

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

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

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Geraldine Fitzgerald

Site address: *Coppelia* and *Fieldings*, Le Mont Pinel, St Helier

Application reference number: P/2023/0799

Proposal: 'Demolish existing dwellings (1 x 3-bed and 1 x 1-bed) and construct six new dwellings (1 x 4-bed and 5 x 3-bed) with new means of access to Mont Pinel.'

Decision Notice date: 14 February 2024

Procedure: Hearing held on 26 June 2024

Inspector's site visit: 24 June 2024

Inspector's report date: 9 August 2024

INTRODUCTION

1. This report contains my assessment of the planning appeal made by Geraldine Fitzgerald (the appellant). The appeal is made against the decision of the department for Infrastructure and the Environment (the planning authority) to refuse to grant planning permission for a proposal that would redevelop the site of 2 existing dwellings to provide 6 new homes on a site at Le Mont Pinel in St Helier.

PROCEDURAL MATTERS

2. Article 114(1) of the Law states that planning appeals against decisions to refuse planning permission are to be considered by way of written representations, although this does not apply if representations were received at the application stage, which was the case for this application.
3. Whilst Article 114(2) does allow me the discretion to consult with the parties on the use of the written representations route in such cases, I elected not to do so in this case. This is because the application attracted quite a number of representations (21); the appellant requested the Hearing procedure; and the Decision Notice includes no less than 8 reasons for refusal. The level of complexity and local contention therefore makes the Hearing procedure the most appropriate.

THE APPEAL SITE, THE APPEAL PROPOSAL AND THE APPLICATION DETERMINATION

The appeal site

4. The appeal site comprises the combined curtilages of 2 existing dwellings located adjacent to Mont Pinel. The smaller, eastern, part of the site comprises a single storey bungalow known as *Fieldings*, which sits on a compact plot. It has white painted rendered walls and slated pitched roofs; its principal elevation fronts the north-eastern leg of Mont Pinel, but there is no vehicular access to the property from this road.
5. The larger part of the site, to the west of *Fieldings*, comprises the fairly large 'L' shaped plot associated with *Coppelia*, a 2-storey detached house seemingly dating from the mid-twentieth century, with rendered white painted walls and a pyramidal tiled roof. The dwelling is sited in the elbow of the L, with gardens to its east and south, the southern area being its front garden, and including a driveway/parking which joins a private drive, shared with other properties, that connects to Mont Pinel. The appellant indicates that the combined site area (both properties) is 1,520 square metres.
6. The surrounding area is primarily residential in land use and character, and there are existing neighbouring dwellings on all sides of the site. To the north is Millais Park, a cul-de sac, containing mainly 2 storey semi-detached houses arranged in a relatively uniform layout; some of the dwellings at the head of the cul-de-sac adjoin the site and are positioned in quite close proximity to the boundary. To the east, there are further residential properties opposite *Fieldings*, the closest being *Orchard Rise*, a large detached house with an attached garage with living accommodation over, and a front parking area with an 'in and out' access arrangement to Mont Pinel. To the south and west of the site, the layout is a little less formal, with detached and semi-detached dwellings and some larger blocks of flatted accommodation, including *The Mews* adjacent to the site's southern boundary. The locality has a mature and attractive residential character, with a variety of architectural styles and different plot sizes and configurations.
7. The appeal site and the surrounding residential development lies within the Built-up Area (BUA) as defined on the Bridging Island Plan (BIP adopted 2022) proposals map. The site also falls within the Green Backdrop Zone (GBZ) which covers the rising settlement area north and east of Don Road.

The appeal proposal

8. The proposal seeks permission to demolish both dwellings and redevelop the site to provide 6 new homes, arranged in a row across the site along a roughly east-west axis, with their main front elevations being south facing. The proposed layout is effectively in 2 parts.
9. The western part of the site would comprise a pair of semi-detached houses (units 1 and 2), the building being sited in a similar position to the existing *Coppelia* house. The units would have modest front gardens, a 4 space car

parking area connected to the existing private drive, and a 75 square metre 'shared space' to the south of the building. The houses would have modest rear gardens, including stores, on their north side. Internally, the ground floor area would include an open plan kitchen living area, with 3 bedrooms and bathrooms on the first floor, with a fourth master bedroom with ensuite located on the upper floor within the roofspace, served by rooflights. The design of the building would be of a relatively traditional style, including pitched tiled roofs with half hips¹ on the sides, reflective of the neighbouring property to the west.

10. The eastern part of the site would contain the other 4 dwellings, which would be of a more contemporary design. These would be 2-storey detached units, 1 being a 5-bedroom house (unit 3), the others being 4-bedroom homes (units 4, 5 and 6). The internal configuration is an 'upside down' format, whereby the bedrooms and bathrooms would be located on the ground floor. The smaller footprint first floor area would accommodate an open plan kitchen/living/dining space, and doors would open out onto an external terrace area on the east side of each unit. These 4 units would be accessed by a new driveway that would be created from Mont Pinel, which the drawings show would be surfaced in 'grasscrete' and include 7 car parking spaces with EV charging, and a covered bike store.

The application determination

11. A range of consultees submitted comments on the application proposal and, where appropriate, these are discussed later in this report. The application was determined under officer delegated powers on 14 February 2024. The Decision Notice cites 8 reasons for refusing to grant planning permission. These reasons are reproduced below:
 1. *The proposal, by virtue of its close proximity to the properties to the north and west of the site, having regard to the layout, form and massing of the development, and lack of mitigating boundary treatment, would not adequately address the relationship of the development to existing buildings, which would result in an unacceptable overbearing impact to neighbouring land and buildings to the north and west contrary to Policies GD1 and GD6 of the Bridging Island Plan 2022*
 2. *The development by virtue of the limitations of the private amenity proposed; being unconnected split-level spaces, linear in shape and minimal in size, the ground floor spaces lacking in sun and daylight sited to the north of the two storey properties, and some spaces in public view lacking privacy, would not meet the expectations of the Residential Space Standards SPG in terms of quality, and for some units overall size of private amenity for the number of persons per dwelling, which would be contrary to Policies SP3, GD1 and H1 of the Bridging Island Plan 2022 and the Residential Space Standards SPG (2023)*

¹ Also known as a 'clipped gable' or Jerkinhead design

3. *The shared space as noted on the Site plan would not be an accessible space for units 3-6 of the proposed development, given division of the site, and there would be no dedicated space for play. Consequently, the proposed development would be contrary to Policies SP3, CI8 and H1 of the Bridging Island Plan 2022.*
 4. *In the absence of a detailed landscaping plan, the proposal fails to adequately demonstrate the delivery of green assets and sufficient enhancement of green infrastructure as an integral element of the design as required by Policies GD6, GD8 and NE2 of the Bridging Island Plan 2022*
 5. *By virtue of the layout of the proposed development and resultant close relationship with neighbouring windows and private amenity spaces, specifically to the north and west of the development site, the development would unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents, and in particular, would unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy contrary to Policies GD1, GD6 and H1 of the Bridging Island Plan 2022.*
 6. *A Percentage for Art contribution has not noted as part of this proposal, which would be contrary to Policies SP4 and GD10 of the Bridging Island Plan 2022.*
 7. *The design would have a negative impact upon the street scene, by virtue of the side view of the development with no real road facing presence, which appears to be a consequence of the site layout, and would not successfully address the impact of the development on the public realm contrary to Policies SP3, SP4 and GD6 of the Bridging Island Plan 2022.*
 8. *The application fails to demonstrate that the development will provide an appropriate level of accessible and convenient off-street motor vehicle parking, that is well-integrated with the development, contrary to Policies GD6 and TT4 of the Bridging Island Plan 2022.*
12. The appellant's appeal is made against this decision.

SUMMARY OF THE APPELLANT'S GROUNDS OF APPEAL

13. The appellant's case is set out in the appeal form and expanded upon in a 'Statement from the Appellant' with appendices and a Final Comments document. The grounds stated in the appeal form are labelled A – I and are set out below:

Ground A: The Appellant disagrees with Reason 1 on the decision notice and is of the opinion that the proposed development does not result in an unacceptable overbearing impact to neighbouring land and buildings and is not contrary to Policies GD1 and GD6 of the Island Plan.

Ground B: The Appellant disagrees with Reason 2 on the decision notice and is of the opinion that the proposed development delivers amenity space that is appropriate in both qualitative and quantitative terms and is not contrary to Policies SP3, GD1 and H1 of the Island Plan, nor the Residential Space Standards SPG.

Ground C: The Appellant disagrees with Reason 3 on the decision notice and is of the opinion that the proposed development delivers appropriate space for play and is not contrary to Policies SP3, CI8 and H1 of the Island Plan.

Ground D: The Appellant disagrees with Reason 4 on the decision notice and is of the opinion that the proposed development delivers sufficient green infrastructure as an integral element of the design and is not contrary to policies GD6, GD8 and NE2 of the Island Plan.

Ground E: The Appellant disagrees with Reason 5 on the decision notice and is of the opinion that the proposed development does not unreasonably affect the level of privacy to land and buildings that owners and occupiers might expect to enjoy and is not contrary to Policies GD1, GD6 and H1 of the Island Plan.

Ground F: The Appellant disagrees with Reason 6 on the decision notice and is of the opinion that a Percentage for Art contribution might have been confirmed in dialogue with the Department during the consideration of the application or secured by a condition attached to the grant of planning permission, and that the application could be considered as in accordance with Policies SP4 and GD10 of the Island Plan.

Ground G: The Appellant disagrees with Reason 7 on the decision notice and is of the opinion that the development would not have a negative impact on the streetscene and is not contrary to Policies SP3, SP4 and GD6 of the Island Plan.

Ground H: The Appellant disagrees with Reason 8 on the decision notice and is of the opinion that the development would provide an appropriate level of well-integrated, accessible, and convenient off-street motor vehicle parking and is not contrary to Policies GD6 and TT4 of the Island Plan.

Ground I: The Appellant is of the opinion that, in accordance with Article 19 of the Planning and Building (Jersey) Law 2002, when taking account of the Island Plan as a whole and all other material considerations, planning permission should be granted.

14. The appellant's Statement provides more detail under each of these grounds, and includes submissions on housing need in Jersey. It refers to the importance of redevelopment proposals, such as the appeal scheme, to meeting strategic planning policy objectives and contends that a 'mature planning balance' approach should lead to granting planning permission.
15. At the Hearing, the appellant's case was made by Mr Nicholson (agent), with contributions from Mr Egglshaw (architect) and the appellant herself.

THE PLANNING AUTHORITY'S RESPONSE

16. The planning authority's case is set out in its officer report, a Response document, and Second Response document. These submissions provide rebuttals to the appellant's grounds and, in essence, maintain that the decision to refuse planning permission was soundly based and justified for the reasons set out in the Decision Notice. The conclusion to the officer report reads:

The Bridging Island Plan focuses new development within the Built-up Areas and seeks to make the most efficient use of land. There is a clear need for housing on the island and, in principle, the proposal would make a useful contribution to the mix of dwellings available.

Notwithstanding this, housing cannot be delivered 'at any cost' and the Department consider that this proposal takes a disappointing approach to site analysis, specifically by virtue of: the lack of consideration to neighbouring occupiers and occupiers of the proposal itself in respect of private amenity space; poor visual image from the public realm; and the lack of integration of existing green open space and provision of communal space within the proposal.

With due consideration to relevant planning matters, the proposal is not considered to acceptably satisfy the relevant policies of the Bridging Island Plan 2022 and, as such, is recommended for refusal.

17. At the Hearing, the planning authority's case was presented by Mr Gladwin (appeals officer) and Ms Gouveia (case officer).

SUMMARY OF THE VIEWS OF INTERESTED PARTIES

18. At the application stage, 21 representations were lodged. These included objections based on design, overdevelopment, the unsustainability of demolishing the existing properties, traffic concerns, impact on adjacent properties, and general disruption. I have also taken into account a further representation submitted by an interested party, Mrs Moore, at the appeal stage.
19. At the Hearing, a number of interested parties spoke, including Ms Wilton, who has a property to the south of the site, and Mr Kelly who lives at *Orchard Rise*, to the east of the site. I have noted, and taken into account, their contributions, which included matters concerning housing affordability, impacts of construction, alleged overdevelopment, parking, traffic and environmental harm.

INSPECTOR'S ASSESSMENT

20. At the outset, it is worth noting some high level policy context, the principle of demolition and redevelopment, and the need for new housing. These are matters which are largely common ground between the appellant and the planning authority, although there are differences of views about their weighting in any planning assessment.

High level policy context

21. First, the site is previously developed land located within the BUA and within the Primary Centre (St Helier), as defined in the BIP. Second, the BIP strategic policies SP1 and SP2 direct new development to such BUA locations. Third, policy H3 says that proposals for residential development will be supported in the BUA, to provide the new homes planned for in the BIP plan period. Fourth, policy PL1 further reinforces that sites within the Primary Centre ('Town') will provide land and development opportunities to meet much of the Island's development needs. Fifth, the site is within the GBZ, where policy GD8 sets specific landscape-based requirements for new development, and generally presumes against the development of new detached buildings, unless an exception test is met.
22. Taking these high-level policy matters together, there is much 'in principle' support for new housing development in this location, although, pushing in the other direction, policy GD8, applies moderation and control of any new development, in the interests of protecting and enhancing the GBZ.

Demolition/redevelopment

23. A further matter that requires some upfront analysis concerns the principle of demolition of the existing 2 dwellings, and the redevelopment to provide a greater number of homes, and, specifically, whether policy GD5 is complied with.
24. Given the thrust of the high-level policies summarised above, it is an inescapable fact that the BIP's development strategy is reliant upon 'recycling' of sites within the BUA. That is likely to involve demolition of existing buildings and structures. Given the BIP support for re-using buildings and the embodied energy within them, and avoiding the waste associated with demolition, policy GD5 provides the policy framework for testing such proposals.
25. It limits support for demolition and replacement to 3 circumstances: 1) where it is not appropriate in sustainability terms, and/or economically viable, to repair or refurbish the buildings; 2) where the proposed replacement building or part of a building represents a more sustainable use of land having regard to the density of existing and proposed development, overall carbon impact, waste generation, and the use and performance of materials and services; or 3) where there exists a demonstrable aesthetic and practical benefit to replace over refurbishment. The policy also requires such proposals to be supported by sufficient information to justify demolition. The framing of the policy is such that only 1 of the circumstances needs to be satisfied.

26. In this case, structural condition reports were submitted for each property and the Planning Statement provided some commentary. There was also some detailed correspondence² from the appellant's agent on this matter.
27. The evidence, and my own observations, indicate that both properties have faults and require significant investment to bring them up to modern day standards. However, many of the faults and issues are not unusual for properties of this age and type, and appear to have conventional remedies, although the works required to *Fieldings* would be more significant and, in the appellant's view, constitute 'a virtual rebuild' and would be costly. Based on the evidence, I am persuaded by the appellant's submission that *Fieldings* would not be economically viable to repair and refurbish, but I am not fully convinced that the case has been made for *Coppelia*, which has less serious issues and, being a detached family house, a more substantial end value post refurbishment
28. There is not therefore a compelling case under the first GD5 scenario to demolish both properties.
29. However, the benefit of replacing 2 older poorer performing properties with 6 modern energy efficient ones, represents a clear sustainability benefit, and the second circumstance is therefore satisfied. For completeness, I do not consider that there is any compelling aesthetic need to remove the existing properties, which are both pleasant, if unremarkable, and the third circumstance is not applicable.
30. Whilst I note some interested parties' views that the dwellings should be retained and refurbished, the planning authority and the appellant are in agreement that GD5 is complied with. Based on the evidence before me, I am satisfied that sufficient information has been provided to demonstrate compliance with one of the allowable exceptions under policy GD5.

Housing need

31. In addition to its specific grounds of appeal, the appellant has made detailed and comprehensive submissions concerning housing delivery, contending that actual delivery is a fraction of the housing numbers that the BIP aspires to deliver. It is claimed that the BIP aspires to a 'step-change' in housing delivery, but '*did nothing of a comparable magnitude to facilitate this*'.
32. Whilst some of these points are well made, an appeal under Article 108 is not the place to re-examine the soundness of the BIP, and in any event, a scheme involving a net gain of 4 units will make a limited contribution to overall housing supply.
33. That said, there can be no dispute that recycling sites within the BUA is an extremely important element of delivering much needed new housing supply. Although this does weigh in favour of the principle of the appeal proposal, I am also mindful that government published assessments³ identify that the greatest need is skewed more towards smaller properties,

² MS Planning letter to the planning authority dated 28 January 2024

³ Jersey's Future Housing Needs 2023-2025 published by Statistics Jersey (May 2023)

rather than larger family homes, although I noted Mr Nicholson's response in this regard, that he considered context and local character may point towards larger family units on the appeal site.

34. In any event, the appellant accepts that these strategic matters should not be 'entirely determinative'⁴ and that due regard should be had to other technical development management policies. It is those other policies that underpin the planning authority's refusal reasons, and the appellant's grounds of appeal, which are explored below.

Grounds A and E – Impact of the proposal on living conditions of occupants and neighbouring properties with particular regard to its physical impacts and overlooking/privacy effects.

35. Grounds A and E relate to refusal reasons 1 and 5 respectively and, as both relate to impacts on the living conditions for occupiers of neighbouring properties, they can be dealt with together. Reason 1 relates to alleged overbearing effects and reason 5 is concerned with overlooking and privacy effects.
36. The primary policy concerning impacts on these matters is GD1, which covers 'managing the health and wellbeing impact of new development'. The policy requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It cites some particular matters that developments must avoid, the most relevant in this case being: a) creating a sense of overbearing or oppressive enclosure and b) unreasonably affecting the level of privacy to buildings and land that owners and occupiers might expect to enjoy. There are similar considerations contained in policy GD6(3).
37. The appellant has referred to Jersey caselaw⁵ concerning how amenity assessments should be made in planning determinations. Whilst these cases related to an earlier Island Plan era, and policy GD1 has evolved somewhat in the intervening period, there is nothing to suggest a departure from the main principles that arise from those judgements. These include the recognition that assessments are contextual and relative, and that in locations where development is directed, i.e. the BUA, some harm from new developments is to be expected. The key consideration for the decision maker is whether any identified harm crosses the threshold of being 'unreasonable', which is not defined, and is a matter for the decision maker.

Physical impacts on neighbouring properties

38. The precise GD1 policy test here is whether the physical presence of the proposal in terms of its height, size, proximity and appearance, would create 'a sense of overbearing or oppressive enclosure' that would be

⁴ Statement from the Appellant (3 April 2024) – paragraph 61

⁵ Boyle and Kehoe -v- Minister for Planning [2012] JRC036; Winchester -v- Minister for Planning and Environment [2014] JRC118

unreasonable. Reason 1 alleges that it would cause such harm to properties to the north and west.

39. The planning authority's Second Response document identified that its specific concerns relate to *Trudene* to the west and Nos 19, 18 and 17 Millais Park to the north. I explore each in turn.
40. *Trudene* is a south facing traditional styled semi-detached house with an enclosed rear garden on its north side. The existing *Coppelia* house is set well back, such that its side (west) elevation mainly faces the rear garden of *Trudene*. The distance from the front corner of *Trudene* to the boundary was stated at the Hearing to be 5.4 metres and to the rear corner 5.9 metres. The appeal proposal would introduce a 2.5 storey building closer to the boundary, and with a slightly different orientation; the measurements would be 1.7 metres from the front corner (of unit 1) to the boundary and 1.5 metres from its rear corner to the boundary.
41. I have noted Mr Nicholson's submissions that, in his view, the relationship would be 'entirely appropriate' and whilst the perspective for *Trudene* residents would be different, it would not be harmful. However, in my assessment, the change is quite a significant one and the juxtaposition of the buildings is important. The appeal proposal, in addition to being much closer to the boundary, would be generally bulkier and imposing, as a result of the design incorporating the clipped hip roof, which presents a large expanse of building rising, effectively to 3 storeys, in very close proximity to *Trudene's* garden. For occupiers within *Trudene*, and making use of its rear garden, this effect would be overbearing, oppressive and unreasonable, in my view. There is therefore a conflict with policy GD1.
42. With regard to Nos 19, 18 and 17 Millais Park, these properties are to the north of the site and beyond the substantial boundary wall. No 19 is a detached 2 storey house, and Nos 18 and 17 are semi-detached houses. The planning authority is concerned about the close proximity of the proposed units 3, 4, 5 and 6 to the gardens and amenity space of the neighbouring properties to the north.
43. The new dwellings would be relatively close to the boundary but, having viewed it carefully from a number of angles and vantage points, and interrogated the digital model, I do not consider the resultant physical impact on the Millais Park dwellings would be unreasonable. The proposed dwellings on this part of the site, due to their design, have a limited first floor presence and relatively shallow pitched roofs. This means that when seen from the Millais Park properties, only the upper parts are visible above the substantial boundary wall. Gaps would be maintained between the first-floor elements, and much of the current views of sky would be maintained, although I am mindful that screen hedges and, possibly, privacy screens on the terrace areas, may add a little to the physical presence.
44. I am also mindful that the Millais Park properties position and arrangement of main living spaces and windows does not suggest that the presence of the buildings would be unduly oppressive or overbearing to existing habitable room spaces. There would certainly be some change, and some

occupants may view the building mass, and glazed triangular gable window features (which will illuminate at night) to be unwelcome, but, in this BUA location, I do not consider these effects to breach the 'unreasonable' threshold.

Privacy

45. With regard to *Trudene*, there is already a degree of overlooking from the first-floor windows of *Coppelia*. I went into those rooms and was able to see clearly into most of the rear garden amenity space of *Trudene* and windows in its rear elevation, including what appeared to be glazed doors to a ground floor living space and a bedroom window above, and its single storey projecting extension. The existing situation is therefore somewhat compromised in terms of privacy.
46. The proposed unit 1 does not include habitable room windows on its side (west) elevation which, on the face of it, could be regarded as an improvement in terms of privacy. However, the planning authority's main concern relates to the extensively glazed stairwell. I agree with the planning authority that these windows, at first and second floor level, being in close proximity to the boundary, would create uncomfortable overlooking effects and an unreasonable loss of privacy. At the Hearing, there was some discussion about the use of obscure glazing, which could be conditioned, and that would not be opposed by the appellant. This would certainly lessen the privacy loss. However, the silhouetting of people using the stairwell, particularly after dark and at the higher level, may still be perceived as intrusive and unneighbourly. I am unclear why this stairwell requires the amount of glazing shown on the submitted plans, and I consider that a different design approach could achieve a much more acceptable outcome with regard to the impact on the privacy of occupants of *Trudene*.
47. Concerning the Millais Park properties, the planning authority's main concern is potential overlooking from the raised balcony areas, which appear to be the main outdoor amenity spaces for units 3, 4, 5 and 6. These terrace areas are set several metres into the site, and are shown as having planters with a hedge on their northern sides, to act as a privacy screen. The planning authority is concerned about the efficacy of a hedge grown in a planter and the time it will take to establish. However, it would be possible to require physical privacy screens, in addition to the hedge, to avoid direct overlooking effects.

Ground A and E conclusions

48. With regard to physical impacts, the proposed relationship with the Millais Park neighbouring properties to the north would cause some harm to living conditions, but it would not cross the threshold of being unreasonable in this particular BUA context. However, the physical impact on *Trudene* to the west is, in my judgement, unreasonable, as it would present an excessive mass of building in close proximity to the boundary, which would be oppressive and overbearing.

49. I further assess that the proposal, as submitted, would result in unacceptable privacy effects through overlooking. Privacy screens to the terrace areas could be required by a planning condition to address overlooking northwards, but I remain unconvinced that the intrusive privacy effects on *Trudene* of the large stairwell windows on the west side of unit 1 could be fully mitigated by the use of obscure glazing (which could be secured by a planning condition), and consider the scheme to be unacceptable in this regard.
50. Whilst I do not share all of the planning authority's concerns, I have found clear conflicts with policy GD1 and GD6(3) and, therefore, I consider that grounds A and E should fail.

Ground B – Adequacy of amenity space

51. The planning authority's second reason for refusal alleges that the development would be inadequate in terms of private amenity space provision, falling short of the expectations of the Supplementary Planning Guidance (SPG) document titled '*Residential Space Standards*' (RSS), which was adopted in October 2023, and, consequentially, conflicts with policies SP3, GD1 and H1. This reason appears to relate to units 3 – 6 (and not units 1 and 2).
52. The RSS sets out design standards and specifications for new homes to ensure that new residential accommodation provides good quality homes. Its Guidance 4.2 states that proposals for residential development should meet or exceed the minimum space standards for private and shared open space, which are set out in tables within the RSS. It explains that the provision of private open space should be afforded a 'high priority'. With regard to developments of 'houses' it states⁶:

The provision of open space for houses should provide sufficient private space for relaxing outside, socialising with family and friends, secure children's play and clothes drying.

To enable this all houses should be provided with enclosed private gardens which are protected from public view with ground level access. In general, this is best achieved where they are behind the building line.

And continues:

Private open space for houses should be of sufficient size and utility to meet the needs of the potential number of occupants. In general, this is best achieved where they extend across the width of the house. A minimum of 30 sq m of private outdoor space is required for all two person houses and an extra 10 sq m should be provided for each additional occupant, up to four-person occupancy; and 5 sq m per additional occupant thereafter.

⁶ Paragraph 4.2.3 Residential Space Standards (adopted October 2023)

53. The adequacy of the external amenity space for proposed units 3 – 6 is contested by the main parties, both in terms of its quantitative and qualitative dimensions.

Quantity

54. The dispute on quantity arises from two different sources. The first is assumed occupancy, which impacts on the RSS quantum requirement. The second is how certain spaces should be interpreted, i.e., whether they should 'count' towards the requirements.
55. In terms of occupancy, the appellant's submissions⁷ define units 4, 5 and 6 as 4-person occupancy units, with unit 3 being a somewhat larger 5-person occupancy dwelling. However, the floorspace figures for the units are substantially higher than the RSS minimums for such occupancy. The officer report focuses on units 5 and 6 in particular, which it says should be treated as 6-person and 5-person dwellings respectively. I agree with the planning authority that occupancy should be informed by potential rather than single or double bed notations on a plan. The RSS internal space standard requires a double bedroom to be a minimum of 11.5 metres and, given that some of the notated single bedrooms exceed this size, the higher occupancy figure is the more robust figure to use. Therefore, the RSS external space standards requirements for unit 3⁸, unit 4 and unit 6 (5-person) would be 55 sq metres and, for unit 5 (6 person), it would be 60 square metres.
56. Concerning whether certain spaces should count, the main amenity space for these 4 houses would be in the form of a terrace at first floor level, which would measure 35 square metres for unit 3, and 28 square metres for units 4, 5 and 6. Whilst these would be good sized terrace areas, and clearly count towards the requirement, as they could fulfil many of the functions set out in the RSS, they are some way short of the required minimum standard. That then leads to a consideration of the ground level spaces.
57. Unit 3 would have a larger plot size and, in addition to the first-floor terrace, it would enjoy a good-sized garden on its south side, along with a more limited garden to the rear (north) of the house. I am satisfied that the useable space is comfortably in excess of the required 55 square metres.
58. With regard to units 4, 5 and 6, the external space in addition to the terrace areas, comprises a limited rear garden area and a path like strip to the west side of each unit. The appellant claims that the overall external space provision is 69, 62 and 58 square metres for units 4, 5 and 6 respectively. However, I do not agree that the pathway type strips to the west of the units should count as private amenity space. Discounting these areas would lead to shortfalls on units 5 and 6 and, by my calculation, there would be a marginal compliance on plot 4.

⁷ MS Planning letter to planning authority dated 16 November 2023

⁸ I have not counted the 'kid's bedroom/office' notated on the unit 3 plans

Quality

59. The qualitative characteristics of private amenity spaces are clearly important. In this regard, the RSS sets out a clear expectation that such spaces will be useable for a variety of purposes and will be private. I do understand the design rationale of the scheme, which seeks, on a relatively enclosed site, to elevate the main amenity space for these units to provide good sized terraces, which can be easily accessed from the main living space. However, combining that design approach with what are quite substantial family houses sat on limited sized plots, is not without some design consequences.
60. I do not doubt that the terraces have the potential to be attractive outdoor living spaces, but on plots 4, 5 and 6, the large ground floor footprints of the dwellings, and the access and parking areas, leave little space available. What space does remain is very limited and compromised. I do not dispute that some of these small areas might fulfil some limited function, such as drying clothes or for younger children to play in, but it does not add up to the quality that the RSS and related BIP policies aspire to. I am also mindful that areas of the rear gardens, as well as being very limited in size, will be heavily shaded for long periods and they are not well related to the internal living spaces.
61. An underlying factor here is that the appellant has chosen to pursue a scheme of relatively large family homes and it is therefore reasonable to assume active outdoor play (balls games etc) of children would be a regular occurrence. An elevated terrace is not altogether appropriate for such activity, and I am mindful that the RSS does quite clearly guide developers to ground floor rear garden solutions.
62. A further qualitative issue relates to privacy, as the RSS expects gardens to be private. Although the terraces for units 3, 4 and 5 would get a degree of screening and relative seclusion from their neighbouring buildings to the east, unit 6 would have its terrace in full view of all passersby on Le Mont Pinel. Indeed, the appellant's 3D visual⁹ appears to demonstrate that users of the terrace would be on full public show, akin to being in a goldfish bowl. This conflicts with the RSS requirements.

Ground B conclusion

63. I conclude that the private amenity space for units 4, 5 and 6 would be substandard in terms of quantity (units 5 and 6) and quality (units 4, 5 and 6), and would fail to provide the required space to achieve appropriate living conditions for future occupiers. This conflicts with the RSS and with the relevant provisions of policies SP3, GD1 and H1. Therefore, the appeal under ground B should fail.

⁹ On Drawing No MSP-3164-PL04Rev A

Ground C – Shared space for play

64. Policy CI8 requires development proposals providing between 5 – 10 family homes (2+ bedrooms), to provide appropriate communal space for play on-site, where possible, or otherwise make a contribution to the provision of new or enhanced space for play within five minutes safe walking distance, or 500m from the site. The RSS indicates that this shared open space should be at least 5% of the site area and 'located and designed in a way that will be proportionate and appropriate [to the community it will serve]'.
65. The submitted scheme has included an area notated as 'shared space 75 sq metres' to the south of the parking spaces serving plots 1 and 2. Whilst this area may be 1 square metre short of the required 5% (which would be 76 square metres), the greater concern is that it would be very poorly located to serve residents of units 3 – 6. As there is no connecting footway link from the eastern part of the site to the western part, occupants of 4 of the 6 proposed homes could only access the space by undertaking a near circuit walk eastwards out of the site and around Le Mont Pinel, to gain access via the *Coppelia* shared drive, a distance of several hundred metres. The result of this separation would be that the space is most unlikely to be actively used by most of the scheme occupants it is intended to serve. The space would therefore not be appropriate.
66. I do appreciate that accommodating play space on sites at the lower end of the qualifying threshold may be challenging, but this element of the proposal is simply not acceptable, and indeed would be wasteful of land, allocating it for a purpose which is unlikely to achieve the RSS and BIP policy objectives. An alternative, allowed for under policy CI8, may be a financial contribution for an enhancement of an existing park, but that is not the approach adopted within the proposal, as submitted.
67. I conclude that the scheme's proposed shared space for play would be inadequate and fall short of the requirements set out in the RSS. This results in consequential conflicts with policies CI8, H1 and SP3, which require new housing developments to include appropriate shared external spaces to serve future occupiers. In my assessment, the ground C appeal should not succeed.

Ground D – Green Assets and Green Infrastructure

68. The planning authority's reason 4 states that, in the absence of detailed landscaping plan, the proposal fails to adequately demonstrate the delivery of green assets and sufficient enhancement of green infrastructure (GI) as an integral element of the design, as required by BIP policies GD6, GD8 and NE2.
69. This ground of appeal actually opens up quite a complex matrix of pushes and pulls from different policies.
70. Much of the appeal site comprises garden land. I have noted the BIP glossary definition of 'green infrastructure', but I find it unclear on the point of whether its reference to 'gardens' includes private domestic gardens.

Taking a cautious view, I would regard the private garden areas of the site as potentially comprising green infrastructure, and that stance would be consistent with most UK planning regimes, although, of course, there is no obligation on domestic garden owners to maintain and manage them as GI. Nonetheless, policy NE2 generally presumes to protect and improve GI assets. Yet at the same time, the BIP has a strong strategic focus of directing new development, including new housing, to the BUA and clearly such development has wider public benefits. More complexity is added by the GBZ designation within this part of the BUA, where policy GD8 which, whilst not overriding the BUA focus for new development, does mediate and moderate the type of development in such locations, and actually presumes against new detached buildings, unless an exception test is met, which can include overall benefit to the community. This is therefore one of those decision making scenarios where it is not possible to satisfy every policy.

71. Based on the evidence, which includes an ecology report and species protection plan (SPP), the existing GI on the site is of limited value in terms of habitat being relatively ordinary, somewhat overgrown, garden. Moreover, given its context, being largely enclosed by existing buildings, it makes no discernible contribution to the landscape character in this part of the GBZ, nor would the development be particularly visible (if at all) in longer views and it would certainly not break the skyline. I therefore find the diminution of the site's physical GI area, and tension with GBZ policy GD8, that will arise through the scheme, to be matters of relatively limited weight in the overall planning balance. That said, the design approach and type of development proposed, notably on the eastern part of the site, is rather land hungry and leaves very little ground available for GI and landscaping. Indeed, the vast majority of the eastern part of the site is absorbed by large building footprints, paths, parking spaces and the access drive. The open areas that remain are typically small and narrow and some will be heavily shaded, and the suitability of these small spaces for effective landscaping and GI is unclear.
72. Having considered the parties' submissions on this matter, I share the planning authority's concern that the scheme does not sufficiently demonstrate that GI and landscaping has been fully considered. Whilst I do not consider that the cited policies should be interpreted as preventing an appropriate development that intensifies the use of this site, or that such a development must maintain equivalent garden areas, there is a clear requirement, notably under policy GD6(6), for GI to be an integral element of the design of a development. Based on the information before me, I am not convinced that is the case with the currently submitted proposal.
73. I conclude that ground D should not succeed.

Ground F – Percentage for art

74. Reason 6 relates to the absence of a 'percentage for art' contribution, and alleged consequential conflict with policies SP4 and GD10. However, the appellant has confirmed that there is no objection to including such a requirement in any planning approval.

75. I note the planning authority's submission that the application lacked a public art statement and that, given its refusal stance on other matters, the issue of a public art contribution remained outstanding. However, it is generally not good practice to include refusal reasons that are capable of being dealt with by planning conditions. It would be more appropriate to avoid such reasons in future.
76. Given that this matter is capable of being dealt with by a planning condition, which would secure compliance with the relevant provisions of policies SP4 and GD10, ground F should succeed.

Ground G - Streetscene

77. Reason 7 alleges that the absence of a 'road facing presence' results in a negative impact on the streetscene, contrary to the high standard of design requirements set out in policies SP3, SP4 and GD6.
78. On my site inspection, I walked up and down Mont Pinel and I observed that a 'road facing presence' is not actually a defining feature of the street. There are some street-facing dwellings, including *Fieldings*, but there are others which are side on to the road, along with long stretches of granite walls, fences, car parking and garaging. It is a mixed and varied streetscene.
79. Given this context, I see no design imperative to front a dwelling onto Mont Pinel. Notwithstanding my reservations about the unit 6 design for other reasons (see ground b above), the appellant's 3D visual does demonstrate how a modern design, combined with high quality materials and detailing, can make a successful streetscene contribution in this location.
80. On this specific issue of streetscene impact, I find no conflict with policies SP3, SP4 and GD6, and ground G should succeed.

Ground H - Parking

81. The planning authority's eighth reason for refusal alleges that the parking arrangements are inadequate, which it says is contrary to policies GD6 and TT4. Those policies, amongst other matters, require developments to make provision of safe access, movement and parking and that such provision is accessible and convenient and well integrated with the development.
82. The proposal would include 4 car parking spaces to serve units 1 and 2, which would be accessed from the private drive that currently serves *Coppelia*. There is no dispute concerning this level of provision, and its proposed arrangement, which is acceptable.
83. Units 3 – 6 would be served by 7 parking spaces, laid out within the proposed grasscrete access/parking court to the south of the dwellings. Although not specified in the refusal reason, it became apparent through the appeal process that the planning authority's objection relates to an internal

manoeuvring issue. Specifically, it is concerned that the tracking drawing¹⁰ show that vehicles manoeuvring to and from certain parking spaces would not have enough space, and this could result in vehicles crossing into the space in front of the homes. I do agree with that interpretation of the tracking drawing and it would be particularly undesirable in the case of unit 4, as the pinch point is close to its primary (front door) access, which could result in pedestrian/vehicular conflict and safety issues. The problem is also likely to be heightened if parking spaces are occupied and also where larger vehicles are being manoeuvred. Although not raised by the planning authority, I also observe that some of the spaces at Le Mont Pinel end of the site would be difficult to access and exit, if other spaces are occupied.

84. I have noted the appellant's submissions on this ground, including an absence of objection on these specific matters from I&E Transport and the Parish of St Helier Roads Committee (PSHRC). In my view, the objection does feel like a resolvable issue which, perhaps, in other circumstances, would have been addressed by some officer negotiation. However, based on the information before me, I do agree with the planning authority that the submitted parking layout has shortcomings which would need to be addressed to achieve compliance with policies GD6 and TT4. This ground of appeal should therefore fail.

Ground I – Article 19 planning balance

85. See conclusions and recommendations section below.

OTHER MATTERS

86. I have noted a number of references to development density and to the Density Standard SPG (adopted July 2023), along with policy H2. The SPG and policy H2 seeks to ensure optimum efficiency in the use of land. The SPG seeks a minimum density of 50 dwellings per hectare (dph) in the town of St Helier. The appellant explains¹¹ that the scheme density is around 40dph and includes density measurements in the surrounding area, to demonstrate that it is consistent with its locality.
87. Whilst I agree that, given the GBZ designation, this is a site where the achievement of the 50dph minimum density set out in the SPG may not be a critical requirement, the relatively low density achieved by the proposal is in large part due to the design approach. A scheme dominated by relatively large footprint detached family homes is inevitably going to result in a lower density than other alternative forms of development.
88. I have noted that the scheme would deliver some localised traffic benefits, through widening and a pull-in space, on Mont Pinel, and these features appear to have some local and PSHRC support. I have also noted the relative proximity of the Listed Douro Terrace buildings, but I am satisfied that the development would not have any impact on the setting of these heritage assets.

¹⁰ Stantec drawing number 5001-007Rev P01

¹¹ MS Planning letter to planning authority dated 16 November 2023 and the Design Statement February 2023

PLANNING CONDITIONS AND PLANNING OBLIGATIONS AGREEMENT

89. At the Hearing I held a 'without prejudice' discussion on planning conditions and Planning Obligations Agreement (POA) matters.
90. Should the Minister be minded not to accept my recommendation and grant planning permission, a range of planning conditions would be necessary and reasonable. These would include requirements in respect of external materials; foul and surface water drainage; revised parking details to address the pinch point concerns; privacy screens for the first floor terraces; obscure glazing to the stairwell windows on the west elevation of unit 1; external lighting details; landscaping details and landscaping maintenance; provision of public art; target energy rate compliance; EV charging points; and implementation of the species protection plan.
91. POA requirements would include contributions to the Eastern Cycle Route, road safety measures and, if the Minister was so minded, a play space contribution pursuant to policy CI8.

CONCLUSIONS AND RECOMMENDATION

92. This is a complex appeal, in part arising from a long list of refusal reasons, each requiring careful analysis and assessment. At first sight, a Decision Notice that contains 8 refusal reasons might be seen to signal a development proposal that is hopelessly flawed.
93. However, the principle of the development is soundly based. The appeal site is within the BUA and not currently optimally used. It is therefore in a sustainable and preferred location for new development and represents a legitimate opportunity for a more intensive development. Whilst the GBZ and the associated policy GD8, creates a tension with such development, the enclosed nature of the site means that it could be developed without conflict with the main planning purpose of the GBZ designation. The sustainability case, to demolish the existing dwellings and redevelop the site for a greater number of more efficient dwellings, has been successfully made under policy GD5. Such a redevelopment would help contribute to identified housing needs, although I must record that the mix of homes proposed, being larger detached family homes, does not follow the current evidence in terms of most needed new homes in Jersey.
94. There appeared to be a large degree of consensus between the parties on most of these matters of planning principle. The main disputes in this appeal relate to detailed and technical matters.
95. On the issue of amenity impacts arising from the proposal's physical impact and privacy effects, I do not share all of the planning authority's concerns, and some could be addressed by mitigations that could be secured by a suitable planning condition. However, I have found clear conflicts with policy GD1 and GD6(3), notably regarding the impact on *Trudene* to the west and, therefore, I consider that grounds A and E should fail.

96. With regard to private amenity space provision, I attach weight to the RSS guidance which is relatively recently adopted and well founded, with a clear planning objective of ensuring that new housing achieves the standards required for future occupants. I assess that the private amenity space for units 4, 5 and 6 would be substandard. This conflicts with the RSS and with the relevant provisions of policies SP3, GD1 and H1. The ground B appeal should fail. I have further found that the scheme's proposed shared space for play would be inadequate and falls short of the requirements set out in the RSS, which results in conflicts with policies CI8, H1 and SP3; ground C should not succeed.
97. Concerning ground D, I have concluded that the scheme does not sufficiently demonstrate that GI and landscaping have been fully considered, as required by policy GD6(6). Ground D should not succeed.
98. However, I have found that the refusal reason related to public art could be addressed by a planning condition, and I assessed Le Mont Pinel streetscene design implications to be acceptable. In my assessment, appeal grounds F and G should succeed.
99. Whilst almost certainly resolvable by some minor layout reconfiguration, there are currently outstanding issues with the car parking layout, which means that policies GD6 and TT4 are not fully complied with. Ground H should not succeed.
100. In terms of the overall planning balance, it will be apparent that whilst I have assessed that 2 of the appellant's grounds of appeal should succeed, these are matters of quite limited weight. There remain substantial technical objections to the proposal, and associated conflicts with BIP policies, to which I attach much greater weight. When considered in the round, I conclude that planning permission should be refused.
101. My formal recommendations are:
- A. That the appellant's grounds of appeal A, B, C, D, E, H and I should be dismissed.
 - B. That the appellant's grounds of appeal F and G should succeed.
 - C. That the decision to refuse to grant planning permission under reference P/2023/0799 be upheld, but that the Decision Notice be amended to delete reasons 6 and 7 (and the consequential renumbering of reason 8).

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI