

PLANNING AND BUILDING (JERSEY) LAW 2002

Appeal under Article 108 against a decision made under Article 19 to refuse planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Roy Bedlow

Application reference number and date:

P/2023/0691 dated 4 August 2023

Decision Notice date:

19 February 2024

Site address:

Spion Kop Farm, Le Chemin du Moulin, St. Ouen JE3 2FL

Proposed development:

“Demolish existing dwelling and outbuildings. Construct 1no. 4 bed dwelling with associated landscaping scheme. Alter vehicular access onto Le Chemin du Moulin.”

Inspector’s site visit date:

28 May 2024

Hearing date:

31 May 2024

Introduction

1. This is an appeal against the decision taken by the Chief Officer to refuse planning permission for this proposed development. The decision notice gives one reason for refusal, as follows: -

“1. By virtue of its scale and architectural design, the proposed development represents an inappropriate form of development which would cause harm to the landscape character of the area. Accordingly, the application fails to comply with the requirements of Policies SP2 (Spatial strategy), SP3 (Placemaking), SP4 (Protecting and promoting island identity), SP5

(Protecting and improving the natural environment), PL5 (Countryside, coast and marine environment), NE3 (Landscape and seascape character), and H9 (Housing outside the built-up area) of the adopted 2022 Bridging Island Plan.”

2. I have pointed out several times before that the Plan's policies do not impose “requirements” on decision-makers.

The site and the proposed development

3. Spion Kop Farm consists of a farmhouse and a range of outbuildings on a plot of land on the north-eastern side of Le Chemin du Moulin. This side of the road and its offshoots contain a long row of modern dwellings. The Farm is within this row but this plot and an adjoining undeveloped plot to the south-east are much larger and more open than others in the row. Land on the opposite side of the road is mostly undeveloped, apart from a group of modern dwellings to the south of the Farm. The area as a whole is within the Protected Coastal Area and Coastal National Park.
4. The Farm is no longer in agricultural or any other use. The farmhouse, which dates from the 19th century, is a prominent building that has full-width flat-roofed box dormers at the front and back; it is unoccupied and is unfit for habitation because of its structural condition. The outbuildings are unused and are structurally unsuitable for commercial or other uses.
5. The new dwelling would be a part single-storey, part two-storey building with a similar footprint to the existing buildings. Extensive use would be made of glazing, granite walls, timber and zinc cladding and green roofs. Solar panels would be installed. Private amenity space would be provided at the rear by a courtyard and swimming pool area. Schemes for new planting and habitat protection have been submitted. The existing vehicular access would be used with the addition of fencing and gates and resurfacing.
6. The appellant has also submitted a planning application (ref. P/2023/1002) to the Infrastructure and Environment Department relating to a storage shed in his ownership which is a short distance beyond the north-eastern boundary of the appeal site. The application seeks approval to the removal of the shed and its replacement by a new storage shed with a bat loft above. The bat loft is intended to compensate for the roosting sites in a barn that will be demolished if the proposed development proceeds. The application is 'on hold' pending the outcome of this appeal; to achieve its purpose, the bat loft would have to be operational before demolition work started on the barn; this can be dealt with by a planning condition.

The Infrastructure and Environment Department's representations

7. In response to the appeal, the Department state that they are satisfied that the demolition of the existing buildings and their replacement by a new dwelling are acceptable in principle. Their main concerns relate to the design, size and landscape impact of the proposed new dwelling, having regard to the size and impact of the existing buildings, the openness of the site and the sensitivity of the Protected Coastal Area and Coastal National Park. Their appeal response states that the Department rely on the detailed reasoning set out in their Department Report.

8. The Department Report describes the existing property as being highly prominent in views from the road, but states that it does not detract from the general character of the area. It states that, overall, the visual impact of the proposed development would be broadly similar. It later continues by assessing the proposed development as follows, before reaching the conclusion recorded in the decision notice set out in paragraph 1 above : -

“By contrast, the proposed development, with its 2-storey flat roofed design and expansive glazing, lacks sensitivity and is far more assertive in its design. It would be more prominent, with a greater landscape impact. Also, the enclosure of the site, with increased planting and the introduction of a set of formal entrance gates (where none exist at present) would seem to detract from the sense of openness, turning a rough rural track into a more formal driveway signalling a residential character to the open rural / agricultural land within the site.

With a redevelopment along these lines, the site would take on a very different character in the department's view.”

9. The Department's Natural Environment Team state that the Ecological Impact Assessment and the Ecological Survey Results Report submitted by the appellant confirm the presence of a range of protected species on the plot, including two of Jersey's rarest species, the grass snake and the greater horseshoe bat. The Team have requested further information relating to the proposed development and to the development proposed in application P/2023/1002, in order to assess whether the proposals as a whole comply with natural environment policies.

Public comments

10. Four comments have been received from the public. 1. The lack of marketing of the site has been referred to [Marketing for rental was in fact started but had to stop when structural engineers reported that the buildings were unsafe for continued use]. 2. The farmhouse has been stated to be an example of early concrete-block construction that should be investigated and recorded [The Department do not consider that this is needed]. 3 & 4. Concerns similar to the reason for refusal have been raised.

The appellant's representations

11. The appellant maintains that the proposed development would be a well-designed contemporary response to the character and context of the area. He draws attention to several other examples of approved modern dwellings in the area that have extensive glazing. He states that the proposed development would comply with all the relevant planning policies and in particular with Policy H9, which he states is the primary policy for the redevelopment of existing buildings in the countryside, including the Protected Coastal Area and Coastal National Park. He states that the outstanding information requested by the Natural Environment team will be provided and this matter can be dealt with by a planning condition if planning permission is granted.
12. The appellant states that the new dwelling would be no larger in terms of footprint, floorspace or visual impact than the existing building. It would have a high-quality design providing a modern and sustainable family home that

would better assimilate into the landscape than the existing dwelling, which he describes as an unsightly, white-rendered building with large front and rear dormers. There would be a much-reduced carbon footprint and substantial environmental gains, including biodiversity enhancements, a reduced level of hardstanding, the re-use of existing materials including all the granite, the installation of solar panels, a pond and additional landscaping.

13. The appellant states that the access and driveway area would be formed by a mix of loose granite chippings and permeable resin-bond gravel and that there would be a sustainable drainage system. The entrance gate would be a simple timber gate set between granite pillars, which is the type recommended for the area.

Inspector's assessments and conclusions

14. The analysis of the proposed development which the Department set out in their report does not lead to the conclusion that the development would be contrary to the wide range of planning policies referred to in the decision notice. The Department have accepted that the demolition of the existing buildings and their replacement by a new dwelling are acceptable in principle. In these circumstances, as the appellant has pointed out, Policy H9 (Housing outside the built-up area) applies and, in particular, criteria 5 and 6 in Policy H9 which deal with the replacement by a new dwelling of existing dwellings and buildings in employment use.
15. To satisfy these criteria, the policy states that the replacement dwelling should not be larger than the dwelling and buildings being replaced, in terms of gross floorspace, building footprint and visual impact, and that there should be environmental gains. It adds that these gains should be demonstrable and significant; they should contribute to the repair and restoration of landscape character; they should be delivered through improved design and appearance of the land and buildings; and the intensity of occupation and use of the site should be reduced.
16. In many respects the appellant's assertion that these criteria would be satisfied has not been disputed by the Department. The floorspace and footprint have been acknowledged to be similar to the existing. The visual impact has been stated to be broadly similar to the existing impact. The contribution that would be made by the environmental gains identified by the appellant has not been disputed, nor has his assertion that satisfactory outstanding environmental information can be provided. It has not been disputed that the intensity of occupation and use of the site would be reduced, when compared to its past residential and agricultural potential.
17. The Department have in essence only three clearly-defined objections. These are: (1) the new dwelling would have a greater landscape impact because of its design and appearance; (2) there would be a loss of openness as a consequence of the enclosure of the site by new planting, fencing and access surfacing; and (3) the site would take on a very different character.
18. I do not attach significant weight to objections (2) and (3). As to (2), the proposed boundary treatment would be low-level and have little impact on the openness of the site. The existing access track is already hard-surfaced and the surfacing materials are deteriorating; it would be re-surfaced with loose-laid granite chippings and resin-bond gravel, which are treatments appropriate

to these surroundings. As to (3), changes in the character of sites are inevitable when redevelopment takes place pursuant to Policy H9 and new dwellings replace buildings originally constructed for other uses; these changes must have been anticipated when the policy was adopted.

19. I now turn to objection (1), that the new dwelling would have a greater landscape impact because of its design and appearance. I do not consider that this is a persuasive objection, for the following reasons: -

- The objection does not sit well with the Department's recognition that the existing property is highly prominent in views from the road and that, overall, the visual impact of the proposed development would be broadly similar, nor does it sit well with the undisputed aspects of the appellant's appeal which are referred to in paragraph 16 above.
- The outstanding landscape feature here is the partially-wooded escarpment that rises to the north-east beyond the boundary of the site. The part-two storey, part single-storey design of the proposed development would have a lesser impact on views of the escarpment than the existing development, which is described by the Department as highly prominent and by the appellant as unsightly.
- The site itself has little intrinsic landscape value. It consists mainly of grassland with some low hedging and isolated trees and bushes, with the farmhouse and its associated buildings featuring prominently in the middle of the site. A fall in on-site levels has allowed the new dwelling to be designed so that it can be assimilated into the landscape. A range of on-site ecological and environmental improvements are proposed that will enhance the site's landscape character.

20. For all the reasons set out in this report, I have reached the conclusion that the proposed development will be in accordance with planning policies and that there are insufficient reasons for withholding planning permission for it, subject to a range of planning conditions. The need for these conditions was discussed at the hearing (on a 'without prejudice' basis, in the event of the appeal being allowed) and the conditions I have set out below reflect the understanding reached at the hearing with the parties.

Inspector's recommendation

21. I recommend that the appeal is allowed and planning permission is granted for development at Spion Kop Farm, Le Chemin du Moulin, St. Ouen JE3 2FL, consisting of the demolition of the existing dwelling and outbuildings, the construction of a four-bedroom dwelling with associated landscaping scheme and the alteration of the vehicular access onto Le Chemin du Moulin, in accordance with the application Ref. P/2023/0691 and the plans and documents submitted therewith, subject to the following conditions: -

Standard conditions

- A. The development shall commence within three years of the decision date.

Reason: The development will need to be reconsidered in the light of any material change in circumstances.

- B. The development shall be carried out entirely in accordance with the approved plans and documents listed below.

Reason: To ensure that the development is carried out as approved.

Additional conditions

1. No demolition work shall take place until the development proposed in planning application ref. P/2023/1002 (Remove existing external store, and construct new store with bat loft above) has been approved and has been completed in accordance with the terms and conditions of the planning permission.

Reason: Species protection pursuant to Policy NE1 of the Bridging Island Plan.

2. Prior to the commencement of the development, full details of a Species Protection and Enhancement Plan shall be submitted to and approved in writing by the Chief Officer. The approved plan shall be implemented prior to commencement of the development, continued throughout the development (where applicable) and thereafter retained and maintained as such. Any variations from the approved plan that may be required as a result of findings on site shall be agreed in writing in advance with the Chief Officer prior to implementation.

Reason: To protect biodiversity pursuant to Policy NE1 of the Bridging Island Plan.

3. Prior to the commencement of the development, samples of all the materials to be used in the construction of the external surfaces of the development, including hard landscaping materials, shall be submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved samples and retained as such.

Reason: To protect the character and identity of the area and to enhance its setting pursuant to Policy GD6 of the Bridging Island Plan.

4. Prior to the commencement of the development, details shall be submitted to the Chief Officer to demonstrate that the development as approved will outperform the target energy rate (i.e. the minimum energy performance for new dwellings required by building bye-laws) by 20%, using the Jersey Standard Assessment Procedure (JSAP) calculator or the Simplified Building Energy Model (SBEM) tool.

Reason: To comply with Policy ME1 of the Bridging Island Plan

5. Prior to the commencement of the development, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Chief Officer. The scheme shall include details of the pond, all boundary treatments and indications of all existing trees and hedgerows on the land, identifying those to be retained and setting out measures for their protection throughout the course of the development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first

residential occupation of the dwelling or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To deliver design quality, to protect and improve green infrastructure assets and to provide new green infrastructure assets pursuant to Policies GD6 and NE2 of the Bridging Island Plan.

6. Prior to the commencement of the development, details of the development's means of externally-mounted illumination, including details of the design and external appearance of the structures housing or mounting the illumination and of the type and intensity of the illumination, shall be submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved details prior to the first residential occupation of the dwelling and thereafter retained as such.

Reason: To protect the visual amenity and landscape setting of the area pursuant to Policy GD6 of the Bridging Island Plan.

7. The approved Site Waste Management Plan shall be maintained throughout the development as a living document and waste management shall be implemented in full accordance with it. Any variations from the Plan shall be agreed in advance in writing with the Chief Officer prior to implementation.

Reason: To comply with the provisions of Policy WER1 of the Bridging Island Plan.

Approved plans and documents

Site Location Plan

MSP-3217-PL01 A - Existing Site Plan

MSP-3217-PL02 - Existing Plans

MSP-3217-PL03 - Existing Plans

MSP-3217-PL04 - Proposed Site Plan

MSP-3217-PL05 - Proposed Ground Floor Plan

MSP-3217-PL06 - Proposed First Floor Plan

MSP-3217-PL07 - Proposed Elevations

MSP-3217-PL08 - Proposed Sections

MSP-3217-PL09 - Proposed Contextual Elevation

MSP-3217-PL10 - Sustainability

MSP-3217-PL11 - Existing Visuals (Aerial)

MSP-3217-PL12 - Proposed Visuals (Aerial)

1765-001 P2 - Landscape Site Plan

Planning Statement

Structural Condition Report: March 2023

Structural Engineer Letter: May 2023

Design Statement: June 2023

Ecology Holding Letter: June 2023

Landscape Design Statement: June 2023

Sustainability, Aesthetics and Cost Appraisal Evaluation: June 2023

Ecological Survey Results Report: August 2023

Ecological Impact Assessment: September 2023

Site Waste Management Plan

Dated 11 July 2024

D.A.Hainsworth
Inspector