

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (a) against a decision to grant planning permission

Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Mr Alan Farrell

Planning Permission Reference Number: RP/2022/0535

Decision notice date: 29 June 2022

Location: Chateau Rocquebrune, La Route de St. Aubin, St Helier, JE2 3LL

Description of Development: Revised plans to P/2018/1651 (Install fence to North, North-East and South-West of site). Relocate North-East section

Appeal Procedure and Date: Hearing 9 November 2022

Site Visit procedure and Date: Accompanied, 8 November 2022

Date of Report: 12 December 2022

Preliminary matters

1. There is a dispute between the applicant and appellant concerning the location of the legal boundary between their properties. Disputes about ownership are civil matters unrelated to the planning merits of the application. However, I have considered whether this dispute would result in a risk of prejudice to any potential owners of the appeal site and consequently whether I should dismiss the appeal.
2. I understand that the application was accompanied by the necessary confirmation of ownership. In addition, the appellant contacted the Infrastructure, Housing and Environment Department to notify them of the contested ownership of the land. The appellant and a neighbouring property raised objections to the proposal and the appellant has raised this appeal. Thus, I conclude that there has been no prejudice and I can consider the appeal.
3. In reaching this conclusion I am mindful that planning permission relates to the land, rather than an individual. Thus, a grant of planning consent does not bring with it any rights of ownership or access to land and cannot be implemented without the consent of the lawful owner.
4. This appeal relates to a proposal to alter the location of a fence, for which there is extant planning permission. The applicant has questioned whether this proposed relocation could be approved as a non-material amendment to the extant permission. However, the Infrastructure, Housing and Environment Department determined that a revised application would be required. This report is concerned with the appeal against the outcome of that application and does not consider whether the application was necessary.

Introduction

5. This is a third-party appeal by Mr Alan Farrell against a decision to grant revised planning permission in respect of installation of a length of fence to the north-east of the property known as Chateau Rocquebrune.
6. Permission was granted by the Infrastructure, Housing and Environment Department ('the Department') under delegated powers on 29th June 2022.
7. A summary of the cases presented by each party during the application and the appeal are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

The appeal site and proposed development

8. Chateau Rocquebrune sits in a large plot, on steeply sloping land, to the north of St Helier. The residential development of Mont Pelle lies to the north-east of the site. Four properties within Mont Pelle have garden areas which directly abut part of the applicant's land. This includes the appellant's property.
9. The applicant has previously sought and obtained planning permission to install a fence comprising vertical metal railings, to the north, north-east and south-west of his property. Permission was granted by the Minister, following an appeal. The location of the north-east portion of the consented fence is offset from existing walls associated with properties in Mont Pelle (including the appellant's property). The distance of the offset varies, but is approximately 2 metres from the appellant's wall. The current application seeks to move the location of this portion of the fence north-eastwards to reduce this offset to less than 1 metre.

Case for the appellants

10. The appellant states that the rear of his shed and the adjoining block wall do not constitute his legal boundary. He is concerned that the revised position of the fence would affect his ability to access these areas for maintenance, which he considers would be in breach of his right of relief under Jersey law.
11. The appellant's initial response also raised concerns about the effect of the fence on his amenity in respect of light and overbearing.

Case for the Department

12. The site is located within the Green Zone. The Department considers that the topography of the site and presence of vegetation means that there are no wider views of the proposal site. Taking this into account along with the design, height and location of the proposed revised fence, the Department concluded that the proposal would not cause harm to the landscape character of the area and was in accordance with Policies NE3 and Policy GD6 of the Bridging Island Plan.
13. The Department also considered the provisions of Policy GD1 and concluded that there would not be an unreasonable impact upon the amenities of adjoining properties. The Department concluded that senses of overbearing or enclosure or

loss of light was unlikely and hence any effects would on neighbouring properties would not be unreasonable.

Case for the Applicant

14. The applicant is seeking the re-location of the fence to prevent the creation of a 'no-man's land' between his fence and neighbouring properties.

Representations

15. Six comments from three parties were received at the application stage. In addition to two comments from the appellant, two comments were received from a second neighbouring property, concerned about access to his wall for maintenance purposes and the appearance of the fence. A further objection was received from another neighbouring property, although this did not contain details of the nature of the concerns. A single supportive comment was also received.

Key Issues

16. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan." The current Island Plan is the Bridging Island Plan, dated March 2022.
17. Having regard to the provisions of the Bridging Island Plan and other material considerations, I consider that the key issues in this appeal relate to:
 - the effect of the proposal on neighbouring amenity
 - the effect of the proposal on the Green Zone

Effect of the proposal on neighbouring amenity

18. Policy GD1 requires that "all development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts." It sets out criteria that should be met in order for a development to receive support. It requires that "the development will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents." This includes, amongst other considerations, that it should not create a sense of overbearing or oppressive enclosure; or unreasonably affect the level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy.
19. During my site inspection, I saw that the appellant's property sits at a higher ground level than the proposed fence. The proposed fence would be 2 metres high, as measured from the applicant's land. Based on my observations, I find that the top of the proposed fence would be roughly at the same level as the appellant's existing garden wall and would be below the height of his shed roof. Consequently, I conclude that it would not result in a sense of overbearing or oppressive enclosure, nor would it affect the level of sunlight or daylight to buildings or land.
20. The change in ground levels would mean that the fence would extend for a short height above the level of the wall of the neighbouring property to the east. However, I do not consider that the limited extent of this projection would result in a sense of

overbearing, or oppressive enclosure or have effects on the level of sunlight or daylight to the neighbouring property.

21. I saw that the proposed fence would sit roughly on the line of a previous fence that the appellant has referred to in his submissions. This set back position would leave a gap between the proposed fence and the rear of the shed and adjoining garden wall. Whilst I accept that the gap would be narrow and tapering, some access to the rear of the shed would remain.

Effect of the proposal on the Green Zone

22. Policy NE3 requires that development must protect or improve landscape and seascape character. I am mindful of the extant permission. The proposed fence design is unchanged from that already consented as acceptable. The proposed new location remains well hidden, as a result of topography, existing buildings around the site and vegetation. I therefore conclude that the effects on landscape character arising from the proposed fence would be no different to those from the consented fence and that the proposal would protect landscape character, in accordance with the requirements of Policy NE3.

Other matters

23. Design quality and the effects on biodiversity and geodiversity were assessed by the Department against the provisions of Policy GD6 and NE1 respectively.
24. As noted above, the design of the proposed fence is unchanged from the extant permission. Notwithstanding the changed policy position since that decision was made, the proposed design is considered to be of a high quality and to meet the requirements of Policy GD6.
25. Effects on biodiversity were assessed as part of the extant permission and found acceptable. No one has suggested that the proposals would alter that assessment.
26. The Department notes that the conditions attached to the extant permission would remain in place. Given that the proposal is not considered to give rise to any adverse effects that require to be mitigated, I accept that additional conditions are not necessary.

Conclusions

27. I conclude that the proposal would not have an unreasonable impact on the amenities of neighbouring properties or on the Green Zone and that it would be consistent with the provisions of the Bridging Island Plan.

Recommendations

28. I recommend that the appeal should be dismissed and that the original Planning Permission be confirmed

Sue Bell

Inspector 14/12/2022