

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

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

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Advocate Guy Coltman (Third Party Appellant)

Site address: Bramble Bank, Le Vieux Beaumont, St Peter, JE3 7EA

Application reference number: P/2023/1103

Proposal: *'Construct two storey extension to South-West corner. Replace kidney shaped pool with rectangular and install pergola. Install 3 No. windows to West elevation. Various internal and external alterations. AMENDED DESCRIPTION: Construct 2 No. two storey extensions to South-West and extend terrace to south elevation. Replace existing swimming pool and construct enclosure over to north elevation. Various external alterations to include changes to fenestration.'*

Decision Notice date: 22 January 2024

Procedure: Hearing held on 25 March 2024

Inspector's site visit: 25 March 2024

Inspector's report date: 29 April 2024

Introduction

1. This report contains my assessment of the third party appeal made by Advocate Guy Coltman. The appeal is made against the decision to grant planning permission to undertake a scheme of domestic extensions and alterations at a dwelling known as *Bramble Bank*, in the Parish of St Peter. The proposed development is near to the appellant's home.
2. For clarity, under the Law¹, the decision to grant permission remains in effect, but the development cannot be implemented until this appeal has been decided. Should the Minister decide to allow this appeal, permission would be refused and the development could not proceed.

¹ Article 117(1) and (2) – Planning and Building (Jersey) Law 2002 (As Amended)

Procedural matters

3. In the course of the application, the development description was changed. I am satisfied that the amended description accurately describes the proposed development, and that no issues of unfairness to other parties arise from these minor descriptive changes.
4. During the appeal stages, the applicant's agent submitted a short (2 page) further comments document. Due to an administrative error, this document was not forwarded to the other parties, or to myself, ahead of the Hearing. At the Hearing, I arranged for copies of the document to be circulated and adjourned proceedings briefly in order that other parties could read the submission. Whilst the further comments document was succinct, and sought essentially to reinforce the case already made, in the interest of fairness, I allowed 14 days from the Hearing date for other parties to provide written comments, should they wish.
5. The Decision Notice contains an error. Condition 1 requires the implementation of ecological mitigation and enhancement measures, in accordance with a referenced 'approved' ecology report. However, this document related to another proposal and was not an application document. At the Hearing, the applicant's agent submitted a new Preliminary Ecological Appraisal (PEA)² specific to the appeal proposal.
6. In response to the missing document, and the PEA introduced at the Hearing, the appellant submitted a 6-page document and appendices. It includes an Inspectors' report, and a related Ministerial Decision, concerning a development on the adjacent field involving the same applicant and appellant. I have read and taken into account these submissions.
7. Following the Hearing, the planning authority provided a consultation response³ from the Land Resource Management team which endorses the submitted PEA, and recommends a condition to secure its mitigation and enhancement measures. These matters are discussed later in this report.

The appeal site, the proposal and the application determination

8. *Bramble Bank* is a detached dwelling accessed via a private drive from Le Vieux Beaumont. It sits within a small cluster of other detached residential properties, all accessed from the private drive. This group of dwellings lies just outside the boundary of the defined Built-up Area (BUA) and within the Green Zone.
9. *Bramble Bank* is situated towards the rear (north), and higher part, of its elevated plot, with a swimming pool and patio area in the very northernmost part of its curtilage. It is a large 2-storey property, the existing floorplan drawing⁴ notating a floorspace figure of 408 square metres. Internally, the existing plans show an 'upside down' configuration, with 4 bedrooms on the ground floor and the first floor space

² Nurture Ecology report reference NE/ES/BB.02 dated 25th March 2024

³ Land Resource Management response to application reference P/2023/1103 dated 26 March 2024

⁴ Drawing number MSP-2666-PL11

accommodating a living room, dining area and kitchen opening onto an eastward facing deck, which enjoys panoramic views of St Helier and St Aubin's Bay. On the west side of the property there is a garage, with an office above, under a mono-pitch roof.

10. To the west of *Bramble Bank*, there are 3 detached properties (including the appellant's home) and further properties to the north. To the east is a small open field (Field P983), which is in the ownership of the applicant, and has been the subject of some recent planning history, which is discussed later in this report. Beyond the field there is housing development within the BUA at La Rue du Craslin.
11. The appeal proposal seeks permission for a scheme of works to remodel and extend the house. The key components would be:
 - A 2-storey extension to round off the south-west corner of the house. This would be about 10 square metres⁵ in footprint, and extend the kitchen/diner at ground floor, and create a dressing room at first floor level. Externally, it would have matching painted rendered walls and a tiled pitched roof.
 - An enlarged roof terrace, with glazed balustrading, created on the south of the house and linking to the long deck on the eastern side of the building.
 - An extension to the stairwell on the north side of the building, measuring 1.51 metres by 2.56 metres. Again, this would be 2-storey and finished in matching materials.
 - A replacement swimming pool, and the construction of an enclosure over the pool, which would link to the north elevation of the property. The drawings notate that the enclosure would be 13.1 metre long by 9 metres wide, with a height of 2.6 metres. The pool within would be 10 metres long by 6 metres wide.
 - Various external alterations, including changes to the building's fenestration.
12. At the application stage, the officer report records that 6 letters of objection had been received, with 2 being from the same individual. The grounds of objection included concerns about health and well-being, traffic and highway safety matters, overlooking, the effect on the character and appearance of the area, and light pollution.
13. Officers assessed the proposal to be acceptable and granted planning permission on 22 January 2024. In addition to the standard time limit and plans compliance conditions, a condition requiring ecological mitigation measures was imposed, although, as noted earlier, it referred to an incorrect document. Advocate Coltman's appeal is made against that planning decision.

⁵ Drawing No MSP-2666-PL14 notates additional ground floorspace of 10.3 square metres

Summary of the appellant's grounds of appeal

14. The appellants' case is set out in the appeal form and a more detailed statement of case and appendices. The appeal form cites 4 grounds, which are:

Ground 1: The appellant considers that the decision made by the Regulation Department does not adequately take into account and has not properly assessed all the material considerations including planning history. In the circumstances supporting the decision-making context at Bramble Bank, a decision made under the Planning & Building (Jersey) Law 2002 (as amended) must be properly informed by all considerations including those that are material, and which include planning history and private property law matters which necessarily impact on the planning application (ownership of the private road, for example).

Ground 2: The decision that has been made does not take into account the failure by I&E Transport to apply its own standards when commenting on planning applications. The appellant considers that the decision fails to adequately address the considerations of Policy TT4 – Provision of off-street parking.

Ground 3: The appellant considers that the decision that has been made fails to justify planning permission under Bridging Island Plan, 2022 policies (informed by supporting policy context) including but not limited to Policies SP3 – Placemaking, SP4 – Protecting and promoting island identity, SP5 – Protecting and improving the natural environment, PL5 – Countryside, coast and marine environment, GD6 – Design quality. It is not agreed that the design of the pool extension, which is substantial, enhances the character of the island's environment and landscape.

Ground 4: The appellant considers that the decision that has been made fails to adequately justify planning permission under Bridging Island Plan, 2022 policies (informed by supporting policy context) including policies SP7 – Planning for community needs and GD1 – General development considerations.

15. At the Hearing, the appellant's case was presented by his agent Mrs Steedman with contributions from the appellant, and his wife, who attended remotely.

Summary of the applicant's case and responses

16. The applicant's statement of case is a 6-page document which sets out rebuttals to each of the appellant's grounds of appeal.
17. In response to ground 1, the applicant explains that the appeal proposal is 'fundamentally different' to the scheme refused under reference P/2023/0110. It further explains that there is no intention to subdivide the property, and that private property matters are not material planning considerations.

18. With regard to ground 2, he states that no additional parking requirements arise from the proposal and, in any event, the development exceeds the minimum requirements (2 car spaces and 2 cycle spaces) identified in the Minister's' parking standards.
19. Concerning ground 3, the applicant draws attention to the small amount of floorspace proposed by the 2 extensions, and the fact that the pool enclosure is simply sized to cover the pool. He states that the extensions and pool enclosure are innocuous in landscape terms and will not have any harmful landscape impact. He contends that the scheme complies with Bridging Island Plan (BIP) policies H9, SP3, SP4, SP5, PL5 and GD6.
20. On ground 4, the applicant sets out his views on how the proposal satisfies the relevant policy considerations under BIP policies SP7 (planning for community needs) and GD1 (general development considerations).
21. At the Hearing, the applicant's case was presented by his agent, Mr Stein, with contributions from the applicant.

Summary of the Infrastructure and Environment Department's (the planning authority) case

22. The planning authority case is set out in its officer report and a succinct response document. The response explains that the proposal was considered against the relevant BIP policies and assessed to be acceptable. It also provides rebuttals to each of the 4 grounds of appeal, which are not dissimilar to the applicant's responses. As a result, I do not repeat them here.
23. At the Hearing, the planning authority's case was presented by Ms Vasselin.

Interested parties

24. I have read and taken into account public comments submitted by a number of interested parties at the application stage.

Inspector's analysis and assessment

General observations

25. The appellant's grounds of appeal are wide-ranging and there is a degree of overlap between some of the grounds. Throughout the Hearing, a recurring theme was the disputed views concerning what did, and did not, constitute a 'material consideration' in this case. In particular, there were disputes about whether private property matters, including those related to the private drive, bin stores, and drains, were relevant material considerations.
26. The starting point for any Jersey planning assessment is the legal and policy framework. In essence, the Law adopts a plan-led approach, whereby the Island Plan, currently the BIP, takes primacy in decision making. There is a general presumption that development which is in accordance with the BIP will be permitted and development that is inconsistent with it will normally be refused. However, the BIP is a detailed and comprehensive development

plan, containing a significant number of policies, many of which may not be relevant, or only have limited relevance, to a specific development proposal. It is therefore important that the decision maker identifies and focuses on the policies that are most relevant (or material) to the determination.

27. With regard to other matters, the UK courts have taken the view that the scope of what can constitute a 'material consideration' in a planning assessment is very wide indeed. However, the courts have generally ruled that, because planning is concerned with land use in the public interest, it means that the protection of purely private interests would not normally be material considerations in a planning decision. It also means that there must be some link between the proposed development being assessed, and the particular planning consideration being scrutinised. In the absence of any Jersey caselaw indicating a different approach, I have adopted these principles in my assessment.
28. As a result of the way the appellant has framed the grounds of appeal, ground 1 being more holistic and grounds 2, 3 and 4 being more topic focused, I will explore issues of principle first, then assess each of the grounds and key issues raised under them, and conclude by drawing the findings together to provide an overarching assessment and recommendation.

The principle of the proposed development

29. The proposal is essentially for extensions and alterations to a large detached dwelling house, which is located outside of the defined BUA and within the Green Zone.
30. At a strategic level, BIP policy SP2 provides that, outside the BUA, development will only be supported where a countryside location is appropriate, necessary and justified in its location; or where it involves the conversion, extension and/or subdivision of existing buildings. Extensions to dwellings situated outside of the BUA are therefore within the scope of permissible development under SP2.
31. At a more detailed level, policy H9(1) establishes the parameters for acceptable additions to homes outside the BUA, which are 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'*. The supporting narrative⁶ explains that, *'It would be unreasonable to resist all forms of development to improve people's homes where they lie outside the built-up area; and where there is the potential to optimise the use of existing dwellings.'*
32. Policy H9(1) is not mentioned in the appellant's policy review contained in his statement of case, nor does it feature in any of the grounds of appeal, albeit some of its policy considerations do (such as planning history, size and visual impact). However, policy H9(1) is the most relevant starting

⁶ Bridging Island Plan (adopted March 2022) page 212

point, as it provides the specific policy on the type of development being proposed.

33. In my assessment, the proposal falls comfortably within the scope and parameters of policy H9(1). Both of the 2-storey extensions are very modest in size; the pool enclosure is low rise and sized simply to fulfil its function; and the other alterations are minor and innocuous in design terms.
34. Whilst I have noted the appellant's submissions about the 'floorspace' of the pool enclosure, the enclosed space could not readily be used for other habitable purposes without considerable adaption, and the likelihood of a need for a separate grant of planning permission. The planning history before me does not evidence any undue cumulative expansion of the property over the years, and the additions would remain subservient and would not disproportionately increase the size of the dwelling, in terms of floorspace, footprint or visual impact.
35. On matters of principle, I conclude that the development falls within the acceptable scope of SP2, and that it conforms with the requirements of H9(1). This attracts significant weight in favour of the proposal. However, these findings do not amount to an automatic planning approval, as other policies, and other material considerations, need to be weighed in the balance. I explore these under the respective grounds of appeal.

Ground 1 – failure to consider all material considerations

36. The appellant submits wide-ranging concerns about alleged failures to properly consider matters that are regarded as material to the determination of the application under the Law. These include alleged failures to consider the planning history of the site and potential for increased occupancy of the house; impacts on protected species and alleged conflicts with BIP policies SP5 and NE1; bin storage issues and conflict with private road users; light pollution; and harm to the enjoyment of private residential property.

Planning history

37. I have noted the appellant's submissions and concerns regarding the planning history at this site, most notably a refused 2023 planning application⁷ which sought permission for a scheme of extensions, alterations and sub-division, to create 3 separate self-contained residential units. I have also noted his fears that the applicant may seek to revisit sub-division proposals in the future, utilising the floorspace contained within the appeal proposal. At the Hearing, the applicant explained that the purpose of the refused 2023 proposal, was to provide accommodation for family members, but this had now been addressed by the purchase of separate properties for those individuals.
38. In any event, it is a matter of record that the 2023 application was refused; the reasons including, amongst other matters, policy conflicts arising from

⁷ P/2023/0110

the creation of new dwellings within the Green Zone (policies SP1, SP2, SP5, PL5, and H9) and landscape harm as a result of the size, design and siting of the development (policies SP3, SP4, SP5, PL5, GD6 and NE3).

39. Moreover, the current appeal proposal is for a fundamentally different type of development, relating to extensions and improvement works to an existing single dwelling house. There is no sub-division of the dwelling proposed, and the physical extensions and alterations are not comparable to the refused scheme. As a consequence, the 2023 application is of limited relevance to the determination of the current appeal, which must be determined on its own individual planning merits.
40. I have also had regard to another application made by the same applicant (Ref P/2023/0750) relating to the adjacent field, and to a third party appeal (by the same appellant), and a very recent Ministerial Decision⁸ in that case. This related to a retrospective application seeking to retain an earth bank and field access. That application, and its ultimate refusal by the Minister, clearly raised different planning policy issues, and has limited direct bearing on the current appeal, which relates to proposed domestic additions to the house.
41. The more relevant planning consideration relating to planning history, is that set out in policy H9(1) which, sensibly, instructs the decision maker to assess whether a property has been, or would become, the subject of undue cumulative expansion. However, the applicant's account⁹ of the 'last 30 years' of planning history has not been challenged, and it evidences a distinct absence of such additions.
42. There are no planning history reasons that would provide the basis for withholding permission in this instance.

Bin storage

43. The appellant claims that he has already suffered 'unreasonable harm' as a result of the applicant's bin storage, 'which exceeds the capacity of the area available'. I observed that wheeled bins are currently stored close to the junction of the private drive with Le Vieux Beaumont.
44. However, there is no evidence before me to indicate that the appeal proposal would directly generate any discernible additional waste that requires consideration under planning policies and powers.
45. The arrangements concerning, and any disputes relating to, bin storage and use of the private drive, are purely private property matters and not material planning considerations in this case.

⁸ MD-ENV-2024-206

⁹ Page 1 of the Applicant's statement of case produced by MS Planning Ltd dated 4 March 2024

Protected species

46. The appellant makes specific reference to biodiversity harm and light pollution, and alleged conflicts with policies SP5 (protecting and improving the natural environment) and NE1 (protection and improvement of biodiversity and geodiversity).
47. The actual areas within which the development would occur are limited and comprise existing domestic curtilage areas, which are extensively hard surfaced and/or in use as an outdoor swimming pool. They are not therefore rich natural habitat.
48. With regard to external lighting, I observed that the property does have outdoor lighting units mounted at first floor level at various locations around the property. The appellant has included a body of photographic evidence showing the external lighting in operation and this is clearly a matter of irritation to the appellant, along with his concerns about the impact of artificial lighting on biodiversity, i.e. bats.
49. However, the planning authority confirmed that none of the existing external lighting installations would have required planning permission. Moreover, the proposed development does not require, or indicate, any new external lighting. The applicant also pointed out that all lighting within the development would be internal and downward facing and that, in the pool area, the 2 external lighting units would be effectively rendered redundant (they are used to illuminate the outdoor pool for use after dark), and would no longer be used once the pool is covered.
50. Despite the departmental mix up over ecology reports, I attach significant weight to the (correct) PEA, and the response of the Land Resource Management team¹⁰, which confirms the negligible and low suitability for bats, and absence of any evidence of nesting birds.
51. The endorsement of the PEA's mitigation and enhancement measures, comprising the erection of bird and bat boxes, will deliver an improvement. In this regard, I also note that the PEA includes specific mitigations¹¹ regarding external lighting relative to the new bat boxes that would be installed. A revised planning condition could be imposed to secure these PEA mitigations and measures.
52. On this matter, I conclude that there is no convincing evidence before me to suggest that the domestic additions to the house would result in harm to protected species. Indeed, the development would effectively render redundant 2 lighting units which currently illuminate the outdoor pool, and the mitigation and enhancement measures set out in the PEA would deliver some net benefits. I therefore find no conflict with BIP policies SP5 and NE1.

¹⁰ Land Resource Management consultation response to planning application reference P/2023/1103 dated 26 March 2024

¹¹ Section 7.2 - Nurture Ecology report reference NE/ES/BB.02 dated 25th March 2024

Overall findings on ground 1

53. Whilst noting the differences of views between the main parties, there is no evidence before me to demonstrate that the planning authority has not considered all relevant policies and material considerations. I assess that ground 1 should fail.

Ground 2 – transport and highway safety matters

54. The appellant draws attention to an earlier technical transport assessment that had been commissioned in respect of the 2023 application for extension and sub-division to 3 dwellings. This highlighted the shortcomings of the private road junction and Le Vieux Beaumont, drawing attention to the limited width of the private drive and the sub-standard junction visibility. The appellant further claims that the Transport service's 'no objection' consultation response on the current appeal proposal failed to take into account the potential for increased vehicle trips.
55. Whilst noting these concerns, my assessment must be evidence based. There is no convincing evidence before me to suggest that the 2 small domestic extensions and the covered pool, would lead to any discernible increase in vehicle trip generation from the site that would require additional parking provision and/or other highways related improvements. Indeed, none of the extensions create any new bedrooms, or spaces that could be easily converted into bedrooms.
56. The dwelling is currently a 4-bedroom unit and the proposed plans indicate that it will remain so, albeit with a remodelled internal format. The bedrooms are large, but not unusually so for what is a substantial luxury property. There was some discussion at the Hearing about the potential for internal sub-division to create more bedrooms, the prospect of different future occupiers, and the suggestion that any permission should limit the property to 4 bedrooms by planning condition. Some commonsense is necessary here, along with a recognition of the legal scope of the planning system, which cannot possibly address every conceivable future scenario and all fears and concerns of neighbours. I do not consider that imposing such a restriction would pass the accepted tests for planning conditions, most notably in terms of being necessary, relevant to the development to be permitted (which are modest domestic additions), and being reasonable in all other respects.
57. I find no conflicts with policy TT4 with regard to off-street parking provision and policy TT1 concerning highway safety. I assess that ground 2 should not succeed.

Ground 3 – compliance with relevant BIP policies (SP3, SP4, SP5, PL5 and GD6)

58. Ground 3 is primarily concerned with the visual and landscape impact of the proposal. At the Hearing, the appellant's agent confirmed that this ground referred only to the pool cover extension, which she claimed would make the area appear more 'suburban' and would add more light to a baseline of existing light pollution.

59. The policies cited in support of this objection are strategic policies SP3 (Placemaking), SP4 (Protecting and promoting island identity), and SP5 (Protecting and improving the natural environment), together with policies PL5 (Countryside, coast and marine environment) and GD6 (Design quality).
60. Whilst recognising that design related assessments are inevitably subjective, I do not agree with the appellant's view. The pool extension is confined to an enclosed area which is already used for an outdoor pool, and it is a neatly designed structure. Its low height, and backcloth of taller built development, with trees and vegetation above that, means that it will not be prominent in views from the east, or any other direction.
61. I have discussed light impacts under ground 1 and do not consider that internal light sources provide a basis for withholding permission, particularly in the context of policies SP2 and H9(1) making provision for home additions, which are inevitably going to contain glazed areas and internal lighting.
62. I have also had regard to Ms Vasselin's submissions concerning the content of the Jersey Integrated Landscape and Seascape Character Assessment (JILSCA) (October 2020). This study defines the site as falling within the 'Escarpment', where one of the key considerations is to avoid development which breaches the skyline. Ms Vasselin is correct in assessing no such breach and I agree with her appraisal that the development would not result in any landscape harm.
63. In my assessment, there is no conflict with policies SP3, SP4, SP5, PL5 and GD6, and I conclude that ground 3 should not succeed.

Ground 4 – BIP policies SP7 and GD1

64. I have read and listened to the appellant's concerns about amenity impacts which are claimed to arise from light pollution, bin storage issues and traffic generation. However, there is no compelling evidence before me to suggest that these already experienced effects would worsen as a result of the development, or that they would breach the GD1 policy of being unreasonable. I also find no tension with policy SP7.

Other matters

65. I have noted ongoing disputes over private drainage matters. These are private property matters and not planning considerations relevant to this appeal.

Conclusions and recommendation

66. I am satisfied that the proposal is acceptable with regard to the relevant policies contained within the BIP. I therefore recommend that the Minister dismisses this appeal and confirms the grant of planning permission.
67. However, for reasons set out above, some amendment to the Decision Notice is needed. The required change to the decision notice relates to condition 1, where the bracketed part (ref.NE/ES/BB.01 19th January 2023

Nurture Ecology) should be deleted and replaced with: (*Nurture Ecology report reference NE/ES/BB.02 dated 25th March 2024*).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appearances at the Hearing

For the Appellants: Mr and Mrs Coltman, Mrs S Steedman (planning consultant)

For the Applicant: Mr Whipp, Mr M Stein (planning consultant)

For the Planning Authority: Ms G Vasselin