

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

Appeal under Article 108 against a decision to refuse planning permission

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Florian Gaier

Site address: *Dunvegan*, Le Grand Bourg, Grouville JE3 9UY

Application reference number: P/2023/1282

Proposal: "*Demolish existing pigsty. Construct two-storey extension to South-West elevation. REQUEST FOR REVIEW of refusal of planning permission.*"

Decision Notice date: 6 June 2024

Procedure: Hearing held on 23 October 2024

Inspector's site visit: 21 October 2024

Inspector's report date: 28 November 2024

Introduction

1. This report contains my assessment of the appeal made by Florian Gaier against the planning authority's decision to refuse planning permission for a domestic extension at a dwelling known as *Dunvegan* in Grouville Parish.

Procedural matters

2. The appellant's submissions included a Bat Survey Results Report (July 2024). Whilst it would have been procedurally preferable to have submitted such a report at the application stage, I understand that it was commissioned at that time, but the planning authority made its decision on the application ahead of the receipt of the bat report. I have accepted the report and invited the planning authority's views on it.
3. This case has highlighted some concerns about fairness arising from the Request for Review process. In essence, the officer delegated decision included 2 reasons for refusal and, through the review process, the Planning Committee added a further 3 reasons on matters that had not previously been raised by officers, and were not supported by expert consultee written responses (concerning heritage matters in this case). There were also inconsistencies between policies cited in the Committee meeting minutes and those that appeared in the additional reasons for refusal. The applicant/appellant therefore had no opportunity to respond on these matters at the application stage, and it has led to this more complex and wider scope appeal. At the Hearing, it was explained that the 'cool-off'

procedure is used when the Committee decides not to follow officer recommendations, but it is not triggered when the Committee decides to add further refusal reasons, such as in this case. I record this matter for the Minister's information and consideration, as there did seem to be a consensus view at the Hearing that the process and outcome in this case was a little unfair to, and frustrating for, the applicant/appellant.

The appeal property, the proposal, and the application determination

4. *Dunvegan* is a 2-storey dwelling on the south side of Le Grand Bourg. It is situated in a rural Green Zone location amongst an attractive loose cluster of other dwellings, most of which are of a traditional design and character. Its neighbours to the north and east are both Listed Buildings, these being, respectively, *Le Bourg Farm* (Grade 3), to which it is physically attached, and *Le Bourg House* (Grade 4).
5. The house sits at the front (east) of its roughly triangular shaped plot, with a good-sized garden, including a swimming pool, to the rear of the house. A feature of the house and plot is a notable change in levels. When viewed from the front, it appears as a 2-storey house with accommodation in the gable roof form, signalled by a series of roof lights. However, due to the rising land, the rear elevation that faces the pool and garden is more akin to a bungalow in appearance. The garden rises westwards away from the house and is enclosed by boundary hedges.
6. Internally, the lower level of the house (notated as 'lower ground floor' on the plans) includes a garage, 2 bedrooms, bathrooms and a utility room. Above this, the ground floor provides the main living spaces and kitchen, and there are glazed doors opening onto the patio and pool area. The roofspace accommodation includes a bathroom and a bedroom, with doors opening onto a small deck area overlooking the pool and gardens to the west. Running at a roughly 45-degree angle from the southern end of the house is a former pigsty structure, comprising 3 stone-built pens, with a part roof covering about half of the span of the pens.
7. The appeal proposal seeks permission to demolish the pigsties and build a 2-storey extension in a similar, but slightly larger, footprint, with a short glazed link to the main house. Due to the change in land levels, the lower element would be part sunk into the ground, and would have the same floor level as the existing 'lower ground floor'. The internal spaces in this part of the extension (a bedroom and shower room) would be lit by high level windows in the south-east elevation of the extension. The upper floor would contain another bedroom, with an en-suite and study area; it would include glazed doors opening onto the patio/pool level. The addition would be of a simple traditional design with granite walls and a tiled pitched roof, the materials matching the existing house.
8. Officers initially assessed the proposal to be unacceptable for 2 reasons relating to i) its alleged disproportionate size/landscape character impact and conflict with Bridging Island Plan (BIP) policies SP3, SP4, GD6, H9 and NE3 and ii) the lack of adequate information on ecological impacts, being

contrary to policies SP5 and NE1. Following a Review Request, the Planning Committee, whilst endorsing the 2 officer reasons, added 3 further reasons. The third reason related to the proposed removal of the pigsties, which are regarded as part of the Island's heritage and identity, and their loss is considered to be in conflict with BIP policies SP4 and GD6. The fourth reason alleges harm to the settings of the 2 adjacent Listed buildings, contrary to policies SP4 and HE1. The fifth reason alleges that demolition of the pigsties has not been justified, and that this is contrary to policies SP1 and GD5.

Summary of the appellant's grounds of appeal

9. The appellant's case is set out in the appeal form with appendices, which include a list of 6 grounds of appeal, a more detailed Statement and a Final Comments document. The 6 grounds of appeal are:

GROUND A – The Appellant disagrees that the development is disproportionate in size and height, and disagrees that it would be visually dominant within the rural landscape resulting in harm to the landscape character of the area. The Appellant disagrees that the application is contrary to Policies SP3, SP4, GD6, H9 and NE3 of the Bridging Island Plan 2022.

GROUND B – The Appellant disagrees that the proposed development fails to provide adequate information to evaluate the ecological impacts and any mitigation and compensation measures to avoid harm to protected species. The Appellant disagrees that the application is contrary to Policies SP5 and NE1 of the Bridging Island Plan 2022.

GROUND C – The Appellant disagrees that the loss of the existing pigsties on site would not result in a positive contribution to the character of the area and distinctiveness of the place. The Appellant disagrees the proposal is therefore contrary to Policies SP4 and GD6 of the Bridging Island Plan 2022.

GROUND D – The Appellant disagrees that the proposed development would result in an adverse impact to the setting of Listed buildings. The Appellant disagrees that the proposal is contrary to Policies SP4 and HE1 of the Bridging Island Plan 2022.

GROUND E – The Appellant disagrees that the demolition and replacement of the pigsties is not a sustainable solution and / or that it is not economically viable to repair or refurbish, and disagrees that the proposed development won't have an aesthetic and practical benefit compared to repair or refurbishment. The Appellant disagrees the proposal is contrary to Policies SP1 and GD5 of the Bridging Island Plan 2022.

GROUND F – The Appellant considers that the proposal accords with the Bridging Island Plan 2022 and, taking account of all material considerations, should be granted planning permission, as required by Article 19 of the Planning and Building (Jersey) Law 2002.

10. At the Hearing, the appellant's case was presented by his planning agent, Mr Nicholson, with contributions from Mr Bridge, the scheme architect.

Summary of the planning authority's case

11. The planning authority's case is set out in a Response document with appendices, which include the officer report and the minutes from the 6 June 2024 Planning Committee meeting. The Response explains that the proposal was considered against the relevant BIP policies and initially assessed by officers to be unacceptable for 2 reasons but, following the Review Request process, the Planning Committee added a further 3 reasons relating to heritage impacts (reasons 3 and 4) and sustainability (reason 5). The Response and appendices explain the 5 refusal reasons.
12. At the Hearing, the planning authority's case was presented by Ms Vasselin, the application case officer, with Mr Hunter from the Historic Environment Team dealing with heritage matters.

Interested party's views

13. At the application stage, a letter from the Planning Application Panel of the National Trust for Jersey was lodged. It set out its opposition to the demolition of the pigsties which it says that, whilst not listed, were likely to date from the mid to late C19 and appeared to be in good condition. The Panel considers that the buildings should not be demolished, but should be preserved for future generations.

Inspector's assessment

'Disproportionate size and height' (Reason 1 / Ground A)

14. *Dunvegan* is located within the Green Zone, where the BIP presumes against many forms of new development. However, extensions to dwellings situated outside the Built-up Area (BUA) are within the scope of permissible development under policy SP2. This strategic policy approach is complemented by policy H9, which presumes against most forms of housing development outside the BUA, but does set out 6 specified exceptions. Only the first exception is relevant to this appeal, and this allows for a home extension provided that 'it remains, individually and cumulatively, having regard to the planning history of the site, subservient to the existing dwelling and does not disproportionately increase the size of the dwelling in terms of gross floorspace, building footprint or visual impact'.
15. The officer report sets out that the existing dwelling is 187 square metres in floorspace and the extension would add a further 78 square metres, amounting to a 42% increase, if the converted lower ground floor garage is included. It also highlights the 10.2 metre height of the ¹extension. Officers reached the view that the size would be disproportionate to the house and visually dominant when viewed from the south.
16. I do not share this assessment for a number of reasons. First, the house does not appear to have been much extended in the past, the only obvious addition being a modest single storey garden room wing, and the house sits on a relatively large and spacious plot. Second, the appellant could convert

¹ Drawing 100/P2 shows the garage converted to a 'store'

the garage to living space as permitted development, irrespective of the outcome of this appeal. Third, having checked the plan dimensions myself, I find the appellant's figures and calculations to be more persuasive, and these indicate that the extension (about 60 square metres) would increase floorspace by about 25%, and the building footprint by about 30%. Taking these matters together, I am satisfied that the increases in floorspace and footprint are modest and would not be disproportionate in this particular case.

17. In terms of the visual impact consideration under policy H9, the '10.2 metre height' cited in the officer report does not appear to be correct. The actual maximum height, from the floor slab to the roof ridge, is about 7 metres. Moreover, the extension would be set into the sloped site, and when viewed in context, its height would be set comfortably below that of the main dwelling to which it would be attached by the glazed link.
18. On my site inspection I walked to a point on La Charrière du Bourg and looked back (northwards) across the rear garden of *Le Bourg House* and observed that I could only see the very top of the gable wall of the main house, which suggested to me that the extension will not be particularly, if at all, visible in this view. I am also satisfied that the additions would be subservient to the host dwelling and, being neatly designed and contained within a well-sized garden plot, will not result in any undue increased visual impact or harm to the landscape character of the area.
19. On this main issue, I conclude that the extension would not be disproportionate in terms of floorspace, footprint, or visual impact. In this regard, I find no conflict with policies H9, SP3, SP4, GD6, and NE3.

Ecology (Reason 2 / Ground B)

20. As noted above, the appellant submitted a Bat Survey Results Report (July 2024) with this appeal. The Land Resource Management Team has confirmed² that the report and its findings are acceptable, subject to securing mitigation and enhancement measures. This means that Reason 2) has been addressed and I do not need to explore it further in this report. Should the Minister be minded to allow this appeal, a planning condition could secure the mitigation and enhancement measures, and this will ensure that the relevant provisions of policies SP5 and NE1 are satisfied.

Loss of the pigsties (Reason 3 / Ground C)

21. The pigsty structures appear to be quite old, perhaps dating to the mid to late C19, and were likely historically associated with *La Bourg Farm*. Indeed, I understand that *Dunvegan* itself has origins as one of the farm buildings and was later converted. However, the pigsties are not Listed and have clearly been altered and adapted over the years. They are also not visually prominent, being somewhat hidden away in a private rear garden, with a tree growing in one of the pens, and vegetation screening them. As a result,

²Land Resource Management - Planning Consultation Response dated 1 October 2024

any historical association and link with the original farmhouse and farm operations has been largely lost.

22. I have no reason to doubt the views of the National Trust and the HET that they have some passing historical interest, and that retaining and re-using such structures may be desirable and may serve certain policy objectives under SP4 (protecting and promoting island identity) and GD6 (design principles). However, some balance is needed here, given the absence of any statutory heritage protection.
23. A further factor here is whether the structures could be demolished and removed under the Order³ as 'permitted development'. The Order defines the types of demolition that can be carried out as 'permitted development', i.e., not requiring a formal application for planning permission. This includes under A.1(c)⁴ 'a domestic garage or a similar minor permanent structure' and, under A.1(h), 'a building or other structure the construction of which would be permitted development by virtue of any other part of this Schedule'. Exclusions are set out under A.2 and these include buildings which form part of a Listed building or place. Conditions are set out under A.3.
24. At the Hearing, the planning authority suggested that Class A.1(c) did not apply in this case, but was unable to convincingly evidence why the structure could not be regarded as 'a similar minor permanent structure'. Given its size, nature and longstanding use as a garden store, I am satisfied that it could fall within this class and, as none of the exclusions apply in this case, it could be demolished as permitted development.
25. For completeness, the planning authority suggested that Class A.1(h) was the correct class to apply and it considered that, as the building exceeded 30 square metres, it could not be erected as permitted development under the Order, and could not, therefore, benefit from permitted demolition rights under Class A.1(h). However, this is not supported by the facts, as the building part of the pigsty is well under that floorspace figure, the appellant's architect stating that it was circa 22 square metres.
26. I am therefore satisfied that, irrespective of the outcome of this appeal, the pigsty structure could be demolished as permitted development under the Order. This is an important finding, because there is no evidence to suggest that the appellant would not exercise his legal rights (to demolish and clear away the pigsty structure), were this to be the only barrier to the development proceeding. Indeed, it would not be a major or costly exercise to dismantle and remove the small structures. This is a weighty consideration, because it is not the purpose of planning policy to prevent works that a householder can lawfully undertake without the need for planning permission. As a result, this greatly limits the weight that can be applied to the heritage value of the pigsty structures in planning decision making in this case.

³ Planning and Building (General Development) (Jersey) Order 2011

⁴ Schedule 1, Part 7 of the Planning and Building (General Development) (Jersey) Order 2011

27. In the circumstances, I am not persuaded that the heritage value of these structures provides the basis for a refusal of planning permission based on alleged conflict with policies SP4 and GD6. However, should the Minister be minded to allow this appeal, I do consider that a planning condition requiring a photographic building recording exercise to be undertaken, and submitted to the planning authority (for inclusion in the historic environment records), would be proportionate and reasonable.

Impact on the settings of Listed Buildings (Reason 4 / Ground D)

28. Reason 4 alleges harm to the settings of the Listed buildings which neighbour the site. The BIP includes in its glossary a definition of the 'setting' of a Listed building. This states that it is "... *the surroundings that it is experienced in. It often extends beyond the property boundary, or 'curtilage', of an individual building or place into the broader landscape or townscape context. The extent may have and will change over time following changes to the landscape or townscape, new or removed buildings or with our increased understanding of a building, site or its wider context. The importance of setting is not dependent upon there being public access to, or public views of, the building or place...*" There is a similar explanation in the narrative that supports policy HE1.
29. To the north is *Le Bourg Farm*. It is Grade 3 Listed⁵, the Statement of Significance recording an '*attractive early C18 farmhouse, with its unaltered front facade, still retains its character internally and externally while contributing to its rural streetscape. An historic development can be seen in the panelling, stair and doors.*' Although *Dunvegan* is physically attached to the Listed building, the proposed extension is on the far side of the house, and there is little, if any, intervisibility between the site of the extension and the Listed building. I do not therefore consider that the extension would fall within the setting of this Listed building, and I find no conflict with policies HE1 and SP4.
30. To the east is *Le Bourg House*. It is Grade 4 Listed⁶, the significance being recorded as a '*Farmhouse of 18th century / 19th century origins, retaining historic character and some original features.*' The house appears to be in use today as a private dwelling. Although there would be some partial and oblique intervisibility between the proposed extension and the rear (south-west) facing elevation, and the garden of the Listed building, it would not be imposing. Indeed, the addition would be of modest proportions when viewed from these locations, set in from the boundary, and filtered by vegetation, including a mature tall hedge. I am satisfied that there would be no harm to the setting or the special interest of the Listed building. I therefore find no conflict with policies HE1 and SP4.

The case for demolition of the pigsties (Reason 5 / Ground E)

31. Whilst noting the Committee's desire to retain the pigsties, I do not consider it appropriate to cite policy tests and objections (under SP1 and GD5) to

⁵ CL0099

⁶ CL0056

development works which are otherwise permitted and lawful under the Order. Given that these works could be carried out irrespective of the appeal development proposal, I do not consider that this reason for refusal can be sustained. I also noted the appellant's intention that the materials from the demolition, including the granite blocks, would be reused on site as part of the development.

Planning conditions

32. At the Hearing, I held a without prejudice discussion on potential planning conditions, in the event that the Minister were minded to allow this appeal. I consider that planning conditions requiring a building recording report (for the pigsties) and the implementation of biodiversity measures, would be reasonable and justified.
33. The planning authority suggested conditions removing permitted development rights, preventing the extension being occupied as a separate dwelling, and the approval of facing materials. However, I can see no case for removing permitted development rights at this property; the description and plans define the development as an extension to the house, and its subdivision to a separate dwelling would require planning permission; and the materials are already specified on the drawings.

Conclusion and recommendation

34. For the reasons stated above, I am satisfied that the proposal is acceptable with regard to the relevant policies contained within the BIP. I therefore recommend that the Minister **ALLOWS** this appeal and grants planning permission for the development proposed under planning application reference P/2023/1282, subject to the following conditions:

Standard time limit condition

Confirmation of approved plans and documents condition

Condition 1

The mitigation and enhancement measures detailed in the approved Bat Survey Results Report (ref: NE/ES/D.02, 12th July 2024, Nurture Ecology Ltd) shall be implemented in full as part of the development hereby approved, and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Land Resource Management Team, prior to works being undertaken.

Reason: To ensure the protection and improvement of biodiversity in accordance with the natural environment policies NE1 and NE2 of the Bridging Island Plan (adopted March 2022).

Condition 2

Prior to the demolition and removal of the existing pigsties on the site, a building recording and analysis report (the report) of these structures shall be undertaken, submitted to, and approved by, the planning authority. The recording and analysis shall be carried out by a suitably qualified person and

the report shall be made available to Jersey's Historic Environment Record. The permitted building works for the extension shall not commence until the report has been approved in writing by the planning authority.

Reason: To ensure that special regard is paid to recording any historical interest of the structures prior to their removal.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI