

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 14 September 2023.

Reference: RC/2023/0073

Maison Fosse au Bois, La Route de Vinchelez, St Ouen, JE3 2DA

- 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 Karen Noel against the decision of the States of Jersey. The appellant lives within 50 metres of the appeal site.
 - The application Ref P/2023/0073 was approved by notice dated 3 July 2023.
 - The application granted permission is "Vary Condition 7 (no tree shall be felled, lopped, topped, or in any way destroyed or removed) from permission P/2006/0747 (Proposed development of 3 No 4 bed, 2 storey dwellings with garaging, parking and associated landscaping). FURTHER AMENDED PLANS: Re-orientate roadside gable and create footpath. Alterations to massing and window positions on western-most dwelling. Various other external alterations to remove hedge and install fence above the southern boundary wall.
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Recommendation

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

Introduction and Procedural Matters

2. This Report refers to the Planning Department as "the Department."
3. The Bridging Island Plan, referred to in this Report as "*the Island Plan*" was adopted on the 25th March 2022.
4. The description of the application granted permission above is as that set out on the decision notice.
5. A previous application¹ to vary the condition the subject of this appeal was refused in March 2022².
6. The description of the condition proposed to be varied that is provided on the application form only comprises a small excerpt from the full condition. Much of condition 7 relates to works that have already taken place. However, for completeness, the full description from that part of the condition relevant to this appeal states: "no tree shall be felled lopped, topped, or in any way destroyed or removed, unless the prior written consent of the Minister for Planning and

¹ Reference: RC/2021/1844.

² The application was to Vary condition 7, no tree shall be felled lopped, topped, or in any way destroyed or removed) from P/20006/0747 (Proposed development of 3 No 4 bed, 2 storey dwellings with garaging, parking and associated landscaping). Remove row of Leylandii trees and replace with Laurel hedge to be maintained at a height of 2m."

Environment is received. For the avoidance of doubt, the Leylandii trees to the southern and western boundaries of the site should be retained at a height of no less than 5m from ground level.”

7. The Department states that the reason for imposing that part of condition 7 pertaining to this planning appeal was “to enable the construction of the residential properties (the subject of the original application)...and protect the privacy of the neighbouring property to the south (occupied by the appellant) from direct overlooking...”
8. The variation the subject of this appeal would effectively result in the removal of Leylandii trees protected by condition 7 and replace them with a fence located above an existing boundary wall. The full height of the resultant boundary – the combined height of the existing wall and new fence - would be 3 metres.
9. The appellant refers to the removal of trees relating to another boundary not directly related to this appeal. I note that this is a matter between the appellant and the applicant and/or the Department.
10. The appellant refers to harm arising by way of noise pollution and the loss of protection and security. There is no substantive evidence before me to demonstrate that the Department’s decision in respect of this appeal would result in unreasonable harm in these regards, or that any harm arising from such would add significantly to any other harm.
11. Both the applicant and the appellant refer to the High Hedge Law. I note that this Report concerns a planning appeal relating to an application for the variation of a planning condition and that a complaint under the High Hedge Law would comprise a separate matter.
12. The applicant states that condition 7 would not have been imposed after the implementation of the High Hedge Law in 2008. Whether or not this is the case, at the time of its imposition, condition 7 formed a necessary part of a planning approval and there is nothing to lead me to conclude that that development would have been permitted without the imposition of condition 7.
13. Whilst the Department’s appeals officer was able to provide clear, informed and relevant details during the course of the public hearing, in this case, the reasoning provided in the officer’s report in support of the Department’s delegated planning decision lacked substance and included confusing references.
14. An officer’s report presents the opportunity to provide all parties with a clear and reasoned justification for any recommendation made. I note that this can be especially important in respect of a delegated decision, where an officer’s report can provide the only explanation for that decision.
15. Condition 7 (the subject of this appeal) was imposed to protect the amenity of neighbouring occupiers and an application to vary condition 7 was refused by the Department as recently as September 2022. Given this, it is reasonable to expect a subsequent officer’s report recommending that condition 7 be varied, to clearly explain the rationale behind the Department’s change in approach.

The officer's report states that the proposed variation is unlikely to result in unreasonable harm but provides no explanation as to why.

16. Further to the above, as well as lacking substance, the Department's officer's report includes confusing references. It states that the Government Arboriculturist considers that Leylandii cannot be maintained at a specific height. Whether or not this is the case, nowhere does condition 7 require Leylandii to be maintained at a specific height. Rather, condition 7 is explicit in stating: *"For the avoidance of doubt, the Leylandii trees to the southern and western boundaries of the site should be retained at a height of no less than (my emphasis) 5m from ground level."*
17. The Department's officer's report goes on to state that the Leylandii couldn't be cut to meet the applicant's aspirations without resulting in the hedge dying. This is an equally confusing point - the applicant's clear aspirations, in the explicit form of a submitted planning application, are to cut down and remove the Leylandii, in order to replace them with a fence.
18. Whilst my ultimate conclusion results in a recommendation that the appeal be dismissed, I raise the above matters to draw attention to the importance of the content of an officer's report.
19. 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 Appellant

20. The appellant states that the condition the subject of this appeal reflected planning concerns over the need to protect privacy. The appellant considers that if the trees were removed, the privacy afforded by the trees would be lost and that the close proximity, orientation, height and scale of the development currently obscured by the trees, would appear overbearing.
21. The appellant states that there have been no changes in circumstances since the original condition was imposed. The appellant notes that condition 7 was not appealed at the time that it was imposed. The appellant states that the Leylandii the subject of the appeal currently provide "100% privacy and screening."
22. The appellant states that the removal of the trees would result in the development overlooking her property, including into three bedrooms.
23. The appellant considers that the removal of trees and their replacement with a 3 metre fence would not prevent harm to privacy due to the proximity and height of the development. The appellant states that the removal of the condition would be inconsistent and prejudicial when compared to the wall, fence and trees to the west boundary, where privacy is protected.
24. The appellant considers that varying the condition would not result in a tall enough barrier to retain privacy and would not be of sufficient structural integrity to withstand weather conditions.

25. The appellant states that the trees the subject of this appeal provide a green refuge for birds and that this would be lost were the trees to be replaced by a fence.
26. The appellant states that she would support the replacement of the Leylandii with a fence above the existing wall if it resulted in a boundary that was taller than 3 metres, as this would help to maintain privacy.

Case for the Planning Authority

27. The Department's officer's report states that the proposed variation is not likely to result in any significant or unreasonable harm to the amenities of nearby users.
28. The Department's appeal statement provides the reasoning behind the Department's position.
29. The Department states that the appellant's main house is set away from the boundary with the appeal site, with only one first floor side gable window directly facing the site. The Department states that the appellant's garage and parking area comprise the closest parts of the appellant's property to the appeal site and notes that these are not private recreation or sitting areas.
30. The Department notes that the appellant's principal private garden areas are further away from the appeal site, including garden land around the opposite side of the appellant's house.
31. The Department notes that the appellant's property and the appeal site are in the built-up area where a degree of mutual overlooking is to be expected.

Case for the Applicant

32. The applicant states that the removal of the existing trees and their replacement with a fence will increase the amount of sunlight and daylight received by and improve the general living conditions of, the occupiers of the dwellings within the appeal site.
33. The applicant states that a number of the trees relating to condition 7 have died since the imposition of the condition and that some of the remaining trees are not in good condition.
34. The applicant states that the appellant's dwelling is some 20 metres away from the appeal properties, with only one gable end window and Velux windows in the roof facing towards the appeal site. Given this, the applicant considers that the proposal would not result in harm to privacy.
35. The applicant states that the Leylandii have not been maintained on the appellant's side, resulting in them being over-balanced and risking them toppling over.
36. The applicant states that the proposed 3 metre boundary would be tall and would be taller than most boundaries between neighbours and that, in respect of privacy, the proposed 3 metre high boundary represents a reasonable compromise.

37. The applicant states that replacing the Leylandii with hedging would not be possible due to limited access, the need to remove stumps and roots and the difficulty of growing hedges where the Leylandii are/were.

Main Issue

38. The main issue in this case is the effect of the proposal on the living conditions of the occupiers of La Retour, with regards to outlook and privacy.

Reasons

39. The appeal site includes two properties, Maison Marguerite and Maison Lucille, located in the built-up area in St Ouen.

40. The surrounding area is residential in character and comprises a mix of dwelling types and sizes. During my site visit, I observed that many dwellings have small gardens and that the juxtaposition of properties is such that, whilst many dwellings enjoy private outside space, a degree of overlooking between dwellings is common-place.

41. Maison Marguerite and Maison Lucille comprise adjoining two storey dwellings, with parking areas to the front and relatively short gardens to the rear. During my site visit, I observed that a combination of the height of the rear boundary – largely comprising tall conifers – and the relatively short width of the gardens, meant that the boundary appears as an imposing and dominant feature.

42. This appeal focuses upon this boundary, which is located between the rear gardens of Maison Marguerite and Maison Lucille, and the neighbouring dwelling to the south, La Retour.

43. La Retour is a detached one and a half storey dwelling, with rooms at roof level and with an attached garage. The dwelling is set within comfortable gardens, including large garden areas to the south and east. The large garden area to the south and also a smaller garden area to the west of La Retour are attractive and private.

44. La Retour is accessed via a long driveway and the property has a large parking area, which extends along the northern boundary with the appeal site. The dwelling's attached garage also sits alongside this northern boundary.

45. During my site visit, I observed that whilst there are glimpses towards La Retour's northern boundary from front (east) facing windows, these are from an oblique angle and only a single gable end window at first floor level and a Velux window face towards the appeal site.

46. The Velux window is set some considerable distance away from La Retour's boundary with the appeal site. This, along with the height and sloping angle of the window, leads me to find that any changes to the appeal site's northern boundary would result in minimal impacts in respect of the outlook from the Velux window and/or the privacy of the occupiers of La Retour.

47. Further to the above, I also find that the majority of La Retour's garden area would remain unaffected by changes to the boundary resulting from the proposed variation to condition 7.

48. The proposed variation would result in the removal of the tall conifers located to the rear of the appeal site and their replacement with a fence above an existing boundary wall, resulting in a 3 metre high boundary.
49. Given this and all of the above, I consider that the areas of La Retour that would be impacted to any significant degree by the proposed variation would comprise the dwelling's first floor gable window and the property's driveway, parking area and garage.
50. I observed the appeal site from the appellant's facing first floor window. This window would face directly over the proposed boundary fence and towards the rear windows of Maison Marguerite and Maison Lucille. However, being set back from La Retour's garage, it would do so from a considerable distance.
51. Further to the above, the window itself appears to be relatively small and it serves an office/bedroom, rather than say a kitchen, or main living area. Also, it does not comprise the only source of natural light to this area, which has Velux windows to the roof. In this regard, I am mindful that privacy could be maintained at times, through use of a window blind or similar.
52. Thus, whilst some limited harm would arise in respect of increasing overlooking between this window and the appeal site, I find that such harm would not be unreasonable.
53. This is an important distinction, as the Island Plan seeks to achieve an appropriate balance between safeguarding the amenities of Jersey's residents and meeting Jersey's development needs.
54. To this end, 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..."*
55. Thus, 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 will result in harm, but whether or not such harm would be *unreasonable*.
56. Consequently, whilst undoubtedly, the removal of the existing trees would remove a screen between La Retour's small gable-end window and the appeal site, for the reasons set out above, I find that the proposal would not result in unreasonable harm to the outlook and/or privacy of the occupiers of La Retour.
57. Further, in respect of La Retour's parking area and garage which, as noted above, are located alongside the boundary with the appeal site, I consider that the proposed 3 metre high boundary would be so tall as to provide for the general privacy of the occupiers of La Retour when parking or manoeuvring vehicles, using the garage and entering or leaving vehicles.
58. Whilst some scope for overlooking from the first floor windows of Maison Marguerite and Maison Lucille would arise, I find that this would only provide for glimpses to La Retour's parking areas and garage from bedroom windows as the

ground floor windows of the dwellings within the appeal site would be obscured by the 3 metre boundary feature proposed. Consequently, I find that the proposal would not result in unreasonable harm to the outlook and privacy of the occupiers of La Retour in this regard.

59. On consideration, I find that the most significant impact resulting from the proposal would be that relating to the altered experience of the occupiers of La Retour when entering their property.
60. Currently, on approaching the property along its long driveway, there is a notable sense of privacy derived in part from the significant green screen resulting from the appeal site's tall conifer boundary.
61. Replacing these conifers with a 3 metre tall fence would mean that the intervening boundary would be considerably lower and that the first floors and roofline of the appeal properties would be clearly visible on the approach to La Retour along that property's driveway.
62. I find that harm would arise as a result of a sense of overlooking from the appeal site, as occupiers enter their property and in this regard, I am mindful that the changes resulting from the proposal would undoubtedly give rise to more overlooking of La Retour than that which currently exists.
63. However, taking the following into account, I do not consider that this harm would amount to such harm as to be unreasonable.
64. La Retour is situated in the built-up area which, as noted earlier in this Report, is characterised by some degree of overlooking. The proposal would not create a unique situation in the area and further, the overlooking that would arise would largely be limited to glimpses between La Retour and the bedroom windows of dwellings within the appeal site. I find that the harm arising from such overlooking would be similar to that which already exists across the wider area and would not be unreasonable.
65. In this regard, I am mindful that the most private areas of La Retour would remain private, providing scope for retreat and privacy and also, in reaching my conclusion and the subsequent recommendation below, I am conscious of the benefits associated with the removal of the existing conifers.
66. The replacement of the existing trees would result in the removal of significant physical bulk and whilst I note and empathise with the appellant's concerns in respect of birdlife, I find that the proposal could also open up scope to create new opportunities to attract wildlife.
67. In this regard, I am also mindful of the apparent varied condition of the conifers, some of which appear to be towards the end of their lifespan and some of which appear to be in a poor state of repair.
68. The proposed variation would involve the creation of a new boundary, which whilst lower than the existing boundary, would be considerably taller than most garden boundaries and I find that this would provide for significant levels of privacy at ground level.
69. Also, I find that the proposal would comprise a neat solution, revitalising and making good use of an existing stone wall. Together with the proposed fencing,

I find that this would result in the creation of an attractive, sturdy and weatherproof feature.

70. Taking everything into account, I find that the proposed development would not result in unreasonable harm to the living conditions of neighbouring occupiers, with regards to outlook and privacy. Consequently, the proposed development would not be contrary to Island Plan Policy GD1.

Conclusion

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

Nigel McGurk BSC(HONS) MCD MBA MRTPI

PLANNING INSPECTOR