

**STATES OF JERSEY**  
**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**  
**APPEAL OF A DECISION UNDER ARTICLE 108**  
**REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**  
**by**  
**Mr Philip Staddon BSc, Dip, MBA, MRTPI**  
**an Inspector appointed under Article 107**

**APPEAL BY: Kinga Burnett and Others (Third Party Appellants)**

**AGAINST: The Department's decision dated 11 July 2019 to grant planning permission for a proposal to "raise roof to create first floor and construct single storey extension to South elevation" at Heathlea, Le Petit Pont Marquet, St Brelade.**

**REFERENCE: Reference P/2019/0314**

**APPEAL PROCEDURE: Hearing – 9 October 2019**

**SITE VISIT: 9 October 2019**

**DATE: 15 November 2019**

## **Introduction**

1. This report contains my assessment of the appeal made by Kinga Burnett and Others against the decision of the Department of the Environment to grant Planning Permission for a proposal to "*raise roof to create first floor and construct single storey extension to South elevation*" at a dwellinghouse known as *Heathlea*, situated on Le Petit Pont Marquet in St Brelade.

## **Procedural matters**

2. The appeal form is submitted in the name of Kinga Burnett whose property is *Solbakken* immediately to the east of the appeal site. However, the appeal documentation makes clear that other neighbours are making the appeal jointly with Ms Burnett.
3. These other Appellants are: Mr P. Crowther (*Connemara*, Le Petit Pont Marquet); Mr and Mrs Doleman (*St Jude*, La Rue du Pont Marquet); Ms Hirst (*Shandwick*, La Rue du Pont Marquet); Mr Dodd (*Ingleside*, La Rue du Pont Marquet); Mr Arden (9 Le Pont Marquet Close); Mr and Mrs Bren (*Oakleigh*, Le Clos du Pont Marquet); and Mr and Mrs Rabet (*Capilano*, Le Clos du Pont Marquet). All of these 'Others' have interests within 50 metres of the appeal site. For the avoidance of doubt, the appeal has been considered as being made by these multiple Appellants. I allowed a number of the Appellants to speak at the Hearing, in addition to their Planning consultant who represented them. I also visited most of the Appellants' properties in the course of my site inspection.
4. In the course of my site inspection, it became apparent that drawing no. PG501-12RevP1 Proposed Section AA did not accurately reflect the precise details of site levels and boundary treatments visible on the ground. It also includes an outline rear elevation of *Solbakken* which is not altogether reflective of its actual form. These matters are not pivotal to my assessment but, should the Minister be minded to dismiss this appeal and confirm the Planning permission, it would be desirable to require the Applicant to produce an accurate Section AA drawing.

## **The site and its surroundings**

5. *Heathlea* is situated on the south side of Le Petit Pont Marquet, which is a narrow private road which runs more or less parallel to La Rue du Pont Marquet (the B25) in St Brelade. The property sits within a rectangular shaped plot and comprises a flat roofed bungalow, which appears to date from the middle part of the twentieth century.
6. It is set at a notably higher level than the street and pedestrian access to it, and to its neighbour *Lismore* which is similarly elevated, is gained via a series of steps. Internally, the bungalow currently provides three bedrooms and associated living accommodation. The appeal site also extends to include a lock up garage a short distance to the west of the main plot (and in front of *Lismore*).
7. The properties in the vicinity include quite a wide and mixed range of ages, designs and heights. *Lismore*, immediately to the west side of the appeal

site, is a two storey property with a steep gable roof design and it appears to have some accommodation in the roofspace. To the east, is *Solbakken*, a two storey property set down on a lower level than the appeal site, which appears to have been remodelled and extended at some point in time.

8. Immediately to the north of the site, and on the other side of the road, is *Connemara*, a single storey dwelling. Further to the north are more bungalows, located on the south side of La Rue du Pont Marquet, with their rear aspects facing the appeal site across their respective gardens. There is also a bungalow to the east, at No. 9 Pont Marquet Close. To the south of the rear garden of *Heathlea*, there are dwellings located on Le Clos du Pont Marquet.
9. The area is predominantly residential in character and land use and it has an attractive and mature feel.

### **The application proposal – P/2019/0314**

10. The application proposal seeks to extend and upgrade the property. The works would include the addition of a first floor under a new flat roof and a comprehensive remodelling internally and externally. The proposed upper floor would accommodate the main living areas in the form of a large lounge, spanning the full depth of the property, and a kitchen / dining area. On the ground floor, the accommodation would include three bedrooms, bathrooms and a media room. The extended and remodelled house would be faced in painted render at ground floor level, with the upper floor level finished in horizontal timber cladding.
11. The application attracted 13 letters of objections and was considered by the Planning Committee at its 11 July 2019 meeting.

### **The Appellants' grounds of appeal**

12. The Appellants grounds of appeal can be summarised:

Ground 1a) – the impact of the proposal on neighbours' living conditions / amenities with regard to privacy / overlooking effects.

Ground 1b) – the impact of the proposal on neighbours' living conditions / amenities with regard to light.

Ground 1 (final section) – the impact of the proposal with regard to "the outlook of neighbours through its increased size, mass and scale".

Ground 2 – whether the proposal accords with the design requirements of the Island Plan Policies SP7, GD7 and GD1.

Ground 3 – whether the proposal accords with Policy BE6 (Building Alterations and Extensions) of the Revised Island Plan.

13. The Department and the Applicant contested these grounds, through their written submissions and contributions at the Hearing.

## **Main issues**

14. Based on the Appellants' grounds of appeal and my assessment of the application proposal, the main issues in this case are:
  - The effect of the proposal on the living conditions of neighbours with regard to privacy, light and outlook.
  - The effect of the proposal on the character and appearance of the area in terms of its design.

## **Living conditions – Inspector's assessment**

### *Policy*

15. With regard to the effect of the proposal on neighbours' living conditions, the key policy test is set out in the Revised Island Plan's (2014) general development control Policy GD1. Under GD1(3) a proposal must not 'unreasonably harm' the amenities of neighbouring uses, including the living conditions for nearby residents. The policy goes on to explain that these considerations will include privacy (a) and the level of light (b).

### *Privacy / overlooking*

16. The existing dwelling has a range of windows in its front, side (east) and rear elevations serving habitable and other accommodation. The side wall facing *Lismore* to the west does not contain any window openings. The extended and remodelled house would also include windows in the front, side (east) and rear elevations, with no windows in the west elevation. However, the windows would be greater in number and glazed area and would include openings at first floor level. There would also be an external staircase at the rear of the property, giving access from the main first floor living area to the rear garden.
17. At the Hearing, it was generally accepted by all parties that the proposed ground floor windows were not unreasonable in terms of amenity impacts on neighbours. These ground floor windows would include those serving a bedroom, entrance hall and utility room to the front; a media room and en-suite to the side; and an en-suite and two bedrooms to the rear, the bedrooms served by glazed doors facing down the garden.
18. However, the Appellants have concerns about potential overlooking effects from the first floor level. As the windows face in three different directions, and have potential impacts on different neighbouring properties, it is important to assess each elevation in turn.
19. On the proposed front (north) elevation, there would be four first floor windows. Working from right to left, the first and second windows would serve a utility room and W.C. respectively, which would be obscure glazed. Although there may be a scope for limited glimpsed views when the windows are open, this would be across the street and into garden areas, an effect which is not unusual in a suburban context.

20. The third opening would be a large centrally located plain glass 'gallery' window. Internally, this would be above the ground floor entrance hall and at the level of the first floor lounge area. It would be possible to see out from the lounge area. Due to the presence of the internal staircase, it would not be possible to stand next to the window and this would limit the view and any actual, and perceived, overlooking of *Connemara* opposite. Indeed, the natural line of view from a position within the lounge would be northwards over the top of *Connemara*, rather than looking down into it. I consider that the gallery window would not result in any unreasonable loss of privacy for occupants of this property or its rear garden area.
21. The fourth window would be a high level plain glazed unit above the staircase. Whilst some views outwards from the lounge would be possible, the high level nature of this window means that these will be of the sky, rather than near neighbours' properties.
22. On the proposed side (east) elevation, there would be two rectangular shaped windows, each with the lower half obscure glazed, with plain glass in the top half. The obscure glass in the lower sections will preclude any direct overlooking of *Solbakken's* side windows and rear garden. However, the drawings do not specify the opening details of these windows and one appears to have the potential to include a full height opening. This could lead to some uncomfortable potential overlooking and loss of privacy, given that the separation distance between the two properties is quite limited (circa 7 metres), albeit there is currently some screening by existing vegetation. At the Hearing, the Applicant recognised this potential issue and suggested a 'piano' mechanism, which allowed a short opening for ventilation without allowing outward views. These details are matters that could be conditioned.
23. On the rear (south) elevation, the first floor windows would comprise two large windows serving the dining and lounge areas, along with an external staircase. The windows would face down the garden towards the properties on Le Clos du Pont Marquet. Although this would entail the introduction of large first floor windows, where currently there are none, there are first floor windows on the properties either side, at *Lismore* and *Solbakken*, on a similar alignment. The significant spatial separation is such that the new windows will not, in my assessment, create any undue privacy issues for the properties on Le Clos du Pont Marquet. I am also satisfied that any oblique sideways views of *Lismore* and *Solbakken* are limited and entirely within reasonable parameters in this suburban Built-Up Area context.
24. I have assessed carefully the possibility of overlooking from the external staircase, but I am satisfied that its central position, set well away from the property boundaries, along with its functional form, will not result in any undue privacy impacts. However, at the top of the staircase there would be a glazed door to the lounge. The drawings do not specify the type of glazing for this door and, if clear glazed, it could allow occupants within the lounge area to gaze sideways towards *Lismore's* rear bay windows and garden area. In my view, this door should be obscure glazed to maintain privacy, and this is a matter than can be addressed by a Planning condition.

25. I have noted the Appellants' submissions that the internal accommodation design, with the main living areas on the first floor, would exacerbate overlooking effects and loss of privacy. I have also considered their references to an appeal decision<sup>1</sup> concerning privacy matters on another development proposal. However, the context in this case is of a mature and developed suburban area, where there is already an existing dwelling on the plot, and two storey dwellings with first floor windows are not uncommon. I do not consider that the referenced appeal case is directly comparable, as it related to an entirely new dwelling (through a conversion / extension of an outbuilding) in a countryside location. In any event, each case must be decided on its own merits.
26. On the issue of privacy, I conclude that the proposal would not result in any unreasonable overlooking effects for occupiers of neighbouring properties. However, I do consider that it is necessary to control the details of window openings on the side (east) elevation to protect the amenities of occupiers of *Solbakken*. I also consider it necessary to require the first floor door to be obscure glazed, to maintain the privacy of occupiers of *Lismore*. Subject to these provisions, I consider that Policy GD1(3)(a) is satisfied.

#### *Light*

27. Policy GD1(3)(b) relates to the effect of a proposal on the 'level of light' that neighbours can reasonably expect to enjoy. In my view, the construction of the policy wording could cover both the loss of light (shading / loss of light) and gain of (unwanted) light.
28. Whilst the proposed first floor extension means that the dwelling would be taller than the existing bungalow, its two storey elements are set comfortably away from all of its neighbours. Combined with its flat roof design which limits any shadowing, I am satisfied that the proposal will not result in any undue loss of light to its neighbours.
29. The Appellants greater concern relates to light impacts arising from the new glazed areas after dark, which they consider amount to 'light pollution' and deem to be intrusive. However, as with the issue of privacy, context is important and the presence of first floor windows is common in this area, and is part of its local character. Whilst I do recognise that the proposal involves the use of extensive glazing and that all of the first floor windows will be new, the presence of lit first floor windows is entirely normal and to be expected in this part of the Built-Up Area. The Appellants have also made reference to potential external lighting impacts but there is no evidence before me to indicate that such lighting is proposed and, if it is, whether it would cause any unreasonable effects.
30. On this matter, I consider that the proposal will not result in any unreasonable effects for neighbours and that Policy GD1(3)(b) is satisfied.

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<sup>1</sup> P/2018/1026

## *Outlook*

31. Policy GD1(3) does not specifically address 'outlook', but I consider that it does fall under the broader remit of the first part of the policy in terms of 'amenities of neighbouring uses'. The Appellants contend that the proposed building, being bigger and taller than the existing dwelling, will be overbearing and will adversely affect neighbours' enjoyment of their properties.
32. As I noted above in my 'light' assessment, whilst the proposal would be taller and bigger (than the existing bungalow), its main mass is set comfortably away from all of its neighbours to the side, front and rear, and its mass is tempered by its flat roof design. I do recognise that elements of the new building will be visible to neighbours where currently there is no built form i.e. above the existing bungalow roof. However, this does not automatically equate to an unreasonably harmful impact on outlook. I consider that, whilst there will be some change to neighbours' outlooks, it will not be unduly harmful, nor would it be unusual in its context. Indeed, it should be noted that Policy H6 provides general support for housing developments within the defined Built-Up Area, including extensions and alterations.
33. As a result, I am satisfied that none of *Heathlea's* neighbours will be subjected to an unreasonable loss of outlook and I find no conflict with Policy GD1 in this regard.

## **Design – Inspector's assessment**

34. Policy SP7 says that development must be of a high design quality. It lists components including layout and form; elevational treatments; scale, height and massing; external elements and landscaping and architectural details and appearance. Policy GD7 similarly requires new development to be of high quality design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and the built context. Policy GD1(6) cross references Policies SP7 and GD7 in its requirements. Policy BE6 deals specifically with design considerations for building alterations and extensions in a similar manner.
35. The Appellants consider that the proposed building would be unacceptable in design terms, drawing attention to its elevated position and contending that the design would fail to respond appropriately to its context, including building spacings, and that it would be 'alien' in appearance. They also contend that it would be prominent and noticeable from a wide area.
36. In my assessment, the existing *Heathlea* property is unremarkable in design terms and has little architectural merit. It could at best be described as ordinary and neutral in its contribution to the character and appearance of the area. The proposal would remodel and transform it into a different design, which would be modern in its style.
37. In terms of its layout it would follow that established by the existing property and would retain gaps and spaces either side of the main dwelling. I consider that its mass and height is acceptable and not out of character,

as it will be notably lower than *Lismore* to the west and its flat roof height would be set at a level which forms a natural transition to the lower set *Solbakken* to the east.

38. In terms of its external appearance and detailing, there is a considerable variety of building ages, heights, design and styles in the area. I consider that the modern style and clean lines of the proposal, including its flat roof, will sit quite comfortably within that varied context. Indeed, I consider that it would make a positive contribution to the streetscene and the area. Having viewed the site from a number of locations, I do not consider that it will appear prominent in the wider area, but will settle naturally and comfortably within its Built-Up Area context.
39. On this main issue, I consider the design to be acceptable and to accord with the Island Plan Policies SP7, GD7, GD1(6) and BE6.

### **Other matters**

40. The site contains a number of trees and bushes, including a specimen in the front garden and planting alongside the boundary with *Solbakken*. Through the Hearing process there was discussion about whether this would be retained and also about the health of the tree at the front of the property. Whilst I do not regard the trees and screening as pivotal to the acceptability of the proposal, they do offer some softening and screening which contributes to the character of the area and will, if retained and enhanced, assist in integrating the new development into its setting. These are matters that could be addressed by conditions covering landscaping and landscape maintenance.
41. The Appellants have also raised a range of highway concerns. However, there is no evidence before me to suggest that the proposal, which does not increase bedroom numbers at the site and retains the existing garaging nearby, will result in any highway safety issues.

### **Planning Conditions**

42. In addition to the standard time limit (Condition A) and plan compliance (Condition B), the decision notice contains one further condition. This requires obscure glazing, as indicated on the drawings, of the first floor windows in the north and east elevations. This relates to the utility room and w.c. windows on the front of the house, and the lower panels of the two windows on the side wall. It will be clear from my analysis above that, should the Minister be minded to dismiss this appeal and confirm the grant of planning permission, I consider that further conditions are reasonable and justified. I suggest additional conditions to cover:
- The submission and approval of precise details of any first floor window openings and their opening mechanisms on the side (east) elevation.
  - A requirement that the first floor door (to the external staircase) be obscure glazed and retained as such.



- A requirement for the submission and approval of a landscaping scheme.
- A requirement for maintenance of the implemented landscape scheme.

I have appended a revised schedule of suggested conditions to this report.

### **Conclusions and Recommendation**

43. I assess that the proposal will not have any unreasonable effects upon the living conditions enjoyed by occupiers of any of its neighbouring properties and that the development would accord with Policy GD1(3). I further conclude that the design of the proposal is acceptable and meets the expectations and requirements of Policies SP7, GD7, GD1(6) and BE6.
44. However, I do consider that a more robust and comprehensive set of Planning conditions should be imposed in the interest of protecting neighbours' amenities and enhancing the development's contribution to the character and appearance of the area. I also consider that the Applicant should be required to submit a corrected Section AA drawing for clarity.
45. Subject to these matters, I recommend that the Minister DISMISSES this appeal and grants Planning Permission for the application P/2019/0314, subject to the requirement and conditions set out in the Appendix to this report.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**

## **APPENDIX to Inspector's Report – P/2019/0314**

### **Plans requirement**

1. That the Applicant be required to submit a revised and corrected Section AA drawing that accurately reflects the position on the ground.

### **Recommended Planning Conditions**

- A. The development shall commence within three years of the decision date.

Reason: The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.

- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

Reason: To ensure that the development is carried out and completed in accordance with the details approved.

1. No part of the first floor of the development hereby approved shall be occupied until the proposed windows in the north and east elevations at first floor level are fitted with obscure glass as indicated on the approved drawings. Once implemented, the obscure glazing shall be retained as such thereafter.

Reason: To safeguard the amenities and privacy of the occupants of neighbouring properties to the east and north in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

2. Notwithstanding the requirements of condition 1, precise details of any window openings (and their opening mechanisms) within the first floor window units on the east elevation shall be submitted to and approved in writing by the Department for the Environment.

Reason: To ensure that any opened window does not result in overlooking and loss of privacy to occupants of the neighbouring property to the east in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

3. The first floor west facing glazed door at the top of the external stairwell shall be fitted with obscure glass and retained as such thereafter.

Reason: To preserve the amenities and privacy for occupants of the neighbouring property to the west in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

4. No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the Department for the Environment. The scheme shall include indications of all existing trees and hedgerows on the application site, identify those to be retained and

set out measures for their protection throughout the course of development, along with new planting proposals.

Reason: To safeguard the character and appearance of the area in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

5. All planting, seeding or turfing set out in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: To safeguard the character and appearance of the area in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).