

Appeal of a Decision

Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended)

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 10 March 2025. Hearing held on 10 March 2025.

Reference: P/2024/0657

Midvale, 54 Le Clos des Sables, La Route Orange, St Brelade, JE3 8GJ

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
 - The appeal is made by Adam Swain against the decision of the States of Jersey.
 - The application Ref P/2024/0657 by Adam Swain was refused by notice dated 5 December 2024.
 - The proposed development is construct a two storey extension with Juliet balcony and form new dormer window along southern roof slope, new window along northern gable elevation, alter existing dormer windows to front and rear roof slopes.
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Recommendation

1. I recommend that the appeal be dismissed.

Introduction and Procedural Matters

2. The description of development comprises an amended description taken from the Department's decision statement. This follows amendments made by the appellant to the original application prior to the Department's decision.
 3. An email from Simon Porter was sent to the Planning Tribunal service on 6 March 2025 stating that the Appeal Form contains incorrect information in respect of the ownership of the site. Whilst I note this, I also note that the appellant was also the applicant and in this respect, I am satisfied that the appellant's details are correct.
 4. As part of his case, the appellant notes that the Department miscalculated the amenity area of the site that the proposed development would retain. Further to my consideration of the submitted plans and to my site visit, it is apparent to me that the case officer and the Planning Committee Members for the Review who visited the site made an error in this regard.
 5. This error followed through into the Department's decision notice. The decision notice incorrectly states that the proposal would be contrary to the Residential Space Standards Supplementary Planning Guidance (referred to below as the SPG) space standards.
 6. The proposal would clearly comply with the outdoor amenity space standards set out in the SPG. During the course of the public hearing, it was accepted by the Department that the retained outdoor private amenity space at the appeal site would meet the SPG's space standard requirements.
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7. Whilst ultimately not fundamental to the recommendation that concludes this Report, it is nonetheless of considerable concern that the submitted plans and the SPG were misinterpreted in the way that they were and that the resultant error followed all the way through to the Department's published decision notice. Consequently, the Department's first reason for refusal is predicated on the Department's own mistake.
8. There is nothing in the officer's report to suggest anything other than that the officer's finding of overdevelopment resulted from an incorrect assessment. Therefore, this Report does not consider the Department's first reason for refusal as a main issue, as that reason for refusal is not supported by anything other than an error.
9. I note that the Department's officer's report refers to the appeal dwelling as a two-storey end of terrace dwelling. This is not the case. The appeal dwelling is a detached dormer bungalow.
10. This Report refers to the Planning Department as "*the Department*."
11. The Bridging Island Plan, adopted on the 25th March 2022, is referred to in this Report as "*the Island Plan*."
12. 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

13. The proposal would not result in the overdevelopment of the site. The Department used inaccurate figures to calculate the amenity space that the proposed development would retain. The retained space would be of a high quality, regularly-shaped and well-landscaped.
14. Many surrounding dwellings have been extended and this is characteristic of the area. The proposal cannot be considered to be over-development when compared to its surroundings. The footprint of development within the appeal site after the proposed development would remain proportionately less than that of neighbouring properties.
15. The proposal would not harm the amenity of neighbours. The site is in the Built-up Area where a level of overlooking is generally acceptable. Even if the proposal resulted in some harm in this respect, it would not result in unreasonable levels of harm.
16. The existing dormer to the rear of the property already provides some level of overlooking, as do second storey windows from other nearby dwellings. The proposed first floor spaces will be bedrooms and not primary living areas. Fences, distances between dwellings and landscaping all serve to mitigate against over-looking.
17. The proposal follows precedents set by other second-storey balconies in the area.

Case for the Department

18. The Department's acceptance that the Residential Space Standards SPG would be complied with is noted earlier in this Report.
19. There would be an increase in loss of privacy from the proposed rear extension due to its siting relative to the existing dwelling. Overlooking would arise as a result of the development looking down from the first floor level at a closer proximity into neighbouring gardens.
20. Numbers 50, 51 and 52 Le Clos des Sables sit lower in the landscape than the application site. The Juliet balcony would appear dominant and provide direct views to the rear of these dwellings and to their gardens.
21. Whilst the proposed dormer inset along the southern roof slope would comprise obscured glazing, it would not be restricted in its opening mechanism which would result in overlooking of Number 55 Le Clos des Sables.
22. The cumulative harm arising from all of the above would be unreasonable.

Other Comments

23. No other representations were submitted to the appeal.

Main Issue

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

Reasons

25. The appeal property comprises a detached dormer bungalow with an attached single storey garage to the side. It is set back from the road behind a low wall and a front garden and it has a large garden to the rear. This has been separated into two distinctive areas. One contains a large single storey annex with its own garden area; and the other comprises a garden area adjacent to the main dwelling. Both areas of garden are relatively substantial, noting their location within the Built-up Area.
26. The appeal property is located within a residential area characterised by the presence of predominantly detached bungalows and occasional detached dormer bungalows set within comfortable garden plots. Like the appeal property, dwellings tend to be set back from the road behind short gardens and/or parking areas and have larger gardens to the rear.
27. The presence of gardens, the setting back of dwellings from the road and the low height of buildings combine to present the area with a distinctively open and spacious character. Further, whilst many dwellings have been altered and/or extended, such changes tend to appear in keeping with host dwellings and their surroundings and this adds a pleasant degree of uniformity to the area's qualities.
28. The area's open and spacious characteristics are apparent to the rear of dwellings, where gardens back onto gardens. There are plentiful open views from the rear of dwellings across gardens towards the rear of neighbouring dwellings. Generally, due to the low height of dwellings, such views tend to be

restricted to those above boundaries and garden features towards roofs, rather than provide for direct rear-window-to-rear-window views.

29. This provides for a notable sense of privacy to the rear of dwellings and this is a factor further enhanced by the general absence of rear-facing dormers or obtrusive windows at roof level.
30. The proposed development would involve the creation of a two-storey gable that would project to the rear. At the centre of the gable at second-storey height would be a Juliet balcony, encompassing glazed double doors and a balcony screen.
31. Unlike the existing rear dormer, which is modest in size and which appears relatively unobtrusive on the large rear roof slope, the proposed Juliet balcony would, due to the projection and height of the gable and the tall and striking appearance of the glazed doors and the glazed balcony feature, appear prominently in its surroundings, where no other such feature is visible.
32. Having viewed the appeal property from neighbouring gardens, I consider that the Juliet balcony would, due to its prominent appearance, draw the eye and appear to be “looking down” upon neighbouring gardens.
33. Whilst I empathise with the appellant’s view that the Juliet balcony would serve a bedroom and that occupiers would not seek to spend time looking over neighbours’ gardens, I find that there would be a very real perception of overlooking for occupiers of neighbouring dwellings. This would particularly be the case for the occupiers of Number 50 Le Clos des Sables, as there would be a direct line of sight between the proposed Juliet balcony and the rear elevation and rear garden of this neighbouring dwelling.
34. Whilst there would be a reasonably substantial distance between the Juliet balcony and neighbouring properties, I am mindful that the unique appearance of the proposed development within its surroundings would lead it to appear incongruous and this, in turn, would serve to exaggerate the prominence of and significant perception of overlooking from, the Juliet balcony.
35. As a consequence of all of the above, I consider that the proposed Juliet balcony would result in unreasonable harm to the living conditions of neighbouring occupiers, with regards to privacy.
36. Further to the above, the proposed side dormer, along the southern roof slope, would be fully opening. This would give rise to the scope for the direct overlooking of the rear garden of Number 55 Le Clos des Sables, next door. The dominant height of the proposed dormer and its close proximity to No 55’s rear garden would lead to the occupiers of No 55 having a significant perception of being overlooked when using their private garden amenity space whenever the proposed window is open.
37. The harm arising from this would be mitigated by the proposed obscure glazing and it being likely that the window would be closed for much of the time. Given this, the harm arising would not, in itself, amount to unreasonable harm, but it would result in harm and this would add to the totality of harm resulting from the proposed development as a whole.

38. Taking all of the above into account, the proposal would result in unreasonable harm to the living conditions of neighbouring occupiers, with regards to privacy. This would be contrary to Island Plan Policy GD1, which amongst other things, seeks to protect residential amenity.

Other Matters

39. The scope for conditions was discussed during the course of the public hearing. During these discussions the Department stated that it was unlikely that a planning condition obscuring a Juliet balcony would meet the test of being reasonable. I note this and there is nothing to lead me to consider that there are any reasonable and enforceable conditions that could be imposed that would serve to change the recommendation set out in the conclusion below.

40. In considering this appeal, I am mindful that the proposed development would form part of a property that provides for two-generational living, making good use of the appeal property. This is something that stands in favour of the proposal, but that does not mitigate or outweigh the unreasonable harm identified.

41. During the course of the site visit, I noted that a nearby property has been extended to include a large first floor balcony amongst other things. However, this property is located in a different part of the Les Clos des Sables and the circumstances associated with that development and that property's immediate surroundings do not provide for direct comparison with the proposal the subject of this appeal.

Conclusion

42. For the reasons set out above, I recommend to the Minister that the appeal be dismissed.

Nigel McGurk BSC(HONS) MCD MBA MRTPI

PLANNING INSPECTOR

28th March, 2025