

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

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

### Report to the Minister for the Environment

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

**Appellant:** Mr & Mrs J Sheehan

**Planning Permission Reference Number:** P/2017/0806

**Decision notice date:** 19<sup>th</sup> October 2017

**Location:** Tramonto, La Route du Petit Port, St Brelade, JE3 8HH

**Description of Development:** Install fence to west of site. Construct first floor extension above garage. Amended plans. Alteration to application site boundary.

**Appeal Procedure and Date:** Hearing 10<sup>th</sup> January 2018

**Site Visit procedure and Date:** Accompanied, 10<sup>th</sup> January 2018

**Date of Report:** 5<sup>th</sup> February 2018

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### Procedural Matters

1. The description on the Decision Notice refers to installation of a fence to the west of the site. At the hearing and during the site inspection, all parties agreed that the proposed fence would be installed to the east of Tramonto, as shown on plans submitted during the application process (002B, 006B, 008B). (I note that the north arrow on plan 005B appears to be incorrectly positioned.) Consequently, whatever the outcome of the appeal, the description of the proposal should be amended to reflect the correct location of the proposed fence.
2. The Decision Notice also refers to amended plans and alteration of the site boundary. During the hearing it was confirmed that this relates to submission of a new site location plan, which showed a different boundary to the original plan.

### Introduction

3. This is an appeal by Mr & Mrs Sheehan against a refusal to grant planning permission for construction of a first floor extension above an existing garage and installation of a boundary fence.
4. Owing to the number of objections received, the decision was made by the Planning Committee on 21<sup>st</sup> September 2017 and confirmed at its meeting on 19<sup>th</sup> October 2017. This decision was contrary to the Department's recommendation to approve the scheme without any conditions.
5. The Decision Notice dated 19<sup>th</sup> October 2017 listed a single reason for refusal of the application:

(1) By virtue of its scale and design, the proposed extension would have an unreasonable overbearing impact on neighbouring properties, including Rose Maris and La Hougue Farm. For this reason, the application fails to satisfy the requirements of Policy GD 1 of the adopted 2011 Island Plan (revised 2014).

6. A summary of the cases presented by the appellant, the Department of the Environment and the Planning Committee, together with a summary of comments received during the application process and at the hearing are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

### **The appeal site and surroundings**

7. Tramonto forms one of a small group of properties situated along a private road to the south of Le Mont du Petit Port. These properties are of varying ages and designs. The appeal property is a large detached dwelling, modern in design with a number of mono pitched roofs, white render finish and zinc fascias.
8. The property has been altered as a result of recent planning consents. Of particular relevance is permission, P/2011/0806, which included consent for an extension, which was not fully implemented. Permission was also granted (P/2011/1706) for the construction of a self-contained dwelling to the north-east of the property (but within the confines of the property boundary) known as “The Old Garage”.
9. To the east of the site lies La Hougue Farm. This is a recently completed, substantial two-storey family home with balcony facing west (towards the application site). This replacement dwelling occupies a different location and orientation to the original building, which lies to the south-east of Tramonto. That building was still standing at the time of my site inspection, but I understand that it will be demolished as a condition of the permission for the new dwelling. The property is currently subject to a separate appeal (RP/2017/0889).
10. There are also dwellings to the south of the site, which share a boundary with Tramonto. These include Rose Maris, which was mentioned in the reason for refusal on the Decision Notice.
11. The ground level of Tramonto is significantly lower than its neighbours to the east and south. These differences in levels are addressed through a retaining wall, which runs north-south along the boundary with La Hougue Farm and then extends westwards along the boundary with Rose Maris. The wall is set back from the boundary between Tramonto and La Hougue Farm to create a raised bed along the eastern boundary with La Hougue Farm. There are also raised planters built against the retaining wall with Rose Maris.

### **The proposed development**

12. The application has two distinct elements:
  - a. Installation of a fence to the east of Tramonto near the boundary with the adjoining property (La Hougue Farm).
  - b. Construction of a first floor extension above the existing garage on the eastern side of Tramonto.
13. The proposed fence would be constructed of timber. It would be placed above the retaining wall, with its base being at ground level for La Hougue Farm. Because of

the difference in levels between the two properties, the top of the fence would be 3 metres high as measured from ground level at La Hougue Farm or the level of the raised bed at Tramonto, which equates to approximately 4 metres high if measured from the courtyard ground level outside Tramonto.

14. The proposed extension would be located above the existing single storey garage, which adjoins the eastern side of Tramonto. The design of the extension is two intersecting triangular forms. These would have a white rendered exterior, zinc cladding and zinc fascias.
15. The extension would be accessed via the garage and comprise a single room incorporating a kitchenette along one side and an adjoining bathroom. There would be no windows on the east-facing elevation. There would be three windows on the southern elevation: a small triangular window in the area of the kitchenette and a pair of vertical windows within the bathroom.
16. The stated purpose of the development is to create a self-contained flat for a carer.

#### **Case for the appellant**

17. The appellant has provided six grounds of appeal:
  - (1) By virtue of its height relative to, and distance from the adjoining neighbours, the proposal would not be unreasonably overbearing to either Rose Maris or La Hougue Farm.
  - (2) Insufficient regard was given to the fact that the site is located in the built up area for which policy H6 of the revised Island Plan (2011) sets a presumption in favour of extensions or alterations to existing dwellings.
  - (3) Insufficient weight was given to the meaning of “unreasonably” in policy GD1 of the revised Island Plan (2011) which test sets a high bar to fail.
  - (4) The design is in keeping with the design of the existing building and is therefore an entirely appropriate design.
  - (5) Insufficient regard was given to the extant permit P/2011/0806, which includes a raised roof element, similar to that which is proposed.
  - (6) Insufficient weight was given to the proposed use of the extension as a carer’s unit for the applicant’s son who requires a high degree of professional care.
18. Evidence in support of these six grounds is set out in pages 5 - 7 of the Appellant’s ‘Statement of Case’ (undated), and accompanying eight appendices.

#### **Case for the Department of the Environment**

19. The Department’s report for the Planning Committee identified the site as being within the built up area, where there is a presumption in favour of development (including residential development). In the Department’s opinion, the key issues were the design of the extension and the potential impact on neighbouring amenity. The Department considered that the extension would reflect the style of the existing dwelling. Given that the appeal site is at a lower level than its neighbours, the Department’s view was that the extension would not overbear nor affect the privacy of its neighbours and overall would not lead to unreasonable harm being caused.

## **Planning Committee**

20. As the Planning Committee was not represented at the hearing, the assessment of the Committee's views is based on: the written minute of the Planning Committee's meeting of 21<sup>st</sup> September 2017; the reason for refusal included on the Decision Notice dated 19<sup>th</sup> October 2017; and comments from the Department at the hearing.
21. In reaching its decision, members of the Planning Committee visited Rose Maris and La Hougue Farm on 19<sup>th</sup> September 2017, and Tramonto on 17<sup>th</sup> October, 2017. Following these visits, the Committee considered that the scale and design of the proposed extension would result in unreasonable overbearing impact on neighbouring properties including La Hougue Farm and Rose Maris.
22. The minutes report that in reaching its decision, the Committee was not convinced that every available option for providing the additional accommodation at Tramonto had been explored. No formal position was taken on the proposed fence, but the minute records that this was viewed by the Committee as "a lesser issue".

## **Consultations**

23. A single consultation response was received from the Environmental Health Team of the Department of the Environment (letter dated 21<sup>st</sup> June 2017), which confirmed it had no objection to the application.

## **Representations made by other interested persons**

24. Objections were received from four parties during the application process. A further representation from one of these parties was received during the appeal and the same party also provided comments during the hearing. In summary, these representations raise issues relating to: over-development of the site; quality of design; effects of the proposals on neighbouring properties (over-looking, effects on daylight); height of the fence; and effect of the fence on the neighbour's hedge.
25. One of the representations also requested that the Department seek additional information to inform the decision, namely: a scaffold profile; a sunlight survey; and method statement for the construction of the fence.

## **Inspector's assessment and conclusions**

26. Based on the reasons for refusal, written representations, the information provided during the hearing and my observations during the site inspection, I consider the main issues in this appeal are whether the proposal would result in unreasonable effects on neighbouring properties, particularly Rose Maris and La Hougue Farm.
27. The appeal site is within the built up area defined by policy SP1 - Spatial Strategy as the area in which development will be concentrated. Policy H6 - housing development within the built up area - also sets a presumption in favour of extensions or alterations, provided the proposal meets required housing standards.
28. Alongside these policies that set a presumption for development within the built up area, it is necessary to consider the requirements of policy GD1 - general development considerations. This policy sets out the general criteria against which all development will be assessed. Development will not be permitted unless it does not unreasonably harm the amenities of neighbouring uses, including the living

conditions for nearby residents. Privacy and access to light are specifically mentioned in the policy.

29. The application is for two discrete and independent developments: installation of a fence; and construction of an extension. I consider these separately below.

#### *Installation of a fence to the east of the property*

30. The proposed fence would be installed close to the eastern boundary of Tramonto, adjacent to a hedge on the neighbouring property of La Hougue Farm.
31. The hedge is currently subject to a Ministerial Order that requires it to be 2.43 metres high as measured from a manhole cover in the south west corner of La Hougue Farm's garden. Planning permission RP/2017/0889, which applies to La Hougue Farm, included a condition to increase the height of the hedge to 2.6 metres. This permission is subject to a separate appeal, which includes consideration of a proposal to further increase the height of the hedge to 3 metres.
32. During the hearing and subsequently during the site inspection, there appeared to be some confusion about the relative heights of the proposed fence and the hedge. This appeared to be at least partially attributable to the use of different datum points for assessing the heights of the hedge and proposed fence.
33. Following the hearing and the site inspection I asked all parties to provide their understanding of the comparative heights of the hedge and the proposed fence. The appellant's agent has submitted revised calculations by email that set out the height of the proposed fence and hedge under the three different scenarios that I set out in paragraph 31. These have all been estimated from the same datum point (defined on plan 006B). These calculations show that the proposed fence would be lower than any of the three proposed heights for the hedge. The agent for the neighbouring owners of the hedge and also the Department have both accepted these figures as correct.
34. I conclude that the proposed fence would be lower than the hedge required along the boundary of La Hougue Farm, no matter what the outcome of the appeal for RP/2017/0889. To that extent, I do not consider that it would not have an unreasonable effect on the amenity of the adjoining property to the east (La Hougue Farm).

#### *Construction of an extension above the existing garage*

35. Development represents change. The test that must be satisfied under policy GD1 of the 2011 adopted Island Plan (revised 2014) is whether that change unreasonably harms the amenities of neighbouring uses, including the living conditions for nearby residents. The policy identifies particular examples of unreasonable harm, but does not specifically mention 'overbearing'. However, I consider that the wording of the policy is generic rather than prescriptive. Whilst it provides some examples of the form that this unreasonable harm might take these are not intended as a comprehensive list. Further, it is generally accepted that the physical presence of a building can, in some circumstances, lead to a reduction in amenity for neighbours.
36. The Department's report contains a summary of the distances between the proposed extension and the boundary with neighbouring properties. Whilst these are helpful to a degree, in providing an indication of the scale and proximity of development,

they are less helpful in defining impact. Policy GD1 does not provide specific criteria for determining unreasonable impact on neighbouring amenity. Instead, it relies on a more flexible approach, requiring the decision-maker to reach a conclusion within the context of the immediate surroundings. Accordingly, I have considered the impact of the proposed extension upon each of the two properties named in the Decision Notice in turn.

37. The proposed extension would alter the current single-storey garage into a two-storey building. Based on plan 006B, the height of the extension to the underside of the fascia would be 2.6 m higher than the lowest part of the current garage roof, and the appellant considers that the top of the roof fascia would be 4.5 metres higher than the ground level of La Hougue Farm's garden, but would be set back from the boundary. The Department estimates that the extension would rise around 3 metres above the existing roof line at its highest point along the eastern boundary.
38. In my view, whilst the proposed extension would be visible from the ground floor living area of La Hougue Farm and the adjacent external amenity, it would be largely screened by the hedge (and fence). I consider that the extension would assume a greater prominence when viewed from the first floor balcony. Based on plan 006B, I estimate that the top of the eastern wall of the proposed extension facing La Hougue Farm would be slightly higher than the floor level of the balcony. Whilst I accept that the extension would be a noticeable feature in the outlook from the balcony, given the distance between the balcony and proposed extension, their relative positions and similarity in height, I consider that the balcony would continue to enjoy a generally open aspect to the north and south.
39. On balance, I conclude that whilst the proposed extension would alter the outlook from the balcony, and from the ground floor to a lesser degree, the proposal would not result in an unreasonable overbearing impact on La Hougue Farm.
40. I turn now to considering the effects of the proposed extension on Rose Maris, which lies to the south of Tramonto.
41. Rose Maris lies at a greater distance from the proposed extension than La Hougue Farm (estimated by the Department as 10.5 metres to site boundary and 10 metres to the house). As I noted in paragraph 11, there is a significant difference in ground levels between Rose Maris and Tramonto.
42. When viewed from the courtyard area of Tramonto, Rose Maris appears as a remote structure owing to the difference in heights between the properties and the shielding effect of the retaining wall and raised planters.
43. A very different perspective is obtained from the ground floor living room and external amenity space of Rose Maris. During my site inspection, I noted that the difference in ground levels acts to foreshorten the views between Rose Maris and the garage at Tramonto. This gives the impression of the garage being located closer to the boundary with Rose Maris than the distances measured from the plans would suggest.
44. The appellant has questioned how the proposed extension could be considered 'overbearing' as it would be located on lower ground than Rose Maris. Whilst I accept the appellant's view that the difference in levels means that the proposed height of the extension would be broadly equivalent to a single or one and a half storey building, I consider that the increase in height would exacerbate the visual

foreshortening that I described above and would result in an impression that the extension was located almost on the northern boundary of Rose Maris.

45. I observed the only external amenity space of Rose Maris to be to the north of the property. The northerly outlook from the ground floor of Rose Maris is restricted to the north-east by vegetation and to the north-west by the roof of Tramonto and outbuildings in neighbouring gardens. I consider that the proposed extension would act to further restrict this outlook, creating an impression of the garden and ground floor living space being 'hemmed in' by development and that this would result in unreasonable effects upon the amenity of the residents of Rose Maris.

#### *Other matters*

46. The appellant has indicated that the proposed extension is required for use by care professionals, who provide respite care for a family member who has a disability. Further clarification of their needs was provided during the hearing, which for reasons of confidentiality I will not repeat in detail here. However, it was apparent that the purpose of the fence is also to ensure that appropriate conditions are maintained to assist with the management of the family member's condition.
47. I have given these special circumstances particular consideration during my assessment. Whilst I have sympathy with the needs of the appellant's family, I do not consider that in this instance these needs outweigh the requirements of policy GD1 in terms of impacts on neighbouring amenity.
48. I note that there is an extant permission for the property (P/2011/0806), which was partially implemented and which the Department has confirmed is still valid. That permission allowed for an extension at first floor level. Whilst this is a material consideration, as the consented extension would be situated further to the west and would be lower than the current proposal, I do not consider that it has any particular influence in determining the acceptability of the current proposal.
49. The minute of the Planning Committee meeting reports that the Committee "was not convinced that every available option for providing the additional accommodation at Tramonto had been explored." For avoidance of doubt, I have considered the current scheme on its own planning merits and not in comparison to any other possible scheme, including the extant permission.
50. The neighbours at La Hougue Farm have questioned whether the proposed fence could be installed without harm to their hedge. At the hearing the appellants stated they had received advice from specialists, Rothwells, that they could introduce a fence without harm to the hedge. Based on my observations, I consider that there is adequate space to install the fence within the raised bed area of Tramonto, without having an adverse effect on the neighbouring hedge.
51. One of the representations to the original application requested the Department to obtain various items of additional information, including the erection of a scaffold profile. It is up to the decision-maker to decide what information they require in order to come to a reasoned view on the acceptability or otherwise of a proposal.
52. The appellant states that the separation distances between the proposed extension and neighbouring properties are similar to other examples in the built up area. He has also suggested that consent has been given for developments in the local area which he considers may have had an overbearing impact on neighbouring properties.

Those other cases are not before me. In any case, each proposal must be considered on its own merits, and judged with respect to its own setting.

### Conditions

53. Without prejudice to the outcome of the appeal, possible planning conditions were discussed at the hearing.
54. The Department did not consider that any conditions would be necessary for the proposed application. It considered that the application plans provided adequate information about proposed heights and levels of the proposed extension and fence.
55. The agent for La Hougue Farm suggested conditions in relation to construction of the fence. However, the Department is content with the level of information provided. In my opinion, no conditions would be required concerning installation of the fence.

### Conclusions

56. In reaching my conclusions I have considered the issues afresh. I have viewed the ground from the appeal site and also visited neighbouring properties accompanied by representatives of the Department, the appellant and neighbours.
57. Article 19(2) of the Planning and Building (Jersey) Law 2002 requires that all development should be in accordance with the Island Plan, unless there is sufficient justification for granting permission that is inconsistent with the plan.
58. The proposed development satisfies many of the policies of the 2011 adopted Island Plan (revised 2014). It is for an extension, within the built up area and meets the required design standards. However, the presumption in favour of development within the built up area does not allow all development at any cost. The Island Plan also contains policies, which provide checks and balances to prevent inappropriate development. Policy GD1 requires that development should not unreasonably harm the amenities of neighbouring properties.
59. The proposed fence would be lower than the required height for the hedge that lies between Tramonto and La Hougue Farm. This height was established by a Ministerial Order, although there is an appealed condition to increase the height further. Consequently, I conclude that the proposed fence would be screened by the hedge and would not have an unreasonable impact on neighbouring properties.
60. The proposed extension would be set back from the boundary with La Hougue Farm and would be screened at ground floor level by the fence and hedge. This, combined with the difference in ground levels, leads me to conclude that it would not have an overbearing impact on the ground floor or external garden areas of La Hougue Farm.
61. I conclude that the proposed extension would have a more noticeable effect on the outlook from the balcony of La Hougue Farm, resulting from the proximity and height of the roof of the proposed extension. However, I do not consider that these effects would be unreasonable, given the wider outlook from the balcony.
62. Rose Maris is also situated at a higher level than Tramonto. In this case, I consider the difference in height would act to foreshorten the apparent distance between the proposed extension and the ground floor living area and external amenity space.



The outlook from these areas is already restricted by vegetation and built development. My observations lead me to conclude that the proposed extension would act to create a feeling of enclosure and ‘hemming in’ of the ground floor living area and only external amenity areas, which I consider would be unreasonable and contrary to the requirements of policy GD1 of the 2011 adopted Island Plan (revised 2014).

63. The extant permission is a material consideration, but owing to the differences between the proposals, I do not consider that it is a determining factor.
64. I am aware of the special personal circumstances of the appellant’s family. Whilst these are a material consideration I do not consider that in this case they should assume a greater significance than impacts upon the amenity of neighbours.
65. The application is for two, distinct elements. Whilst I have concluded that the extension would not meet the requirements of policy GD1 of the Island Plan, I have no such reservation about the fence. In this instance, it seems to me that the Minister could issue a ‘split decision’, using the powers available to him under Article 116(2) of the 2002 Law, which allow him to (a) “allow the appeal in full or in part”; or (d) ”reverse or vary any part of the decision-maker’s decision.”
66. The split decision would be intended to allow the appeal with respect to the installation of the fence along the eastern boundary, but dismiss the appeal with respect to the extension above the garage. In dismissing the appeal with respect to the extension, the Minister may wish to give consideration to amending the reasons of refusal to remove reference to La Hougue Farm.

#### **Recommendations**

67. The wording of the description of development should be amended from “install fence to west of site” to “install fence to east of site” to reflect the proposed location of the fence.
68. For the reasons set out above, I recommend that the appeal should be allowed in respect of the fence to the east of the property (subject to amending the wording as set out below) but dismissed in respect of the proposal for the extension above the garage.
69. The reason for refusal for the extension should remove reference to effects on La Hougue Farm.

*Sue Bell*

Inspector 5<sup>th</sup> February 2018