

STATES OF JERSEY

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

APPEAL OF A DECISION UNDER ARTICLE 108

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Inspector appointed under Article 107

APPEAL BY: High Gorse Limited

AGAINST: Decision of the Department of the Environment to Refuse to Grant Planning Permission for a proposal "*OUTLINE PLANNING: Construct 1 No. four bedroom dwelling. Fixed Matters: Design, Means of Access, Appearance, Siting. Reserved Matters: Landscaping*"

DECISION DATE: 5 August 2016

LOCATION: High Gorse, part of Field No. 1534, Tower Road, St. Helier

REFERENCE: PP/2016/0600

APPEAL PROCEDURE: Hearing - 4 October 2016

SITE VISIT: 4 October 2016

DATE: 9 November 2016

Introduction and background Planning history

1. This report contains my assessment of the appeal made by High Gorse Limited against the decision of the Department of the Environment to refuse to grant planning permission for the erection of a dwelling on a plot of land off Tower Road in St Helier.
2. The site comprises a narrow strip of undeveloped land approximately 8 m wide and 90 m long, which slopes to the west. The southern end of the site is higher than the northern end and it is bordered to the east and west by low granite walls and hedges.
3. There is an extant permission for the erection of a dwelling on this site (P/2011/0023) initially granted on 12 May 2011 and subsequently renewed on 4 November 2014 (RC/2014/1539). The permission allows for the construction of a four-bedroom dwelling and garage with guest accommodation and a roof terrace. The design is long and narrow and the main aspect of the house is to the west. This extant permission is a weighty material consideration in this case and I refer to it hereafter as Scheme A.
4. In 2015, the Appellant sought planning permission for a revised scheme under application PP/2015/1596, hereafter referred to as Scheme B. The main differences between Scheme B and the consented Scheme A were:
 - The inclusion of separate guest accommodation (a gate house) at the entrance of the site
 - The addition of a basement to the main building
 - An increase in the length of the main building from 47 m to 53 m
 - The addition of accommodation (a family room) at the second floor (terrace) level
5. The Department refused Scheme B on 20 January 2016 for two reasons. The first concerned amenity impacts on the neighbouring properties to the immediate east and west. The second concerned the impact on the character of the surrounding area, countryside and skyline.
6. The Appellant requested a review of this decision by the Planning Applications Committee. The Committee maintained the decision to refuse the application on 17 March 2016.
7. An appeal was lodged against the decision to refuse Scheme B. Following a Hearing on 8 June 2016, the appointed Inspector's report recommended that the appeal be dismissed. The Minister shared that view and dismissed the appeal by his Ministerial Decision MD- PE- 2016-0097 on 18 July 2016. This report and decision are material considerations in this case.
8. Following the dismissal of the appeal, a third application proposal was submitted under PP/2016/0600, hereafter referred to as Scheme C. The main differences between Scheme C and the approved Scheme A are as follows:

- The inclusion of a basement (as Scheme B)
 - Increased footprint (as Scheme B) and associated increased ground floor area
 - Increased first floor accommodation (a study)
 - Increased roof terrace area
 - The inclusion of a glazed lift / staircase enclosure measuring 3.5m x 4.5m x 2.4m high at the second floor / terrace level
 - External spiral staircase to south elevation (included on Scheme A) omitted
9. The application was submitted in Outline with the fixed matters being layout, scale, appearance and means of access, with landscaping being the one 'reserved matter'.
10. Scheme C was refused on 5 August 2016 for two reasons:

Reason 1. The proposed development by virtue of the proposed increase to the area of the footprint; the creation of a second floor stairwell enclosure & increase to the length of the first and second floors and terraced areas - whereby development increases further into the north of the site, will have an unreasonable impact on the amenities of the neighbouring properties to the immediate east and west contrary to Policies GD1 & GD7 of the Adopted Island Plan, 2011: Revised (2014).

Reason 2. The increased height, scale and massing of the proposed development by virtue of the creation of a second floor stairwell structure which will interrupt the horizontal and linear emphasise of this modern style of development will have an unreasonable visual impact on the character of the surrounding environment and skyline contrary to Policies GD1, GD5 & GD7 of the Adopted Island Plan, 2011: Revised (2014).

11. This appeal is made against that refusal.

The main issues

12. Given the above Planning history background and the materiality of the extant permission and the earlier appeal decision, the principle of developing a house on this site is well established. The broad architectural design concept, which is a modern linear style occupying a long but narrow footprint, is also firmly established.
13. The main issues in this case emanate from the proposed changes to the design and, more to the point, whether they sufficiently overcome the objections identified in the earlier Scheme B appeal. More specifically, the two main issues to consider are those set out in the reasons for refusal and relate to i) impacts on the residential amenities of Richelieu Lodge (to the east) and Claremont House (to the west) and ii) design and visual impacts arising from the enlarged scheme, notably in respect of the lift / stairwell enclosure.

The Appellant's Case – brief summary

14. The Appellant considers the scheme to be an appropriate response to the Scheme B appeal decision. Scheme C removes the gate house

accommodation in its entirety and removes the room on the upper (second storey) level, replacing it with a smaller and lighter glazed lift / stairwell enclosure which, it contends, would not be visually prominent and would offer some design and visual impact benefits over the Scheme A spiral staircase (which would be omitted).

15. The Appellant also explains that the changes proposed are to better suit the family needs and will allow greater accessibility through the dwelling and more natural light within it. It also points out that the dwelling design is a four bedroom home and not a five bedroom home as stated in the Department's report and that there is no second storey accommodation. The Appellant also notes that there were no objections from the two closest properties, which are the focus of Reason 1.
16. Overall, the Appellant considers the revisions to be minor in nature and that Scheme C now overcomes the concerns identified through the Scheme B appeal.

The Department's response – brief summary

17. The Department's Officers consider the relevant policy considerations are GD1, GD5, GD7 and BE3, which together seek to achieve a high quality of design that respects its context, longer views and the amenities of other properties.
18. The Department accepts that in this location, within the defined Built-up area, there is a presumption in favour of development. However, this presumption does not override amenity considerations for surrounding residents, or the design and visual impacts of increased scale and massing.
19. The Department considers the differences between Scheme C and Scheme A are significant and will result in unreasonable impacts on the amenity of neighbouring properties. It further considers that the stairwell structure will detract from the design of the dwelling and it will have an unreasonable visual impact.

Assessment – residential amenity impact (Reason 1)

20. Although not specifically stated in the reason for refusal, the specific amenity impact relates to overlooking effects from the upper (terrace) level of the proposed house to two neighbouring properties.
21. Policy GD 1 requires that proposed developments should "*not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy*". In Jersey, there are no adopted Planning guidelines to establish the point at which 'reasonable' impacts cross into becoming 'unreasonable'. As my colleague Inspector noted on the earlier appeal, judgement is required.
22. In my view, there are three important foundation points that set the context for that judgement exercise. First, this site is within the defined built-up area and, in my view, that implies that it would be reasonable to expect and accept some degree of overlooking (and indeed physical proximity) between properties. Second, the extant Scheme A permission includes a not insubstantial terrace area (72 square metres) at the same height level to

that currently proposed. Third, the Scheme B appeal Inspector identified the second floor 'family room' and the gatehouse accommodation as the specific sources of unacceptable overlooking.

23. Scheme C will have a bigger 'second floor' terrace area than Scheme A. Rather than one single terrace area of 72 square metres, it would include two terrace areas of 36 square metres and 55 square metres, separated by the stairwell structure. The enlarged building design does mean that the smaller terrace is closer to the properties to the east and west but this was not a specific concern identified by the earlier appeal Inspector. Scheme C omits both of the features that were identified as problematic i.e. the family room and the gatehouse.
24. I have reviewed the situation afresh. With regard to Richelieu Lodge to the east, the distance from the closest point of the Scheme C terrace is 28.6 metres compared to 32.2 metres in Scheme A. In my view, the distance of 28.6 metres, being at an oblique angle and within the defined Built-up area, is a quite comfortable spatial relationship in Planning terms. Furthermore, as well as the spatial separation and oblique angle, the natural viewing line for any users of the terrace will be in the other direction, being westwards towards St Aubin's Bay (which I imagine to be the main purpose of the facility).
25. The comparable distance relationship with Claremont House is about 32 metres. This also involves an oblique angle of view. I do not consider that it will result in unreasonable amenity impacts.
26. I have noted the points made about the absence of objections from either of these two properties. However, the silence of existing occupiers and owners is not necessarily a reliable confirmation of an acceptable Planning relationship. I have also noted that a Planning application has been submitted for a redevelopment proposal at Claremont House but this is of limited relevance to this appeal.
27. Overall, I am satisfied that the proposal will not result in unreasonable amenity impacts and that it complies with the relevant Policy GD 1 considerations.

Assessment – design and visual amenity impacts (Reason 2)

28. There is no disputing that Scheme C is larger and a little bulkier than Scheme A. I do not accept the Appellant's notion that the changes were so limited that had they been presented at a later stage they would have been readily approved as extensions. This is a sensitive site and careful judgements are required. However, I am satisfied that the slightly greater length of the house and increases in ground and first floor space are acceptable and well executed in design terms.
29. The matter of contention relates to the lift / stairwell structure, which will make this part of the building higher. The actual dimensions of this glazed structure are 4.5 metres deep by 3.5 metres wide and 2.3 metres high. In my assessment, the most sensitive view is that from further up (eastwards) on Tower Road looking back across, over fields 1538, 1539 and 1540, towards the site in the direction of St Aubin's Bay.

30. At present, there is a tall and mature hedgerow along the rear site boundary (it is shown on the submitted drawings as much lower than its actual height). In my judgement, this hedgerow will screen much of the proposed building, with only the upper parts of the dwelling's rear granite wall, the roof terraces / balustrading and a rendered chimney appearing in the view from Tower Road. The stairwell structure would add to these visible elements with a further 8 square metres of 'building'.
31. However, there is no guarantee that the existing hedge will be maintained at its current height, or indeed at all, as it appears to sit within Field 1540 (outside the application area). It may also be affected by the proximity of the building works for Scheme A, or Scheme C, should this appeal succeed. Whether or not the hedge is retained, there is no escaping the fact that a large building is already approved and it will be visible in public views, including that from Tower Road.
32. In my assessment, the extra eight square metres is of little consequence, given its very limited mass and lightweight glazed structure. It is certainly far less substantial than the much bulkier 'family room' that was proposed under Scheme B. There is also some limited benefit from the loss of the (Scheme A) external spiral staircase structure. Furthermore, when viewed from Tower Road, there are no 'skyline'¹ impact issues at all, as the view is downwards towards the bay and the visible parts of the building will appear against the backdrop of the distant sea and land on the far side of the bay.
33. On matters of design, I do not share the Department's view that the stairwell structure would interrupt the linear design. The linear concept remains strong and I do not think that it is unduly diluted, or disrupted, by a modest slightly higher glazed element over a small part of its length.

Conclusions and recommendation

34. My conclusions are that this proposal will not result in any unreasonable amenity impacts on adjacent properties and it will not result in unreasonable visual impacts or design issues.
35. Accordingly, I recommend that the appeal be ALLOWED and that Outline Planning permission be granted for the scheme proposed under application PP/2016/0600, subject to standard and other appropriate Planning conditions.
36. If the Minister accepts and agrees with my recommendation, I suggest that the Department's officers be requested to prepare an appropriate set of Planning conditions for inclusion in the Decision Notice. These should include the standard time limits, approved drawing details, definition of 'reserved matters' (landscaping), materials and finishes, access and hard surfacing arrangements and drainage details. Such conditions are reasonable, justified and necessary in Planning terms.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

¹ The term 'skyline' is used in Reason 2