

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

Site visit made on 6 March 2017

by N McGurk BSc (Hons) MCD MBA MRTPI

Reference: P/2016/0848

Cicadella, La Route De Noirmont, St Brelade, JE3 8AJ.

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by Firpine Development Limited against the decision of the States of Jersey.
 - The application Ref P/2016/0848 by Firpine Development Limited, dated 3 June 2016, was refused by notice dated 8 December 2016.
 - The application granted permission is to "Demolish existing dwelling to create a detached four bedroom dwelling."
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Recommendation

1. I recommend that the appeal be allowed and planning permission be granted for the proposed development, subject to the conditions set out at the end of this Report.

Procedural Matters

2. I have taken the description of the development proposed from the application form. I note that the decision notice is slightly different, "Demolish existing house and construct 1 No. four bed dwelling with associated parking and landscaping."
3. I have taken the postcode, above, from the Decision Notice. There was no postcode on the application form. Also, I have taken the appellant's name from the original application form. The appellant's name provided on the appeal form is set out slightly differently, "Robert F. Bonney (Director Fir-Pine Development Limited)". I refer to the appellant as "he" in the Report below.
4. The application the subject of this appeal was refused following the refusal of a previous application¹ for demolition of the existing dwelling and garage and the construction of one four-bedroom house with associated parking and landscaping. This previously refused application was subsequently dismissed at appeal, in a decision dated 13 September 2016.
5. The appellant points out that the application the subject of this appeal was designed to address the previous reasons for refusal. The siting and design of the proposed dwelling the subject of this appeal are different to the siting and design of the previously refused proposal.
6. The appellant has submitted various and wide-ranging representations during the appeals process. In considering this appeal, I have considered the

¹ Reference: P/2015/1938.

information before me and focused on relevant land use planning matters. If the appellant considers that the Department or the Planning Applications Committee has acted in an inappropriate manner in carrying out its statutory duties, then that is a separate matter between those parties.

7. The Department has submitted a statement in respect of the garage element of the proposal requiring planning permission as it is too large in area and too tall at its western end to comprise permitted development.

Main Issue

8. The main issue in this case is the effect of the proposed development on the living conditions of neighbouring occupiers, with regards to outlook, sunlight and privacy.

Reasons

9. The appeal property, Cicadella, is a detached four-bedroom bungalow with a detached garage. It is accessed by a long driveway from La Route de Noirmont. The shallow-pitched roof of the bungalow affords the building a low profile.
10. The appeal site is located in the Built-Up Area. It is surrounded by housing to three sides. Detached houses on Portelet Drive are located to the north. High View, a single dwelling, is located to the west; and recently built detached houses on Lismore are located to the south. The appeal site adjoins open fields in the Green Zone to the east.
11. In support of his case, the appellant considers that the proposed development would not have an unacceptable and unreasonable impact on neighbours. He considers that the scale, design and siting of the proposal is such that it would not appear overbearing when seen from neighbouring properties. He has also provided a Sunlight Analysis in support of his view that the proposal would not result in a harmful reduction of sunlight to neighbouring properties. Further, in support of his view that there would be no loss of privacy, the appellant considers that there would only be very limited scope for an oblique line of sight over the neighbouring dwelling at No 6 Portelet Drive.
12. Objections to the proposal have been submitted by neighbours, in particular from residents living in Portelet Drive. The proposed development would be situated closest to Nos 6 and 7 Portelet Drive and objections have been received from the occupiers of these two dwellings. Amongst other things, the representations from neighbours support the reasons given for refusal in relation to loss of outlook and privacy and specific concerns are raised in respect of the proposed development's impact on the amount of sunlight received by the occupiers of No 6. During my site visit I observed the appeal site from its surroundings, including from Nos 5, 6 and 7 Portelet Drive.
13. Relative to surrounding dwellings, the existing dwelling at the appeal site appears notably low in height. Whilst the low profile of the bungalow was an important concern at the time of its development, planning policy has changed over the years and further to the Island Plan², there is now an emphasis on

² Revised 2011 Island Plan (2014).

making the most efficient and effective use of land and buildings within the Built-Up Area as part of the presumption in favour of sustainable development.

14. It was recognised by the Inspector in his report to the Minister for the Environment further to an appeal against the previously refused application P/2015/1938, which is referred to above, that a proposal to build a new dwelling on the appeal site is acceptable in principle and that the erection of a taller, two-storey dwelling, on the appeal site would, also in principle, be in keeping with surrounding houses.
15. However, that is not the same thing as affording “carte blanche” to construct any kind of two-storey dwelling. As described, the appeal site is largely surrounded by existing dwellings and consequently, it is fundamentally important that any new development respects the living conditions of neighbouring occupiers.
16. In this regard, Policy GD1 of the Revised 2011 Island Plan (Island Plan) seeks to prevent development that would unreasonably harm residential amenity. Amongst other things, the Policy states that development should not unreasonably affect the levels of light and privacy that owners and occupiers might reasonably expect to enjoy.
17. The previous Inspector’s recommendation was largely founded upon his conclusion that “the development would unreasonably harm the amenities and living conditions of 6 Portelet Drive because of loss of outlook and sunlight.” In the previous appeal, the Inspector found that, amongst other things, the considerable distance between properties, the viewing angles that would arise and the existence of screening meant that no unreasonable harm would arise in respect of the amenity of the occupiers of High View or Nos 2-5 Portelet Drive, inclusive.
18. However, as noted above, the proposal the subject of this appeal is different to that previously considered and dismissed.
19. The proposed development the subject of this appeal would be smaller in scale than that previously dismissed. It would also be sited further back towards the Green Zone and further away from High View and Nos 2-5 Portelet Drive. Consequently, the proposed development would appear even less intrusive than the previously dismissed proposal when seen from these properties. In addition, the proposed garage would be low in height and largely screened by existing boundaries and planting. The overall dimensions and siting of the proposed garage are such that when existing screening is taken into account, it would not result in any appreciable difference amounting to unreasonable harm in respect of outlook, daylight or sunlight.
20. Also in the above regard, I am mindful that the proposal the subject of this appeal does not include a west facing balcony or a large bedroom dormer window in the west elevation closest to Portelet Drive. These were elements that contributed to the identified harm arising from the previous proposal.
21. Taking all of the above into account, I consider it reasonable to conclude that the proposal would not result in any unreasonable harm to the residential amenity of the occupiers of High View or Nos 2-5 Portelet Drive, inclusive.

22. The proposed dwelling would be sited close to and broadly in between Nos 6 and 7 Portelet Drive, such that the rear elevation of No 6 and the southern gable of No 7 would face towards the proposal's north facing gable end, albeit separated by gardens, boundary screening and to a small degree, in the case of No 7, a small garage.
23. Further to viewing the appeal site from the rear of Nos 6 and 7, I find that the relatively low, one and half storey height of the proposed north elevation closest to Portelet Drive, would, when combined with its siting, set back from the appeal site's northern boundary, and its relatively narrow width, result in a building that would appear sympathetically designed and in keeping with its residential surroundings.
24. Whilst the proposal would step up in height and increase in width, it would only do so as the distance from Nos 6 and 7 Portelet Drive increases. I find that this would have the effect of "stepping up" to the taller Lismore properties, leading the proposal to fit neatly alongside them; as well as serve to prevent the proposal from appearing overbearing when seen from Portelet Drive. In this regard, whilst I recognise that the Lismore development has changed the appearance of the area, this is characteristic of any new development where previously there was no, or little development. Lismore exists and as such, has an influence on local character. The proposed development has regard to this and to some degree, I find that it provides a sensitively designed "bridge" between Portelet Drive and Lismore.
25. Whilst I acknowledge that the upper floor and roof of the proposed development would be visible from Nos 6 and 7, this would not comprise an unusual or unacceptable relationship between dwellings within the Built-Up Area. Importantly, I consider that northern elevation has been designed to be sensitive to neighbouring properties and that this serves to ensure that a reasonable outlook from them would be maintained.
26. The appellant has provided a Sunlight Analysis. This demonstrates that the proposal would result in little material change in respect of the amount of sunlight reaching the rear windows of neighbouring properties on Portelet Drive. The conclusions of the Sunlight Analysis provided does not accord with the findings of the occupiers of No 6 Portelet Drive.
27. The effect of the proposal on sunlight was considered during the hearing and various material has been submitted in this regard.
28. Further to consideration of all of the information, I find that there is evidence to demonstrate that the proposed development will result in a loss of direct sunlight into the ground floor rear windows of No 6 between approximately 0800 hours and 0930 hours between November and February, inclusive. No 6 is north-facing and to some degree, it relies on its south facing rear aspect for sunlight.
29. However, whilst I recognise that the loss of sunlight that would arise as a result of the proposal would be keenly felt by the occupiers of No 6, I am mindful that it is not unusual for a dwelling in the Built Up Area not to receive direct sunlight through ground floor windows for part of the early morning during the winter time. No 6 would receive direct sunlight to the ground floor (and to other parts of the property) at other times during the winter and there would be no notable

loss of direct sunlight for the majority of the year. There would be no harmful impact in respect of the receipt of daylight.

30. Thus, whilst I understand that the receipt of such direct sunlight, where it occurs, is greatly welcomed, I consider that its loss would not be so significant as to “unreasonably affect the level of light to buildings and land that owners and occupiers might expect to enjoy,” having regard to Policy GD1. The proposal would not prevent No 6 from receiving some sunlight year-round and whilst there would be a slight overall reduction in the amount of direct sunlight to the ground floor of the property, this would not amount to an unreasonable impact.
31. Further to the above, I find that there will be a small increase in the amount of shadowing to parts of the gardens of Nos 6 and 7 as a result of the proposed development. However, there is no substantive evidence to demonstrate that this would amount to such harm as to warrant the dismissal of the proposal.
32. The proposal has been designed such that there are no windows in the northern elevation and consequently, there would be no direct overlooking of either No 6 or No 7 Portelet Drive. The siting of the proposal is such that there may be some scope for oblique views across the gardens of Nos 6 and 7 from other windows, but these would be from a distance and I find that they would be at such an angle as not to be intrusive and there is no substantive evidence before me to the contrary.
33. Taking all of the above into account, I find that the proposed development would not harm the residential amenity of neighbouring occupiers in respect of outlook, daylight and privacy. The proposal is in accordance with Policy GD1 of the Island Plan, which amongst other things, protects residential amenity.

Other Matters

34. The “ghost of Policy GD2” was referred to during the public hearing. The now deleted Island Plan Policy GD2 formerly referred to the demolition and replacement of buildings. Island Plan Policy GD1 refers to not replacing “a building that is capable of being repaired or refurbished.”
35. In this regard, the appellant has submitted evidence to demonstrate that the existing bungalow at the appeal site has structural shortcomings and does not comply with building standards. There is no substantive evidence before me to demonstrate that the bungalow can reasonably be repaired or refurbished. Notwithstanding this, taking everything into account, I consider that the proposal is in keeping with the aims and requirements of the Island Plan.
36. It was submitted by neighbours, objecting to the proposal, that “the ghost of Policy GD2” be dealt with by the Minister. As above, this Report focuses on relevant land use planning matters to reach the conclusion and recommendation below.

Conclusion

37. For the reasons given above, I recommend to the Minister that the appeal be allowed.

38. The Officer's Report provided by the Department originally recommended that the application the subject of this appeal be approved. That Report contained the two conditions set out below and I recommend that the proposal be subject to these two conditions, should the Minister allow the appeal and grant planning permission.

39. I note that the condition in relation to hedge protection is necessary in the interests of the retention of an attractive feature of ecological significance; and that the condition in relation to any extensions, alterations or erection of outbuildings is necessary in the interests of residential amenity.

40. Further to the above, there was discussion of working hours during the public hearing. As noted above, the appeal site is largely surrounded by housing. Consequently, there is some scope for noise and disturbance arising from building operations to have an unreasonably impact on residential amenity. In this regard, I recommend the imposition of a condition to control hours of work and to prevent operations from taking place during those times when local residents can reasonably expect a higher degree of peace and quiet.

- i) Prior to the commencement of development details of measures to be taken to protect the eastern boundary hedge shall be submitted to and agreed by the Department of the Environment. The development shall thereafter be undertaken in accordance with those details and the hedge retained thereafter to a height of no less than 2m. (REASON: In the interests of retaining this attractive boundary feature and its ecological habitat value in accordance with policies GD1 and NE4 of the Island Plan.
- ii) Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011 and any amendments thereto, no extensions to the property, alterations to the roof or the erection of any outbuildings shall be undertaken unless a planning application has been submitted and approved for that work. REASON: Planning permission has been granted on the basis that, on balance, the impact on adjoining properties and the character of the area is not unreasonable. The Department considers it appropriate and necessary to retain control over any further alterations to the site to ensure that this balance is retained.
- iii) Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays. REASON: In the interests of protecting neighbouring occupiers from noise and disturbance.

N McGurk

INSPECTOR