

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

Site visit made on 1 October 2018

**by N McGurk BSc (Hons) MCD MBA MRTPI**

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### **Reference: P/2018/0309**

#### **La Cotte, Le Mont du Ouiasne, St Brelade, JE3 8AW**

- The appeal is made under Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended) against the granting of permission to develop land.
  - The appeal is made by Mr Kenneth Jenkins against the decision of the States of Jersey.
  - The application Ref P/2018/0309 by Mr Bob McLachlan and Mrs Dawn McLachlan, dated 6 March 2018, was approved by notice dated 5 July 2018.
  - The application granted permission is "Construct 1 No. four bed dwelling with associated parking and landscaping."
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### **Recommendation**

1. I recommend that the appeal be dismissed and that the original planning permission be upheld, subject to conditions.

### **Procedural Matters**

2. I have taken the description of the development proposed from the decision notice which appears more detailed than that provided on the application form, which states, "New building dwelling with small pool."
3. The appeal site has a significant planning history. In 2010, a planning application<sup>1</sup> to demolish an existing dwelling and construct a new 4 bedroom dwelling with a garage was approved. Subsequent demolition of the original dwelling began prior to the expiry of the 5-year commencement period relevant to that permission.
4. In October 2016, a new planning application<sup>2</sup> was approved. This comprised revised plans to the previously approved application, above, for the demolition of the existing dwelling and the construction of a new 4 bedroom dwelling with a garage. The approved revised plans included an increase in height to the boundary wall.
5. Consequently, planning permission P/2016/1073 can be implemented, should the applicants wish to do so. In considering the application the subject of this appeal, the ability to implement the most recent permission, referred to below as "the development permitted," is a significant material planning consideration.
6. In their appeal submission, the applicants have stated that they have decided to go ahead with this most recently approved development "entirely as a consequence of the constant objections and attempts to frustrate any development on our site..."

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<sup>1</sup> Ref: P/2008/0081.

<sup>2</sup> Ref: P/2016/1073

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7. However, whilst the appellants have stated this, they have not withdrawn this appeal. I consider this to be unfortunate as it requires the States of Jersey to resource an appeal which, according to the appellants, will not have any effect on the actual development of the appeal site. I note that the withdrawal of the appeal under such circumstances could potentially have saved public resources.
8. The appellants have also stated that "...the wall is not part of this application so cannot be considered. Please confirm that he (the Inspector) is aware of this." This statement is unhelpful and incorrect.
9. The statement is entirely at odds with the planning application the subject of this appeal. Amongst others, Plans 814\_213, 814-316 and 814-201 clearly show the proposed wall and the submitted Design and Access Statement opines that the "new proposal proposes a granite stone wall of 2m high which matches that in material, scale and position as the one approved in consent PP/2016/1073."
10. The appellants did not attend the hearing.

### **Main Issues**

11. The main issues in this case are the effects of the proposed development on the character and appearance of the area and its effect on the living conditions of the occupiers of The Old Smugglers Inn, with regards to outlook and daylight.

### **Reasons**

#### *Character and appearance*

12. The appeal site comprises a relatively small area of cleared land within which a bungalow, now demolished, was previously located. The site is located at the end of le Mont du Ouaisne, on the opposite side of the road to the Old Smuggler's Inn. The site is separated from the road by a granite wall.
13. The site is accessed from a lane to the west, beyond which is a large car park, opening out onto a predominantly coastal setting. To the north of the site is Ouaisne Common and to the east is an area of woodland.
14. Whilst I note that the development of a dwelling and a taller boundary wall, as proposed, would result in a significant change to the site in its current, cleared state, the fact is that the site already has planning permission for a dwelling, to replace the demolished bungalow, and for a 2 metre high granite wall between the replacement dwelling and le Mont du Ouaisne.
15. In respect of this appeal, the development permitted effectively comprises a fall-back position. Consequently, it is important to consider the effect on local character of the proposal the subject of this appeal (referred to as "the proposed development") as compared to that of the development permitted.
16. The development permitted would comprise a very large two storey dwelling with a total floor area of some 470 square metres. The development permitted's overall bulk, varying roof heights and contrasting materials would lead it to draw attention to itself as a large structure of complex appearance.

17. Notably, the two storey elements of the development permitted would rise significantly above the height of the development permitted's granite wall and would be located in very close proximity to le Mont du Ouaisne. These elements would be clearly visible above the wall in views from the road and from the Smuggler's Inn and would, I find, draw attention to themselves as a result of their height, range of materials, structure and particularly, their proximity. All of this would result in the development permitted appearing as a dominant feature.
18. By way of significant contrast, the floor area of the proposed development would be almost 50% smaller than that of the development permitted. Further, the considerably smaller development proposed appears to have been carefully designed so as to comprise a much simpler structure, in terms of both materials and form.
19. As a consequence of the above, I find that the proposal would not only appear less complex than the development permitted, but its timber-clad, simple and modern-chalet style characteristics would lead it to blend in with its seaside setting. Thus, rather than draw attention to itself as a large and dominant feature, the proposal would provide architectural interest to its surroundings in a relatively harmonious manner.
20. Further to the above, the significant overall reduction in volume, in comparison to the development permitted, provides for the two storey element of the proposal to be focused within the northern part of the site. This is the part of the site furthest away from le Mont du Ouaisne and the Old Smugglers Inn. As a consequence of the design, the single storey part of the proposal would largely nestle below the 2 metre height of the boundary wall and whilst its two storey element would be visible from the south, the proposed dwelling would appear neither imposing nor overbearing due to the considerable distance between it and le Mont du Ouaisne.
21. Further, whilst, at its highest point, the proposed dwelling would be slightly taller than the development permitted, I find that no significant harm would arise in this respect due, in part, to the siting of the two storey element towards the northern-most part of the site and in part, due to the simple and modern overall appearance of the proposal.
22. Consequently, it would be the proposed granite wall rather than the proposed dwelling itself that would appear as the most prominent feature, when seen from the road and the Smuggler's Inn. I consider that the wall would provide for a sense of clear separation between le Mont du Ouaisne and the proposed dwelling beyond. In addition, the natural stone material of the wall would blend well with that of neighbouring buildings and boundary features. Also, the height of the wall would provide for a strong sense of enclosure and furthermore, I find that its "blank" nature would lead it to appear as a somewhat neutral feature within the setting of the Old Smuggler's Inn.
23. Consequently, unlike the development permitted, the proposal would not draw attention to itself but would sit comfortably within the setting of the Smuggler's Inn.
24. Taken together, the proposed granite wall and the area above the single storey element of the proposal closest to le Mont du Ouaisne would, to some

significant degree, enhance the pub's setting through a combination of the use of a locally appropriate natural material to create a boundary feature, together with the considerable sense of spaciousness that would arise as a result of the open area between the wall and the two storey element of the proposal. Indeed, I consider this "gap" above the single storey element of the development proposed to comprise an essential quality, resulting in a design that would not harm and that would, to some degree, enhance local character.

25. The proposal would, for the reasons set out above, result in a development that would be to the greater overall benefit of its surroundings than would the development permitted.
26. Taking all of the above into account, I find that the proposed development would not harm, but would preserve and to a small degree, enhance, the setting of the Old Smuggler's Inn, a Grade 4 Listed Building. Given this and the above, I find that the proposal is in accordance with Revised Island Plan 2011 Policies GD1, GD5, GD7, NE6 and HE1, which together amongst other things, serve to protect local character.

### *Living Conditions*

27. As set out above, the appeal site is located immediately across le Mont du Ouaisne from the Old Smuggler's Inn.
28. I observed the site from the Old Smuggler's Inn during the course of my site visit. The main entrance to the pub is through a single storey porch which extends across part of the front of the pub and to a small degree, restricts the outlook from the inner windows behind it and reduces the amount of daylight entering into the pub. When stood up and looking out of these windows, much of the outlook is towards a granite wall and there will not be a significant change in this regard as a result of the proposal.
29. When sitting down and looking out of windows, through the porch and in the direction of the appeal site, there are glimpses over the top of the existing wall to the skyline. The proposed granite wall would be taller than the existing wall and would alter this outlook slightly, but not to any significant extent. There would still be glimpses of the skyline above it. Furthermore, photographs of the now demolished bungalow show that, when it was located on the site, the side gable of that building would have previously appeared prominently in the outlook from the pub.
30. The Old Smuggler's Inn extends further up le Mont du Ouaisne, away from the beach. Here, five ground floor windows are set relatively low down. The main prospect from each of them is largely limited to views towards a granite wall and/or woodland opposite. This outlook would change little as a result of the proposal, other than the presence of a taller granite wall, which would itself be in better condition than the existing wall.
31. Further to the above, I observed during my site visit that the ground floor of the pub had "snug" and "cosy" qualities and that the outlook from ground floor windows towards le Mont du Ouaisne did not comprise an especially significant or notable feature. Rather, the only especially notable vista was that provided by windows looking west, in the general direction of the sea. This outlook would be unaffected by the proposal.

32. Taking into account all of the above, particularly the location and nature of the windows and their existing outlook, I consider that the proposed development would not have a significant detrimental impact upon the levels of daylight entering the pub and there is no substantive evidence before me to the contrary.
33. Consequently, I find that the proposed development would not result in any harm to the living conditions of the occupiers of the Old Smuggler's Inn, with regards to outlook and daylight. In this respect, the proposed development is in accordance with Revised Island Plan 2011 policies GD1 and GD7, which together amongst other things, protect residential amenity.

*Other Matters*

34. I note above that the dimensions of the wall proposed as part of the application are the same as those previously approved in 2016 and that the applicants have decided to implement that permission.
35. Notwithstanding this, there are objections to the proposed development in respect of highway safety, on the grounds that the height of the wall proposed would "impair" the line of sight of drivers and pedestrians.
36. In this location, Le Mont du Ouaisne comprises a narrow road without footpaths. It is close to a popular beach and consequently, there are often many road users, including pedestrians, in the immediate vicinity of the appeal site. As a consequence, drivers and pedestrians already need to be cognisant of the prevailing highway conditions.
37. The proposal will result in a taller wall than the existing wall adjoining Le Mont du Ouaisne, but, in accordance with the plans, the proposed wall would be set within the appeal site, inside the line of the existing wall. During my site visit, I observed that there was no clear view along Le Mont du Ouaisne above the existing site boundary that would be substantially altered by the proposed new wall. Furthermore, whilst I observed the site from a variety of locations, it did not appear to me that the proposed development would result in a harmful additional impairment to the line of sight of drivers or pedestrians and there is no substantive evidence to the contrary.
38. I find that no harmful impact would arise in respect of highway safety as a result of the development proposed. As referred to earlier, I am also mindful that that the development of a 2 metre high wall has already been considered and further to this consideration, was granted planning permission – albeit associated directly with another form of development to that the subject of this appeal.
39. Taking the above into account, I find that the proposed development does not harm highway safety and is in keeping with Island Plan policy GD1, which seeks to ensure that development does not result in unacceptable impacts on highway safety.
40. In support of his appeal, the appellant suggests that a covenant should be imposed to ensure that no extension is added above the flat roofed section. However, the imposition of a covenant is a legal matter beyond the scope of this planning appeal.

41. In this regard, however, I note that any proposal for a first floor extension would, in any case, require planning permission and consequently, it would be assessed on its merits, or otherwise, against prevailing planning policies. I note above that the spaciousness afforded by the ground floor element and the focusing of the two-storey element towards the northern-most part of the site are important design considerations that contribute towards the proposal sitting comfortably in its surroundings. These are factors likely to have a bearing in respect of any future planning application.
42. I also note that the appellant would like to see the removal of General Development Rights in respect of the proposal. However, whilst, in line with the Island Plan, it is important for development to respect local character and the setting of heritage assets, there is no substantive evidence before me to demonstrate that, without the removal of General Development Rights, the proposed development may result in harm to skyline strategic views, important vistas, or the setting of landmark and listed buildings and places. I do not propose that, in this case, General Development Rights should be removed.

#### *Conditions*

43. In granting planning permission, the Department imposed four planning conditions.
44. Taking each of these in turn, Condition 1 requires an ecological assessment to be undertaken and submitted to the Department of the Environment for approval. Any mitigation measures must be carried out in full and in accordance with the assessment. This is a necessary condition, to ensure the protection of all protected species and no changes are proposed.
45. In respect of Condition 1, the appellant suggested that a “method statement” be required to accompany the ecological assessment, in order to understand how engineering works could affect “the surrounding ecologically sensitive neighbouring areas and road side.” However, as Condition 1 provides for the approval of the Department of the Environment and the whole purpose of the ecological assessment and mitigation measures is to protect ecology, I am satisfied that Condition 1 is appropriate. I also note that the proposed development would be required, by law, to meet Jersey’s Building Bye-laws.
46. Condition 2 requires a landscaping scheme to be approved and implemented. This is a necessary condition in the interests of local character and no changes are proposed.
47. No changes are proposed to Condition 3, which requires the landscaping scheme to be completed prior to first occupation. This is a necessary condition which provides for high quality design and ensures that the benefits arising from landscaping are not unduly delayed.
48. Condition 4 requires the approval of external materials. This is a necessary condition which is in the interests of local character. No changes are proposed.

**Conclusion**

49. For the reasons given above, I recommend to the Minister that the appeal be dismissed.

*N McGurk*

INSPECTOR