

## **REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT**

**By Graham Self MA MSc FRTPI**

Appeal by Jersey Homes Trust against a refusal of planning permission.

Reference Number: P/2017/0495.

Site at: L'Industrie (see "*Procedural Matters*" below), La Rue de Samares, St Clément, JE2 6LZ.

---

### **Introduction**

1. This appeal is against the refusal of planning permission for development described in the application as: "Demolish existing apartments and garages and construct new 25 bed care facility". In the decision notice refusing permission, the development was described as: "Demolish existing building. Construct 1 No. residential care home with 24 No. residential units and 1 No. visiting family unit with associated parking and landscaping". The latter description also appears in the statement of case submitted by the appellant's agent.
2. The appeal has been conducted by written representations. I inspected the site and surroundings on 9 October 2017.
3. In this report I refer first to some procedural matters and to the reasons for refusal. A description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellant, the planning authority, and other parties. I then set out my assessment, conclusions and recommendation. The appeal statements, written submissions by interested parties, plans and other relevant documents are in the case file for you to examine if necessary. For reasons which will become apparent, this report is much longer than I would normally consider appropriate for a written representations appeal.

### **Procedural Matters**

4. In the application, the site address was specified as "Evelina Court, La Rue de Samares"...etc. In the decision notice, the site address was specified as: "L'Industrie, La Rue de Samares"...etc. Since "Evelina Court" appears to be the intended name of the proposed development - which does not exist - the site address used in the application is not correct. However, this is not a crucial point as the location of the site has been clear to all those involved in the application and appeal.
5. The proposed development is evidently an amended version of an original scheme. My assessment relates to the proposal as amended, since that is the subject of this appeal.

### **Reasons for Refusal**

6. The two stated reasons for refusal of planning permission are:
  1. The proposed development, by reason of its siting, height, scale, massing and close proximity to the northern boundary, would unreasonably harm the amenities of the neighbouring properties to the north of the site at No's 9 and 10 Le Clos de la Serre. Accordingly the proposal fails to meet the

requirements of Policies GD1, GD7, and SP7 of the Adopted Island Plan, 2011 (Revised 2014).

2. The proposed development, by reason of its height, scale and massing, poor quality of design and landscaping and its siting set back from the roadside, would unreasonably affect the character of the area, contrary to Policies GD1, GD7 and SP7 of the Island Plan (Revised 2014).

### **Site and Surroundings<sup>1</sup>**

7. The appeal site lies on the east side of La Rue de Samares. To the south are some newly-built houses grouped around a small cul-de-sac. Some of these houses appeared to be occupied and some were advertised for sale at the time of my inspection. To the north is another group of modern houses served by a short cul-de-sac off La Rue de Samares, known as Le Clos de la Serre. These dwellings look fairly new but all appeared to be occupied. The two houses in Le Clos de la Serre nearest to the site are Numbers 9 and 10 - Number 9 being towards the rear or east and Number 10 being towards the front or west, closest to La Rue de Samares. The northern boundary of the appeal site is marked by a rendered wall which for most of its length is about 2.3 metres high, but lower towards the east.
8. Most of the appeal site is occupied at present by a building (L'Industrie) which was evidently until fairly recently a house and two flats. At the time of my inspection this building was mostly vacant, although part of the ground floor appeared to be in use as a builder's rest room. Building materials and equipment were also being stored in the open on land behind the building, in the eastern part of the appeal site. As can be seen in the photographs submitted in evidence, there are several windows in the north elevation of this building, the highest window being at second floor level. This window serves a loft area which is accessible by means of fixed "loft ladder"-type steps from the first floor.
9. The land east of the appeal site is mostly an open field. To the west on the opposite side of La Rue de Samares there is other open land, partly covered with rough grass and partly (towards the south) in arable cultivation.
10. Although there are areas of undeveloped land including the fields just mentioned, most of the land on both sides of La Rue de Samares is built-up. There are houses of various ages and styles, some standing close to the road and some further back or grouped around short culs-de-sac off the road. Granite block walls of varying heights are present intermittently along the sides of the highway.
11. There are pavements (or footways) on both sides of La Rue de Samares in places but the pavements are not continuous and are quite narrow, including locations where the kerb along the edge of the pavement is so low as to be almost flush with the carriageway. The width of the carriageway itself varies, and there are several places where it is too narrow for two normal-sized vehicles to pass each other.

### **Case for Appellant**

12. The main grounds of appeal are that insufficient regard was given to a number of matters. In summary, these are:
  - Policy SC02 which encourages the development of health-care facilities in the built-up area.

---

<sup>1</sup> Some descriptive details are incorporated into my "Assessment" section.

- The essential need for the proposed type of facility.
  - Policies SP1-SP4 inclusive, SP6, GD3 and H6 which seek to direct new development to the built-up area, to achieve the highest density of development and widen housing choice.
  - The test of unreasonableness, bearing in mind the site's location in the built-up area.
  - The presence of the existing L'Industrie building, including its height and siting, its substandard appearance, and its impact on Number 10 Clos de la Serre.
  - Building Research Establishment standards on sunlighting and daylighting.
  - The high design quality of the proposed development.
  - The existing character of the area.
13. The appellant also contends that insufficient detail has been given as to why the proposal would harm the amenities of properties to the north.
14. The statement of case submitted for the appellant expands on each of the grounds of appeal and adds 28 appendices containing supporting documents, including extracts from the Island Plan, copies of correspondence, copies of plans, photographs of the site and surroundings, and photographs of developments elsewhere. Statements responding to the representations by third parties and by the planning authority have also been submitted on the appellant's behalf.

#### **Case for Planning Authority**

15. The planning authority's case is based on the officer's report, which makes the following main points.
- In principle, the proposed use is acceptable in accordance with Island Plan policies H6, H7 and SCO2 and would meet a need for residential care homes.
  - The proposed building, three-storey in character, would be atypical of the area and would be set back from the road with limited landscaping to soften the hard-surfaced frontage. The design, siting, form and scale of the development would unreasonably affect the character of the area.
  - Because of its scale, height and siting the proposed building would dominate over neighbouring properties and would cause unacceptable loss of light to the two properties to the north. The impact on properties to the south would not be unreasonable.
  - The Department are satisfied that the proposed parking provision with 12 spaces mainly for staff plus three overspill spaces would be satisfactory and that the proposal would not cause unacceptable problems of traffic generation or road safety.
  - The parking area at the front of the site would have limited landscaping and would give a hard edge to the development not of sufficient quality to comply with policies GD1 and GD7.
  - Overall, the proposal is considered to be unacceptable for the reasons stated in the decision notice and contrary to the policies referred to in that notice.

## **Representations by Other Parties**

16. Written representations were submitted at application stage from the occupiers of about a dozen properties near the site objecting to the proposed development.<sup>2</sup> Almost all of these representations mention traffic and road safety. Several objections refer in particular to the narrowness of La Rue de Samares, the poor provision of pavements, and the growth in traffic which has resulted from past and recent housing development. Comments are made about the effect of recent traffic management proposals which could add further to traffic using La Rue de Samares. Objectors say that the road could not satisfactorily cope with the additional traffic likely to be generated by the proposed development, especially taking into account the presence of nearby schools and the use of the road by children. Similar objections have been submitted later by a number of local residents in response to the appeal.
17. Other issues raised by objectors include:
- The provision of car parking space, which is considered to be inadequate.
  - Noise and light pollution.
  - The scale and height of the development, being not in keeping with the area. (This is not a universal view - one person who objects on other grounds states that he likes the design).
  - The effect of the proposal on the amount of sunlight, daylight and privacy for neighbouring properties.
  - The effect on drainage.
  - A care home should not be sited between residential properties.
18. The Parish of St Clément state that they are content with the proposal, especially the setting back from the road, and have no comment about car parking provision, having received an explanation of how it would be managed.

## **Assessment**

### *The Proposal*

19. I comment first on aspects of the proposal where there are inconsistencies or inaccuracies in various documents. As far as possible within the procedural limits of a site inspection I sought to clarify some of these during my inspection.<sup>3</sup> The documents include the application and accompanying plans, the Design Statement, the Planning Statement, the statements of case for both main parties and the planning authority's refusal notice. I draw attention to these points because you may want to refer to these documents and they could be misleading. There are also legal and practical implications, particularly if you are minded to grant conditional planning permission, a matter to which I return later.
20. The extent of the application and appeal site is shown with a red dot-dash line on Drawing 543-010A titled "Proposed Site Plan". A different boundary is shown on the Location Plan (Drawing 543-001) and on the plan headed "Site Location Plan" in the Design Statement - these plans show a "kinked" western boundary where

---

<sup>2</sup> Some local residents sent more than one representation, and some have made joint comments.

<sup>3</sup> With the agreement of all those present, including representatives of the appellant, the planning authority and two local residents, I asked questions on a number of factual points relating to the proposal (such as the position of the site boundary and the number of units proposed). The information I received in response is incorporated into my assessment.

it is proposed to widen the pavement.<sup>4</sup> Another boundary, showing a third differently-shaped site, appears in the plan labelled "Site Photographs" in the Design Statement.

21. The southern boundary of the site is shown on the Proposed Site Plan aligned partly along the outer edge of a pavement, about 5.5 metres from the nearest part of the proposed building. On the drawings of the west and east elevations, this distance is materially different (about 4 metres on the east elevation and 6 metres on the west elevation), and the site boundary appears to coincide with a proposed wall instead of the more southerly pavement edge.
22. There are other discrepancies relating to the site boundary on the application drawings. On the drawings of the north and south elevations (543-015) the eastern site boundary is shown with a red dashed line at a distance of about 7.6 metres from the easternmost part of the proposed building. On the Proposed Site Plan (Drawing 543-010A) the corresponding distance is shown as about 25 centimetres.
23. Applying the convention that the larger scale plan should be regarded as more accurate than the others and that the Site Plan should be regarded as showing the site boundary more accurately than other drawings, I am taking the application and appeal site to be that shown on Drawing 543-010A. This was confirmed and agreed by all those present at the site inspection.
24. Various different descriptions of the number of "units" and/or bedrooms which would be provided by the proposed development appear in the application, the Design Statement, the Planning Statement (both of which documents were evidently submitted in support of the application), the planning officer's report, and the planning authority's refusal notice. The differences are partly explained by the potentially confusing numbering in the floor plan drawings, where the "visiting family room" (which would apparently be intended for overnight stays by visitors) is not numbered and there is no number 8 (or 08). The application drawing of the proposed ground floor (Drawing 543-011A) shows eight single-bedded units, seven of which are labelled as "Patient Unit 01" to Patient Unit 07", with another apparently single-bedded unit labelled "visiting family room". The drawing of the proposed first floor ((543-012A) shows eight single-bedded rooms which are labelled "Patient Unit 09" to "Patient Unit 16"; and the drawing of the proposed second floor (543-013) shows another eight single-bedded rooms which are labelled "Patient Unit 17" to "Patient Unit 24".
25. Thus what is proposed on the ground floor would include seven units for resident patients plus one unit for visitors, with 16 other resident patients' units (as numbered on the application plans from 09 to 24 inclusive) on the upper floors. If the visitor's accommodation is added, this makes 24 "residential units" as shown on the application drawings - 23 for permanent residents and one for visitors' overnight stays. However, both the application and the Design Statement refer to a "25 bed care facility" (with a "nine bed care facility" on the ground floor as described in the Design Statement). As noted in paragraph 1 above, both the planning authority's refusal notice and the appellant's statement of case (on page 3 under the heading "Application") refer to 24 residential bedrooms and one visiting family unit - that is to say, 25 bedrooms in total.
26. The descriptions in the application, the Design Statement and the Planning Statement are all wrong. The planning officer's report and the authority's refusal

---

<sup>4</sup> On Drawing 543-010A this pavement area, shown as outside the application site, is bordered by a yellow dashed line labelled ""Line of land given up to increase pedestrian footpath".

notice quoting the same figures ("24 No residential units and 1 No visiting family unit") are also wrong.

27. A yet further description appears on page 3 of the appellant's Planning Statement<sup>5</sup> which refers to "mostly 2 bedroom en-suite units sharing a communal lounge and kitchen". This is also incorrect. The layout of the first and second floors is such that there would be seven shared "living/kitchen/dining" areas - three on the first floor and four on the second floor - each evidently designed to be shared by the occupants of two adjacent single bedrooms. Thus, despite the numbering of the "patient units" (which appears to treat the units with direct access to a shared room as two units, not one), the proposal could perhaps be described as providing in total up to seven two-bedroom "units" and eight single-bedroom "units", one of the latter being designated for visitors. But even ignoring the numbering on the drawings and discounting the "visitor unit" so as to increase the proportion of units which could conceivably be described as two-bedroom units, the proposal cannot correctly be described as providing "mostly" two-bedroom units.
28. On page 2 of the Design Statement, under the heading "The Proposals", the text states:
- "At ground floor a nine bed care facility is provided.....Above this....are a further 16 bedrooms in two blocks. These blocks are provided by amenity space<sup>6</sup> in the form of balconies and roof terraces which take advantage of the field views to the East and West."
- "All of the units have their own parking space and further parking is provided for the ground floor clinic and for visitors. Shared amenity space is also provided to the rear of the development (East) to add to the private amenity provided by the balconies."
29. The claim that there would be "balconies and roof terraces which take advantage of the field views to the east and west" is inaccurate - the central roof terrace would not provide any views to the east or west and no other areas of roof terrace are proposed, although there would be a second floor balcony in the east elevation, labelled "balcony" on Drawing 543-013. (In other places there would be limited "Juliet balconies", that is to say balustrade railings outside full-length glazed openings designed to prevent anyone falling from the openings, rather than balconies on which occupiers could stand or sit.)
30. The statement about parking provision for the ground floor clinic and visitors appears to conflict with the fact that the submitted plans do not show any clinic and the overall proposal is not described elsewhere as a clinic.<sup>7</sup> When I sought to clarify this point at the site inspection the appellant's representative indicated that the whole of the ground floor was regarded as a "clinic". Even on that basis, I cannot see how the proposed car parking arrangement squares with the claim that "all of the units [would] have their own parking space and further parking [would be] provided for the ground floor clinic and for visitors".
31. The Design Statement (on page 2) states that "shared amenity space is...provided to the rear (east) of the development"; and the Planning Statement (on page 4)

---

<sup>5</sup> Appendix 3 in the appellant's Statement of Case.

<sup>6</sup> Here I am quoting the original text. It is fairly clear that "provided by" is a mistake and that this is intended to mean: "provided with amenity space".

<sup>7</sup> For example, the Design Statement (page 19) states: "At ground floor the building functions as a care facility".

refers to "an area of land to the north-east that could be used as amenity space". From the responses to my queries at the inspection, it appears that these descriptions are intended to refer to the area of land edged blue, east of the application site. Similarly, the "3D Massing Views" on the right hand side of Drawing 543-019 and the "Massing Models" illustrations on page 16 of the Design Statement show a wedge-shaped area of land east of the proposed building, with a wall or fence along the eastern edge of the wedge-shaped area, as if this area were included in the application site for use by future occupiers as some kind of outside amenity space.

32. The area of land described above is outside the application (or appeal) site.<sup>8</sup> There is no application for planning permission for this land to be used for care home purposes. The "Massing Models" drawings, the Design Statement, the Planning Statement and some of the application plans such as the drawings of the north and south elevations mentioned earlier are misleading in this respect.<sup>9</sup> Whether land outside the application and appeal site could be used for care home purposes within the same planning unit as the proposed care home would depend on the outcome of any future planning application - otherwise, the use of this land for care home purposes would be unauthorised.
33. I have not checked the proposed floor areas in detail, but the "Area Schedule" in Section 3.9 of the Design Statement appears to be inaccurate in several ways. For example, it specifies eight patient rooms (when only seven are proposed) on the ground floor, and does not list any floorspace for the proposed laundry or the proposed sluice room.
34. The Planning Statement contains other errors. On page 4, there is a reference to "a total of 12 staff working a shift pattern". This is repeated elsewhere in submitted documents. However, other evidence indicates that the figure of 12 staff is considered by the appellant to be the likely maximum number of staff on the proposed premises *at one time*. The intention would apparently be to operate the care home with three staffing shifts each day, one of which (covering the late evening and night-time period) would have less staff than the others. No details have been provided about this lesser number, but assuming it would be about half the projected maximum of 12, the Planning Statement should have referred to "a total of *about 30 staff* [my italics] working a shift pattern".<sup>10</sup>
35. On page 8, the Planning Statement claims that the north gable of the proposed eastern block would align with the southern gable of 9 Le Clos de la Serre<sup>11</sup>. That would not be so. As was confirmed at my inspection, there would be an offset between these two gables, with the gable of the proposed eastern block further to the east than the gable of the house at 9 Le Clos de la Serre.

---

<sup>8</sup> Blue edging should denote land outside an application site in the same ownership. According to the application form the applicant (Jersey Homes Trust) is not the owner of the application site - the owner is stated to be Evelina Holdings Ltd, so presumably this company owns the blue-edged area.

<sup>9</sup> A note on Drawing 543-019 reads: "This drawing is an illustration of the proposed development and is not to scale. The image is to be regarded as an artist's impression and is illustrative only". No similar note appears on Figure 3.8 "Massing Models" in the Design Statement.

<sup>10</sup> My figure of 30 is the sum of 12+12+6.

<sup>11</sup> Here I am paraphrasing slightly for grammatical reasons. The sentence I am referring to (in the second paragraph of the left hand column on page 8 of the Planning Statement) is: "The north gable of the eastern block will align with the southern gable of 9 Le Clos de la Serre and which is a normal relationship between neighbouring dwellings".

36. During my inspection I also established that there are other inconsistencies in the application plans. In Drawing 543-014 the west elevation facing the road is shown with shrub vegetation along most of the building frontage, and in Drawing 543-010A (the Proposed Site Plan), there is a label "New roadside granite wall with planting behind". But the site plan does not show any area where the vegetation which appears in the elevation drawing could be planted - on the site plan, all of the space directly in front of the west elevation would be taken up by the hard-surfaced car parking area.<sup>12</sup>
37. The 1.8 metre high obscured screen shown as proposed along two parts of the southern edge of the first floor terrace on Drawing 543-012 is not shown to the same dimensions (either laterally or vertically) in the drawing of the south elevation (543-015).
38. The two 1.9 metre wide openings in the southern ground floor part of the east elevation are shown on the elevation drawing (543-014) as features which look like doors - full length with a central division, similar to features elsewhere which are definitely proposed to be doors - but are shown as undivided windows on the drawing of the proposed ground floor plan (543-011A).
39. Several of the errors and inconsistencies mentioned above may have arisen because the application subject to this appeal resulted from changes to an earlier scheme, and application documents have not been properly amended to reflect the changes.<sup>13</sup> Some of the flaws, such as the differences between the application plans showing layout and elevations, appear to be of the type which, according to Practice Note 11, would normally cause an application to be returned. However, returning the application is of doubtful practicality at this stage and I am assuming that you will wish to consider all the other issues.<sup>14</sup>

#### *Assessment of Main Issues*

40. I now turn to the main matters of dispute raised in the written representations. I perceive four main topics: first, the impact with regard to traffic generation, road safety and parking; second, the design and appearance of the proposed development and its effect on the character of the area; third, the effect on the amenity of neighbouring properties; fourth, the degree of need for the development. Other relevant issues include appropriate development density, the design of the existing building at L'Industrie, possible comparisons with developments elsewhere, drainage, and noise; and of course all the issues have to be considered in the light of applicable planning policies.

---

<sup>12</sup> On this point there seems also to be a degree of conflict between what is shown in the drawings and the appellant's statement of case, which argues that "the proposed roadside wall negates the need for any substantial landscaping....and any soft landscaping would be hidden from view".

<sup>13</sup> It also seems that the wrong descriptions in the planning officer's report and the decision notice referred to the original scheme, even though what was refused was the later revised application, not the original scheme.

<sup>14</sup> States of Jersey Practice Note 11 "Information Required for a Planning Application P1" dated January 2016 states that floor plans must match elevation drawings and where they do not, the application will be returned. The equivalent step at this stage would be to summarily dismiss the appeal without considering the cases, but such an approach would be likely to lead to a fresh application for the same proposal with amended plans and documents, followed by another appeal.



*Traffic Generation, Road Safety and Parking*

41. There are more comments from local residents on these issues than on any others, though it is relevant to note the Parish's satisfaction with the proposed development, particularly the parking provision. The Parish's view is apparently based on an explanation given to the Parish by the applicant, on which I cannot comment since I do not know what was said during this explanation.
42. As mentioned in paragraph 34 above, the care home would evidently have a staff of about 30, working three shifts with a maximum of 12 staff on the site at any one time. The provision of facilities such as the on-site laundry would help to minimise the amount of service vehicles calling at the premises. If the proposed care home were to be built and used in the future in the same way as is currently envisaged, it can reasonably be assumed that hardly any of the resident occupiers would be car owners and drivers.
43. That said, the car parking provision is open to criticism in four respects. First, the proposed "overspill" spaces would involve some double-parking. The Design Statement (page 22) states: "The staff...will be on shifts and as such, double spaces will be perfectly easy to manage on site". Despite that statement, it is not clear how, for example, any employees arriving by car to start their shift who need to use such spaces would avoid blocking in the cars of employees who had yet to finish a previous shift, without one or other of the employees being able to interrupt their shift to move their cars. In practice, this is the type of problem which can typically cause drivers to park off-site, with potential implications for disturbance to nearby residents.
44. Second, the applicant has indicated that if planning permission were granted, a minibus would be used for transporting residents on outings.<sup>15</sup> This implies that the minibus would either be based at the appeal site or would at least be parked there quite frequently. There is no indication in the evidence that this has been allowed for in working out how many parking spaces would be required.
45. Third, whilst local residents' concerns about access by ambulances may well be overstated, it is difficult to see from the available evidence what allowance has been made for visits by people such as doctors, therapists, or others who would not be normal shift-working employees. In this last category, I have in mind people such as those leading music, art or other entertainment or exercise sessions. Even if the applicant charity does not currently envisage providing such sessions, it has to be remembered that if the development were to be permitted and implemented, the ownership or management of the premises could change at any time. The type of people who could occupy the building could also change in the future without planning permission being required.<sup>16</sup>
46. Fourth, there is inconsistency between the Design Statement and the Planning Statement. The Design Statement (page 22) indicates that the 12 numbered parking spaces are for staff (the Statement refers to 12 staff and adds: "...provision for this number of staff has been provided"). The Planning Statement (page 6) states that "parking will...only be required for staff and visitors and it is considered that 12 dedicated spaces is more than sufficient".

---

<sup>15</sup> According to the Planning Statement (page 12) Les Amis intend to purchase a minibus for this purpose.

<sup>16</sup> This is because the age, medical characteristics or other aspects of the type of persons who might occupy the care home in the future if planning permission were to be granted could change without causing any "material change of use" as defined for the purposes of planning law - even without considering the potential for changes of use to a children's home or hospital mentioned later in my comments on possible conditions (paragraph 102).

The Planning Statement also states that residents of the care home would be "likely to rely on relatives for lifts to and from their destinations" - that seems to imply fairly regular visits by relatives, contradicting the suggestion in the Design Statement that residents would rarely have visitors (that is my interpretation of: "not as frequent as a more conventional care home would be"). The provision of accommodation for overnight visitors also suggests that there would be a demand for it.

47. Turning to other traffic-related matters, there is a bus route along the coast road and a public car park at Green Island, though this is around 350 metres away and I doubt it would be regarded as convenient by many car users going to the site compared with potentially more intrusive on-street parking in nearby residential culs-de-sac. The layout of La Rue de Samares is well below normal modern standards and the narrow, discontinuous pavements alongside the narrow carriageway create obvious safety hazards. Traffic along this road has evidently increased greatly in recent years. Residents also mention the possible future effects of traffic management measures in the locality, although whether such measures could increase traffic in La Rue de Samares seems uncertain.
48. Much of the past increase in traffic will have resulted from new housing developments, as well as increasing car ownership and usage. The fact that traffic-generating developments have been approved in recent years makes it difficult to define when "the line should be drawn" on the basis that another development would cause unacceptable congestion or undesirably increase accident risks. No specific evidence has been put forward about the accident rate in this road, and the need for drivers sometimes to proceed with caution or give way to other drivers in narrow parts of the road is common elsewhere in Jersey.
49. Having regard to the above points, even allowing for the prospect that some employees would share car travel or use other forms of transport, I have doubts about the adequacy of the proposed on-site car parking arrangements. The applicant's statements about the amount of car parking provision seem to underestimate the likely need for parking by non-employees and appear to be based more on assertion than evidence - for example, there is no evidence from surveys of the pattern of traffic generation or parking turnover at any similar care home. I can also understand local residents' concerns about the traffic and road safety impact of the proposal, especially bearing in mind the presence of a nearby school. On balance, however - and here I give some weight to the fact that the Parish have considered these issues and do not oppose the development - I judge that these factors are not sufficiently clear-cut or weighty to warrant refusing planning permission.

*Design, Appearance and Effect on Character of Area*

50. The proposed building would have an overall width of about 22 metres and a depth (front-to back dimension) of about 30 metres at ground floor level. Towards the rear and front of the site there would be two higher parts - referred to in evidence as the eastern and western blocks - which would have accommodation on three floors. These blocks would have "almost-ridged" roofs (ridge-shaped but with a small flat section at the top) and gable ends to the north and south. Between the eastern and western blocks, at first floor level on the flat roof above the ground floor, there would be a roof terrace furnished with seating and tables intended for shared use by residents.
51. The finishing materials, including rendered areas and granite blockwork, would reflect what can be seen on other buildings in the vicinity. The window-to-wall proportions in most elevations would not be particularly abnormal, although from

an appearance viewpoint I think the large areas of obscured glazing in the north elevation would be a jarring feature, as would the "privacy screen wall" (where the northern gable of the eastern block would be extended sideways to form a flat-topped wall up to eaves height).

52. Looked at in isolation, the design of the proposed building would not be unattractive and the finishing materials would reflect those found in the locality. However, the building's shape and the eaves height of the eastern and western blocks (about 7 metres) would give the building a bulky appearance and its design has to be considered with regard to its setting.<sup>17</sup> The fact that the proposed building would be set back from the road much further than the existing building would help to give the street scene a rather more open quality than at present. Whether that effect would be positive or negative is perhaps a matter of opinion but in any case it would be offset by the high roadside wall. The overall effect of the building set-back would probably be neutral for most people, taking into account the variety of set-back distances elsewhere in La Rue de Samares.
53. I am more concerned about other combined effects of the bulk of the proposed building and its location within the site. In the north, the full-height gables of the eastern and western blocks would be about 2.5 metres from the site boundary. In the east, as recorded in paragraphs 22 and 23 above, the building would almost abut the site boundary - the approximately 25 centimetre (or under 1 foot) gap shown on the Site Plan would be even less allowing for projecting features such as window sills and would barely allow for structural components of the development such as wall foundations to be constructed within the appeal site.
54. The site is in the built-up area, where fairly high density development can be appropriate as a matter of policy. But in this setting, the proposed three-storey building, standing within a few centimetres of one of its site boundaries and within 2.5 metres of another boundary, would look unnaturally squeezed onto its plot. Even allowing for the fact that the rear of the building would be away from the road, this would be a visually unsatisfactory feature of the development. The ratio between eaves height and ridge height of the eastern and western blocks would also be uncharacteristic of most other buildings in the area.<sup>18</sup>
55. Numerous buildings in the vicinity, and elsewhere in St Helier, are sited close to or abutting property boundaries. The modern houses neighbouring this appeal site are obvious examples, as they stand in small plots with limited space around them. However, these modest houses do not have quite the same combination of bulk, height and confined setting as would the proposed development.
56. Part of the planning authority's reasons for refusing planning permission related to "the poor quality of...landscaping". As noted in paragraph 36 above, the drawing of the proposed front elevation which shows the front of the proposed building softened by planting would not be achievable in practice. At the rear, the virtually non-existent gap between the building and the site boundary would certainly not provide any room for planting.

---

<sup>17</sup> The photomontages in Drawings 543-016 and 543-017 help to illustrate the general appearance of the proposed building from different viewpoints in La Rue de Samares.

<sup>18</sup> Part of the appellants' case is that at roof ridge height the proposed building would be lower than the existing building. This is indicated on some of the drawings. Looked at from public viewpoints in Rue de Samares the difference in ridge height would probably not be so significant as to be noticeable, and would be more than offset by the overall scale and mass of the building.

57. I insert here that the modern houses north of the appeal site and the enclosures around their plots have a harshly urban appearance with little or no relief or softening from vegetation. The new dwellings to the south are hardly any better in this respect. However, I do not consider that this poor feature of neighbouring development should be regarded as setting a precedent which should be followed when assessing the proposal now subject to appeal. The appeal proposal involves a much larger building than the neighbouring houses and so the need for planting and other landscaping is correspondingly greater.
58. The Island Plan policies most relevant to issues of design, appearance and impact of development on the surrounding area's character are Policies GD1, GD7 and SP7. They all set out criteria against which proposal are to be assessed. Policy GD7, for example, requires development to "adequately address and appropriately respond" to various criteria, which include the scale, form, massing and siting, and the use of landscape to enhance new development. The policies are fairly generalised, so whether or not this proposal meets these policies is a matter of judgement. In some respects, such as finishing materials, I consider that policy criteria would be met; in other respects that would not be so. For example, features such as the high-level flat-topped sideways extension of the north gable of the eastern block (the "privacy screen wall") and the large areas of obscured glazing would not - in the words of Policy GD7 - "complement the style and traditions of local buildings".
59. Taking all the above points into account I agree with the planning authority's view that the development would detract from the character of the area. Some features of the design would be acceptable; but the scale and bulk of the building combined with the proposed siting and lack of landscaping would be unsatisfactory and would not comply with relevant Island Plan policy.

*Effect on Amenity of Neighbouring Properties*

60. I consider this topic with particular reference to sunlight, privacy and visual impact.
61. Various arguments have been raised about the effect of the development on the amount of sunlight reaching the properties to the north. The appellant contends that the proposal would more than meet recommendations for sunlight set out by the UK Building Research Establishment,<sup>19</sup> which were applied in another recent appeal in the absence of local standards. The planning authority submits that BRE guidelines are not adopted in Jersey and that the proposed development would cause unreasonable loss of light to the neighbouring properties.
62. Illustrative diagrams of a shadow analysis for March 21<sup>st</sup> (the Spring Equinox) are in Appendix 23 of the appellant's statement of case, and similar diagrams for different dates and times of day are in Drawing 543-020.<sup>20</sup> The appellant points out that from the shadow analysis, the gardens of 9 and 10 Le Clos de la Serre would receive substantially more sunlight on the March 21<sup>st</sup> date than would be required to meet the BRE "adequately sunlit" recommendation.

---

<sup>19</sup> This refers to a BRE document "Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice".

<sup>20</sup> As far as I can tell, the analysis the analysis depicted here does not allow for any additional overshadowing effect of the proposed screen wall extension to the north gable of the eastern block. Drawing 543-020 is dated May 2017 and this feature of the proposed building was apparently not introduced until later.

63. I consider that the BRE recommendations are a useful guide, but no more than that. The appellant's shadow analysis indicates that on March 21<sup>st</sup> (which is of course only a sample date for guideline purposes, assuming that the sun is shining) most of the sunlight in the rear garden of 9 Le Clos de la Serre would be in the morning. An increasing proportion of the rear garden would be overshadowed in the afternoon, as would be the south-facing window in the rear extension. (This is a single-storey extension, not shown on the application plans; it contains a dining room and has a window facing south, towards the appeal site.) The front and rear gardens at Number 10 would also be partly overshadowed, but to a lesser extent than at Number 9.
64. In summary, I find that compared with the existing situation, the proposed development would significantly reduce the amount of sunlight reaching the plots of 9 and 10 Le Clos de la Serre. The extent of overshadowing would not breach BRE guidelines and considered by itself, the impact might not justify refusing planning permission, but it is a matter to be weighed in the balance.
65. The planning authority has accepted the appellant's argument that the proposal would not have a significantly adverse effect on the privacy or other amenities of the dwellings to the south, and I do not see any reason to disagree with that view, as the side road immediately south of the site would help to provide separation from the nearest houses and their gardens. To the north, the properties most directly affected would be 9 and 10 Le Clos de la Serre.
66. The house at Number 10 has a small front garden behind a roadside wall. Most of this area, and the side part of the plot immediately south of the house, is at present covered with timber decking. Apart from a small shed, the rear (west) garden is surfaced with artificial "Astroturf"-type plastic grass. It is surrounded by timber panel fencing about 1.8 metres high.
67. The house at 9 Le Clos de la Serre also stands on a small plot. Its rear garden has been made even smaller than it was originally by the dining room extension.
68. The appellant rightly points out that the existing building on the site has several windows which face north. However, the proposed building would be much closer to the northern boundary. Direct overlooking would be prevented by the use of obscure glass in the north-facing windows of the proposed building and in the screen along the northern edge of the central roof terrace. The high-level wall which would extend the north gable of the eastern block (apparently as a result of an amendment to an earlier design) would also help to screen angled views northwards from upper level windows in the proposed building.
69. The designer of the proposed building has obviously made efforts to minimise loss of privacy in neighbouring properties by the use of obscure glazing and the addition of the high-level screen wall. However, the northern part of the building would be very dominant in the outlook from these properties, particularly from their gardens. In my judgment Number 9 would be the worse affected.
70. The applicant points out that the gable of the proposed eastern block would "only" extend eastwards of the rear wall of this house by 2.85 metres, and that this relationship is typical of what is routinely found on housing estates. That argument does not allow for the fact that the 2.85 metre dimension would be more than half the total depth of the small rear garden at Number 9. As can be seen on Drawing 543-023 showing "Existing v Proposed Overlay", the existing L'Industrie building does not extend towards the rear part of the site and does not have anything like the impact on the rear of Number 9 as would the proposed building. The fact that the dining room in Number 9 has part of its outlook

towards the south would tend to make the eastern block more of an everyday presence when seen from this property than it otherwise might be. The dominating effect of this block would also be emphasised during the hours of darkness if the large, high-level obscured glass windows were illuminated by lights inside the building.

71. During my inspection I saw the view northwards from upper floor windows in the existing L'Industrie building. The highest window in the north elevation of L'Industrie serves what appears to be a loft with no proper staircase access. Other windows are of moderate size and at a distance of about 8-10 metres from the properties to the north. Given the presence of the boundary wall and the intervening distance, occupiers of those properties can find a private area in their gardens if they want to, and I think the appellant's argument that the existing situation would be improved by what is proposed is overstated. The existing situation with some windows in the north elevation of L'Industrie at a distance of around 8-10 metres would be replaced by a situation with obscure-glazed windows in a gabled elevation at a distance of about 2.5 metres. For occupiers of the dwellings to the north, the development would provide what I judge to be a limited benefit in privacy, offset by the closer, more dominant physical presence of the proposed building.
72. Under Policy GD1 of the Island Plan, development proposals will not be permitted unless they would not "unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents". Taking into account the height of the proposed building and its closeness to the properties to the north, together with the added visual impact of the high-level sideways gable extension to the eastern block, I judge that the proposal would have an oppressively dominating effect, especially at 9 Le Clos de la Serre. These properties would be made less pleasant places in which to live. Whether this is "unreasonable" in terms of Island Plan policy is a point I return to later.

*Need for the Development*

73. Part of the appellant's case refers to the need for the proposed development. The proposed care home would evidently be operated by a charity, Les Amis, and would cater for people with special needs including those suffering from dementia. Letters of explanation and support from the charity's managing director, from the Minister for Health and Social Services and from the Minister for Housing are in Appendices 1 and 2 of the appellant's Statement of Case.
74. The letter from Les Amis explains that the charity is planning to open the first elderly and complex needs nursing care unit for people with learning difficulties in Jersey. The letter describes the work of the charity and provides information about the number of people in Jersey living with a form of dementia.
75. The letters just mentioned indicate that the proposed care home would provide different types of care - described by the Minister for Housing as "intensive" and "less intensive". Some of the statistics referred to in the letters are open to question - for example, it is not clear how Les Amis can know that "approximately 1,400 people in Jersey are living with dementia" if, as is also claimed, less than half of them have received a diagnosis. Nevertheless the need for additional specialist care facilities in Jersey is fairly clear.
76. The appellant also rightly draws attention to Policy SCO 2 of the Island Plan, under which the development of new primary and secondary healthcare facilities will be permitted provided that certain criteria are met. A key criterion - which would be met in this instance - is that the proposed development would be within

the Built-up Area. Changes at St Saviour's Hospital since the early 2000's have meant that people with learning difficulties have had to go into nursing homes and have caused pressure on facilities at the General Hospital.

77. I find that the appellant's submissions about need provide quite strong arguments for the development of a care home of the type proposed. What is much less clear is whether there is a compelling need for the proposal subject to this appeal, on this particular site, of this particular scale and design. In those respects the appellant's case is much weaker, and there is scant information about what other possible locations have been investigated. The arguments put forward by some local residents are equally weak - they merely say that the development should take place on another site, without saying where that should be.
78. Policy H7 of the Island Plan Policy has relevance here. It states that housing to meet special requirements including residential care and nursing homes will be permitted provided that there is a local area, Parish, or Island-wide need, but this is also subject to the proviso that "the development....complies with other policies in the Island Plan". Thus the "need" case is a further aspect to be weighed in the overall balance with all the other issues.

*Other Matters*

79. I do not propose to discuss every point raised in the written representations, but it is appropriate to comment on some of them.
80. Part of the appellant's case refers to Island Plan Policies SP1, SP2, SP3, SP4, SP6, GD3 and H6. The broad aim of these policies is to concentrate development, including residential development, into the built-up area, in order to encourage more efficient use of resources and help to conserve the rural character of other areas. Higher densities than have been achieved in the past are also envisaged. The proposal would accord with the general thrust of these policies; but that does not mean that a high density of development should be an overriding consideration. Policy GD3, for example, refers to "the highest reasonable density....commensurate with good design, adequate amenity space and parking....and without unreasonable impact on adjoining properties".
81. I agree with the appellant's contention that the existing building at L'Industrie is of poor quality design. At the least, it is architecturally undistinguished. That may be a reason not to oppose redevelopment of the site, but does not provide any strong support for this specific proposal.
82. Subject to the possibility of a legal undertaking on which I comment further below, the proposal could potentially provide a widened pavement next to the appeal site. This would be a useful planning gain from a road safety viewpoint, but in my judgement would only be a small benefit.
83. The appendices to the appellant's statement of case include photographs of recent developments elsewhere (including Les Anquetils and Walter Benest Court). These appear to illustrate mostly high density developments of apartments or terraced "town houses", some of which have small courtyard-type outside amenity areas which lack privacy.
84. I do not know whether some or all of the dwellings in those locations were first occupied when newly-built, but that seems likely from the photographs. I think there is a distinction between a situation where a development would be imposed on existing occupiers - as would be so in La Rue Samares - and a situation where

occupiers choose to buy or rent a dwelling knowing about surrounding development. This distinction has some, albeit limited, relevance when considering whether the effect of a proposal on neighbouring occupiers would be unreasonable for planning policy purposes. Be that as it may, I do not consider that the developments on different sites, in different locations, with different planning histories, should be regarded as setting any precedent when judging the acceptability of the appeal proposal.

85. One of the arguments for the appellant is that following pre-application discussions, your Department invited the submission of a planning application which cost the Jersey Homes Trust £14,000 for the application fee alone. The implication is that the applicant was misled. The letter sent on the Department's behalf after the discussions<sup>21</sup> set out a number of criticisms of the proposal and drew attention to various points (for example indicating that care would be needed to ensure that the proposal would not impact on residential amenity), and offered the possibility of further discussion. Although of course I do not know what was said during a meeting or meetings, from the available evidence I find that the claim that an application was "invited" is incorrect.
86. Several of the objections by local residents on matters such as drainage are not supported by any real evidence. No objection has been raised by the relevant authority and I have no good reason to believe that the proposed development would overload the local sewerage or surface water drainage systems.
87. There is a reasonable basis for residents' concerns about noise, in view of the closeness of the proposed outside terraces to nearby dwellings. The development might generate some outside noise but the high wall at ground level and the 2 metre screen at first floor level would provide partial barriers and I do not consider that the likely noise impact would justify refusing planning permission.
88. Some residents have objected to the development on the ground that a care home of the type proposed should not be in a residential area, or at least should not be in *this* residential area, and I suspect that this view underlies other objections even if unstated. I can understand the reasons for such a reaction. However, the planning authority has not opposed the development on this ground, and local residents who say the development should go somewhere else have not suggested where. Wider social policy, sometimes called "care in the community", points towards locating care homes in residential areas. So it is not the principle of the proposal which makes it open to sound objections - these arise from the more detailed site-specific factors discussed above.

### **Overall Conclusions**

89. As is the case in many planning decisions, a balance has to be struck between the positive and negative aspects of this proposal. I have found that in several respects the development would be acceptable; it would have some benefits and it would meet a need which would be in the public interest. On the other hand, there is also a public interest in safeguarding the quality of Jersey's existing housing stock, and I judge that the development would have an overbearing impact on the southerly outlook from the residential properties to the north, particularly 9 Le Clos de la Serre, to a degree which would unreasonably harm residential amenity.
90. There are also clear objections to some design features, notably the combined effects of the scale and siting of the proposed building. Expressions such as

---

<sup>21</sup> A copy is appended to the Department's Response to the Appellant's Statement of Case.



cramped over-development are rather clichéd, but would apply aptly to this large three-storey building sited so close to two of the boundaries of its site as to be virtually abutting one boundary. In addition the soft landscape provision would be inadequate and difficult or impossible to improve because of constraints resulting from the way the proposed building would be positioned and the extent of the site which would be taken up by hard surfacing.

91. The proposal would be in line with some planning policies, including Island Plan policy relating to the provision of healthcare, but would conflict with other policies on the design and impact of development. In particular, I judge that the need for a care home of the type proposed does not outweigh the objections to this proposal on this site, and the same applies to other beneficial aspects.
92. Irrespective of those points, I consider that the flaws and inconsistencies in the application and supporting material, as described in paragraphs 19-39 above, create an unacceptable degree of ambiguity. The application sought detailed planning permission, that is to say all details were included, and a grant of permission would be legally unsatisfactory because there would be too many doubts about what exactly was being permitted.
93. I conclude that planning permission should be refused, confirming the planning authority's decision but with some variation to the reasons for refusal.
94. The appellant has contended that the Department's reasons for refusal are unclear or insufficiently specific. I consider that both reasons were adequate. However, bearing in mind my earlier comments about design (some aspects of which I found satisfactory) I suggest that Reason 2 could usefully be clarified by modifying it to read:
  2. By reason of its height, scale and massing in relation to its position within the application site, the proposed building would have a visually unsatisfactory, cramped appearance. It would also have some poor design features such as the proposed high-level gable extension on the eastern block and the large areas of obscured glazing. The landscape provision for the development would be of poor quality. The overall effect would detract from the character of the area and would be contrary to Policies GD1, GD7 and SP7 of the Adopted Island Plan 201 (Revised 2014).
95. I also consider that the following reason should be added (numbered 3 below assuming it would be an addition):
  3. There are inconsistencies between the application documents (including the application form, the application drawings, the Design Statement and the Planning Statement), as a result of which there are too many ambiguities about what is proposed to enable the application for detailed planning permission to be approved.

#### **Conditions if Permission Granted**

96. No submissions have been put forward by the parties in this case about what conditions might be imposed if planning permission were to be granted.
97. Normally a detailed planning permission would permit the proposed development in accordance with all the submitted details, subject to standard conditions covering implementation within a time limit and in accordance with submitted plans or other documents. However, if you are minded to grant planning permission, bearing in mind the inconsistencies mentioned above I think it would

be necessary to impose a condition which would make design, layout and landscape details subject to further approval, in the same way as an outline permission would have "reserved matters".

98. A possible wording could be:

"Notwithstanding the details of design, layout and landscaping shown in the application drawings and the descriptions of the proposed development contained in the application, the Design Statement and the Planning Statement, no development shall be carried out until full details of design, siting and landscape, together with a revised Design Statement and a revised Planning Statement containing descriptions of the proposal which accord with the details shown on the revised drawings, have been submitted to the planning authority and have been approved by the authority in writing".

99. In effect, such a condition would "convert" what would otherwise be a detailed permission into an outline permission, except for details of the proposed means of access which are probably adequately covered in the application. Because this change could be regarded as more than minor, in the interests of fairness I suggest that the main appeal parties should be offered the opportunity to submit written comments on possible conditions if you decide to grant conditional permission in this way. If necessary - for example if such comments were disputatious or were to raise issues of planning law - I could provide a supplementary report assessing conditions in more detail. Standard conditions covering the time limits for submission of details and for implementation should also apply.

100. The Department's report on the application notes that before planning permission could be granted a planning obligation would be needed to cover the arrangements for the proposed pavement widening<sup>22</sup> and payment towards a cycle route. I do not see any reason why this requirement should not apply - although elderly people as potential occupiers might well not be cyclists, staff at the proposed care home could be; and the applicant itself has suggested pavement widening (which would be on land outside the application site).

101. As far as I can tell from the available evidence, no obligation has been entered into covering these matters - certainly no legal obligation or agreement under Article 25 of the 2002 Law, not even in draft, has been put before me to consider. So as things stand the absence of any completed legal obligation would justify refusing planning permission. Alternatively, you may wish to consider the possibility of imposing a condition aimed at preventing any development being carried out until a suitable legal obligation has been completed and approved. On that basis, I am not recommending this matter as an additional reason for refusal.

102. If planning permission were to be granted and implemented subject only to standard conditions, the provisions of Article 3 and Class J of the Planning and Building (General Development) (Jersey) Order 2011 as amended would apply. Under the Order, the use of the premises could change in various ways without the need for any planning application - for example, they could become a children's home (Class J(a)) or a hospital (Class J(d)). Such uses would be likely to have materially different patterns of traffic generation and other impacts compared with the proposed care home.

---

<sup>22</sup> This would be on land apparently within the applicant's ownership but outside the application or appeal site as defined in Drawing 543-010A. Any obligation would presumably have to cover details such as proposed surfacing material.

103. None of the parties to this appeal seems to have considered this point. I suggest that it could be covered by a condition aimed at restricting the use of the premises and taking away permitted development rights so as to prevent any future changes of the sort which would normally be permitted under the GDO. But defining a future use would need to be precise. Terms like "elderly" or "dementia sufferers" would not be precise enough to make a condition enforceable. I think the detailed wording of such a condition would have to be another topic subject to further consultation with the parties and possibly a supplementary report, if you were minded to grant permission.

### **Recommendation**

104. I recommend that the appeal be dismissed and that planning permission be refused, for the reasons stated in the Department's decision notice but with Reason 2 modified and Reason 3 added as set out in paragraphs 94 and 95 above.

*G F Self*

Inspector

21 October 2017.