

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

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

### Report to the Minister for the Environment

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

**Appellant:** Mr L Adams

**Planning Permission Reference Number:** P/2016/0442

**Decision notice date:** 3 October, 2016

**Location:** 91-93 Great Union Road, St Helier, JE2 3WA

**Description of development:** Demolish existing building and construct 1 no. two-bed and 2 no. three-bed dwellings with roof terraces.

**Appeal procedure and date:** Hearing 12<sup>th</sup> January, 2017

**Site visit procedure and date:** Accompanied, 10<sup>th</sup> January, 2017

**Date of report:** 9<sup>th</sup> February, 2017

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### Introduction

1. This is an appeal by Mr L. Adams against a refusal to grant planning permission to demolish the existing office building at 91 - 93 Great Union Road, St Helier, and replace it with three townhouses with roof gardens, designed as family homes. Refusal of the application was on the basis that the proposal is an overdevelopment of the site which has an unreasonable impact upon the amenities of neighbouring properties.

### The appeal site, proposals and planning history

2. The appeal site is a two-storey office building located on Great Union Road, close to its junction with Rouge Bouillon. The area is predominantly residential.
3. The building occupies a plot that is broadly pentangular in shape. The main, front elevation faces Great Union Road to the north-east; the south-eastern elevation, adjoins a private lane that enables access to the rear of the properties on Rouge Bouillon; the south-western elevation abuts a garage and the rear extension of 30 Rouge Bouillon including a first-floor roof terrace. The western boundary abuts the gable end of a rear extension to a property on Rouge Bouillon and the north-western boundary lies adjacent to parking spaces in front of properties 95 - 97 Great Union Road.
4. The proposals would require the demolition of the existing building and construction of 1 no. two bed and 2 no. three bed town houses, which would extend to the boundaries of the site. The accommodation would be over four

floors, with an additional roof garden. A single garage is incorporated at ground level.

5. A previous, similar application (P/2015/1570) was refused on the grounds that it was a cramped overdevelopment of the site, which would unreasonably harm the residential amenities of surrounding properties. The current application has been modified by the applicants in response to the stated reasons for refusal.
6. The proposed development would form an oblique angle abutting the gable wall of the property immediately to the west. This wall has a window at first floor level. A recessed lightwell, which extends from first floor level to the roof, has been incorporated into the design to avoid blocking this window. The lightwell would be painted white, to reflect light into the room.
7. Two objections to the current application were received, these relate to concern about effects to the neighbouring properties to the south-west and west. Representations were also received from the Parish.
8. The Department refused the current application for the following reason:  
*“It is acknowledged that the site is located within the Built Up Area wherein the development of new houses will normally be permitted. However, in this instance, by virtue of its design, size, scale and siting, the proposed development would result in a cramped overdevelopment of the site, which would unreasonably harm the residential amenities of surrounding properties. Accordingly, the application fails to satisfy the requirements of Policies GD 1, GD 3, GD 7, SP 7 and H 6 of the 2011 Jersey Island Plan (revised 2014).”*

#### **Case for the appellant (summary)**

9. The appellant believes that the Department has given undue weight to the objection of the neighbour to the immediate west of the property. The appellant considers that the lightwell that has been included within the proposals would be wider than the existing arrangement, and would allow adequate light and ventilation to the neighbour.
10. In producing the design, the appellant states they have modified the proposal to take account of comments received on the previous application. Specifically, the height of the building has been reduced, and the height of the parapet to the rear elevation has been reduced through the introduction of a mansard roof. The number and size of windows in the rear elevation has been reduced and the street elevation has been set back from the boundary edge. The appellant points out, that buildings in the surrounding area represent a range of different heights from two-storeys opposite the property to five-storeys on De Montfort Crescent. They believe that the building does not increase the overall height of the area, and is acceptable in an area where regeneration is needed.
11. The appellant does not believe that the development would unreasonably harm the neighbouring properties through effects on light, over-hanging structures or encroachment on privacy.

#### **Case for the Department of the Environment (summary)**

12. The Department considers the proposal to be well-designed architecturally. It notes that the site lies within the ‘Built Up Area’, where development of new houses would normally be permitted. It also accepts that loss of the office

accommodation and the level of parking would be permissible. However, the Department is concerned that the four-storey building, which would be built out to the boundary of the site, would have an overbearing impact on neighbouring properties that immediately adjoin the site. It is concerned about effects on privacy arising from windows within the rear elevation, which it states would open out directly over the neighbouring properties. The Department also considers that the window in the property to the west would effectively be blocked.

#### **Representations made by other interested persons (summary)**

13. The Parish of St Helier has raised a number of concerns relating to encroachment onto the Parish footpath from balconies, doors and windows; visibility splays for cars and pedestrians; lowering of the kerb; and issues relating to refuse storage and collection.
14. The neighbour to the west is concerned about the levels of light to his kitchen. He feels that the height of the building above the lightwell will have an imposing presence. He also notes that the proposed arrangement will prohibit external access to the window or surrounding wall on his property.
15. The owner of the property to the south-west is also concerned about effects on light levels to his property, including a roof terrace. He feels the proposed property would create over-shadowing and he is also concerned about the loss of privacy resulting from overlooking of his property from windows in the rear elevation and from the roof gardens.

#### **Issues**

16. Based on the appeal documentation, representations from the Department, my site inspection and the hearing, I conclude that the main issues are:
  - The effects of the development on the neighbour immediately to the west of the property, specifically the effect of the development on the first-floor window;
  - The extent to which the proposed development would result in a cramped over-development of the site; and
  - The effects of the proposed development on the residential amenity of surrounding properties.

#### **Inspector's assessment and conclusions**

17. I note the efforts that have been made by the appellant to adapt the design to address the reasons for refusal received in response to the previous application. Nevertheless, the test is whether the development as submitted meets the required threshold for approval; not whether it is better than previous versions.

#### **Effects of the development on the neighbour immediately to the west of the property**

18. The window in the gable end of the property to the west currently faces a wall on the appeal site and is separated from it by a distance of around one metre. There is also a low wall to the southern side of the space, although the opening part of the window is above the height of this wall. Thus, whilst the window currently opens into a space with some restrictions, there is still an opportunity for air flow around the window and light can enter from the sides and above.

19. Although the proposals would result in an increase in distance in the horizontal plane from the window to the adjoining building, the walls of the western-most unit would effectively “box” the window in. This means that light would only be able to enter from directly above and it would reduce the opportunities for air circulation from any other direction.
20. The appellant has drawn my attention to comments in a letter written by the (then) President of the Planning Committee in response to a previous application in 2004. These refer to the acceptability of allowing development closer to the window as it serves a secondary room. However, I do not consider that these comments carry any great weight in the current context as they were produced in response to a different application, which was judged against an earlier version of the Island Plan with a different policy context.
21. In response to concerns about external access to the window and wall, the appellant stated at the hearing that provision could be made for one of the windows in the proposed development to open, to provide access to the lightwell. This means, that should the owner of the adjoining property wish to get to the outside of his kitchen window for some purpose, he would be reliant upon the good will of his neighbour to allow access through the new development. In my opinion this seems a highly contrived and unsatisfactory arrangement that could easily lead to resentment between neighbours.
22. Policy GD 1 of the Jersey Island Plan (amended 2014) requires that development should not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents and Policy GD 7 requires that the design of new buildings should take account of the relationship to existing buildings. For the reasons set out above, I conclude that the construction of the building up to the boundary with the adjoining property to the north-west, which would result in the creation of a lightwell, would ‘unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents’ and does not adequately address and appropriately respond to the relationship with the gable wall of the property to the west.

The extent to which the proposed development would result in a cramped over-development of the site

23. Policy GD 3 of the Island Plan requires that the highest *reasonable* density of development be achieved, but this has to be accompanied by provision of adequate amenity space and without unreasonable impact on adjoining properties.
24. The proposed development would be four storeys high, compared to the current two storey building. During my site inspection I noted buildings of various heights in the immediate area. The existing building appears relatively low when viewed in the context of the street; the properties immediately to the west of the appeal site are taller, and to the east lies De Montfort Crescent, which is five-storeys.
25. The footprint of the proposed development would extend to the property boundary. I note that the front street elevation is set back from the road by half a metre. Nevertheless, this would create a very narrow buffer area between public space and the front of the property. At upper levels, some of this space would be occupied by the balconies, which would project by around 100 mm beyond the property boundary.

26. The design does not allow for any external amenity space at ground level, although I accept that the roof garden does make some provision for this. Car parking is accommodated within the ground floor footprint of the building. All storage, including refuse would also have to be accommodated within this space. I am not convinced that this is a satisfactory arrangement and I note that the Parish has requested details of refuse storage and collection to be agreed with them.
27. The proposed building would directly abut the property to the west. As noted above, this would result in encroachment on a window.
28. Whilst I am of the opinion that a taller building than the existing property could be accommodated within the streetscape, the scale and size of the proposed building in relation to its proximity to the road and adjoining properties represents a cramped over-development of the site. Moreover, the absence of any external amenity space at ground floor level seems inadequate in a development being proposed for family accommodation.

Effects of the proposed development on the residential amenities of surrounding properties

29. The appellant has used methods published by The British Research Establishment (BRE) to estimate the effects of the proposed development on light levels to the property to the south-west. A 'Vertical Sky Component' has been calculated for the centre of the window adjacent to the roof terrace. 'Waldram' diagrams have also been produced. The appellant states that these calculations show that although the proposed development would lead to a reduction in the Vertical Sky Component (from 38.5% to 30%), the remaining levels would still meet guideline standards (28%).
30. I understand from the Department that these BRE methods have no statutory status in Jersey. Consequently, these figures should be treated with caution and not afforded undue weight. The test that must be satisfied is set out by Policy GD 1 of the Island Plan and relates to whether the proposal will have *unreasonable* harm. This is a subjective test, which has to be considered on a case by case basis. It focuses upon what can 'reasonably' be expected, rather than on what an occupant may desire.
31. In my opinion, the proposed building would have some effect on light levels in the extension to 30 Rouge Bouillon, and by association, on the roof terrace. The proposed development is located to the north and east of the extension, and hence the effects would be less than if it were positioned to the south and west. I do not consider that these effects would have unreasonable harm.
32. Whilst several windows are shown in the rear elevation of the proposed development, only one of these is located in a position that would allow direct overlooking of the roof terrace. This could be addressed through a condition requiring the window to be fixed and manufactured from obscured glass. The position of the other windows on the rear elevation is such that any views of the terrace would be at an oblique angle, and in my opinion would be no worse than in many urban settings.
33. The owner of 30 Rouge Bouillon is also concerned about overlooking from the roof gardens of the new building, and the risks of items being dropped over the edge

onto his terrace. The roof gardens are set back from the property boundary, and are separated from it by a Mansard roof, which reduces the risk of overlooking. However, this risk could be further reduced by inclusion of a condition requiring the balustrades of the roof garden to be set back from the edge.

34. I noted, during the site inspection, that there is some uncertainty about the precise location of the property boundary. However, the position of the boundary is not an issue to be decided by this appeal.

#### **Conclusions and recommendations**

35. On balance, for the reasons set out above, I conclude, that the proposed development would result in a cramped overdevelopment of the site, which would unreasonably harm the residential amenities of surrounding properties. Consequently, I recommend that the appeal should be **dismissed**.
36. If the Minister decides that the appeal should be allowed and planning permission granted, then I recommend that a number of conditions be imposed, and I append a note on that matter.

*Sue Bell*

Inspector 09/02/2017

### **Notes on possible conditions**

1. The Department prepared a list of suggested conditions for discussion during the hearing. These were accepted by the appellant. This list would act as the starting point and conditions to address the following points should be added.
2. In addition a condition should be added to require the balustrades at the edge of all three roof gardens to be constructed of obscured glass, to a height of 1100mm and set back from the edge at a distance to be determined by the Department. The reasons for this are to reduce the ability to look over the railing into the property to the south-west and to reduce the bulk of the building.
3. The window in the rear elevation of the middle unit should be fixed closed and formed of obscured glass, in order to prevent overlooking of the adjoining property to the south-west.

