

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Department of CYPES

Planning application reference number: P/2023/1014

Date of decision notice: 14 March 2024

Location: 1 Castle View, Westmount Road, St. Helier, JE2 3LP

Description of development: RETROSPECTIVE: Change of use of existing 1No. 4 bed dwelling to Class J-Residential Institution

Appeal procedure and date: site inspection and hearing.

Site visit procedure and date: accompanied 30 July 2024.

Hearing: 1 August 2024

Date of report: 30 August 2024

Procedural matters

1. An objection has questioned the validity of the appeal. The appeal was lodged on 10th April 2024 and notice of this was published in the Jersey Gazette on 18 April 2024. As the appeal was considered to include sensitive information, the documents were temporarily removed from the public register to allow redaction of this information. A new notice was published in the Jersey Gazette on 30 May and the period for comments was extended to recognise this. Evidence of display of a site notice has also been supplied. Based on my review of the information including the number of representations received at appeal stage, I am satisfied that no party has been prejudiced or prevented from commenting on the appeal.

Introduction and relevant planning history

2. This appeal seeks retrospective permission for a change in use of 1, Castle View from a residential dwelling to a Class J-Residential Institution.
3. The property forms one of the homes which were acquired by the States of Jersey through compulsory purchase as part of proposals for works to Overdale Hospital. Following changes to those plans, it has been occupied by a young person in care of the State and their support workers. The planning department has indicated that this constitutes a change in use, necessitating an application for planning permission.
4. The Planning Committee resolved to refuse the application at its meeting of 22 February 2024 and confirmed this decision on 14 March 2024. This was counter

to the recommendation of the Planning Officer to approve the application.

5. The Decision Notice lists a single reason for refusal:
“By virtue of the property’s location and its proximity to neighbours, the proposed use fails to demonstrate that it supports and enables the creation of sustainable communities where people can know their neighbours and have a sense of belonging, and fails to adequately consider the potential health, wellbeing and wider amenity impacts it may have on neighbouring properties. It is therefore contrary to Policies SP7 and GD1, H7 and TT1 of the Bridging Island Plan 2022.

The appeal site and proposed development

6. The property is located at the entrance to a small residential cul-de-sac. It comprises a 2 ½ -storey, detached family home. It has four bedrooms, two of which are ensuite, lounge, dining room and family bathroom. The property has a fenced, private amenity space to the rear and a parking area to the front.
7. Castle View is a small residential development comprising a total of five detached dwellings. These are located to the south and east of the appeal site. A more recent residential development of five detached properties, Hillcrest, is located to the north and north-east of the appeal site and utilises the same access from Westmount Road as Castle View.
8. The proposals only seek a change in use from private domestic use to a Class-J Institution to home a single young person and their carers. No physical changes to the property are proposed.
9. The States of Jersey also own other properties in Castle View and Hillcrest. It was confirmed at the hearing that this application seeks permission for a change in use to 1, Castle View only.

Case for the appellant

10. In the appellant’s view the Planning Committee did not consider the individual who is being fostered by the States of Jersey and the well-being that has been created in the home for this individual over the past 9 months.
11. In reaching its decision, the Committee did not consider the following policy elements:
 - Policy SP7 - Planning for the community need, including putting “Children First”.
 - Policy GD1 - Managing the health and well being in respect of the sense of belonging for the occupier.
 - Policy H7 - Supported Housing - which supports independent living and houses adapted for residential care.
 - Policy TT1 - Integrated safe and inclusive travel - the site has access to bus services. There is parking for 4 cars, with access to further parking at the neighbouring Overdale Hospital site.

Case for the Planning Committee and Infrastructure and Environment Department (‘the Department)

12. The Planning Committee visited the appeal site prior to making its decision and fully considered all the background papers and plans, together with all material planning

considerations.

13. It is acknowledged that the Island Plan supports new or extended health and social care facilities and the supply of supported housing within the built-up area, but more weight should be given to the consideration of neighbours and the impact that such a change of use may have on their wellbeing, and the amenities that the occupiers might expect to enjoy.
14. There are discrepancies in the documentation in relation to the number of car parking spaces available. Policy TT1 was included in the reasons for refusal in reference to insufficient car parking on site. Overdale hospital will not always be available for overspill parking.

Consultations

15. The responses from Environmental Health (16 October 2023) and Jersey Fire and Rescue (12 December 2023) expressed no objection.

Representations

16. The Planning Register lists ten responses from nine addresses. All but one of these objects to the proposal, with one seeking further information. Objections relate to:
 - Impact on the character of the area - concern for neighbour safety.
 - Noise and disturbance.
 - Insufficient parking.
 - Retrospective nature of the application.
 - Residence is not suitable for the occupier.
 - In breach of title deeds.
 - Loss of privacy.
 - No utility and garage as stated in application.
17. The appeal generated nine responses from eight addresses, including two responses from individuals who had not commented on the application. All object to the proposals and raise similar points made to the application.

Inspector's assessment

18. Article 19 of the Planning and Building (Jersey) Law 2002 as amended states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Planning permission may also be granted for proposals that are inconsistent with the Island Plan if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.
19. The current Island Plan is the Bridging Island Plan, March 2022 ('the Island Plan'). Having regard to the policies within that plan, the reasons for refusal and the grounds for appeal, and points raised in representations, I conclude that the determining issues in this appeal are:
 - The principle of change in use of a private dwelling to a residential institution.
 - Effects of the proposals on neighbouring amenity.
 - Effects of the proposals on parking and traffic.

The principle of change in use of a private dwelling to a residential institution

20. The property is located within the built-up area. Policy H7 - Supported housing provides support for the development of supported homes in the built-up area. Whilst the Department suggested at the hearing that this policy may not be particularly relevant for the type of residential institution proposed, that does not accord with its assessment report submitted to the Planning Committee. It also appears to me that the policy wording allows for a broad interpretation of provision of supported care, which would extend to include that proposed. Policy CI2 - Healthcare facilities, also provides support for the development of new or extended health and social care facilities within the built-up area and within the designated 'Our Hospital development site'. The appeal site lies within the identified area.
21. During the hearing, the Department referred to Policies H3 - Provision of homes and H4 - Meeting housing needs as providing context for the Planning Committee's decision. The property was purchased by the State at a time when it was thought that the land may be required for widening the road as part of the proposals to upgrade the hospital. However, there is a demand for family homes, and it was suggested to me that the Planning Committee may have felt that private housing was a preferable option to that proposed. I have been presented with no evidence to support this view. The minutes of the Planning Committee meeting make no reference to alternative uses and the written statements make no reference to this as justification for the decision. I have therefore given it little weight.
22. Subject to my comments about the site-specific effects of the proposed change in use, I conclude that there is policy support for the proposed change in use from a domestic property to a residential home.

Effects of the proposals on neighbouring amenity.

23. Policy GD1 - Managing the health and wellbeing impact of new development sets out that all development proposals must be considered in relation to their potential health, wellbeing, and wider amenity impacts. It should not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. Amongst other things, development should not unreasonably affect the level of privacy to building and land that owners and occupiers might expect to enjoy.
24. The proposal would re-use an existing domestic dwelling, without any physical modification to the structure. The proposals would not, therefore alter the relationships between buildings or lead to any change in levels of privacy to building or land of the neighbouring properties.
25. Occupancy levels would be consistent with what would be expected of a family home. The appeal site is a detached property, albeit relatively close to other houses within the cul-de-sac. Whilst I accept that the cul-de-sac is a relatively quiet residential area, inevitably, residents will be aware of activity at neighbouring properties. A certain degree of tolerance between neighbours of low levels of noise and disturbance as a consequence of daily life is to be expected. Whilst I was made aware of previous examples of anti-social behaviour, I do not consider that the use of a family-sized dwelling as a residential institution for a single child to be an inherently noise-generating activity.
26. I have also been directed to Policy SP7 - Planning for community needs. This aims to ensure that all new development demonstrates that it is helping to meet the

identified needs of the community. Part 3 of the policy notes that the design of new development should contribute to the sense of place; and support and enable the creation of sustainable communities where people can know their neighbours and have a sense of belonging.

27. I have considered the comments made in representations and articulated by neighbours at the hearing concerning instances of anti-social behaviour, which has led to some residents feeling uncomfortable, distressed, or threatened. I understand that these aspects may have contributed to the Planning Committee's conclusions that the proposal would detract from the sense of belonging. Whilst I have taken account of the concerns of residents, I am mindful that anti-social behaviours could arise even if the property were in private residential use and that there are measures to address this. In addition, I understand that some of this distress has arisen from issues related to traffic and parking, which I consider further below.
28. I was struck by the strong sense of community expressed by those residents who attended the hearing. I am not persuaded that the proposals would detract from this. Indeed, it seems to me to be consistent with the aims of Policy SP7 which all residents of the area, including the occupants of the appeal site, could benefit from.
29. For the reasons set out above, I am content that the proposals would not unreasonably harm the amenities of occupants and neighbouring uses nor detract from the sense of community and hence would align with both Policy GD1 and SP7.

Effects of the proposals on parking and traffic

30. During my site inspection I saw that there is private parking associated with the property. This appears, to me, to have capacity for two cars, with the possibility of fitting a third car at right angles across vehicles.
31. The appellant has explained that there are usually two support workers at the property at one time and that there is a hand-over period between shifts. I understand that there is also a 'resident' car for use by the occupants. Other health and education professionals make visits. Whilst I accept that there is access to public transport, there is still the potential for parking needs to exceed the available spaces. In addition, the number of vehicle movements associated with these visits is different in character to that of domestic residential use.
32. I saw that there is no visitor parking within the cul-de-sac and there are restrictions on the length of time that cars can use the spaces available on Westmount Road. Residents have reported difficulties in accessing their own homes owing to parking issues. The appellant recognises the constraints on parking spaces and has made provision for additional spaces to be made available a short distance away within the grounds of Overdale Hospital. However, this is a temporary measure with no indication as to how long it would remain a viable option.
33. The reasons for refusal quoted Policy TT1 - Integrated safe and inclusive travel. This policy addresses how a development would contribute to safe and integrated travel, inclusive and accessible to all users and modes of transport and its effect on the integrity and functioning of the island road network. It also states that development which has the potential to generate significant amounts of movement must be supported by a transport assessment and a travel plan, as appropriate. No transport assessment or travel plan has been provided.

34. I find that the current parking arrangements are unsatisfactory for a residential institution, which by its nature is likely to generate more vehicle movements and demand for parking than a domestic residential property. As no long-term solution to traffic movements and parking has been identified, I am not persuaded that this is an issue that could be controlled through a condition.

Other matters

35. I note the Planning Committee's concerns that there appeared to be no evidence of a site selection process or risk assessment for the proposed change in use. The appellant has provided details of the assessments that were undertaken in terms of considering the suitability of the appeal property as a safe and appropriate home for a young person in their care. These appear child-centred, rather than assessing any risks to the wider community. However, I am not aware of any policy or procedural requirement that requires a risk assessment to accompany an application for a residential institution. Had that been an issue of concern I would have expected this to have been identified as a requirement during the discussions with the Department.
36. Article 3 (1) of The Planning and Building (General Development (Jersey) Order 2011 allows for a change in use of a building to another use, provided it falls within the same use Class. If the appeal is successful, the lawful use of the building would be any purpose defined within use Class J - Residential Institutions. These are set out in Schedule 2 to the Order as: use as a home or institution providing for boarding, care and maintenance of children, old persons or persons under disability; a convalescent home; a nursing home; a hospital; a refuge; and a hostel. I consider that there would be differences between these activities in terms of their acceptability at the appeal site, which is located within a residential cul-de-sac. I am content that a condition could be applied to limit use to that specified.
37. Reference was made to a deed of covenant restricting the use of the properties. That is a separate matter unrelated to the grant of planning permission.

Conditions

38. The Department's original assessment report, which recommended approval of the application, did not suggest any conditions beyond the standard conditions.
39. For the reasons set out above, if the appeal is successful and planning permission granted, I recommend that a condition be appended to limit the use of the property specifically for the care of children in a domestic setting. This should set a maximum for the age of the occupant (e.g. 18). It should also remove the permitted development rights to prevent a change of purpose within the same use Class.
40. I also recommend a condition to limit the number of children who can occupy the property. I understand that the current application is to enable occupancy by a single individual. However, there may be occasions where it might be beneficial to keep siblings together. A limit of a maximum of three related children would seem appropriate for a dwelling of this size.

Conclusions

41. The proposal seeks a change in use of an existing property. Based on my assessment, there is policy support for supported housing which provides a home for a child in the States' care, at a location within both the built-up area and the "Our Hospital development site." Whilst I note the concerns of residents and the Planning Committee in terms of effects on the health and well-being of other residents of the neighbourhood and effects on community, for the reasons set out above, I conclude that the proposals would be consistent with Policies GD1 and SP7 of the Island Plan. Nevertheless, the proposals would generate levels of traffic and a demand for parking above what might usually be expected in a residential setting. In the absence of a transport assessment and travel plan there is no evidence that these matters can be addressed satisfactorily long-term, consistent with Policy TT1.
42. It is not necessary for a proposal to satisfy each and every policy within the Island Plan. As the preamble to the Island Plan explains "When considering whether a development proposal is in accordance with the plan, it is important to have regard to the plan as a whole and not to treat a policy or proposal in isolation. It is likely that several policies will be relevant to any development proposal and that some policies can, seemingly, pull in different directions. This is not a flaw in the system, but simply a product of a complex and wide-ranging plan, and a reflection of the natural tensions that arise in seeking to meet the community's economic, social and environmental objectives. It is for the decision maker to carefully balance the planning merits of a development proposal with the policy requirements of the plan."
43. On balance, I conclude that the proposals would not be consistent with the plan as a whole.

Recommendations

44. I recommend that the appeal should be dismissed, and that planning permission should be refused.
45. In making this recommendation, I am aware that the outcome of this appeal will have a bearing on the health and well-being of a vulnerable young person who is in the care of the State. Failure of the appeal would necessitate finding a new home for them, which I appreciate may be problematic given the severe shortage of suitable accommodation on the Island. The Minister may wish to balance these social considerations against the planning harm arising from the concerns relating to traffic and transport.
46. If the Minister decides to disregard my recommendation and grant planning permission, then I recommend that this should be subject to conditions in relation to removal of permitted development rights for change in use within a use Class, and restrictions on the age and number of young people who can occupy the building, as set out in paragraphs 38 - 40 above.

Sue Bell

Inspector 30 August 2024