

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

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

REPORT TO THE MINISTER FOR THE ENVIRONMENT

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

Appellants:

Firpine Development Limited (Robert Bonney)

Application reference number and date:

P/2015/1938 dated 23 December 2015

Decision Notice date:

25 May 2016

Site address:

Cicadella, La Route de Noirmont, St Brelade JE3 8AJ

Development proposed:

The demolition of the existing dwelling and garage and the construction of one four-bedroom house with associated parking and landscaping.

Inspector's site visit date:

9 August 2016

Hearing date:

12 August 2016

Introduction and procedural matters

1. This is an appeal by the applicants against the decision of the Department of the Environment to refuse planning permission for the development described above.
2. The reason given for the refusal of planning permission is as follows: -

"The proposed development, due to its size and position in relation to adjoining properties, will result in an unreasonably overbearing impact upon adjoining properties to the north. In addition the size and position of the

northern-most first floor window in the west elevation and the creation of a balcony on the west elevation will result in an unacceptable loss of privacy to adjacent properties to the west and north. The scheme therefore fails to satisfy the requirements of policy GD1 (General Development Considerations) of the 2011 Island Plan (Revised 2014)."

3. The appellants submitted additional information at the hearing in relation to daylight and sunlight. I have taken this into account, together with the response and comments relating to this information that were received after the closure of the hearing and published on the planning register on 16, 19 and 22 August 2016.
4. The appellants submitted wide-ranging representations during the appeals process. This report deals only with the representations that relate to the planning merits of the proposed development.

Description of the site and its surroundings

5. The property to be demolished is accessed by a lengthy driveway from La Route de Noirmont and consists of a four-bedroom bungalow with a detached garage. The bungalow has a shallow-pitched roof, which gives it a low profile. The appellants have submitted a consulting engineers' report that highlights the bungalow's structural shortcomings and concludes that it does not comply with current building standards in a number of respects.
6. The site is in the Built-up Area for planning purposes. It has two-storey housing on three sides and open fields on the fourth side, which are in the Green Zone. The houses are 5, 6 and 7 Portelet Drive on the northern side, High View on the western side and the recently-built Lismore Units 1 and 2 on the southern side. Also nearby are 2, 3 and 4 Portelet Drive, which are on the northern side of High View and a short distance to the north-west of the site, and Lismore Unit 3 on the southern side of High View.

Details of the proposed development

7. It is proposed to build a four-bedroom, part-two storey/part-1½ storey detached house with an attached garage. The house would have a fairly intricate arrangement of pitched roofs. The two-storey part would have a roof ridge on a north-south axis with an east-west projection on its eastern side. There would be a 1½-storey projection on the western side, containing a balcony, and a 1½-storey projection on the northern side that would have dormer windows facing east and west.
8. The footprint of the new house would not be significantly different in overall size to the footprint of the bungalow and its garage. It would be positioned differently, however, resulting in there being more development towards the eastern boundary of the site and less development towards the western boundary of the site. It would also be slightly nearer the northern boundary of the site than the bungalow. All four elevations of the house would be much higher and more bulky than the bungalow.

The case for the appellants

9. The appellants disagree with the reasons given for refusing planning permission. They state that the site is large and is surrounded by higher two-

storey properties, and that the scale and design of the new house should be accepted in its context. They maintain that the relationship between the new house and the adjoining properties to the north would be similar to that which was approved in the Lismore development and would not be overbearing. There would not in their opinion be a view from the balcony or from the window referred to that resulted in unreasonable overlooking, because of the distances involved and intervening boundary features.

The case for the Department of the Environment

10. The Department accept the structural report and raise no objections to the demolition of the bungalow and its garage. They do not object to the design approach of the new house or to the materials to be used, which they consider would be compatible with the Lismore development and be an improvement on the bungalow.
11. However, the Department do not accept that the context is the same as Lismore, because of the presence of the neighbouring properties I have referred to in paragraph 6 above. Their objections are specifically related to the impact of the new house on the nearest properties in Portelet Drive, which they consider would be overbearing, and to the extent to which properties to the west would be overlooked from the balcony and the northernmost first-floor window in the western elevation. (These are the balcony referred to in the last sentence of paragraph 7 above and the west-facing dormer window referred to there.)

Representations made by others

12. Representations have been received at both the application stage and the appeal stage, objecting to the proposed development. Most of these are from residents in Portelet Drive.
13. The objections support the reasons given for refusal in relation to loss of outlook and privacy and add concerns about loss of sunlight. They also raise wider issues about the impact of the development on the character and appearance of the site and its surroundings.

The main issues in the appeal

14. The main issues in the appeal are in my opinion the effect that the development would have on (i) the character and appearance of the site and its surroundings and (ii) the amenities of nearby residents, with particular reference to privacy, outlook and sunlight. I have considered these issues in turn in the paragraphs that follow.

Inspector's assessments and conclusion

The effect on the character and appearance of the site and its surroundings

15. Policy H 6 of the Island Plan applies, since the site is in the Built-up Area. A proposal to build a new dwelling here is therefore acceptable in principle. The Department's agreement to the demolition of the bungalow and their assessment of the design approach of the new house and the materials to be used, as being compatible with the Lismore development and an improvement on the bungalow, are sound in my view.

16. The bungalow's surroundings have changed significantly as a result of the Lismore development. Planning policies have also changed in recent years, with emphasis now being placed on making the most efficient and effective use of land and buildings within the Built-up Area, as part of the Island Plan's strategy of promoting sustainable development.
17. Although the planning history of the site shows that attention was paid to maintaining the low profile of development here when the bungalow was built, the erection now of a two-storey dwelling on the site would in principle be in keeping with all the adjoining houses. It should not in my view be excluded solely on the basis that it would by its very nature detract from the character and appearance of the site or its surroundings.

The effect on the amenities of nearby residents

18. Any such development should, however, comply with sub-paragraphs 3.a. and 3.b. of Policy GD 1 of the Plan. These indicate that proposals will not be permitted if they unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, and, in particular, if they unreasonably affect the level of privacy or light to buildings and land that owners and occupiers might expect to enjoy.
19. The Department do not apply any specific standards when assessing whether development would meet these criteria. Proposals are assessed on their merits, having regard to their context and the specific circumstances of the site and its surroundings.
20. The reasons for refusal are specific and they focus on what I agree are the main amenity concerns, namely the balcony, the west-facing dormer window and the houses to the north. I have assessed these in turn: -

The balcony

21. The balcony would be on the first floor of the house, with its access being from the master bedroom. It would be roofed over and would be recessed within the side walls of the house. These walls would screen views sideways towards the nearest houses in Portelet Drive and in the Lismore development. Views looking outwards would be towards High View and its rear garden, with angled views of some of the other properties in Portelet Drive and the Lismore development.
22. The windows of High View would be a very considerable distance away and the privacy of its rear garden would not be significantly changed, since it is already overlooked directly from the upper floors of some of the houses in Portelet Drive. The angled views referred to would be over substantial distances. In my opinion, the balcony would not unreasonably affect the level of privacy that any of the nearby residents might expect to enjoy.

The west-facing dormer window

23. The dormer window would serve Bedroom 3 and would face in the same direction as the balcony, but it would be set back from the balcony and therefore slightly further away from High View. There would be little to be seen of the Lismore development from the dormer window, because the balcony would be in the way. There would, however, be a more direct view of

properties in Portelet Drive than could be obtained from the balcony, because the dormer window would be closer to the northern boundary of the site.

24. The properties that would be affected are Nos 2, 3, 4 and 5. I visited them at my site inspection. There would be no direct viewing between the dormer window and the rear windows of these properties, because of the angle they would be to each other. It would be possible to see into some parts of their rear gardens from the dormer window, but the gardens are already well-screened to maintain their privacy and the distances between them and the dormer window would be much greater than exists at present between them and their neighbours' first-floor windows. In my opinion, these properties would not experience an unreasonable change in their level of privacy as a result of the dormer window.

The houses to the north

25. This concern relates to 6 and 7 Portelet Drive, which I also visited. These houses are alongside part of the northern boundary of the site. The 1½-storey projection containing the dormers would be close to the boundary with No 6; behind and above it would be the two-storey part of the house, with its roof ridge on the north-south axis. The two-storey projection on the eastern side of the house would be beyond the boundary with No 7, but further away than the 1½-storey projection would be from No 6's boundary.
26. The privacy of Nos 6 and 7 would not be reduced, since the house would not have any first-floor windows facing these properties. The matters in contention are the extent to which the house would affect the outlook from the properties and the amount of sunlight enjoyed by them.
27. As indicated in paragraph 8 above, the new house would be positioned differently within the site. This would result in development taking place slightly nearer to the boundary with No 6 and in an area beyond the rear boundary of No 7 where there is no development at present. The depth of the rear garden of No 6, between its single-storey rear extension and the boundary with the site, is only about 5m to 8m. The depth of No 7's rear garden, between the house and the boundary with the site, is between 13m and 14m.
28. The distance between No 6's single-storey rear extension and the gable wall of the house's 1½-storey projection would average around 10m. The two-storey part would be about 5m further away from No 6. The minimum distances between the rear house wall of No 7 and the 1½-storey and two-storey parts of the house would be around 14m and 20m respectively.
29. The 1½-storey projection would be about 7m high at the roof ridge and the two-storey part would be about 8m high at the roof ridge. The two-storey projection beyond the rear boundary of No 7 would also be about 8m high at the roof ridge.
30. The bungalow is about 4.5m high at its roof ridge, which is well away from the boundary with No 6 because the roof has a shallow pitch. The 1½-storey projection would, however, have a gable wall facing the rear of No 6. It would therefore have a markedly-greater impact on the outlook from No 6 than the bungalow has, not just because of its additional height near to the boundary but also because of its much greater bulk. In my view, the impact would be

overbearing to an extent that would do unreasonable harm to No 6's amenities and living conditions.

31. The rear windows and garden of No 7 have an open outlook over the eastern part of the site, towards Lismore Unit 1, and over the field beyond the eastern boundaries of the garden and the site. Part of this outlook would be affected by the eastern end of the 1½-storey projection and by the northern side of the two-storey projection, but the separation distances (see paragraph 28 above) would be significantly greater than in the case of No 6. In my opinion, the effect on the outlook of No 7 would not be serious enough to constitute unreasonably harm to No 7's amenities or living conditions.
32. Loss of sunlight is not a concern raised by the Department, but it has been raised by objectors and responded to by the appellants. The occupiers of No 6 and the appellants have both submitted technical information in relation to sunlight. The findings are not identical, but they do as a minimum confirm my own assessment that the rear windows and garden of No 6 would experience a loss of sunlight at certain times of the day and year. I regard this as an unreasonable loss of amenity because No 6 is north facing and has other houses on both sides, and is therefore dependent on its south-facing rear aspect for sunlight.

Conclusion

33. As indicated above, I have come to the conclusion that the development would unreasonably harm the amenities and living conditions of 6 Portelet Drive because of loss of outlook and sunlight. It would therefore fail to comply with Policy GD 1 of the Island Plan and should not in my opinion be permitted.

Other matters

34. In reaching this conclusion, I have taken into account the various appeal reports and decisions to which my attention has been drawn. I have assessed the development having regard to the specific considerations that arise at this site and its surroundings, which are not directly comparable to those arising in the other appeals.
35. I have also had regard to the possibility of changes to the development being required by planning conditions if planning permission was granted. However, changes of the kind mentioned in the representations are beyond the scope of planning conditions and would require a fresh planning application.

Inspector's recommendations

36. I recommend that, in exercise of the power contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended), the appeal should be dismissed.

Dated 13 September 2016

D.A.Hainsworth

Inspector