

**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**

**Appeal under Article 108 against a decision made under Article 19 to  
refuse planning permission**

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

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**Appellant:**

Joanna Sheehan

**Application reference number and date:**

P/2019/0946 dated 26 July 2019

**Decision Notice date:**

19 December 2019

**Site address:**

Tramonto, La Route du Petit Port, St. Brelade JE3 8HH

**Development proposed:**

"Extend garage and construct first floor extension to create 1 No. one bed residential unit."

**Inspector's site visit date:**

29 September 2020

**Hearing date:**

30 September 2020

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**Introduction**

1. The application was recommended for approval but was refused by the Planning Committee. The Decision Notice gives the following reason for refusal: -

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

## **Description of the proposed development and its surroundings**

2. Tramonto is a detached dwelling within a group of houses that are in the Built-up Area, as defined in the Island Plan. The proposed development has been designed to match the style of the dwelling. It would extend the family's accommodation in order to provide for a child's care needs.
3. Rose Maris is a house that would have its rear windows and rear garden to the south of the proposed development. The new La Hougue Farm is a house that would have its rear windows and balcony and rear garden to the east of the proposed development.

## **The main issues in the appeal**

4. After reading the written representations received and inspecting the site and its surroundings, I decided that there were three main issues for consideration at the hearing. These were (i) the effect of the proposed development on the amenities of the occupiers of Rose Maris, (ii) the effect of the proposed development on the amenities of the occupiers of the new La Hougue Farm and (iii) the weight to be attached to the care needs.

## **Island Plan policies**

5. Policy SP1 (Spatial strategy) states that development will be concentrated within the Built-up Area.
6. Policy H6 (Housing development within the Built-up Area) indicates that, in principle, house extensions and alterations will be permitted within the Built-up Area. Policy H7 supports the provision of housing in the Built-up Area to meet special requirements, where the development meets a local area, parish or Island-wide need and complies with other Island Plan policies.
7. Policy GD1 (General development considerations) indicates that development proposals will not be permitted if they unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents. Five examples are given, in particular.
8. In this report, I have quoted several references to the "requirements" of Policy GD1. The policy does not impose "requirements". It sets out "criteria" and "considerations" that call for the exercise of planning judgment (see the opening words of the policy and the text supporting the policy at paragraphs 1.4 to 1.7).
9. Policies SP7, BE6 and GD7 contain criteria relating to the quality of the design of proposed development.

## **Planning history**

P/2017/0806.

10. This was an appeal relating to the construction of a different first-floor extension above the garage. The inspector concluded that it "would not result in an unreasonable overbearing impact on [the new] La Hougue Farm", but she recommended that the appeal be dismissed because "the proposed extension would act to further restrict" the outlook from Rose Maris, "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".

11. The inspector's reasoning in relation to Rose Maris was as follows: -

"Rose Maris lies at a greater distance from the proposed extension than La Hougue Farm ... there is a significant difference in ground levels between Rose Maris and Tramonto. ... 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. ... A very different perspective is obtained from the ground floor living room and external amenity space of Rose Maris. ... 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. ... 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."

12. The inspector's conclusion based on this reasoning is in my experience a novel application of the criteria in Policy GD1. To my mind, it is tantamount to protecting the view from Rose Maris. The protection of a view in these circumstances is not, so far as I am aware, usually recognised as an objective of the policy.
13. The inspector took into account the care needs but did not "consider that in this instance these needs outweigh the requirements of policy GD1 in terms of impacts on neighbouring amenity".
14. The Minister agreed with the inspector's recommendation and refused planning permission for the following reason: -

"By virtue of its scale and design, the proposed extension would have an unreasonable impact on the neighbouring property, Rose Maris. For this reason, the application fails the requirements of Policy GD1 of the adopted 2011 Island Plan (revised 2014)".

RP/2017/0889.

15. This was an appeal relating to an increase in the height of the balcony facing Tramonto on the rear elevation of the new La Hougue Farm. The inspector gave weight to the care needs and recommended that the height of the hedge on the boundary between the new La Hougue Farm and Tramonto should be maintained at 3m, rather than the previously-required height of 2.6m.
16. The Minister agreed with the inspector's recommendation and imposed a planning condition requiring the hedge to be maintained at a height of 3m. The reason given by the Minister for the condition was "To protect the

amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the adopted Island Plan 2011 (Revised 2014)".

### **The case for the appellant**

17. The appellant points out that Tramonto is a split-level bungalow, mostly single storey, whereas Rose Maris and La Hougue Farm are both two-storey houses. She states that it seems illogical to maintain that the proposed development would have an overbearing impact on these houses. In addition, Tramonto is on significantly lower ground than the houses, so that the proposed development would effectively appear as a single storey when viewed from them. She maintains that it would be slightly lower than the hedge required on the La Hougue Farm boundary.
18. The appellant states that the proposed development has been redesigned since the dismissal of appeal P/2017/0806, so that the roof of its southern elevation facing Rose Maris would be 1.974m lower and it would have a mono-pitched roof that would slope upwards away from Rose Maris. This elevation would be about 20.4m away from the rear windows of Rose Maris and about 10.4m away from the boundary of its rear garden. It would only be about 2.7m above the ground level of the rear garden of Rose Maris and about 1.6m higher than the rear boundary wall of Rose Maris. No windows would face Rose Maris.
19. The appellant has provided confirmation of widespread official support demonstrating that the proposed development would meet the particular needs of a child of the family.

### **The case presented by the Growth, Housing and Environment Department**

20. The Department state that the Planning Committee took the view following an inspection that the proposed development would have an unreasonable impact on Rose Maris and that the "requirements" of Policy GD1 were not satisfied. They state that this policy applies within the Built-up Area and where it is not satisfied Policies H6 and H7 are not satisfied either. The Committee were very aware of the personal circumstances involved but did not consider that they assumed a greater significance than the impact of the proposed development on the amenity of the occupiers of Rose Maris.

### **Other representations made against the proposed development**

21. The occupiers of Rose Maris consider that the proposed development will have an overbearing impact on their amenities. The occupiers of the new La Hougue Farm state that part of the roof of the proposed development will be visible above the height of the hedge and will have a negative impact on their amenities. Other objections refer to the design and height of the proposed development and assert that the site will be overdeveloped.

### **Other representations made in support of the proposed development**

22. All the written representations and hearing statements that have been made in support of the proposed development relate to the care needs. No-one who opposes the proposed development disputes these needs. I have summarised all the supporting material I have received in the following paragraphs. I have not given details of the needs in this report, because they are confidential. I

have read, in their unredacted form, all the written representations about these needs that have been submitted.

23. The Minister for Children and Housing has exercised his right under Article 17 of the Law (Development of concern to any Minister, etc.) to have his comments taken into account. He has explained that the child requires a range of support services from the Government and that the family has gone to great lengths to ensure that the child receives the necessary support, so that the family can care for the child at home. The Minister maintains that the Government should be assisting them to do so, since the Government Plan leads with the Common Strategic Priority of Putting Children First. He states that this case should be judged on its unique personal circumstances and that the advice of experts should not be ignored. He points to the Disability Strategy published in May 2017 and indicates that the Strategy has a number of actions under accessible housing options, including "Review current planning and building regulation to ensure they are fit for purpose and encourage adequate accessibility, including the availability of 'lifetime home'". Having described the child's needs in detail, he concludes that the proposed development is essential.
24. A Consultant Child & Adolescent Psychiatrist and a Clinical Nurse Specialist in the Health and Social Services Department have both provided medical evidence in support of the proposed development and they have described the advantages that it would provide for the child and the rest of the family.
25. Two Social Workers in the Complex Needs Team have stated that a vital aspect of the child's support plan relates to the physical outline of the family property. They support the proposed development and describe how it would add significant positive effects for the child.
26. The Minister spoke at the hearing to give further emphasis to his written representations. Additional support was given at the hearing by Senator Moore (as ambassador for the child's disorder), Deputy Wickenden (as a member of the Planning Committee) and the Director of Children's Services.

### **Inspector's assessments**

#### *Compliance with planning policies*

27. The proposed development complies with Policy SP1 and, in principle, with Policy H6. It is reasonable in the context described in paragraphs 22 to 26 above, to interpret the words "a local area, parish or Island-wide need" in Policy H7 favourably. The proposed development has been designed to reflect the style of the existing dwelling and is not in conflict with Policies SP7, BE6 or GD7.
28. The applicable criterion in Policy GD1 states that development proposals will not be permitted if they "unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents". The criterion lists five examples in particular: these include not unreasonably affecting the levels of privacy or light that neighbours might expect to enjoy and other matters not of concern in this appeal.

*The effect on the amenities of the occupiers of Rose Maris*

29. By modifying the design of the proposed development so that the edge of the roof nearest to Rose Maris would be much lower and the roof would have a single slope rising away from Rose Maris, the appellant has significantly improved the effect that the proposed development would have on Rose Maris, when compared to the development refused permission in the previous appeal. I do not consider that development of the size and design now proposed would be overbearing, particularly in view of its distance from Rose Maris. I accept that it would restrict the outlook from Rose Maris in this direction, but in my opinion the visual impact would no longer be so serious that it would unreasonably harm the amenities or living conditions of the occupiers. None of the five particular examples in Policy GD1 are at issue in respect of Rose Maris.
30. What would be lost is part of the aspect from Rose Maris over Tramonto and its grounds towards the countryside beyond. I appreciate the value of this view to the occupiers of Rose Maris, but to refuse planning permission for this reason would be to lay down a standard under Policy GD1 that was so exacting that many hitherto acceptable development proposals would fail in the future.
31. There is often a fine dividing line between proposals that are acceptable and those that are not. In my planning judgment, the development now proposed satisfies the criterion in Policy GD1 in respect of Rose Maris, since it will not unreasonably harm the amenities, including living conditions, of its occupiers.

*The effect on the amenities of the occupiers of the new La Hougue Farm*

32. There is some disagreement as to whether the proposed development would be visible from the new La Hougue Farm with the hedge on the boundary at its approved height. In my estimation, a triangular rising section of the highest part of the roof would be visible above the hedge from the balcony and upper rear windows. This section would, however, be more than 10m away and I do not consider that it would have a significant effect on the occupiers' outlook or light. The hedge would preserve their existing level of privacy.
33. I have concluded that the applicable criterion in Policy GD1 would be satisfied in respect of the new La Hougue Farm, since the proposed development would not unreasonably harm the amenities, including living conditions, of its occupiers or their level of privacy and light.

*The weight to be attached to the care needs for the accommodation*

34. The Royal Court stated at paragraph 13 of its judgment in *Le Maistre v. Planning and Environment Committee* [2001 JLR 452] that "The personal circumstances of an applicant for development permission should not be ignored but they should rarely carry much weight and never be determinative of an application. In our judgment, the Committee was right not to grant permission on that ground".
35. Planning and other policies have changed since 2001 and so has the law relating to the determination of applications and appeals and the role of the Royal Court, but in my opinion the statement in paragraph 13 of this

judgment is still binding. I therefore take the view that the Minister cannot allow this appeal on the basis that the care needs are determinative, but he should not ignore them and in the exercise of his planning judgment he should assess how much weight they should carry, bearing in mind that they should “rarely carry much weight”.

36. My assessment of the care needs that have been explained to me in detail is that they are a rare instance in which they should carry more than minimal weight, because the proposed development would be in the best interests of the child. The amount of weight I attribute to them is that, if the Minister is unsure whether or not to accept my assessment of the effect of the proposed development on residential amenities, the care needs are sufficient to tip the balance in favour of granting planning permission.

### **Inspector's recommendations**

37. I recommend that the appeal is allowed and that planning permission is granted to extend the garage and construct a first-floor extension to create a one-bedroom residential unit at Tramonto, La Route du Petit Port, St. Brelade JE3 8HH, in accordance with the application P/2019/0946 and the submitted plans and documents, subject to the standard conditions and reasons A and B relating to the commencement of the development and the carrying out of the development as approved. No other planning conditions have been suggested and I do not consider that any others are needed.
38. The approved plans will be the 14 plans listed in the Decision Notice.

Dated 23 October 2020

*D.A.Hainsworth*

Inspector