

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

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

Report to the Minister

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

Appellant: Sally Sparrow

Planning Permission Reference Number: P/2024/0541

Decision notice date: 19 September 2024

Location: Cap Verde House, La Rue du Cap Verd, St. Lawrence, JE3 1EL

Description of development: PART RETROSPECTIVE: Reconfigure pedestrian entrance to West Elevation to include new wall with railing over.

Appeal procedure and dates: accompanied site inspection, 14 January 2024; hearing, 15 January 2025

Date of report: 20 February 2025

Introduction

1. This is a third-party appeal by Sally Sparrow against a decision to grant planning permission for works to Cap Verde House, St. Lawrence.
2. Permission was granted by the Infrastructure and Environment Department using delegated powers on 19 September 2024.
3. A summary of the cases presented by each party during the application and the appeal are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

The appeal site, planning history and proposed development

4. The appeal site is a two-storey plus basement detached property located on a private road (La Rue du Cap Verd) within the green zone. The private road provides access to the dwelling immediately to the northeast of the appeal property (Chantry) and three further properties located beyond these.
5. The property lies adjacent to a hairpin bend on the road. Vehicles passing the house are required to turn back on themselves to continue along the road, up a steepish gradient, to access the three properties located there.
6. The main access to the house is via a door in the northwestern elevation. This is reached by steps directly from the private road. The proposal seeks to introduce a low granite boundary wall with railings, to create a defined sense of enclosure and separate the access from the road.

Case for the appellant

7. The appellant's grounds of appeal can be summarised as:
 - The planning officer appears not to have visited the site and hence would not have been able to assess the effect of the proposals on the turning area.
 - If the planning officer did visit, they did not address the effect of the reduction in size of the turning area on all vehicle movements including emergency vehicles and how this would be affected by cars parked in the turning area.
 - The officer failed to apply policy GD6 to assess the impact of the development on neighbours and its integration into the area and also failed to apply the correct test, which is of unreasonable harm (not serious harm).
 - The officer failed to explain why permission should be granted retrospectively.
 - The officer failed to address that Cap Verde is a listed building, to apply policy HE1 and to have regard to the opinion of the historical environment team that the development would affect the informality of the property.
 - The officer failed to address the inconsistency in submissions as to whether the purpose of the application was to improve the façade or for safety reasons.
 - The officer failed to have regard to policy HE3.

Case for Infrastructure and Environment Department ('the Department')

8. Points can be summarised:
 - The planning case officer visited the site on 18 September 2024 and was able to assess the impact of the development on the turning area and road.
 - The Department has considered the issue of the turning area and parking and concluded that there is ample space, even with cars parked surrounding the turning area, to safely turn a vehicle.
 - The Fire & Rescue - fire safety team confirmed they had no objection to the planning application and that the works would not impede them from making access up the road to properties.
 - The test set out in policy GD1 was fully taken into account in the consideration of the application.
 - Policy GD6 was fully considered and the Department considered that the application complied with this policy.
 - The part retrospective nature of the works was fully taken into account by the Department. The description of the development was changed to reflect the part retrospective nature of the application and was noted in the Department report.
 - The listed building status of properties was considered, and comments of the heritage environment team were fully taken into account. In the Department's opinion the principal test in Policy HE1 is that proposals must protect its special interest and then should seek to improve the significance of listed buildings and places. The Department considers that 'must' is a requirement to do so, whilst 'seek' is not mandatory. The Department concluded that the proposals protect the special interest of the listed buildings and their settings.
 - The stated reasons for an application are immaterial to the consideration and determination of an application.
 - Policy HE3 relates to Conservation Areas. This policy is not relevant as none have been designated in Jersey.

Case for the Applicant

9. The applicant's responses to the grounds of appeal can be summarised:
- The planning officer and the HET made visits to the site.
 - The drawings provide a true reflection of the proposed wall.
 - There is space to turn. The client made their own request for the Emergency services to visit and assess the proposals and they concluded that emergency access would not be altered. The full body of the normal turning circle is shown on the drawings.
 - The formal turning area has not been affected, only the sequence of arrival approaching the turning area has been adjusted in geometry. If neighbours have chosen to manoeuvre before the designated area, then that is their own choice, but a perfectly adequate turning area is maintained a few yards away.
 - As part of previous approved works the applicant has undertaken some essential drainage works which led to excavation works. Some foundation works have been carried out where an initial course of blocks have been laid, to see if it works (at the client's own risk).
 - There are no known inconsistencies. The application addresses both the historical links, character and safety where the design follows the natural geometry of boundary lines and preserves the building's integrity.

Consultation responses

10. The **Historic Environment Team** issued a response of 'More Information' (4 July 2024). This notes that Cap Verde House is a Grade 3 listed building. The proposals are also within the setting of The Chantry, a Grade 2 listed building. The response states: "*Cap Verde House is located in a secluded location with a degree of informality and semi rural character contributing much to its significance. The proposed boundary wall, gate and associated landscaping would be within the extent of listing. Some of this informality would unfortunately be lost by introducing what is a more suburban feature of a boundary enclosure. The HET accept nonetheless that it is not uncommon for owner to wish to have some form of boundary enclosure to their property and would note that the design approach does consider some of the local features within the area. Any negative impact be assessed (sic) within the wider planning balance.*"
11. The response from **Fire Safety - protection** is in the form of an undated email which appears to have been requested by the applicant, rather than the Department. It was uploaded to the Planning Register on 13 August 2024 and confirms that the works would not impede access up the road.

Representations

12. Nine representations from five individuals are listed on the planning register. These raise similar points to those made by the appellant, as summarised above. Additional points raised are that there is a right of access over the land owned by Cap Verde House and that no heritage impact statement has been provided.

Key Issues

13. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states "*In*

general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan.” The current Island Plan is the Bridging Island Plan, dated March 2022 (‘Island Plan’).

14. Having regard to the provisions of the Island Plan, the grounds of appeal and other material considerations, I consider that the key issues in this appeal relate to:
- The design of the proposals and the effects of these on vehicle access and neighbouring amenity.
 - Effect of the design of the proposals and how these integrate into the area.
 - Effect of the proposals on listed buildings.

The design of the proposals and the effects of these on vehicle access and neighbouring amenity

15. I saw that access beyond Cap Verde House to the three properties located higher up the slope, requires navigation around a hairpin bend. Residents explained to me that the usual vehicle approach was to swing right into the turning area, before commencing on the turn leftwards to continue up the hill. I accept that those residents would be very experienced at the manoeuvre and able to achieve it very efficiently. Notwithstanding the comment that some people could manage this turn in a single movement, my assessment is that the geometry of the road is such that those in larger vehicles or unfamiliar with the road would find it difficult to navigate without undertaking a three-point turn (or more) in the turning circle outside the entrances to Cap Verde House and The Chantry.
16. The proposed garden wall would reduce the width of the road as it approaches the turning area. As the wall would continue north eastwards, beyond the inner point of the hairpin bend, it would effectively displace the entrance to the turning area to the northeast. This would prevent vehicles from swinging right until they were much further past the left turn up the hill and around the hair pin bend.
17. I accept that the proposals would result in vehicles having to adopt a different pattern of movement to that previously and that at least a three-point turn would be required. For some vehicles, particularly those with a longer wheelbase, this may require a series of forward and back movements. However, the proposed arrangements would not prevent the passage of vehicles around the bend. During my site inspection I saw vehicles, including vans, enter the turning area and continue along the road, with no apparent difficulty.
18. I have considered concerns about the ease with which two vehicles could pass each other. Again, whilst this may require vehicles to adopt new manoeuvres to those they have previously been used to, there appears adequate space for vehicles to pass each other in the turning area.
19. Residents have explained that the full area of the turning circle is not always available, owing to the presence of cars parked around its edge. I saw that there is provision for parking four cars beyond the confines of the turning circle. I consider this adequate to accommodate cars associated with Cap Verde House, including visitors. Furthermore, I saw that even should cars park on the edges of the turning circle, there should be sufficient space remaining to enable vehicles to navigate the bend, albeit it may require a different or additional manoeuvres.

20. Given the appellant's previous experiences, I can understand her concerns about the ease and speed with which emergency vehicles can access properties beyond Cap Verde House. It is regrettable that the Department did not undertake its own, formal, consultation with the Fire Service. However, both the appellant and the applicant have provided copies of their own, independent informal consultations with the Fire Service on this matter. Whilst I note that the response received by the appellant suggests that the proposals had not eased the situation, it has not raised any concerns that it would not be able to access houses beyond Cap Verde House.
21. Policy GD1 - managing the health and wellbeing impact of new development, protects neighbouring amenity. It requires that development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. What might be considered 'unreasonable' depends, to a degree, on local context. La Rue du Cap Verde is a private road. As such, there are no published design standards, and it is not under the control of either the Parish or the States of Jersey. The road layout is already cumbersome, requiring some skill to navigate. I accept that the proposed road alignment would require residents to adopt a different approach and pattern of turning, particularly for those in larger vehicles. However, it would not prevent vehicle access, nor do I consider that the additional manoeuvres would result in any appreciable increase in journey times. I therefore conclude that the proposals would not result in unreasonable harm to the amenities of occupants and neighbouring uses, including nearby residents.

Effect of the design of the proposals and how these integrate into the area

22. Policy PL5 - Countryside, coast and marine environment applies to proposals within the green zone. It seeks that proposals in the countryside should protect or improve its character and distinctiveness. The appellant has also highlighted policy GD6 - Design quality. This seeks a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape, and wider setting. The policy identifies 8 key principles. These include, amongst other factors, the relationship of the development to existing buildings, settlement form and distinctive characteristics of a place; use of materials, details, and colours; and impact upon neighbouring uses.
23. The proposals would enclose a small area of land adjacent to the main entrance of Cap Verde House. The proposed line of the boundary would extend the line of an existing feature, and the proposed materials of the wall would be consistent with those that are existing. The proposed low height of the wall, coupled with the use of railings, would also enable continued views of the listed building. Given the presence of other strong boundary features, including those separating Chantry from the turning area, I find that whilst the proposals would introduce an enclosed and more formal setting to this elevation of the house, it would not appear out of character. I have considered the effects on neighbouring uses above. I conclude that the proposals would be consistent with the provisions of policy PL5 and GD6.

Effect of the proposals on listed buildings

24. Policy HE1 - Protecting listed buildings and places, and their settings states that proposals that could affect a listed building, or place, or its setting, must protect its special interest. Proposals should also seek to improve the significance of listed buildings and places. The policy identifies four criteria that must be met in order for support to be given to proposals that do not protect a listed building or its setting, having regard to the comparative significance of the listed building or its setting and

the impact of the proposed development on that listed building, or setting. Thus, the policy provides for sensitive change to occur, provided the special interest of the listed building or its setting is maintained.

25. The Special Interest of Cap Verde House is “Architectural, Historical.” These are also the Special Interests of the neighbouring Chantry listed building. The Historic Environment Team (HET) has commented that the proposals would detract from the informality of the setting of Cap Verde House, which contributes to its significance. However, I note that the informality is not referenced on the Listing Schedule as part of the significance of the building, nor has the HET objected to the proposals.
26. The proposed wall would appear to run close to or along the boundary of the listed area. It would be low in height, topped with railings. As such, it would not obscure or restrict views of the listed building. Whilst this would introduce an element of ‘enclosure’ adjacent to the main entrance of the property, I do not consider that this would detract from an appreciation and understanding of the special architectural or historical interest of the listed building. That is, the special interest of the listed building would be maintained. Whilst I do not consider that the proposals would improve the significance of either of the listed buildings, the wording used (should also seek) is aspirational and discretionary, recognising that improvements may not be possible in all cases.
27. The proposed wall would lie within the wider setting of Chantry. However, that property is heavily screened by an existing tall, solid boundary feature. When viewed in this context I am content that the proposals would also protect the special interest of the setting of Chantry.
28. The appellant has referred to part c of policy HE1 and questions if this has been met. This part of the policy sets out one of the criteria that should be considered when determining if there is support for a proposal that does not protect a listed building or place, or its setting. It seeks that harm has been avoided, mitigated, and reduced as far as reasonably practicable. This assessment is to be carried out with regard to the comparative significance of the listed building and the impact of the proposal on that significance. As set out above, I conclude that the proposals would protect the special interest of the listed building. In any case, the harm referred to in the policy relates to effects on the listed building and its setting, rather than to effects on neighbouring uses, which are safeguarded through policy GD1.

Other matters

29. The appeal statement refers to Policy HE3 - Protection or improvement of conservation areas. However, as none have been identified in Jersey, this policy is not applicable.
30. I note that the proposal is part retrospective. Whilst it is regrettable that works have commenced in advance of permission being sought, the proposals require to be assessed on their merits. If permission were not granted, the Department would be able to consider the expediency of commencing enforcement action.
31. The appellant has questioned whether the Department’s officer visited the site prior to reaching a decision. That is a matter for the Department. Nevertheless, I note that the Department has confirmed that a site inspection was made.

32. Apparent inconsistencies in the motivation of the applicant for seeking the wall have been highlighted by the appellant. Whilst reasons for a proposal can be material to a decision, they are unlikely to be determinative. My consideration is based on the merits of the proposal.
33. The appellant has suggested alternative alignments and designs. However, my role is not to identify the 'best' option, but to consider whether the current proposals are acceptable.

Conditions

34. The Decision Notice for the proposed scheme did not include any conditions other than the two standard conditions relating to the commencement of the development and the carrying out of the development in accordance with the approved details. It was suggested to me that conditions requiring submission and approval of details of finishes and height of the railings could be added to the permission. However, scale plans have been provided, which set out the height of the railings and details of materials are also specified. Therefore, I do not consider that these matters require to be conditioned.

Conclusions

35. For the reasons set out above, I conclude that the proposals would be in accord with the Bridging Island Plan 2022.

Recommendations

36. I recommend that the appeal should be dismissed, and that Planning Permission be granted.

Sue Bell

Inspector 20 February 2025