

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

by **N McGurk** BSc (Hons) MCD MBA MRTPI,
an Inspector appointed by the Judicial Greffe

Site visit made on 13 September 2023. Hearing held on 13 September 2023.

Reference: P/2022/1655

La Maison Blanche, Parc de l'Oeilliere, Le Mont de la Pulente, St Brelade, JE3 8HF

- 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 Sam and Stephanie Habin against the decision of the States of Jersey. The appellants live within 50 metres of the appeal site.
 - The application Ref P/2022/1655, dated 9 November 2022, was approved by notice dated 4 May 2023.
 - The application granted permission is "Construct single storey extension with roof terrace to North-West elevation and car port to North-East elevation. Various minor internal alterations. AMENDED PLANS RECEIVED omit roof terrace above extension. AMENDED DESCRIPTION: Construct single storey extension to North-West and South-West elevations and extend existing balcony on South-West to form terrace. Construct car port to North-East elevation."
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Recommendation

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

Introduction and Procedural Matters

2. This Report refers to the Planning Department as "the Department."
 3. The description of the application granted permission above is as that set out on the decision notice.
 4. The applicant made changes to the original planning application prior to determination. Amended plans were submitted. These omitted construction of a roof terrace to the North-West elevation following objections to the original proposal.
 5. For clarity, the application granted permission (and referred to below as the proposed development) by the Department is for a single storey extension and the extension of an existing balcony.
 6. The appellants object to the extension of the existing balcony. The appellants occupy The Nook which is located within 50 metres of the appeal site. The Nook provides for separate living accommodation within the dwelling Gaya Ganga.
 7. The appellants' grounds of appeal centre around the impact of the proposed development, specifically the proposed extension to the existing balcony to create a terrace, on their privacy.
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8. Taking everything into account, this Report is concerned with the effect of the proposed development on the living conditions of neighbouring occupiers, with regards to privacy.
9. The summaries of the various cases set out below are neither exhaustive nor verbatim but summarise main points made by the relevant parties. In reaching the recommendation set out in this Report, I have considered all of the information before me.

Case for the Appellants

10. The appellants consider that the proposal would result in a large raised outdoor living space directly overlooking the main living area, garden and patio of The Nook and that this would result in unreasonable harm to their living conditions, in respect of privacy, contrary to Island Plan Policies GD1 and GD6.
11. The appellants consider that the proposal is unreasonable in the context of neighbouring properties and notes that the appeal property already has a considerable area of amenity space surrounding the property, including an existing terrace.
12. The appellants draw attention to the proposed landscaping condition, noting that it relates to the role of plants/trees *"specifically designed to negate the impact of development on the residential amenity of neighbouring residential properties."*
13. The appellants consider that the proposed landscaping condition does not sufficiently safeguard or protect their privacy. Rather, it is the appellants' consideration that the imposition of the landscaping condition demonstrates that the Department has determined that the proposed terrace would have an adverse impact on the privacy of neighbouring occupiers.
14. The appellants consider it implausible that landscaping, that would screen the potential sea view arising from the proposed development, would be put in place.
15. The appellants state that there is no guarantee that landscaping would be large enough, or would grow sufficiently large enough, or would endure prevailing weather conditions, to the extent that it would protect privacy. With regards to landscaping, the appellants consider that its provision would be limited by the existence of a right of way located between the appeal site and The Nook belonging to La Plage.
16. In the appellants' view, the Department could have imposed a condition requiring 1.8 metre obscure screens on the sides of the proposed terrace facing The Nook and La Plage, in order to protect privacy.
17. The appellants state that the 10 metre distance from the proposed development to La Plage is not a considerable distance, especially given the height of the proposal.
18. The appellants state that the main line of sight for users of the proposed terrace would be into the garden of The Nook and that this would result in the appellants feeling watched to an oppressive and overbearing extent.

19. The appellants consider that the Department's view that some overlooking is inevitable conflicts with other planning decisions in the area and that, consequently, the policies of the Island Plan have not been applied on a consistent basis.

Case for the Planning Authority

20. The Department considers that some form of overlooking is inevitable, as the appeal site is located in the built-up area.
21. The Department states that the proposed terrace would be a considerable distance away from neighbouring properties and would appear neither oppressive nor overbearing.
22. It is the view of the Department that a landscaping condition is necessary to "ameliorate" the appeal site, as well as to provide some screening for neighbouring dwellings. The Department notes that the existing garden is bare and that the proposed landscaping condition was imposed not only in the interests of the privacy of neighbours, but also to improve the visual interest of the site.
23. The Department draws attention to the relevant test, which is not whether there is an impact, but whether that impact is unreasonable, having regard to what might reasonably be expected. In this case, it is the Department's view that, taking account of the distance between the proposed development and the appellants' property, along with the presence of an existing, albeit smaller balcony in the same location as that proposed, any harm arising would not be unreasonable.
24. The Department also states that, whilst the proposed terrace would be closer to La Plage than to The Nook, the views from it towards La Plage would be onto the car parking area of that property, rather than into its private garden space. The Department considers that this would not result in unreasonable harm.
25. The Department considers that the examples of decisions relating to other development proposals provided in support of the appellants' case do not provide for direct comparison with the proposal the subject of this appeal.

Case for the Applicant

26. The applicant considers that the granting of permission for the proposed development was consistent with the property's location within the built-up area, where there is a positive outlook towards reasonable development.
27. The applicant states that the proposed development is modest relative to the appeal site's large plot. In this regard, the applicant notes that the appeal site could readily accommodate an additional dwelling and that such a development would likely result in development taking place much closer to neighbouring boundaries than would be the case in respect of the proposal the subject of this appeal.
28. The applicant states that, in response to neighbours' concerns, proposals for a larger first floor terrace closer to neighbours' boundaries were not pursued.

29. The applicant notes that the proposal would extend an existing balcony and points out that this is not a case of whether or not there should be a balcony, but whether the proposal is too large or not.

30. The applicant points out that the proposed terrace would be accessed from an upstairs bedroom rather than from a main living area.

Other Comments

31. Further representations have been made by G Habin, R Young, C Sanderson, C McLatchie and A Pickup.

32. G Habin considers that the proposed terrace would result in severe privacy issues and that as the appeal property has a large garden it does not need the proposed terrace. G Habin states that the proposal would increase the usage of people overlooking adjacent properties and that its only purpose would be to borrow views over neighbouring houses and gardens.

33. R Young states that the proposed terrace would enable direct overlooking of The Nook and that there is no need for additional amenity space as the existing property has a massive garden.

34. C Sanderson states that the proposed terrace would overlook the garden of The Nook and have a full view into the lounge of that property, leading to a complete loss of privacy for occupiers. C Sanderson considers that there is plenty of space at the appeal property for outside seating at ground floor level.

35. C McLatchie states that the proposed terrace would perform the function of a viewing platform and is not necessary in a property which has a large garden. C McLatchie considers that the proposal would overlook neighbouring properties, depriving them of their privacy.

36. A Pickup considers that distances are irrelevant – everything in the foreground would be overlooked when the reason for the proposed terrace is to view the coast. People's health and well-being would be harmed due to overlooking. Existing overlooking in the area is negligible and overlooking would only become inevitable when the proposal is approved. If a condition requiring screening is necessary, the level of overlooking is unreasonable.

Main Issue

37. The main issue in this case is the effect of the proposal on the living conditions of neighbouring occupiers, with regards to privacy.

Reasons

38. The appeal property comprises a two storey detached dwelling with balconies set within a large garden plot in the built-up area.

39. The surroundings are residential and are largely characterised by the presence of detached dwellings set within garden plots of different sizes. This provides for greenery and a generally spacious character.

40. During my site visit, I observed that a number of dwellings in the area are set relatively close to one another and that this, along with the topography of the

area and the different size, height and form of dwellings, provides for a degree of overlooking.

41. The appeal property's large garden is perhaps its predominant feature. This is not least due to the absence of significant landscaping, whereby much of the garden appears as an open and somewhat bleak expanse of lawn. In this regard, the appeal property appears a little incongruous within surroundings where neighbouring dwellings tend to have smaller and more intensively planted and/or landscaped gardens.
42. That part of the neighbouring dwelling Gaya Ganga, known as The Nook, is situated close to the boundary of the appeal site. I visited this neighbouring dwelling during my site visit. I noted that, whilst visible from The Nook, the house within the appeal site appears some considerable distance away from this neighbouring dwelling, across the wide expanse of garden area.
43. During my site visit, I observed that there are views from The Nook's garden area into and across the appeal property's garden, as well as across La Plage, which neighbours both Gaya Ganga and the appeal property.
44. The proposed development would include the creation of a terrace above an extension. This terrace would be located in the same general location as, but would extend, an existing balcony accessed from an upstairs bedroom. There is no evidence before me that the existing balcony results in unreasonable harm to the living conditions of neighbouring occupiers with regards to privacy.
45. In providing for the Island's development needs, it is recognised that some degree of harm to residential amenity is likely to be acceptable in the built-up area, as in this case. In this regard, the Island Plan seeks to achieve an appropriate balance between safeguarding the amenities of Jersey's residents and meeting Jersey's development needs.
46. To achieve this, Island Plan Policy GD1 ("*Managing the health and wellbeing impact of new development*") requires development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts and only supports development where it:

"*...will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents...*"
47. Consequently, in determining whether or not to support a development impacting upon residential amenity, the appropriate test for the decision-maker is not whether such development would result in harm, but whether or not such harm would be *unreasonable*.
48. The design of the appeal property is such that it is already characterised by the presence of a balcony and a terrace. Whilst the proposed terrace would be larger than the existing balcony, I consider that it would not appear especially large when seen within the context of what would comprise an extended dwelling, which itself would be set within the property's expansive garden.
49. The existing balcony already provides external space at first floor level that provides for sea views in the general direction of The Nook. Given this, I find that, whilst larger than the existing balcony, the proposed terrace would not

give rise to a change that would in itself, be so significant as to result in unreasonable harm to the privacy of the occupiers of The Nook.

50. Further, whilst I acknowledge observations that sea views in the general direction of The Nook could currently be regarded as a main focus of the existing balcony, I note that the larger size of the proposed terrace would introduce the scope for a wider range of views in different directions.
51. I also acknowledge that the occupiers might use the proposed terrace as they see fit, just as they might use the, albeit much smaller, existing balcony as they see fit. However, as with the existing balcony, the only access to the proposed terrace would be directly from an upstairs bedroom and I consider it reasonable to conclude that this places a limiting factor on the overall scope for the use of the proposed terrace.
52. It is indisputable that the proposed terrace would be larger than the existing balcony and that this would provide an improved outside space. Given this, it is reasonable to consider that the proposed terrace would provide opportunities for more use than the existing balcony. However, this does not automatically equate to unreasonable harm to the privacy of neighbours.
53. The distance between the proposed terrace and The Nook is so considerable that any overlooking that might arise between it and the proposed terrace would not amount to unreasonable harm. In this regard, I find that the proposed terrace would be so far away from The Nook that it would appear neither overbearing nor oppressive, as suggested by the appellants.
54. Further to the above, I am also mindful that the Department imposed a landscaping condition. Whilst one of the reasons for this condition was to improve the landscaping of the property as part of the development proposed – in the Department’s words, to “ameliorate the current plot” – a further reason was to provide “some screening” for surrounding dwellings. During my site visit, I observed there to be plentiful scope for the provision of some screening.
55. In this regard, I note that there is nothing before me to suggest that in imposing the condition in the way that it did, the Department sought to ensure the privacy of all surrounding properties. Rather, as set out above, the Department sought to improve the appearance of the plot and to provide some screening. Consequently, the proposed development would provide landscaping, including some screening and I find that this would benefit the character and appearance of the appeal property and its surroundings.
56. In reaching my recommendation below, I note that it is a general characteristic of the wider area – just as it is of Jersey’s built-up area as a whole – that dwellings and gardens tend to have areas where there may be some degree of overlooking between neighbours, as well as more private areas where this is not the case. I note that, along with the appeal property, the neighbouring properties Gaya Ganga/The Nook and La Plage share this characteristic.
57. Taking account of all of the above, there is nothing to lead me to conclude that the proposed terrace would result in unreasonable harm to the living conditions of the occupiers of The Nook, with regards to privacy. The proposed development would not be contrary to Island Plan Policy GD1.

Other Matters

58. The proposed terrace would be located closer to La Plage than to The Nook. During my site visit, I observed that whilst there is overlooking between the appeal property and the main parking area to one side of La Plage, albeit mitigated to some extent by the presence of planting and fencing, the main garden area of La Plage would not be overlooked by the proposed terrace. Taking these factors into account, I find that the proposed terrace would not result in unreasonable harm to the living conditions of the occupiers of La Plage, with regards to privacy.
59. In support of their case, the appellants have provided examples of decisions relating to other development proposals. However, there is nothing before me to demonstrate that the examples provided relate to proposals and/or circumstances so similar to the development proposed as to provide for direct comparison. Notwithstanding this, I have, in any case, found that the proposed development would not result in unreasonable harm to residential amenity, leading to my recommendation below.
60. In their representations, the appellants suggested that the Department could have imposed a condition requiring 1.8 metre high obscure screens on the sides of the proposed terrace facing The Nook and the neighbouring property, La Plage, in order to protect privacy.
61. I consider that such a requirement would result in an unfortunate design, creating a terrace with an oppressive sense of enclosure and which would appear as a highly incongruous and unduly dominant feature. This would be contrary to Island Plan Policies GD1 and GD6, which together amongst other things, seek to provide for good design.

Conditions

62. In granting planning permission, in addition to standard planning conditions relating to development commencement and for the development to be carried out in accordance with approved plans, the Department imposed Condition 1, requiring a detailed landscaping scheme to be submitted to and approved in writing by the Chief Officer.
63. Condition 1 is necessary in the interests of the natural environment, local character and residential amenity. No change is recommended in this regard.

Conclusion

64. For the reasons set out above, I recommend to the Minister that the appeal be dismissed and that the Department's decision be upheld.

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PLANNING INSPECTOR