

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr K Bell (see paragraphs 5 and 6 below) against a refusal of planning permission.

Reference Number: P/2017/1233.

Site at: Magnetic and Printemps, La Route des Genets, St Brelade.

Introduction

1. This appeal is made under Article 108 of the Planning and Building (Jersey) Law 2002 against a refusal of planning permission. I held a hearing into the appeal and inspected the site and surroundings on 19 April 2018. During my inspection I went into several neighbouring properties to check their layout and the view from them towards the appeal site.
2. In this report I consider first some procedural and legal matters concerning the identity of the appellant. A description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellant and the planning authority. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.
3. The application was dated 30 June 2017 and was date-stamped as received by the Department of the Environment on 30 August 2017. The proposed development was described in the application as: "Proposed 3 bedroom dwelling". In the Department's decision notice refusing planning permission, the development was described as: "Construct 1 No. three bed dwelling with associated parking and landscaping to the gardens of Magnetic and Printemps".
4. The planning authority's reasons for refusal were:
 1. The proposed building would unreasonably harm the amenity of neighbouring uses, including the living conditions for nearby residents, by having an overbearing effect on adjacent properties to the north and south owing to its scale, form, massing, orientation and siting, and therefore fails to satisfy the requirements of Policies GD 1 and GD 7 of the 2011 Island Plan (revised 2014).
 2. The proposed building would unreasonably harm the amenity of neighbouring uses, including the living conditions for nearby residents, by unreasonably affecting the level of privacy to buildings and land to the north and south that owners and occupiers might reasonably expect to enjoy, and therefore fails to satisfy the requirements of Policy GD 1 of the 2011 Island Plan (revised 2014).
 3. The proposed access is of insufficient width to provide a satisfactory means of access to the property and therefore fails to satisfy the requirements of Policy GD 1 of the 2011 Island Plan (revised 2014).
 4. Details of the required visibility splay at the site access have not been resolved and therefore fail to satisfy the requirements of Policy GD 1 of the 2011 Island Plan (revised 2014).

Procedural and Legal Matters - Identity of the Appellant

5. The applicant in this case was Mr K Bell. When the appeal was lodged, the "appellant" was named in answer to Question 4 on the appeal form as Mr M Bell. Under Article 108 of the 2002 Law, only the applicant has a right of appeal against the refusal of planning permission. I noticed this discrepancy while preparing for the hearing, and the Judicial Greffe raised the matter with Mr Bell's agent. As a result Mr K Bell - who I understand has gone abroad - has supplied written confirmation that he wishes his father, Mr M Bell, to pursue the appeal on Mr K Bell's behalf.
6. Although the appeal could have been turned away since the person specified as the appellant did not have any right of appeal, in all the circumstances, I consider that the appeal can be treated as having been validly made by the applicant, Mr K Bell.

Site and Surroundings

7. The appeal site is located south of La Route des Genets, close to the crossroads junction at Red Houses. The site is at present part of the back gardens of two neighbouring bungalow dwellings which front on to La Rue des Genets, Printemps being to the west and Magnetic to the east. There is a swimming pool (which would be filled in as part of the proposed development) in the rear garden of Magnetic.
8. At the time of my inspection the front part of the plot of Printemps was surfaced with tarmac which appeared to have been laid fairly recently. A driveway leads past the west side of Printemps to the rear part of its plot. The entrance to this driveway from La Route des Genets is at a point where an angled service road leads off the main road near some shops clustered around the Red Houses junction, the nearest premises just west of Printemps being "Wally's Chippy".
9. The area surrounding the site to the south, east and west is largely residential, with a mixture mostly of bungalows but also some two-storey dwellings standing in plots of varying sizes and shapes. The dwellings to the west front on to La Marquandarie. The dwellings to the south front on to a cul-de-sac known as La Cloture.
10. The land in this vicinity slopes generally down towards the south (although in places the difference in levels is stepped rather than sloping); so the level of the residential plots at the rear (south) of the appeal site is lower than the site itself.

Case for Appellant

11. The main grounds of appeal are, in summary:
 - The development would leave the existing and proposed properties with reasonable sized plots. The proposed building would sit comfortably in the site and maintain reasonable distances from all boundaries.
 - The properties surrounding the site are one, one and a half and two storey properties. Boundaries are well established offering privacy which would be maintained. The 1½ storey design of the proposed dwelling and its footprint would be in keeping with the surrounding area. The building is designed to avoid impact on neighbouring properties.
 - The first two reasons for refusal conflict with the planning officer's report to the planning committee. The officer recommended the application for approval and considered it acceptable having assessed it against planning policies and its location in the built-up area. The officer also considered

that the development would not unreasonably harm the amenities of neighbouring properties on grounds of overlooking, overshadowing, loss of light or loss of privacy.

- The access is a private driveway, serving an existing garage which would be demolished. The access is of sufficient width.
- Visibility at the site entrance for vehicles and pedestrians would be satisfactory. The Department for Infrastructure raised no objection to the proposal.
- The proposal would not have any unreasonable impact on neighbouring properties and complies with all relevant policies.

Case for Planning Authority

12. In response, the planning authority make the following main comments.
 - The Department's recommendation was to approve the application. However, having considered representations for and against the proposal, the planning committee raised a number of concerns about the impact on properties to the north and south, the need to obscure glaze some windows, the practicality of the narrow access drive and visibility splays at the site entrance.
 - As regards visibility splays, details had not been finalised at the time the application was decided. If the application had been approved these details could have been made subject to conditions.
 - The committee were also concerned about the potentially dangerous conflict where the driveway runs directly in front of the side door to Printemps.

Representations by Other Parties

13. Written representations commenting on the application were submitted by about eight to ten local residents objecting to the proposed development (this figure is approximate because some people made more than one submission and one or two are joint submissions). Other points of objection were made orally during the hearing by or on behalf of local residents.
14. The main objections are, in summary:
 - The proposed dwelling would be out of keeping with the area, where the dwellings are mostly bungalows, and would cause overlooking and loss of privacy for neighbouring occupiers of properties to the west and south.
 - Noise, disturbance and pollution would be caused. Neighbouring properties would be devalued.
 - The two-storey building would be visually dominating and would shade the morning sun.
 - The proposal would be "garden grabbing" for development which would have a totally inappropriate mass and scale.
 - The access arrangement near the fish and chip shop would be dangerous and would cause congestion at a point where traffic queues occur close to the Red Houses junction.

Assessment

15. This appeal raises two main issues of dispute: first, the effect of the proposed development on the amenities of surrounding residential properties; second, whether the proposed access arrangements would be satisfactory. These points have to be considered taking account of relevant planning policies.
16. Some of the objections by local residents are overstated, or may have related to a design which has been superseded (though not all the changes are readily apparent on the elevation drawings). For example, after revisions to its design the proposed dwelling would not have any first floor windows in its side gables and any overlooking of the rear gardens of properties to the west fronting La Marquanderie would only be at an oblique angle. Allowing for angles and distances I do not consider that those properties, or any to the east, would be caused unreasonable loss of privacy. The effect of the development on the incidence of sunlight at neighbouring dwellings and gardens would also be well within acceptable limits. The value of properties, which has been mentioned by one objector, is not a planning matter. The complaint by one neighbour that the proposed dwelling would have two chimneys and that "multiple burners would cause pollution" is exaggerated.
17. I am more concerned about the impact of the proposal on the privacy of properties to the south and north. The revised design of the proposed dwelling would have obscured glazing in the three dormer windows in the south elevation. Two of these windows would serve bathrooms, the third (towards the east) would serve a bedroom. Obscured glazing in a bedroom window is not normally a desirable or acceptable feature, and is perhaps indicative of a wider problem. In this instance, bearing in mind that the bedroom would have another window on the opposite side of the room, the obscure glazing is probably just acceptable.
18. The type of glazing, including its permanence, could be controlled by imposing a condition if planning permission were granted, and such control would be particularly necessary to avoid unreasonable loss of privacy in the rear garden of Bon Accueil, where there is a paved patio and lawn. Almost all the outside amenity area for Bon Accueil is at the rear, so safeguarding reasonable privacy there is important. The corner of the proposed building would be only about 4 metres from the site boundary at this location, and the nearest dormer window would be about 5 metres away. Provided suitable obscured glazing were permanently installed in the dormer windows, together with a restriction on the extent to which the windows could be opened, direct overlooking would be prevented. However, the visual impact of the proposed dwelling on the outlook from the back garden of Bon Accueil would be considerable. I consider that this feature of the proposal would make Bon Accueil a less pleasant place to live in: the degree of harm to amenity would be on the margin of acceptability.
19. The proposed dwelling would have a full length glazed French door-type opening in the south elevation as the only source of natural light for the master bedroom. This opening would have a Juliet balcony outside (that is to say, a balustrade designed to prevent anybody falling or stepping from the room, but not providing a platform to stand on). This opening would be in the projecting gable, so would be further to the south than the dormer windows. The distance from this opening to the site boundary in the south (which is irregular-shaped and at an angle to the alignment of the proposed dwelling) would vary between about 9 metres and 15 metres
20. The properties most affected by possible overlooking from the master bedroom would be the bungalows immediately to the south. These dwellings stand close

to the northern boundaries of their plots, at a noticeably lower level than the appeal site as the ground level steps down just south of the site boundary. However, the stepped change in land level, combined with the screening effect of boundary structures and vegetation would mean that most overlooking would be of the bungalow roofs rather than the north-facing windows or the small outside space behind these bungalows. Some angled overlooking between the bungalows towards their front gardens might be possible, but the intervening distance between the proposed dwelling and the front gardens of the bungalows to the south would mean that any loss of privacy there would not in my judgment be in the "unreasonable" category.

21. The appeal site is within a built-up area. Island Plan policies are aimed at concentrating urban development into the built-up area so as to conserve the rural character of the countryside. This does not mean that development which harms residential amenity should be allowed, but the general thrust of policy is that fairly high density development is regarded as acceptable in built-up areas. There are no adopted standards in Jersey for distances between dwellings for this type of development, and bearing in mind the quite small "privacy distances" which seem to have been regarded as acceptable elsewhere in the built-up area I have to be careful not to apply here the stricter standards which apply in other jurisdictions.
22. The proposed dwelling would have eaves and ridge heights higher than is typical of single-storey bungalows in the vicinity and would be bulkier than many of the surrounding properties. But the dormer design would be reasonably in keeping with the area, would have a traditional appearance and would not be as visually jarring as claimed by objectors.
23. I judge that with regard to the issues considered above, the proposal would cause some loss of privacy and be visually intrusive. However, the degree of harm to residential amenity has to be considered taking into account the site's location in the built-up area. I consider these objections to be of supplementary weight, such that by themselves they might not be decisive.
24. I place greater weight on the effect of the proposal on the property at Printemps. Not surprisingly there are no objections from any occupier of Printemps since I understand it is owned by the appellant or his father and does not appear to be occupied at present. Nevertheless there is a proper public interest in safeguarding the quality of the existing housing stock, irrespective of current occupation or ownership.
25. In my view there are two problems. One is that a first floor bedroom window in the north gable of the proposed dwelling would face directly towards the rear garden of Printemps from a distance of only about 4 metres. Obscure glazing is not an option here as the window would be the only one to the bedroom. The rear garden of Printemps would be greatly reduced from its present size, and because of its south-facing aspect it would be an important amenity for occupiers. The situation for Magnetic would not be quite so bad, since the intervening distance between first floor windows and rear garden would be greater, although this advantage would be offset by the location of proposed car parking spaces next to Magnetic's new rear boundary, which would be a likely source of noise and disturbance for occupiers of Magnetic.
26. I also share the concerns which were apparently expressed by the planning committee about the closeness of the driveway access to the side of Printemps. At its narrowest the access is only about 2.2 metres wide measured between the side wall of the dwelling and the boundary wall on the other side of the driveway,

or less than that if the measurement were to allow for roof overhang. The main entrance door to Printemps is in this west elevation. The door is partly glazed; there are obscure-glazed panels adjacent, and a small step outside it. Also in this side elevation towards the rear there is a clear-glazed window to a habitable room. At the time of my inspection the property appeared to be unfurnished, but this room could be a bedroom or living room.

27. In my judgment the arrangement where vehicles going to and from the proposed dwelling would pass within a few centimetres of the side door and window at Printemps, with no intervening wall or fence, would be very unsatisfactory from both safety and amenity viewpoints. Occupiers of Printemps would be likely to suffer disturbance from noise, and from headlight glare during the hours of darkness, as well as the potential hazard (for visitors as well as occupants) of vehicles - typically with projecting wing mirrors - passing extremely close to the door of the dwelling. The front room of Printemps, which has a partly side-facing bay window, would also be affected by noise and light disturbance. Because of the very restricted space it would not be possible to erect any enclosing wall or other barrier. Even pedestrian movements to and from the proposed dwelling, passing so close to the unshielded door and windows of Printemps, could cause some disturbance and take away privacy. The situation here cannot be compared with, say, a purpose-built mews-type development where dwellings in a tight-knit layout would be specifically designed to maintain internal privacy.
28. In those respects the development would (to use the words of Island Plan policy GD 1) unreasonably harm the amenities of neighbouring uses, including the living conditions for residents, and so would conflict with the policy. The potential safety hazard would also mean that the proposal would not meet criterion 6 of policy GD 7 requiring developments to provide safe pedestrian and vehicle access routes.
29. Visibility at the point where the driveway meets the main road is at present partly obstructed by a wall along the frontage of Printemps. However, I am satisfied from my on-site checks that adequate visibility splays could be achieved by removing or lowering the wall, and this could be made subject to a condition if planning permission were to be granted. The field of view from the access might become slightly less than the full applicable standard for vehicles and pedestrians if vehicles were to be parked close to the front plot boundary of Printemps, but I consider the layout would provide a sufficient margin of safety.
30. I can see why there is some concern locally about the possibility of traffic on La Rue des Genets being obstructed if, say, a vehicle proceeding eastwards had to be stopped in the road while the driver waited to turn right into the site at the same time as westbound vehicles were in a stationary queue. It is possible that some congestion and perhaps accident risk could be caused. But such circumstances could occur now, and given the politeness of most drivers in Jersey a gap would probably become available in any queue.

Conclusions

31. I find that the visual impact of the proposal, its effect on the residential amenities of neighbouring properties and its effect on the character of the area would be satisfactory in some ways but not in some respects, although I find the latter to be of only supplementary weight. The proposed access arrangement would be more clearly not satisfactory for the reasons explained above. I conclude on balance that planning permission should not be granted and that the decision by the planning committee to refuse permission should be confirmed.

32. In my view not all of the grounds for refusal quoted by the committee would apply. I suggest the following briefer grounds.
1. The proposed access arrangements would be unsatisfactory because occupiers of the dwelling at Printemps would be likely to suffer disturbance and loss of amenity arising from vehicle and pedestrian movement passing very close to the side of the dwelling and because safety hazards would be caused. Therefore the proposal would not comply with Policy GD 1 of the Island Plan.
 2. The proposal would detract from the residential amenities of some neighbouring properties through loss of privacy and visual impact, and therefore would conflict with the aims of Policies GD 1 and GD 7 of the Island Plan.

Possible Conditions

33. If you are minded to grant planning permission, conditions should be imposed, along the lines set out in the planning officer's first report to the planning committee. Condition 1 is aimed at controlling the provision of visibility splays. Condition 2 is to ensure that the dormer windows in the south elevation would be obscure glazed.
34. I suggest that in both conditions, the word "maintained" should be replaced by "retained", since the latter expresses the intention more accurately and a "maintenance" requirement can be interpreted in different ways by different people.
35. I also suggest that because there are many varieties of obscure glazing, some more "see-through" than others, Condition 2 should include a requirement that before installation, a sample of the proposed glass shall be submitted to the Department of the Environment for approval; and the windows shall not be glazed other than with glass of the same type as that approved. The purpose of this requirement would be to ensure that glass having a fairly high degree of obscurity would be installed. The condition as worded by the Department would include a limit to the extent of window opening; a further restriction specifying that the dormer windows should be hinged at the top would be an added safeguard to prevent overlooking and minimise the perception of loss of privacy in angled views.

Recommendation

36. I recommend that the appeal be dismissed and that planning permission be refused for the reasons set out in my conclusions above.

G F Self

Inspector
30 April 2018.

Appearances at the Hearing

Mr Russell Kinnaird	of JS Livingston Architectural Services (appellant's agent).
Senator Sarah Ferguson	of Soleil D'Hiver, St Brelade (on behalf of local residents).
Mr Michael Carter	Local Resident of 4 Cloture Park Estate.
Ms Tracey Carter	Local Resident of 4 Cloture Park Estate.
Mr Andrew Townsend	Department of the Environment.
Mr Georg Urban	Department of the Environment.