴ refers to a number of other written submissions, including: a letter from MS Planning on the objector's behalf on 24 November 2021⁵; an email and letter received by the Department on 17 and 21 December 2021⁶; and further comments by the agent on 6 May and 15 August 2022. All these documents should be available to you in the case file.

⁴ Unfortunately the Assessment Sheet document has no page numbers, but this material starts on the tenth page in the part of the report headed "Summary of Representations".

⁵ The Officer Assessment Sheet gives this date as 24 November 2022. This submission is filed in the government's website under "public comments".

⁶ I refer to the "received" date here as the letter appears to have been undated.

19. In summary, the basis of the appellant's case is that the application is in breach of many Island Plan policies. The breaches are numerous and significant, and there are no material considerations which merit overriding the breaches. The decision to grant planning permission should therefore be overturned.
20. The grounds of appeal are in two groups. The first group of six (labelled A to F in the relevant documents) cover what are described as "process matters"; the second group refer to about 20 mainly policy-related points of opposition to the proposal.

Process (Grounds A to F in Statements for Appellant)

- The decision to grant planning permission was in breach of Article 11 of the 2002 Law, as the plans "approved" were not properly made available for public review or comment and related items such as the required 3D model were uploaded late to the Planning Register.
- Certification of a site notice display under the relevant Order⁷ was deficient, as it certified that the notice had been displayed for 21 days, but was returned only five days after the application was validated. The wrong site was at first identified on the planning register.
- The application conflicted with elements of application P/2020/1714 (a proposal to extend and alter the existing building) and so breached Article 10 of the 2002 Law under which it is an offence to knowingly or recklessly make a false or misleading representation. The surveyor's report on the 2020 application described the works required for renovation; the Design Statement submitted with the application for the current proposal says that restoration would not be economically feasible, but the economic feasibility case did not arrive until the agent's letter in January 2022. The cost and market value figures supplied indicate that the value of an upgraded property would be a little more than the total costs of purchase and renovation. There is no problem with economic feasibility. The Design Statement is disingenuous.
- Other processing failures included the length of time between Mr Lamont's representation on 21 December 2021 and its first appearance on the Planning Register on 5 April 2022, 105 days later. An email from Mr Lamont on 17 December 2021 has never been published on the register. Material including new drawings, a Planning Statement, CGI views, a Sustainability Statement and ecological information was put on the planning register in early August 2022, 172 days after the application was validated and two weeks before the decision was published.
- The decision was based on inconsistent, incomplete and potentially misleading information because of a lack of confirmed measurements and key dimensions on plans (a basic requirement under Article 9 of the 2002 Law), and vague references to matters such as energy efficiency and foul sewerage. The foul sewer assessment is still missing.
- The decision was based on a case officer's report dated after the officer had left the employment of the planning authority.
- The decision was inconsistent with normal practice, for example using conditions on primary policy matters such as foul sewerage.
- The scheme subject to the decision cannot be implemented because it relies on landscape works outside the red-edged site.

⁷ Planning and Building (Application Publication) (Jersey) Order 2006 – Article 3.

- Because of the above factors and failure to administer the application process competently the decision to grant planning permission is not sound.

Planning Policy Matters⁸ (Grounds 1 to 20)

- The application does not adequately respond to climate change and conflicts with Policy SP1; the demolition of a building in the Green Zone is not adequately justified.
- The application does not align with the spatial strategy in that it is outside the built-up area, does not involve the conversion, extension or subdivision of existing buildings, and is in a location with inadequate services and infrastructure, so conflicts with Policy SP2.
- The application does not provide a suitable placemaking response in particular to its context by reference to its increased scale and mass and inadequate landscape proposals, and does not accord with Policy SP3.
- The application does not protect and promote Island identity, in particular as it does not protect or improve the historic environment, nor does it make a positive contribution to the local landscape character⁹. As such it does not accord with Policy SP4.
- The application does not protect and improve the natural environment, particularly as the inadequacies of the landscape proposals do not protect or improve the quality, character, diversity and distinctiveness of the Island, so the application does not accord with Policy SP5.
- The application fails to plan for community needs: it seeks permission for a replacement dwelling in the Green Zone, it fails to contribute satisfactorily to a sense of place and it fails to make provision of suitable infrastructure, and so does not accord with Policy SP7.
- The application proposes inappropriate development in the countryside which is not converting, extending or subdividing an existing building; nor does it protect or improve the character and distinctiveness of the countryside and does not accord with Policy PL5.
- The application does not demonstrate how it will manage the health and wellbeing impact of new development, and does not show how it will not unreasonably harm the amenities of neighbours, in particular how it will not create a sense of overbearing or oppressive enclosure and how it will not unreasonably affect the level of sunlight and daylight. As such the development does not accord with Policy GD1.
- The application does not demonstrate that it is appropriate to replace the existing building, does not show any benefit in relation to sustainability or economic viability, waste generation, use of materials, or any aesthetic or practical benefits, so does not accord with Policy GD5.
- The application does not demonstrate an acceptable level of design quality, shows a poor relationship to existing buildings and impact on

⁸ There are some textual errors in this part of the grounds of appeal – for example, it is clearly wrong to say that “the application is outside the built-up area” since it is the *site* which is outside the built-up area (or the *proposed development* which *would be* outside the built-up area). Similarly, an application cannot “create a sense of overbearing” – it is *development* which could do so. I am reporting the case as presented, so I have not tried to correct these points in this summary.

⁹ On this point the agent’s statement states: “...Nor does it not make a positive contribution to the local landscape character”. I have transposed this statement (ie removed the double negative) as it appears to be a wording mistake and was meant to say the opposite.

neighbouring uses. It lacks a coherent approach to green infrastructure, has inadequate access and fails to conclude its approach to utilities, and so does not accord with Policy GD6.

- The application does not demonstrate an acceptable approach to skyline views and vistas (particularly in relation to the listed Mont Ube lighthouse and in views of the escarpment from the and does not accord with Policy GD9.
 - The application does not demonstrate how it protects and improves green infrastructure and landscape character. The existing landscape has been removed in advance of the application and the proposals are deficient because of reliance on land outside the application site and applicant's control, so does not accord with Policy NE2.
 - The application does not protect or improve landscape character, with reference to the inadequate landscape proposals, increased scale and height on the skyline adjacent to the listed Mont Ube lighthouse, and the failure adequately to refer to the Integrated Landscape and Seascapes Character Assessment; the application does not accord with Policy NE3.
 - The application does not protect listed buildings and their settings (with particular reference to the adjacent listed Mont Ube lighthouse caused by the scale and form of the proposals), and does not accord with Policy HE1.
 - The application proposes an inappropriate form of housing outside the built-up area (demolition of a dwelling and replacement with one which is larger in relation to floorspace and visual impact) without demonstrable gains for the repair and restoration of landscape character, and does not accord with Policy H9.
 - The application fails to present a clear strategy to meet the 20% reduction in target energy rate for new development, does not propose a low carbon and renewables approach to energy needs, and does not accord with Policy ME1.
 - The application does not demonstrate a suitable approach to safe and inclusive travel or active travel or off-street parking; it does not include electric charging infrastructure or adequate visibility splays or demonstrate how a vehicle could turn on site to exit in a forward gear; so does not accord with Policies TT1, TT2 and TT4.
 - The application does not propose a suitable approach to waste minimisation, does not quantify waste streams and contains no commitment to re-use material on-site; so does not accord with Policies WER1.
 - The application fails to demonstrate an acceptable approach for dealing with foul sewerage, does not provide the necessary assessment of proposed infrastructure, does not confirm a connection to the mains public foul sewer, so does not accord with Policy WER7.
 - The application does not make commitments on the supply and use of water, only gives consideration to various initiatives, and does not accord with Policy U13.
21. Given the above, the decision to grant permission does not accord with Article 19 of the 2002 Law as the application is not in accordance with the Bridging Island Plan. Nor does the application sufficiently justify permitting development inconsistent with the Plan. Planning permission must therefore be refused.

22. A letter from Mr Lamont, writing on behalf of himself and his wife and addressed to the planning department with 11 annexes (labelled Lamont Document 1-11) is filed under "Public Comments" on the government website. The letter contends that the development proposals would harm Mr and Mrs Lamont's interests, do not comply with the Island Plan or policy and guidance, and would be an unacceptable development within the Green Zone in a unique hillside setting on a rural Green Lane adjacent to Mont Ube lighthouse, a visually prominent listed building. The appellant's letter also argues that Mr and Mrs Brown purchased the appeal property knowing its condition and positioning relative to Huguenot House, and that attempts to ignore, circumvent, stretch interpretations or otherwise override the planning framework must be resisted.
23. The annexes to this submission contain critical comments on numerous matters.¹⁰ The following are the main topic headings:
- Application form and application documentation.
 - Highview existing dwelling.
 - Overbearing impact.
 - Occupancy.
 - Comparative massing.
 - Visibility splays.
 - Landscape plan.
 - Historic Impact Statement.
 - Initial Ecological Assessment Report (Sangan Island Conservation Ltd).
 - Public Comments.
 - Landscape Character Assessment and Highview.
24. One of the communications direct from Mr Lamont mentioned above includes a copy of an email sent from Mr Lamont to Mr Kinnaird (the agent for the application) in June 2021. This raised various issues, apparently following a meeting between Mr Kinnaird and Mr Lamont. Among other things Mr Lamont's email referred to his indication at the meeting that subject to various matters, "we should be able to reach a supportive accommodation on this new design project"¹¹.

Case for Planning Authority

25. The main documents setting out the planning authority's case are the officer's report on the application, the statement submitted in response to the appeal, and a second response statement.

¹⁰ These annexes make more than 50 criticisms of the proposal (the number depending on how they are counted and categorised), and because of the detailed, specific nature of this document it is not feasible to summarise it here. The document is available for you to read among the other submitted written evidence and I list the topic headings here so as to provide an indication of its scope.

¹¹ I quote further from this email in my comments in paragraphs 100-102 below. Some of the text in it is the same as another document submitted by Mr Lamont, headed "Undated draft reply to Russell Kinnaird in reply to his email of 8/06/2021", also labelled "this email was not sent".

26. The following main points are put forward in the planning authority's statement.

Process

- The submitted plans and documents have all been published on the government website for public view and comment. The appellant and his agent have commented on the amended plans.
- The application has been considered on its own material considerations and on the submitted plans. Circumstances may change over different applications.
- The submitted plans are to scale as shown on the scale bar. The scale is not required to be annotated on all the plans.
- Paul Roberts was the case officer for the application and wrote the Department's report on it. An objection letter from the applicant's agent was received on 15 August 2022 after Mr Roberts had left but before the application was decided. The Department considered the objection, the report was updated to take the objection into account and the decision was then made on 18 August.
- The Department's report sets out the representations received during the application. Conditions have been applied taking these into account.
- The planting shown as proposed close to the western site boundary is outside the red line site boundary on land within a neighbour's ownership. The Department cannot ensure that this planting is carried out. However, the remainder of the landscaping plan can be ensured. The Department is satisfied that the development would be acceptable without the planting outside the site, and also understands that the applicant has the agreement of the farmer who owns this strip, so the landscaping is still proposed.

Planning Policy/Other Matters

- The application was properly assessed against the policies of the Bridging Island Plan as set out in the officer report, is in accordance with the Plan and does not involve a departure from it.
- The officer's report set out 26 policies of the Bridging Island Plan. It then assessed the application under various headings, including:
 - Relevant planning history.
 - Principle of demolition and replacement building.
 - Design (form, size, scale, siting).
 - Architectural detail and use of materials.
 - Impact on neighbours.
 - Access, car parking and highway considerations.
 - Landscaping issues.
 - Climate change.
 - Biodiversity.
- The officer's report contained the following summary and conclusion:

The application proposes the demolition of an existing property with a replacement building of greater scale outside the built-up area and within the Green Zone. As set out in the body of the report, this proposal is considered to meet the limited and exceptional circumstances required for development in such a location. The applicant has demonstrated that the existing structure

is in a poor state of repair to the detriment of the existing occupiers and the Island's housing stock, and it is uneconomical to refurbish and repair to modern standard. Hence the longevity of the building is not secure and a replacement would preserve the residential use of the site for the long term in a quality and contemporary form.

The loss of the existing building is not contested.¹² It has no architectural merit. The replacement building is considered to protect the setting of the adjacent listed structure and on balance the landscape character of this location and Green Zone. Subject to planning conditions, the new development would also offer biodiversity and sustainability gains, is considered overall to meet Bridging Island Plan policies and is recommended for approval.

Case for Applicant

27. The applicant's case is set out in a document headed "Applicant's Statement of Case" dated October 2022 and in other written submissions including a letter containing comments on the appellant's statement of case. Because of the length of the main statement (44 pages) it is not feasible to record here all the points made in it, so – as I have mentioned above with regard to the appellant's statements - you may wish to read it. The statement refers to relevant law, describes the appeal site and its planning history, refers to the application and the policy context, and then sets out responses to the grounds of appeal A to F and 1 to 20. An appendix contains additional comments stated to be from "the applicant" (though named in this appendix as Laura and Mark Brown).

28. I summarise below the main points of this document:

Process (Appellant's Grounds A to F)

- Article 11 of the Law covers the way planning applications are to be publicised. Approved documents, plans and supporting documents were uploaded to the government website on various dates from August 2021 to August 2022, as part of the normal process of assessment and negotiation with the Regulation Department. The appellant and his agent made comments on various dates between November 2021 and 15 August 2022. The only document submitted for the applicant after 15 August 2022 was a Landscape Design Statement. Article 11 of the Law was followed during the determination of the application.
- Article 10 of the Law refers to false information in applications for planning permission. No false information was submitted with this proposal.
- The information relating to measurements, to the provision of air source heat pumps and to foul sewerage submitted for the application met the validation requirements, followed published protocol, and was not misleading as claimed for the appellant.
- It is questionable whether the dates of employment of government staff are a planning matter. Officers' reports are signed off by senior staff; the date of an officer assessment sheet is not relevant to this appeal.
- The decision on the application was not inconsistent with other decisions as alleged for the appellant. The required procedures were followed.
- Landscape works proposed at the western boundary of the site are outside the site. The planning authority would have been aware of this when the

¹² This must be taken to mean "not contested by the Department" – obviously the loss of the existing building is contested by the appellant.

application was decided and the proposal does not rely on the proposed extension to the hedge.

Planning Policy Matters (Appellant's Grounds 1 to 20)

- The proposal is in accordance with Island Plan policy SP1 on responding to climate change (the details relating to specific clauses of the policy are set out in the schedule on pages 19-20 of the applicant's Statement of Case).
- The appeal site is occupied by a single-storey bungalow which cannot be said to make the best use of land. The proposal would involve appropriate development of under-utilised land and would meet policy SP2 requirements about previously developed or "brownfield" land, and policy H2 encouraging housing development to ensure optimum efficiency in use of land..
- Other policies including policy H4 on meeting identified housing needs, policy Sp7 on planning for community needs and policy SP3 supporting residential development that provides housing types reflecting local housing need and providing good quality internal environments all support the proposal.
- Policies SP3, SP4, SP7, GD6, GD9, PL5, NE3 and H1 of the Island Plan require development to provide high-quality design. The development at Huguenot House to the north sets a precedent for what the planning authority consider to be high-quality design appropriate to this rural location. The current proposal takes design cues from Huguenot and would represent a farmhouse style building suitable for a countryside location. Granite and timber finishes and slate roof tiles would match the materials used at Huguenot. The traditional cross-gabled roof would also be similar to Huguenot.
- The proposed house would be smaller in scale than Huguenot. Despite the slightly higher ground level of the appeal site and resultant higher eaves height of the proposed dwelling, the ridge height of proposed dwelling would be similar to that of Huguenot and would not exceed the tree line to the east.
- The proposed dwelling would be set about 2.75 metres away from the north boundary of the site, providing a 4.85 metre separation between the two houses at their closest point or 6 metres at the widest point.
- Street views of the proposal would be in context. The proposal would not rely on the landscaping scheme included in the application and would provide environmental gains.
- The existing bungalow has an internal floor area of about 133 square metres, which could be increased using GDO permitted development rights to convert loft space and/or add an extension; but this would leave a dwelling unsuited to family occupation or meeting modern standards. The proposed house would have an internal area of about 113 square metres on the ground floor and 108 square metres on the first floor. The habitable internal area of the proposed building would increase slightly compared with the existing bungalow. Policy H9 supports the replacement of an existing dwelling in the countryside where it can be justified having regard to functional needs or necessary improvements to the standard of accommodation. The proposal represents a high-quality design which would create a suitable family home in place of a run-down bungalow at the end of its functional life.
- The impact of the proposal on the amenity of Huguenot House would not be harmful in the ways alleged for the appellant. Any sense of overbearing or enclosure from the proposal is likely to be reduced compared with the existing situation. There would be little change to the level of privacy. Due to the design and separation distance of the proposal the level of sunlight and daylight enjoyed by the property to the north would not be materially

changed. The proposal would therefore accord with policies SP3, SP7 and GD1; grounds of appeal 3, 6 and 8 can be dismissed.

- The proposal would meet requirements relating to road safety, active travel and off-street parking. Visibility splays appropriate for the 15 mph speed limit on the green lane La Rue de la Houquette can be achieved, allowing for a requirement for both properties (Highview and Le Cachibis to the south) to keep the boundary between them lower than 900mm. The proposal would be in accordance with policies TT1, TT2 and TT4; ground 17 of the appeal can be dismissed.
- The application is supported by a Building Condition Report and Sustainability Statement. The figure of 99 square metres in the Sustainability Statement by HLG Associates related to internal floor area allowing for installation of additional insulation measures. It is now accepted that there were calculation errors in Table 6 of the Sustainability Statement prepared by HLG, and that the new build option would result in 184,418 kg of embodied carbon dioxide compared with 100,418 kg for the refurbishment option. However, all material considerations including the benefits of providing a new home must be taken into account. The Sustainability Statement and the revised figures¹³ show that when applying a standard 60-year lifetime, the proposed new-build scheme would result in a more energy-efficient and carbon dioxide-efficient building when compared with refurbishment.
- Condition 2 of the permission would require the 20% reduction in target energy rate specified in policy ME1 to be met. The applicant accepts this requirement. Condition 3 requiring approval of methods to reduce, re-cycle and re-use construction and demolition water is also accepted although policy WER 1 on this point would not normally apply to the demolition of a single bungalow.
- With reference to the Mont Ube lighthouse Grade 2 Listed Building, the Historic Impact Statement by Antony Gibb Ltd supports the application and advises that the development would have a neutral impact in most regards or a minor negative impact from the Weston on the listed building. The government's Historic Environment Team has not objected to the proposal.
- The application is supported by an Initial Ecological Assessment Report by Sangan Island Conservation, and by an Initial Ecological Assessment and Preliminary Roost Inspection report by Nurture Ecology. The reports show that the site has negligible suitability for protected species. The government's natural environment team raised no objection. A recommended standard condition requiring ecological enhancement (as in Condition 4 of the proposed permission) would be acceptable.
- Surface water drainage would have been subject to Condition 7 of the permission, which is acceptable to the applicant although it would not be necessary as no change to the site's water regime is proposed. For foul sewerage the proposal seeks to connect to a tight tank as no public sewer is available. Options to connect to the public system would be explored.
- There would be sufficient space on the site for refuse arrangements including the storage, sorting and recycling of waste to be provided, subject to a suitable condition showing details. Water supply would be via existing mains. Water conservation measures would be supplied in line with building regulations and byelaws.
- Taking all the above points into account, the proposal would comply with policies SP1, SP2, SP3, SP4, SP5, SP7, PL5, GD1, GD5, GD6, GD9, NE2, NE3,

¹³ The details of a revised Table 6 are on page 38 of the applicant's statement of case.

HE1, H1, H2, H4, H9, ME1, TT1, TT2, TT4, WER 1, WER 7 and U13. All the grounds of appeal can be dismissed.

29. In written comments on the appeal, Mr and Mrs Brown¹⁴ express concern about the intentions of their neighbours to the north. During the application process steps were taken to make sure that the revised design now subject to appeal had no negative effect on the neighbours' property, as appeared to be accepted by a report from MS Planning except for an issue involving black bamboo which Mr and Mrs Brown are happy to reconsider. The applicant's architect had tried to engage with Mr and Mrs Lamont without success, although other neighbours had taken interest and expressed support.
30. The only correspondence the applicant's architect had exchanged with Mr and Mrs Lamont had resulted in various demands from them, including moving the proposed building 2 metres further from their house, dropping the levels, having no new north-facing apertures and re-aligning boundaries so as effectively to give them some land.
31. The existing building is cold and damp, has leaks and is unhealthy to live in. The proposed house would be about 3 metres further south than the existing structure as an existing extension next to the north boundary would not be rebuilt. The height of the proposed building is affected by the difference in natural ground levels, the appeal site being higher than the land to the north. Dropping levels would harm the natural environment. No first floor windows or apertures have been included in the north elevation. The house would sit nicely within a rectangular plot and the applicant does not wish to alter its boundaries.
32. The decision to approve planning permission was properly taken by the planning department and was supported by other local residents. Mr and Mrs Brown feel harassed into designing a house to meet the appellant's demands, which have been made in over-lengthy and repetitive objections.
33. Additional comments by the applicant are also set out in an appendix.¹⁵ In these comments Mr and Mrs Brown dispute various points made in documents submitted by Mr Lamont. Mr and Mrs Brown state that they engaged professional advisers on matters such as ecology, landscape and sun-path analysis. Vegetation which has been removed was dying *Leylandii*, not pine trees as alleged by Mr Lamont, whose own house plot is hard-landscaped without a tree or shrub. The properties to the north and south of Highview are both vacant for long periods of the year; Mr and Mrs Brown wish to live in the area in a family dwelling.
34. Other documents submitted for the applicant on various dates between November 2021 and August 2022 include a Design Statement, a Planning Statement, an Initial Ecological Assessment and Preliminary Roost Inspection, several photomontages labelled "CGI Views", a Sustainability Statement, a Building Condition Report, a Revised Landscaping Plan and a Bat Survey Report. Comments by the applicant's agent are also summarised in the planning officer's report on the application.

¹⁴ This part of my report is based partly on a written submission listed as from Mark and Laura Brown dated 8 December 2021, although as noted above, the applicant was Mr Brown.

¹⁵ This is at pages 43-44 of the statement prepared by the applicant's planning consultant.

Representations by Other Parties

35. Written comments on this proposal have been submitted by a number of local residents.¹⁶ Those from or on behalf of the appellant or applicant are reported as part of their cases. About 12 other comments from people who mostly appear to be local or nearby residents are in the case file. Some of the comments are by people who say they regularly walk along the lane past the site.
36. The general thrust of these representations is supportive of the proposal. Typical comments are to the effect that the existing dwelling at Highview is in poor condition (one writer considers that the bungalow “has had its day”, another describes it as “an eyesore”), and that the proposed development would be in keeping with the area or would improve the character of the lane. One representation (jointly from two people) expresses support for the proposal but with the reservation that Portuguese Laurel planting would be inappropriate and with the hope that restrictions could be considered on the size and speed of contractors’ vehicles using the lane.

Assessment and Conclusions

37. This appeal raises three groups of issues: (i) procedural matters; (ii) the planning merits or demerits of the proposed development (which I label as “planning policy and related issues” below); and (iii) other matters.

Procedural Matters

38. I comment first on the group of points made for the appellant concerning the way the application was processed, in particular the way that information and documents were only made publicly available intermittently and at late stages.
39. I start by quoting from two of my reports to previous Ministers. The first was about 18 months ago (July 2021)¹⁷. The extract refers to problems caused to local residents and others trying to make representations on an application for planning permission:
- “A key problem here is the way planning applications are processed in Jersey. The extent of changes to development proposals which are frequently allowed, even sometimes encouraged, between an application being submitted and the decision on it being made is far greater than comparable jurisdictions in my experience. The result is that information and plans submitted with applications cannot be relied on, creating a source of confusion with the potential to affect many people.”
40. The second extract is from an older report (in 2018)¹⁸.

“This was a detailed application, so local residents and other interested parties should be able to expect all necessary details to be included in the application (plus supporting documents such as the Design Statement), rather than the application being used as a kind of ‘sighting shot’ for later revision. The latter is what pre-application discussions should be for.”

¹⁶ Because the government considers it necessary to conceal address details from these documents as published, it is difficult for me to verify the source addresses, bearing in mind that information made available to me should normally be available to all appeal parties in the interests of natural justice. Although I refer to “about 12” comments, several of the submissions are made jointly by or on behalf of two people: allowing for that, the number of people who have commented appears to be approximately 16.

¹⁷ Case reference RP/2020/0855.

¹⁸ Case reference P/2017/1023.

41. The circumstances of those cases differed from each other and from the present case, but the common theme is the problems caused by the practice in Jersey of allowing, even encouraging, applications for planning permission to be made before they are complete with all required supporting material. Such material may then be submitted over a period of time, perhaps a widely spread period on different dates which may be unknown to interested parties unless they make frequent checks with online registers which themselves may be subject to timelags in updating.
42. I have previously considered that when advising a Minister on specific appeals, it would not be appropriate to make a recommendation on a more general issue. Therefore despite the comments I have quoted above from previous reports, I refrained from making linked recommendations. This time, I have decided to include a recommendation on this issue.
43. Meanwhile, problems similar to those described above affected this application because instead of returning the application to the applicant's agent as incomplete, it was registered and processed along with the normal opportunity for public consultation. Then as various supporting documents were submitted later to meet requirements for completing the application, anybody wanting to comment would have had to repeatedly check what was being published and send follow-up comments to add to earlier representations. In my view this is unsatisfactory for all involved, not only for interested parties but also I would have thought for the government's planning staff involved in repeatedly going back to an application.
44. Part of the appellant's case is that of the 18 approved documents or drawings, just three were available during the normal consultation period. The differences included revisions to the location plan, site plan, floor and elevation plans, and new written material on historic environment, landscape, ecology and sustainability; and the Landscape Design Statement was not posted on the planning register until after the application had been decided.
45. A question which you now have to consider for the purpose of this case is whether the way the application was processed should affect the decision on the appeal, and if so, how. The timing of documents such as those just mentioned being published on the planning register nearly six months after the application was registered was clearly unsatisfactory. The period of about two weeks between some representations being made for the appellant and the decision being issued is such as to cause suspicion that only limited consideration may have been given to those comments, especially as the case officer evidently ceased to be employed before the decision was issued.
46. However, it seems to me that the appellant, through his agent, had the opportunity to make representations on all the main material submitted in support of the application. The latest comments submitted by the appellant's agent (on 15 August 2022) are noted in the officer's report on the application, which must have been finalised after Mr Roberts' departure. But the decision was made and issued by the planning authority as a corporate body, irrespective of whether the case officer was actually employed at the time.
47. Claims about the site notice are disputed and from the available evidence I cannot determine for how long and during exactly what dates a site notice was displayed. There is no good reason to disbelieve the evidence for the applicant (as confirmed in writing by JS Livingston Architectural Services) that the site notice was displayed for longer than the required period, and that a 3D model was submitted. In any event, it is clear that the appellant was well aware of the

application from an early stage; so any discrepancy has not caused him such lack of knowledge as to invalidate the decision-making process.

48. The arguments put forward with the application seeking to explain and justify the replacement of the existing dwelling contrasted with the previous application's intention to refurbish the existing dwelling. I can see why the change of approach would cause cynicism. The cost and valuation estimates put forward to help justify the change may also raise suspicions, but no clear, up to date rival figures have been submitted in evidence to justify more than suspicion. On these points the appellant through his agent refers to Article 10 of the Law and appears to be accusing the applicant and/or his agents of a criminal offence. I think it best to leave that particular aspect without comment since that would more suitably be a matter for court proceedings.
49. The appellant's contention that the Design Statement is "disingenuous" is really an accusation of deliberate untruth. Such an accusation might more appropriately be made in a complaint to a professional institute or in a legal forum other than a hearing into a planning appeal. Be that as it may, I do not see reason to find that the Design Statement contains *deliberately* false statements. (I explain the reason for my italic emphasis here in paragraphs 95-98 below.)
50. Some measurements which one might normally expect to find on application plans were not shown; but the relevant drawings were to a scale from which measurements could be adequately checked.
51. The use of conditions to allow matters such as drainage, waste reduction and ecological enhancements to be subject to later approval might not have been consistent with the treatment of other applications or with normal past practice by the planning authority where such details needed to be controlled; but there is no legal reason why these aspects of the proposal should not have been controlled by means of conditions.
52. Other procedural matters raised for the appellant include the fact that a planting scheme as originally proposed would involve land outside the application site. Planting within the site could be covered by a standard landscaping condition. The owner of the adjoining field is evidently willing to have some additional planting within his land, but even if that were not to happen it would not in my view be a reason to refuse planning permission.
53. I reach the following conclusions on these procedural matters. I consider that when the application was first made, it lacked necessary supporting material and should not have been validated. It should have been returned to the applicant, preferably with a list of the required information and/or supporting documents. But it is now too late to do that. The way the application was processed was unsatisfactory, but appears to have become normal practice in Jersey, with requirements for supporting information or documents being met in instalments over a period of time, disregarding whether public consultation had already been carried out. In this instance the time period for processing the application seems to have been unusually long (possibly because of staff shortages within the planning authority), and the process caused difficulties for interested parties such as local residents if they wanted to make representations about the proposed development.
54. Nevertheless I do not see good reason to refuse planning permission now on procedural grounds. The procedural criticisms for the appellant are as much or more directed at the planning authority as at the proposed development, and I

think it necessary to consider whether refusing permission on these grounds at this stage would be an appropriate remedy. The most likely result of doing so would be the submission of a repeat application, followed by a repeat appeal raising planning issues similar to those already raised.¹⁹ There would also appear to be little point in re-advertising the original application to offer a further period for public comment. It also seems to me that despite the shortcomings of the application process I have described above, the appellant in this case had opportunity to make all the representations he wanted to make, that his views were known to the planning authority, and that they were taken into account when the application was decided.

Planning Policy and Related Issues

55. These issues mainly concern the extent to which the proposal conflicts with or accords with policies in the Bridging Island Plan, together with practical or site-related matters such as the likely effects of the proposal on the amenity of neighbouring occupiers and on road safety.

Island Plan Policies

56. During the hearing the policy-related questions between the parties focused particularly on Policy H9 of the Island Plan, and as it refers to housing outside the built-up area it is one of the most relevant, so I turn to it first. Some of the following comments also relate to Policy NE3, which refers to a requirement for development to protect or improve landscape character.
57. Policy H9 states that "proposals for new residential development outside the built-up area will not be supported except where...". It then has a series of sub-paragraphs numbered 1 to 6, two of which have sub-sub-paragraphs - (2(a) to 2(d) and 5(a) to 5(b)). Two of the sub-sub-paragraphs are linked by the conjunction "or" after a semi-colon; other sub-sub-paragraphs are linked by the conjunction "and".
58. The first two sub-paragraphs refer to extensions. The third refers to the use of a traditional farm building or a listed building. The fourth and sixth sub-paragraphs refer to the conversion of "employment buildings" and to the redevelopment of buildings "in employment use". The fifth sub-paragraph states:
- "In the case of the redevelopment of existing dwellings, involving demolition and replacement, the replacement dwelling:
- (a) is not larger than that being replaced in terms of gross floorspace, building footprint and visual impact, except where any increase can be justified having regard to functional needs or necessary improvements to the standard of accommodation; and
- (b) gives rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character."
59. A key matter of dispute in this case is the interpretation of sub-sub-paragraphs (a) and (b) above – the appellant's case is that the proposal clearly conflicts with those provisions. The applicant and planning authority consider that these provisions would be met.

¹⁹ If, hypothetically, I were to recommend refusing planning permission on procedural grounds, I would have to refrain from making any comment on the planning issues raised by the appeal so as not to prejudice possible future proceedings if the recommendation were accepted.

60. The proposed new dwelling would be larger than that which would be replaced. The precise floorspace figures are disputed, but the increase would be about 66% (from about 133 square metres to a proposed figure of about 221 square metres). There would be a small reduction in “footprint” of about 11.5 square metres. The visual impact of the building would be increased. But the words “gross floorspace”, “building footprint” and “visual impact” in the policy quoted above are linked by the preposition “and”. Because of the reduction in “footprint”, the proposed building would not be larger than that being replaced in terms of gross floorspace *and* building footprint *and* visual impact [my italics]. Therefore the exception clause in the second part of sub-sub-paragraph (a) does not need to be considered; but if it were to be considered, there are some reasonably justifiable arguments relating to the functional needs or necessary improvements, which could weigh in support of applying this exclusion.
61. At this juncture it is necessary to break off from examining policy because in the Island Plan the supporting text – which in planning policy documents should normally help explain policies – is inconsistent with the policy. The relevant supporting text of the current Island Plan, referring to proposals for the redevelopment, demolition and replacement of existing buildings in the countryside, states: “In the case of existing dwellings, the development of replacement buildings should not be larger than that being replaced in terms of gross floorspace, building footprint *or* [my italics] visual impact”. As a matter of English the word “or” here links all three criteria (“...in terms of gross floorspace *or* building footprint *or* visual impact [again, my italics]).
62. The conjunctions “and” and “or” can be used exclusively or inclusively, depending on their context. In my judgment the policy is reasonably clear, as explained above. Where there is conflict between supporting text and policy, the wording of policy takes precedence. So I give more weight to the inclusive use and meaning of “and” in the policy than to the selective use and meaning of “or” in the explanatory text.
63. Returning to the policy itself, because sub-sub-paragraph (b) is linked by “and” to sub-sub-paragraph (a), both of these criteria have to be met, so it is necessary to consider whether the proposal would give rise to demonstrable environmental gains, contributing to the repair and restoration of landscape character. On this aspect, the Island Plan’s supporting text explains that any proposed increase in the size of residential floorspace will require exceptional justification having regard to functional needs or necessary improvements to the standard of accommodation.
64. On these points, and on broadly similar issues arising from policy NE3, I can see arguments both ways. The proposed dwelling would obviously be larger than the existing bungalow and would have a greater visual impact. However, it would be smaller than Huguenot House to the north; its shape would also be similar to the shape of its neighbour to the north and it would be constructed with finishing materials which would be more appropriate to the area than the rather suburban white-painted render of the existing bungalow. The proposed finishing materials would also be similar to those used at Huguenot House, and the suitability in this location of materials now proposed (such as granite walls, reflecting the underlying granite geology of this area) was established when planning permission for Huguenot House was granted.²⁰

²⁰ A planning authority officer’s report on that application evidently stated: “The use of granite is welcomed and suited to the countryside setting”.

65. Moreover, the existing bungalow does nothing for the landscape character of the area. Because of the gap between the houses at Le Cachibis Les Buissonnets to the south the three northern properties form a small group in themselves when seen from nearby viewpoints, and one of the visual effects of the proposal would be to provide a more gentle "stepping down" in size and visual impact of these three dwellings (going southwards from the largest in the north) than the existing situation. In that respect the proposed dwelling would help to make the larger Huguenot House in the north look less of a contrast with those immediately to the south and less out of keeping with the area's landscape character. That would be a point in favour of the proposal under policy NE3.
66. There is conflicting evidence, and a lack of any precise information, about the age of the bungalow on the site. The planning officer's report describes it as "originally built in the 1930s"; the appellant's adviser describes it as "probably constructed in the mid 20th century"; a report by chartered surveyors describes it as "of 1930s origins"; and I note that among the evidence is a mortgage valuation for Barclays Bank which also specifies 1930 as the approximate construction date. Bearing in mind its general layout and appearance and particularly the presence of single-skin external walls, plus the other evidence just mentioned, it seems to me likely that the bungalow probably dates from the 1930s, certainly earlier than mid 20th century, although there have been alterations since it was first built. Either way, there is no doubt that it is not constructed to modern building standards, is poorly insulated, and suffers from disadvantages regarding layout. The available evidence indicates that the external walls are 320mm blockwork without any damp-proof course or membrane, and that the roof covering is asbestos slate, with no roofing felt.
67. A further point which has to be taken into account when applying Policy H9 is that even where a development proposal would clearly fail to meet all of the specific criteria discussed above, the policy does not oppose the development. It merely expresses lack of support, which is a weaker reason for objecting on policy-related grounds than would be the case if the policy expressed opposition or objection. The current Island Plan would only have been adopted after careful preparation and extensive consultation, so I have to assume that such nuances of policy are deliberate.
68. With the points discussed above in mind I consider that the proposal would have demonstrable environmental gains and would contribute to restoring landscape character to a degree sufficient to meet the tests in sub-sub-paragraph (b) of sub-paragraph 5 of Policy H9 of the Bridging Island Plan. The proposal would also at least protect landscape character in accordance with policy NE3.
69. I now consider Policy GD1 of the Bridging Island Plan, taking this policy next because it appears to be of particular concern to the appellant and of relevance to the proposal. Among other things, this policy provides that development proposals will only be supported where they would not unreasonably harm the amenities of occupants and neighbouring uses. The policy refers to various specific matters such as a sense of overbearing or oppressive enclosure, privacy, sunlight and daylight.
70. The north-facing gable end of the proposed house would be higher than the northern part of the existing dwelling and there would be ground floor windows in the north elevation. However, the proposed dwelling would be set back about 2.8 metres from the north boundary of the site, with its central (highest) section further away. The north elevation would not have any first floor windows, and the ground floor windows could be satisfactorily screened by boundary treatment which could be subject to a condition. Huguenot House itself has a blank

southern elevation and the separation distance between the two dwellings would be about 4.9 metres (minimum – the south elevation of Huguenot House is at an angle to the plot boundary). In all these circumstances the proposal would not cause any significant loss of privacy for occupiers of Huguenot House.

71. The gable end of the proposed dwelling would be a more noticeable feature in the southerly outlook from the rear part of the plot of Huguenot House than is the existing bungalow, but given the increased separation distance compared with the existing situation the effect would not be overbearing or oppressive. The sun-path analyses show that although both the existing and proposed houses cause or would cause some loss of sunlight in the plot of Huguenot House, any increase resulting from the development would be quite limited.
72. At present it is possible to see part of the Mont Ube lighthouse from positions in the rear garden of Huguenot House. This view would become more obstructed by the proposed dwelling. This is not a compelling reason to object to the proposal, especially bearing in mind the normal principle that there is no right to a view over someone else's land. (Possible impact on the setting of the listed building is a separate matter considered below.)
73. Taking the above aspects into account I judge that the impact of the proposal on the normal residential amenity of Huguenot House would be well within the limit of acceptability.
74. I now turn to other policy-related matters, involving those policies referred to by the appeal parties. I group some policies together where they cover similar issues or types of development.
75. Policy SP1 (on responding to climate change): This policy states that the Island Plan will do various things to achieve what it terms a meaningful long-term reduction in carbon emissions and mitigate against climate change.²¹ It sets out eight aspects of this aim. The proposal would not accord with many of these, including for example the policy objective to support the retention of existing buildings, but would meet a minority of them as it would involve the use of previously developed land and would provide a building designed to be resilient to climate change.
76. Policy SP2 (on spatial strategy): The general aim of this policy is to focus development in existing built-up areas; this excludes the application site. The policy also provides that within the countryside, development will only be supported where a countryside location is justified, appropriate and necessary or where it involves converting, extending or subdividing existing buildings. By replacing one dwelling with another larger one, the proposal would not have the effect of concentrating development within the existing built-up areas of St Helier or Les Quennevais.
77. On the other hand the proposal would optimise density. Looked at from the viewpoint of providing residential accommodation, the existing two-bedroomed bungalow does not make the most "efficient" use of land and Policy SP 2 favours making the best use of under-utilised land.

²¹ On this topic, the Island Plan refers to "a people powered process to develop a carbon neutral roadmap".

78. Policy SP3 (on "placemaking" ²²): This policy sets out various generalised statements referring for example to the character and function of the place, enhancement of sense of place, and "optimisation of resource efficiency" (*sic*). The proposal would contribute to an aesthetically pleasing, safe and durable "place". The proposed dwelling with its high standards of insulation and provision of facilities would positively influence health and wellbeing.
79. Policies SP4 (on protecting and promoting Island identity), GD9 (on skyline views and vistas) and HE1 (on protecting listed buildings and their settings): The proposal would respect the character of the immediate area by providing a dwelling with design features broadly similar to and in keeping with the neighbouring dwelling to the north, and in that way would make a positive contribution to local character and distinctiveness.
80. Policies GD9 and HE1 are partly aimed at ensuring that the skyline, strategic views or vistas and the setting of listed buildings are protected or enhanced. A Historic Impact Statement submitted in support of the application²³ finds that the proposal would have a minor negative impact on the Mont Ube lighthouse in views from the west and a neutral impact in other respects. The government's adviser on historic buildings (Historic Environment Team) has not opposed the development.
81. The Mont Ube lighthouse is evidently a listed building (Grade 2) because of its status as a purpose-built navigation aid relating to Jersey's maritime history. The photographs in the Historic Impact Statement show views towards the lighthouse from various locations in the locality, some of which I looked at. The proposed house would be positioned on the opposite side of the road from the lighthouse, and would not extend any further south than the existing dwelling, although the southern part of the proposed dwelling would be higher than the existing sun room. If the development were to be implemented, views of the lighthouse from a generally easterly direction would not be affected. Views of the lighthouse directly from the west would still be possible. The lower part of the lighthouse would be obscured in some angled views from this general direction (in the area of Le Hocq Lane), but in such views the lighthouse becomes a fairly distant feature. From all that I have read and seen, I do not consider that the proposed development would materially harm the setting of the lighthouse.
82. Policies SP5 (on protecting and improving the natural environment), NE1 (on protecting and improving biodiversity and geodiversity) and NE2 (on "green infrastructure" and networks): The documents submitted in support of the application include an Ecological Assessment Report, an Initial Ecological Assessment and Preliminary Roost Inspection. The available evidence indicates that the site has negligible suitability for supporting protected species and low suitability for bats. The government's Natural Environment Team have not objected to the proposal, and a condition could provide suitable nature conservation safeguards.
83. Policy SP7 (on planning for community needs): The proposal would meet this policy by being a design capable of being adapted to changing family needs. Other aspects of this policy such as the aim to reduce crime or fear of crime have limited relevance to this proposal.

²² I use quotation marks here because this is a term which has crept into use in planning policies but in my view is jargon.

²³ Historic Impact Statement dated September 2021 by Antony Gibb Ltd.

84. Policies PL5 (on countryside, coast and the marine environment) and NE3 (on landscape and seascape character): As noted above, the existing bungalow makes no useful contribution to the character or distinctiveness of the local countryside. The proposal would have either a neutral or positive impact in this respect.
85. Policy GD5 (on the demolition and replacement of buildings): This policy contains criteria to be met by proposals for the demolition and replacement of buildings. Three sub-paragraphs setting out criteria are linked by the conjunction "or", so only one criterion is required to be met under this policy. In my view all three criteria would be met. At the very least, demonstrable aesthetic and practical benefits would be obtained by replacing rather than refurbishing (the third criterion).
86. Some of the arguments relating to policy GD5 concern the "sustainability" of the proposal. This topic is the subject of a Sustainability Statement submitted for the applicant.²⁴ It has been admitted for the applicant that this document contained an incorrect figure for useable floor area. The corrected figures indicate that the refurbishment option would result in the emission of about 100,400 kilograms of "embodied carbon dioxide", that the new build option would result in about 184,400 kilograms of embodied carbon dioxide, and that in these respects refurbishing the existing bungalow would be preferable to the proposed redevelopment. This would be partly due to the production, transport and use of construction materials. However, if likely building lifetimes are taken into account (more than the 60 years used in standard assessments) the new-build option would be the more energy-efficient and carbon dioxide-efficient option.
87. Policies GD6 (on design quality), H1 (on housing quality and design) and H4 (on meeting housing needs): The proposal would provide a house with a design quality – as mentioned in paragraph 79, reflecting the design of Huguenot House to the north – which makes a more positive contribution to the distinctiveness of the built environment than the existing bungalow. Facilities for day-to-day servicing (such as waste disposal) can be suitably provided, subject to an appropriate condition. The proposal would provide a good quality three-bedroomed dwelling and would meet a need for housing of the size proposed.
88. Policy ME1 (on 20% reduction in target energy rate for new development): The applicant has expressed willingness to meet this requirement, which would have been subject to Condition 2 of the permission subject to this appeal. I consider that a condition along those lines would be a sufficient means of ensuring that the requirements of this policy would be met. (Normally I would not consider it appropriate to have a condition relating to Building Regulations attached to a planning permission, a matter I comment on when discussing possible conditions.)
89. Policies TT1 (on integrated safe and inclusive travel), TT2 (on active travel) and TT4 (on off-street parking): The application site would retain sufficient space for cycle parking and the existing hard-surfaced area would be available for off-road car parking (Policies TT2 and TT4). Provision of electric charging equipment could be covered by conditions.
90. The main safety issue concerns visibility from the vehicular access. To the north, a visibility splay distance of about 17 metres along the road can be achieved partly across land within the application site, and could be subject to a condition

²⁴ Sustainability Statement by HLG Associates dated August 2022.

to ensure its continued availability. To the south, a similar visibility splay can only be achieved by looking partly across land within the neighbouring property. The same applies in reverse, for northwards visibility from the access to Le Cachibis. Although it is not possible to establish legally binding control over the future height of vegetation or structure on the roadside part of this boundary, it is obviously in the mutual interests of existing and future owners to be able to maintain visibility here. Bearing in mind the low running speed of traffic along this lane, I consider that any change in safety risk arising from the use of the site access by traffic generated by the proposed dwelling (as compared with the current situation) would be so low as to be acceptable.

91. Policy WER1 (on minimising waste): This policy is aimed at minimising the waste arising from demolition and construction activity. It provides that: "development involving the demolition of substantial structures or with the potential to generate significant quantities of waste through construction activity (such as the development of five homes or 200 square metres floorspace) will only be supported where a satisfactory site waste management plan has been provided".
92. The policy is imprecise in places (because of the use of "substantial" and "significant"), and it seems to be primarily aimed at projects larger in scale than the proposal subject to this appeal. However, the proposed dwelling would have a floorspace greater than the 200 square metre figure mentioned in this policy, although again this is a somewhat indefinite part of the policy since the figure follows the words "such as". No site waste management plan has been provided as part of the application. But this policy – like others – only expresses lack of support, not opposition. Methods for reducing, re-cycling or re-using waste arising from the proposal could be made subject to a condition so that the basic aims of this policy would be met.
93. Policies WER6 (on surface water drainage) and WER7 (on foul sewerage): The proposal would not cause any significant change to existing rainwater run-off volume, and indeed this might be slightly reduced. Arrangements for foul sewerage appear likely to remain similar to those existing. Although the possibility of connecting to the public main sewer has evidently been explored, such an arrangement appears unlikely to be financially feasible, at least in the short term. There is no evidential reason to think that the existing tight tank system could not continue to be adequate if the proposed development were to be implemented and the government body responsible for drainage (DFI Drainage Section) has not raised any objection to the proposal.
94. Policy U 13 (on water supply and use): The main provision of this policy is that development will only be supported where adequate public water supply can and will be made available. Normal public water supply arrangements would be available for the proposed dwelling and measures aimed at minimising water consumption would apparently be covered by current Building Regulations. I do not see any reason for refusing planning permission in these respects.

Other Matters

Alleged False Statements

95. It is necessary to make clear at this point that I have referred above (in paragraph 49) to *deliberately* false statements. The documents submitted in support of the application including the Sustainability Statement, the Design Statement and the Planning Statement are in places poorly written, contain errors and make claims with doubtful justification. As an example of the poor writing, the Sustainability Statement states (at paragraph 3.1): "The scheme designs remain at a very high level of detail". I think this should have meant "at

a very low level of detail", since elsewhere the document refers to "very approximate" and "limited" detail.

96. The Planning Statement asserts (on page 3) that the proposal "does not facilitate a significant increase in occupancy". Similarly, the Sustainability Statement states (at paragraph 4.1.3): "The building density from a habitation perspective will remain the same". Leaving aside the need to work out what is meant by "building density from a habitation perspective" (which I think refers to occupancy), these claims are incorrect: the increased floorspace and number of rooms - in particular the increased number of bedrooms from two to three - would enable an increase in occupancy even ignoring the possibility that either of the of the rooms labelled as "snug" and study could be used as a bedroom.
97. The attempts by and for the applicant to suggest that in view of its fairly large size, the existing bathroom (or part of it) was originally a bedroom are unsupported by any real evidence. The applicant may well not intend to increase the number of occupiers, but what is material is the long-term potential, irrespective of the existing owner's current intention.
98. I mention the above points because it should be noted that there are what may be termed false statements in the evidence submitted for the applicant. Some are probably mistakes through carelessness or lack of proper understanding, some result from claims which in my view are not justified (and are therefore false, in the sense of not being in accordance with the facts); but I do not consider that deliberately false evidence has been submitted in support of the application.
99. Part of the appellant's case involves casting doubt on the comparisons between refurbishment and rebuilding which are contained in documents submitted for the applicant. The documents include a survey report on the original purchase, a building condition report by Willis Associates, a property valuation by Le Gallais estate agents and a cost estimate of works by NSI chartered surveyors. There is no good reason to find that these aspects of the evidence are false.

Relations Between Appellant and Applicant

100. The appellant and the applicant are obviously not on good terms with each other. As reported above (paragraphs 24 and 30) the evidence suggests that Mr Lamont would have been willing to withdraw opposition to the proposed development in return for an exchange of some land within the northern part of the application site, thereby enlarging the plot of Huguenot House. Mr Brown was apparently not willing to agree to that. The email I have referred to in paragraph 24 stated that it had occurred to Mr Lamont that the proposal as described by Mr Kinnaird ("the new project", which must have been essentially the proposal subject to appeal) offered "significant benefits". Mr Lamont's email to Mr Kinnaird of 7 Jun 2021 also stated:

"As the meeting concluded I indicated that if the new project incorporated reducing the ground level, realigning the boundaries, reorienting the position of the original built property including a move from north to south by a couple of metres, with no new north facing apertures, then we should be able to reach a supportive accommodation on this new design project."
101. This message indicates to me that Mr Lamont might well not have objected to the proposed development if certain demands were met. Several of them, including creating a gap between the proposed dwelling and the site's northern boundary, would indeed be met by what is proposed; but there would be no land ownership change or "realignment of boundaries".

102. It is not clear to me why Mr Lamont included a copy of his message in his written evidence; but in my view it weakens his own case, as it suggests that his objection to the application may have been coloured by perceiving an opportunity to obtain some land so as to enlarge the rather cramped plot of Huguenot House, but being frustrated by Mr Brown's unwillingness to agree.

Planning Status of Use of Huguenot House

103. When assessing the effect of a proposal on the amenities of a neighbouring property, it is relevant to consider the use of the neighbouring property, since some uses are more sensitive than others to the impact of nearby development. A curious feature of this case is that the opposition to the proposed development comes from the occupier of a property the current use of which evidently differs from what was permitted.
104. The planning permission for redevelopment of the former joinery workshop granted in 2013, which later led to Mr Lamont's purchase and occupancy of the property in about 2015, was for development specified as: "Demolish existing building, construct 1 No dwelling with ground floor commercial space attached". The publicly available documents relating to this permission show that the planning authority was unwilling to permit redevelopment for solely residential use, and part of the reason why permission was granted was that it "adequately maintains an employment land use".²⁵ Some of the conditions attached to the permission had a similar aim: for example, one condition required that "the 'work' unit....shall be used for no other purpose than that of Class C office"²⁶ unless otherwise agreed by the Minister for Planning and Environment". Another condition referred to the need for the garage to be kept available for parking and referred to use by customers (this is apparently the garage which when I saw it was used for domestic storage).
105. The information recorded above shows that the planning permission for redevelopment of the joinery workshop was for mixed residential and office use. Taking account of the size of the office area (the "work unit" labelled "522 sq ft commercial space" on one of the plans subject to the permission) and of the conditions just mentioned, it is also apparent that the commercial element of the overall use was regarded by the planning authority as a significant component of what was permitted.
106. Mr Lamont confirmed at the hearing that Huguenot House is not used for any commercial activity or "office" use – he is evidently retired and nobody else works there. During my inspection I saw the space which was designated as the office area under the permission (and shown furnished as such on the plans listed in the permission), and it is clear that no commercial or office use is being carried on at the property. There is no evidence of any agreement by a Minister for a change of use from mixed partly office or commercial use of the planning unit²⁷, or for discharging the condition about Class C office use, or for discharging the condition relating to the use of the garage.

²⁵ Documents referring to the then case officer (Mr Le Gresley of the planning authority) also show that planning permission for residential use alone would have been refused, and permission was eventually only granted on the basis that the scheme involved a mixed use including an office or commercial element.

²⁶ This was a reference to Schedule 2 of the Planning and Building (General Development) (Jersey) Order 2011, in which Class C is use as an office.

²⁷ For the purposes of planning law and for interpreting a planning permission, the "planning unit" (in this instance the unit of occupation) is the whole property – hence my references to mixed use rather than separate residential and office/commercial uses.

107. The relevance of this matter to the present appeal is that a property used for mixed residential and commercial purposes would normally generate patterns of activity (inside and outside, including traffic) materially different from residential use alone; so when considering amenity issues potentially arising from neighbouring development, the level of safeguarding appropriate to such mixed use may well not be the same as would apply to a solely residential use. It is not for me to say whether the use of Huguenot House could or should be subject to enforcement action (or may be close to gaining immunity through the passage of time). But there is at least doubt whether the existing solely residential use is lawful, and for the reason just explained that is a factor which you may consider affects the weight of some of the appellant's objections.

Comments by Interested Parties

108. As noted in paragraph 36 above, the written comments submitted by interested persons are generally in favour of the proposal and consider that it would be beneficial to the area. The concern about the species of planting expressed by one local resident could be met by a suitable condition. It might be possible to control the route used by contractors' vehicles to and from the site if planning permission were granted and implemented, but given the layout of roads in the locality, including the practical restriction of a sharp bend a little to the south, it seems most likely in practice that vehicles would use a route off the main A5 road about 100 metres to the north; so attempting to impose a route would seem unnecessary. The suggestion by a resident that the speed of contractors' vehicles should be controlled would appear superfluous given that a 15 mph limit is already in force.

Overall Conclusions

109. This appeal has drawn attention to a large number of procedural and policy issues. The procedural issues stem largely from the way planning applications are administered in Jersey - in particular, applications are validated and processed even when the planning authority consider that numerous documents or other items of supporting material are required to make the applications validly complete; and considerable changes to applications are allowed or encouraged after the applications have been made. Additional procedural shortcomings occurred in this case. But despite those flaws I have found that they do not justify refusing planning permission; and alternatives such as delaying a decision and re-advertising the application would not be appropriate.
110. As for the policy-based issues, arguments for and against the proposed development can be found among more than 20 Island Plan policies. The appellant and his adviser can rightly point to numerous policies or parts of policies which go against the proposal. Some policies express lack of support, but not necessarily objection.
111. Putting it simply, some policies support what might be termed a "make do and mend" approach aimed at refurbishing the existing bungalow to bring it up to modern standards as much as is reasonably feasible; other policies are either more neutral or support the "redevelopment and replacement" approach proposed by the application subject to appeal. The latter approach would have longer-term benefits, would more satisfactorily enhance the quality of the Island's housing stock, and would have the practical benefits of a well laid-out family home. Appropriately-qualified advisers have confirmed that it would not be economically feasible to retain and renovate the existing building and that it would never meet the standards of a newly-constructed dwelling.

112. Site-specific issues such as amenity or visual impact, the effect on the nearby listed building, access arrangements and road safety do not raise clear-cut reasons to prevent the development. The same applies to technical issues such as foul and surface water drainage, water supply, energy use and waste disposal.
113. With the exception of the appellant, local residents who have commented on the proposal express general support for it. The weight to be given to these views is a matter for you to judge.
114. Taking into account all the considerations discussed above, I conclude that the arguments in favour of permitting the development outweigh those against.

Conditions

115. The permission which would have been issued on this application would have been subject to nine conditions. As I made clear at the hearing when inviting contributions on this topic, most of those conditions were (or would have been) flawed in various ways. I set out below my comments, which take into account responses by the appeal parties at the hearing. The numbers in brackets refer to the conditions as originally numbered.

- (1) This condition has a number of faults. A condition should not be specified using the "positive" wording of this condition which appears to require the "planning department" to do something (ie in this instance to approve certain details prior to commencement of the development). In any case the Jersey government does not currently have a "planning department".²⁸ For reasons of enforceability, this type of condition should be worded negatively (eg "None of the development hereby permitted shall be carried out until..." Or "The development hereby permitted shall not be begun until...").

The stated reason for this condition refers to "the Chief Officer". That is inconsistent with the condition and for general consistency it would be more appropriate to refer to the "planning authority".

If the "level of glare" in glazing materials proposed for the west elevation were considered by the planning authority to be unsatisfactory, this could be dealt with by not approving submitted details. It does not seem necessary to mention this point specifically in the condition.

- (2) This condition should be negatively worded for the reason explained above. For clarity, the word "agreed" used twice in this condition should be "approved" – in the circumstances applying here, the planning authority normally issues approvals or refusals, not agreements or disagreements.

It is not normally appropriate for a condition on a planning permission to impose requirements under non-planning legislation – in this instance Building Regulations. However, the condition can be suitably worded so as to avoid this problem, leaving it to the planning authority to decide whether a submitted scheme for energy efficiency meets all relevant requirements.

- (3) "Chief Officer" should be "planning authority" for the reason stated above. For clarity, "It will also include..." in the third sentence should be changed to "The Site Waste Management Plan shall also include...". The fourth sentence contains several errors including a reference to the approved Waste

²⁸ That is why I have used the term "planning authority" elsewhere in this report. Also, as far as I have been able to establish, the part of government known as Infrastructure, Housing and Environment is not a "department". The label "planning authority" should cover any future government reorganisation including the re-introduction of a planning department.

Management "Strategy" (instead of "Plan"). Also the requirement for the Plan to be "maintained as a living document" is unenforceable as the term "living document" is unexplained and undefined.

The specifics about what should be covered by the Site Waste Management Plan mentioned in the condition as originally framed (stockpiling, location of disposal sites frequency and timing of trips, routes etc) can be omitted, because if these matters were not adequately covered in the required Site Waste Management Plan, the planning authority would presumably not approve the Plan. It would be in the applicant's interests to check first (if necessary) what details the planning authority needed. As regards the so-called "living document", the method and scope of future control would have to be included in a Site Waste Management Plan and would also only be approved if it met the planning authority's requirements, so it would be up to the applicant to satisfy the authority on that aspect.

- (4) Condition 4 is unenforceable as it only states that certain steps "should" be taken (as opposed to "shall"). Also a requirement to "discuss" something with the Land Resource Management Team would be ineffective – this requirement could be met by a brief telephone conversation which could then be ignored. In any case, there is no evidence to indicate any need to protect bat species or roosts on this site, so the condition would not be necessary or justified.
- (5) This condition refers to bicycle parking facilities. The planning authority suggested that the condition could be omitted; the appellant's agent contended that the topic was a primary requirement under policy TT2 which should not be left to control by condition. In my judgment control over provision of a bicycle parking facility would not be necessary in this case, where there would be ample space for bicycle parking anyway.
- (6) This condition is intended to refer to planting (or landscaping) within the application site. That could be made clearer by adding the words "within the application site". The requirement for landscaping works to be "maintained as such" is vague and liable to cause enforcement difficulties.
- (7) Like some other conditions, this condition should be negatively worded and should refer to the planning authority, not to the Chief Officer.
- (8) This condition would provide better control if it specified that no development shall be carried out until...etc. For consistency, "must be retained" should be "shall be retained".
- (9) This condition would have the effect of taking away normal "permitted development" rights for erecting outbuildings, extensions and other items including new window or door openings and loft or garage conversions. The restrictions would not cause an absolute prevention of such development, but would bring them under normal planning control through the application process. The restrictions taken together would be fairly Draconian, but have not been opposed by the applicant and appear to be justified in the particular circumstances of this case involving the replacement of a dwelling in the countryside.

The reference to the non-existent "Planning Department" is incorrect as explained above. Some grammatical correction is also needed (for example to change "no works" [plural]...is permitted" [singular]. The condition as drafted contains numerous clauses, which I think would be clearer if set out in a series of sub-paragraphs.

Concluding Comment and Recommendations

116. For a proposed development involving one house, this report is unusually long. But its length and scope has been necessary because of the number of policy-related and other issues raised by the appeal.
117. I recommend that the appeal be dismissed and that planning permission be granted, subject to conditions as described above and in the appendix to this report.
118. I also recommend that a review of government practice be implemented to consider requiring applications for planning permission to be complete before they are validated.

GF Self

Inspector

30 December 2022

APPENDIX TO REPORT: POSSIBLE CONDITIONS

I set out below my suggestions for conditions to be imposed if planning permission is granted for the development subject to this appeal. These should be read in conjunction with the comments on pages 26-27. The reasons for the conditions would be similar to those listed in the planning authority's decision notice and the numbering below follows the numbering in that notice.

1. The development hereby permitted shall not be begun until details in respect of external building finishes (including roof tiles) and of glazing materials to be used on the west elevation have been submitted to and approved in writing by the planning authority. The development shall not then be carried out other than in compliance with the approved details.
2. The development hereby permitted shall not be begun until details of measures to ensure the efficient use of energy have been submitted to and approved in writing by the planning authority. The development shall not then be carried out other than in compliance with the approved details.
3. The development hereby permitted shall not be begun until a Site Waste Management Plan containing details of proposed methods to reduce, recycle and re-use construction and demolition waste have been submitted to and approved in writing by the planning authority. The development shall not then be carried out other than in compliance with the approved details.
4. *(Omitted as not necessary. Later conditions may therefore need different numbering.)*
5. *(Omitted as not necessary. Later conditions may therefore need different numbering.)*

6. The dwelling hereby permitted shall not be occupied until all landscape works within the application site (including the provision of visibility splays) have been carried out as indicated in the approved plans and Landscape Design Statement. The areas adjacent to the road forming visibility splays within the application site shall thereafter not be obstructed by any structure or vegetation above a height of 0.9 metre above the level of the nearest part of the road carriageway.

7. The dwelling hereby permitted shall not be occupied until details of the surface water drainage strategy (including calculations) have been submitted to and approved in writing by the planning authority, and implemented. The measures as implemented shall be permanently retained.

8. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011, and of any amendment to or replacement of that Order, no works involving the following are permitted without the prior written approval of the planning authority:

(a) the erection of an outbuilding, extension, gate, fence, wall or other means of enclosure;

(b) the provision of an external tank;

(c) the conversion of any outbuilding or loft;

(d) the creation of new openings in the external fabric of the permitted building;

(e) the replacement of any windows with doors or vice versa;

(f) the introduction of any hardstanding to any ground surface;

(g) the installation of external lighting other than is shown on the drawings which form part of this permission.