

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

Appellant:

Ben Richardson

Application reference number and date:

P/2015/1937 dated 4 January 2016

Decision Notice date:

21 April 2016

Site address:

Le Clos, La Maudelaine Estate, St Brelade, JE3 8GT

Development proposed:

"Demolish dwelling and construct 4 No. three bed dwellings with associated parking and landscaping."

Inspector's site visit date:

9 August 2016

Hearing date:

10 August 2016

Introduction and procedural matters

1. This is an appeal by the applicant against the refusal by the Planning Applications Committee to grant planning permission for the development described above. There was an equality of voting at the Committee meeting and as a result the application was deemed to have been refused in accordance with established procedures. The Department of the Environment had recommended approval subject to standard conditions and further conditions relating to the external appearance of the development, a scheme of landscaping and an ecological assessment.

2. The reasons given for refusing planning permission are as follows: -

"1. By virtue of its scale and proximity to the site boundary, the northernmost proposed dwelling would unreasonably harm the amenities of the neighbouring residential property to the immediate north of the site (no. 1 Melmea). Therefore, the application fails to comply with the requirements of Policy GD 1 of the 2011 Island Plan (revised 2014).

2. By virtue of its overall architectural design and appearance, the proposed development would be harmful to the character of the immediate area. Therefore, the application fails to comply with the requirements of Policies GD 1 and GD 7 of the 2011 Island Plan (revised 2014)."

3. I notified the parties before the hearing that I would also be considering the effect of the development on traffic and parking conditions in Le Chemin de Maudelaine, since this was an additional matter that was raised in the public comments received at the application stage.
4. I indicated at the site visit and at the hearing that, although the Committee had in the first reason for refusal focussed their attention on the amenities of the property to the immediate north of the site, I would also be considering the effect of the development on the amenities of all the other properties that adjoin the site. I drew attention, in particular, to the effect on properties adjoining the southern boundary, which would be nearer to the development than the property, 1 Melmea, referred to by the Committee.
5. I have taken into account the Site Plan with Survey Overlay 1071/10 that was published on the planning register on 10 August 2016 after the hearing had closed and the correspondence that was forwarded by the appellant's agent on 11 August 2016.

Details of the site and the proposed development

6. Le Clos is a bungalow on the western side of Le Chemin de Maudelaine which has an extensive garden. The bungalow is in a state of disrepair and there are no objections to its demolition.
7. The site is in the Built-up Area for planning purposes. It is surrounded by residential development, which consists predominantly of two-storey houses. There is a variety house styles in the locality.
8. It is proposed to build four detached, part-single/part-two storey, three-bedroom houses on the site. Each would have a garage and a driveway, and garden areas at the side and rear. The design and layout of each would be similar, but their appearance would be distinctive and would not resemble any other dwellings in the locality.

The case for the appellant

9. The appellant states that the rear windows of 1 Melmea would be at least 13m from the blank gable wall of the nearest house, Dwelling 1. Applying the separation standard of 12.5m, which he states is typically advised by residential design guidance in such circumstances, he maintains that unreasonable harm to the amenities of 1 Melmea would not occur. He indicates that similar dwelling spacing has been approved on the Clos Orange

estate and adds that the Department's computer model sun study demonstrates that there would be no unreasonable impact on 1 Melmea's light or sunshine.

10. As to design issues, the appellant states that there is no predominant design character in the immediate area. He maintains that the development would provide interest and complement neighbouring developments. Each of the houses would have sufficient off-road parking space and, in the appellant's opinion, the development would not have an adverse effect on traffic and parking conditions in Le Chemin de Maudelaine.

The case for the Department of the Environment

11. The Department accept that the rear windows of 1 Melmea would be at least 13m from the blank gable wall of the nearest house, but point out that the gable wall would be only 1.5m away from 1 Melmea's boundary and would be to the south of 1 Melmea. In these circumstances, they maintain that the decision to refuse planning permission reflects the overbearing effect the development would have on 1 Melmea and the loss of light.
12. As to the design and appearance of the development, the Department accept that there is no predominant design character in the immediate area. They point out, however, that the Committee took the view that the design and appearance of the development would be inappropriate for the site having regard to the surrounding built context, noting that that the houses would have low-pitched roofs, split at the apex to create panels of clerestory glazing, and have timber cladding and render.
13. The Department agree that the houses would have sufficient off-road parking space and that the development would not have an unacceptable effect on traffic and parking conditions in Le Chemin de Maudelaine.

Representations made by others

14. Several letters of objection were received at the application stage, most of them from residents whose properties adjoin the site. They raise concerns about the effect of the development on the character and appearance of the site and the locality, neighbours' amenities and parking and traffic conditions.
15. The Parish Roads Committee raised no objections to the proposals.

The main issues in the appeal

16. The main issues in the appeal are in my view the effect of the development on (i) the character and appearance of the site and the locality, (ii) the amenities of the occupiers of properties adjoining the site and (iii) traffic and parking conditions in Le Chemin de Maudelaine. I have considered each of these issues in the paragraphs that follow.

Inspector's assessments and conclusions

The effect on the character and appearance of the site and the locality

17. The site is surrounded by modern housing, which is predominantly two-storey and has a mixture of styles. In principle, the construction of houses on the site

would therefore be in keeping with the locality and with the policies in the Island Plan that encourage residential development in the Built-up Area at the highest reasonable density.

18. The bungalow on the site is situated in the northern part of the site and its large garden extends to the southern boundary. The development would result in the locality experiencing a loss of openness and some trees and other vegetation, which do not have protected status. The appellant proposes to replace the lost trees with mature specimens planted on the boundaries, but nevertheless it is inevitable that the open, 'green' character and appearance of the large garden would be lost, to the detriment of the prospect from nearby properties and the street scene in this part of Le Chemin de Maudelaine.
19. The new houses would be laid out side by side with their principal elevations facing the road. They would make the fullest use of the available land, but would comply with the Department's standards for internal and external space and parking facilities. The design of the houses would be distinctive, as indicated in paragraph 12 above, and although they would look different from any others in the locality, they would in my opinion be of interest and would not fail to comply with the urban design objectives and design quality criteria in Island Plan Policies SP 7, GD 1 and GD 7.
20. The planning conditions suggested by the Department in the event of the appeal being allowed would require approval to be obtained before the development commences of (a) the external materials to be used, (b) a landscaping scheme and a landscape management plan and (c) an ecological assessment of the site, to include mitigation measures. The conditions would require the developer to carry out the development in accordance with the approved details of these matters.
21. My conclusion on the effect the development would have on the character and appearance of the site and the locality is that there would be some drawbacks, which would to a degree be overcome by the suggested planning conditions. On balance, the drawbacks are in my opinion outweighed by the advantages of encouraging the redevelopment of the site at a higher residential density, provided the development proposed would be acceptable as far as the other two main issues are concerned.

The effect on the amenities of the occupiers of properties adjoining the site

22. The northern elevation of Dwelling 1 would be about 1.5m away from parts of the rear boundaries of 1 and 2 Melmea. The site is generally at a slightly lower level at present and this level is expected to be retained or lowered when the proposed finished levels of the development are approved by the Department (a condition to this effect has been agreed). There is at present a wall and fence on the boundary that extend to a combined height of about 2.7m above the ground level of the site where it is next to the boundary.
23. This elevation of Dwelling 1 would be a mixture of two-storey and single-storey elements. In the absence of more detailed plans and finished levels, I cannot be certain about the height of the northern elevation of Dwelling 1 in relation to 1 and 2 Melmea, but the plans I have received indicate that most of it would be higher than the wall and fence, with the two-storey element being several metres higher.

24. The rear elevation of 1 Melmea would directly face the two-storey element across its rear garden. The two-storey element would be seen from 2 Melmea at an angle. As noted in paragraphs 9 and 11 above, the distance between them would be about 13m in the case of 1 Melmea; it would be much less, however, in the case of 2 Melmea, which has a short rear garden.
25. I doubt whether either 1 or 2 Melmea would experience a significant loss of daylight or sunlight, but the two-storey element of Dwelling 1 would in my opinion have a significant impact on the outlook from both properties because of its height and proximity. Whilst there is a similar separation distance between 3 Melmea and the side of 68 Le Clos Orange to its south, this is not typical of the locality. Since the bungalow at present on the site is lower and further away from 1 and 2 Melmea than Dwelling 1 would be, the standard of amenity currently enjoyed by 1 and 2 Melmea would be significantly reduced.
26. There is a row of five properties beyond the western boundary of the site. These are 64-68 Le Clos Orange. The rear gardens of these properties become shorter towards the southern end of the row. The development would also be staggered from north to south. The outcome would be that the two shortest rear gardens – No 64's and Dwelling 4's – would be next to each other. The separation distance would, however, still be substantial and whilst there would be some overlooking between all four new dwellings and the properties opposite to them in Le Clos Orange, the standard of privacy generally enjoyed at present in this locality would still be maintained.
27. I turn now to the southern boundary of the site, which is shared with the three properties, 58-60 Le Clos Orange. These three properties have two storeys and occupy small plots with extremely short rear gardens. It was established at my site visit and at the hearing that the distance between Dwelling 4 and 58 and 59 Le Clos Orange would be far less than the distance between Dwelling 1 and 1 Melmea, a factor which appears to have been overlooked by the Department and the Committee before then. This factor is clearly significant to the outcome of the appeal, since development would look cramped here and Dwelling 4 would have a serious impact on the outlook from Nos 58 and 59.
28. The Department do not apply any separation standards such as the 12.5m-distance referred to by the appellant. Proposals are assessed on their merits, having regard to their context and the specific circumstances of the site and its surroundings. The applicable Island Plan policy is criterion 3 of Policy GD 1, which indicates that development proposals will not be permitted if they "unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents". In my opinion, the development would do so in its impact on 1 and 2 Melmea and 58 and 59 Le Clos Orange.

The effect on traffic and parking conditions in Le Chemin de Maudelaine

29. I have considered the representations received from interested persons about the effect the development would have on traffic and parking conditions in Le Chemin de Maudelaine. I understand their concerns, but their views are not supported by the Department or the Parish Roads Committee and were not referred to by the Committee in the reasons for refusal. The houses would have adequate off-road parking space and I observed nothing unusual in the traffic conditions in Le Chemin de Maudelaine when I visited the site.

Inspector's overall conclusion and recommendation

30. I understand the appellant's wish to maximise the redevelopment potential of the site. There is support for this in Island Plan Policy GD 3, which encourages residential development in the Built-up Area at the highest reasonable density. The policy states, however, that there should not be an unreasonable impact on adjoining properties, and this is re-iterated in criterion 3 of Policy GD 1. The appellant has in my opinion sought to construct too much development on the site, with the result that Dwellings 1 and 4 would have an unacceptable impact on adjoining properties.
31. I therefore recommend that, in exercise of the power contained in Article 116 of the Planning and Building (Jersey) Law 2002 (as amended), the appeal should be dismissed.

Dated 13 September 2016

D.A.Hainsworth

Inspector