

# **PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**

## **Appeal under Article 108 against a decision made to grant a Planning permission**

### **REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT**

**By Mr Philip Staddon BSc, Dip, MBA, MRTPI**

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Appellant: Mrs J Sheehan (Third Party Appellant)

Site address: *Le Ruisseau*, Gorey Village Main Road, Gorey, JE3 9FX

Application reference number: P/2020/1654

Proposal: 'Construct single storey office / store to south of site'

Decision notice date: 9 April 2021

Procedure: Hearing held on 12 July 2021

Inspector's site visit: 12 July 2021

Inspector's report date: 23 August 2021

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#### **Introduction**

1. This report contains my assessment of the third party appeal made by Mrs J Sheehan against the decision to grant planning permission for a development at her neighbour's property, *Le Ruisseau*. I held a Hearing on 12 July 2021 and have considered the submissions and evidence of the appellant, the applicants and the department for Infrastructure Housing and the Environment (IHE).

#### **Main issue**

2. The main issue is whether the development proposed at *Le Ruisseau* would cause unreasonable harm to the living conditions of the appellant's home, *Clos Fleuri*, with particular regard to its physical presence and potential lighting effects from skylights and outdoor lighting.

#### **Procedural matters**

3. The development description that appears in the application form is '*Demolish existing extension to North elevation and garden shed to South of site. Construct single storey office / store to south of site*'. However, the demolition elements of the proposal do not require planning permission in this instance and do not need to be included in the description. Accordingly, for the purposes of this appeal, I have adopted the development description

*'Construct single storey office / store to south of site'* which covers the development requiring planning permission.

4. In the course of this appeal, the applicants produced further drawings (drawing numbers M06/115 and M06/116). These do not revise or alter the proposal as initially determined, but seek to provide additional information to assist the appeal process. I have accepted and considered these drawings in reaching my recommendation.
5. There is an error in the decision notice as part of the standard text defining the time limit of the permission has been omitted. I address this matter in my recommendation.

### **The appeal site**

6. *Le Ruisseau* is situated on the south-east side of Gorey Village Main Road. It is a traditional style 2 storey dwelling, with single storey side wings, and a pitched slate covered roof. It is sited towards the front of its plot facing the road, behind a modest front garden which includes a driveway.
7. The back garden has a depth of over 30 metres and tapers to its rear boundary, which is formed by a small stream, with Gorey Common beyond. There is a timber shed in the bottom of the garden. The garden is enclosed on its 3 sides by granite walls which, in the rear boundary, includes a door to access the common. There is a semi-mature tree near to the south-west boundary.
8. To the north-east of *Le Ruisseau*, there are 2 dwellings. The first occupies a road frontage plot and is sited in a similar relationship to the road as *Le Ruisseau*. The second, *Clos Fleuri*, sits behind this property and to the north-east of *Le Ruisseau's* rear garden. *Clos Fleuri* is a single storey dwelling and is the appellant's home. Its rear wing contains 4 glazed doors in its south-western elevation which open onto a raised timber deck patio, which appears to be the primary amenity space and is equipped with outdoor seating. From the glazed doors and patio area are views towards the granite boundary wall with *Le Ruisseau* and the vegetation and trees within its garden.
9. The granite garden wall separating the 2 properties varies in height. Drawing no M06/115 indicates that the main length is about 1.86 metres high (on the appellant's side) and this was confirmed by my measurement on site. This steps up towards the bottom of the garden to about 2.8 metres high.

### **The proposal and the determination of the application**

10. The application seeks planning permission to construct a single storey outbuilding at the bottom of the garden. It would be sited running parallel to the side garden wall (adjacent to *Clos Fleuri*) but inset from it by between 561 – 769 mm. It would comprise 2 elements, the first being a rectangular shaped office with its main windows facing back towards *Le Ruisseau* and the second being a store.

11. The walls of the building would be faced in timber cladding. Most of the building would be covered with a shallow (10°) mono-pitched roof which would rise from about 2.4 metres high (closest to the appellant's property) to about 3.2 metres. The roof would be constructed in zinc cladding and would include 2 rooflights (over the office).
12. At the application stage the appellant submitted 3 representations. There were no comments from consultees that have any direct bearing on the main issue in this case. The application was determined under officer delegated powers and permission was granted on 9 April 2021.
13. A planning condition was imposed restricting the use of the building for purposes ancillary to the main dwelling and making clear that the accommodation is not approved for use as a separate residential unit. For clarity, under the Law<sup>1</sup>, this decision remains in effect, but the development cannot be implemented until this appeal has been decided.

### **Planning policy framework**

14. There is no dispute about the relevant Revised Island Plan (2014) policies in this case. The appeal site is situated within the defined Built-up Area where policy SP 1 seeks to concentrate new development. Policy BE 6 addresses building alterations and extensions and sets out that these will be approved subject to meeting design criteria. Policies SP 7 and GD 7 require all new development proposals to be of a high quality design.
15. The pivotal policy in this appeal is policy GD 1 which addresses 'general development considerations' and, more specifically, part (3) of that policy which sets a requirement that new development does not 'unreasonably harm' the amenities of neighbouring uses, including the living conditions for nearby residents. The policy goes on to identify matters that 'in particular' will be considered; these include privacy, light, noise and emissions. The concept of what is unreasonable is not defined in the policy and is a matter of judgement for the decision maker. It is a judgment that arises regularly in planning decision making.
16. I am mindful that a Draft Bridging Island Plan (DBIP) has been prepared. However, it is still the subject of public consultation and examination processes, such that its draft policies carry very limited weight at the present time.

### **The appellant's grounds of appeal**

17. The appellant's statement of case sets out five grounds of appeal:
  - (i) *The application fails under policy GD 1 by virtue of its unreasonable impact on the amenity of the neighbouring property, Clos Fleuri.*
  - (ii) *In reaching the decision, undue reliance was given on what might have been permitted under Permitted Development Rights (PDR), not*

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<sup>1</sup> Article 117(1) and (2) - Planning And Building (Jersey) Law 2002 (as amended)

*least as the Department leaves the appellant at risk that PDR can be used to make the impact far greater still.*

*(iii) There is no fixed datum, so the appellant is concerned the plans lack the necessary detail to ensure that the finished build matches what the permission was intended to allow.*

*(iv) The application is materially incomplete.*

*(v) The application was not correctly advertised.*

18. These grounds are expanded upon in the appellant's submissions and final comments, the latter including responses to the additional plans submitted through this appeal.

### **The applicants' response**

19. The applicants rebut the grounds of appeal and understandably support the IHE decision to grant planning permission. The applicants explain that the proposed outbuilding has been designed to replace the existing shed with a bigger and more functional storage area and to create a modest home office area for use by the occupiers. They further state that it was designed to avoid a severe impact on neighbours.
20. The applicants' submissions seek to clarify dimensions and levels and include the additional plans to assist the appeal. They explain that the roof design was carefully thought through and is considered appropriate for a contemporary outbuilding. The applicants also submit that external lighting in the garden can be installed without planning permission.
21. With regard to policy GD 1(3), the applicant contends that the building's size and low roof pitch will have little impact on sunlight reaching the appellant's property and decking area, and consider that the office and store building is a good design solution which will not have a detrimental effect on the adjacent property.

### **The IHE department's response**

22. The department's case is set out in its officer report and this is supplemented by its succinct statement of case and final comments documents. The latter 2 documents seek to address some of the appellant's concerns about the application content and process matters.
23. With regard to the substantive main issue, the officer assessment is that whilst there may be some visibility of the proposal from the appellant's property, the impact is not considered to be unreasonable and, hence, the presumption in favour of the proposal arising from its location in the Built-up Area, as set out in policies SP 1 and BE 6, should prevail. It considers the design to be acceptable and in accordance with policies SP 7 and GD 7.

## **Inspector's assessment**

### *General*

24. The appeal proposal relates to a single storey outbuilding that would be located within the rear garden of a suburban property, within the defined Built-up Area. As such, there is no fundamental 'in principle' policy objection, as it finds broad support under the Revised Island Plan's (2014) spatial strategy (policy SP 1) and, subject to satisfying criteria, policy BE 6 which addresses building alterations and extensions.
25. Notwithstanding that broad support, such developments introduce change, and that change can be alarming to neighbours, particularly if the existing context has remained unchanged and enjoyed as such for a long period of time. The policy safeguards are set out in policy GD 1(3) which requires that development proposals do not unreasonably harm the amenities of neighbouring use, including the living conditions for nearby residents. Design policies GD 7 and SP 7 are also relevant.
26. The appellant's third, fourth and fifth ground concern matters related to the accuracy of the submitted plans and the processes followed by the IHE. These are best addressed at the outset of my assessment. I will then assess the main issue concerning the impact on the appellant's amenity (first ground) and the relevance of PDR (the second ground).

### *Grounds 3, 4 and 5 – plans and certainty issues*

27. These 3 grounds, respectively, allege that there is no fixed datum to give certainty to finished building heights, that the application is materially incomplete, and that the application was not correctly advertised.
28. In the course of the application, the applicants have added plans and information. Whilst referred to as 'revised' drawings, my understanding is that the drawings simply sought to clarify the proposal and levels, partly in response to the submissions made by the appellant. This material included a topographical survey. Given the absence of any significant change to the application proposal, there was no requirement for re-advertisement under the Order<sup>2</sup>.
29. The process of clarification has continued through the appeal process. Drawing number MO6/115, whilst not amending the proposal, shows the elevational view that would face the appellant's property. Drawing number MO6/116 is the proposed site plan, with some key dimensions notated in respect of the distance between the proposed outbuilding and the appellant's home.
30. Whilst acknowledging the appellant's concerns about the plans, there appeared to be a consensus at the Hearing that the additional drawings, and drawing MO6/115 in particular, were helpful and provided certainty on building heights. Ms Ingram, for the applicants, confirmed that the building

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<sup>2</sup> Planning And Building (Application Publication) (Jersey) Order 2006 (as amended)

would be constructed to the indicated dimensions and would not be larger or taller.

31. In conclusion on these 3 grounds, whilst I find no substantive issue of concern with the application plans or the IHE publicity processes, the 2 additional plans, along with the topographical survey drawing, do provide some helpful additional clarity and precision. Should the Minister be minded to dismiss this appeal and confirm the planning permission, these plans should be referenced accordingly to provide certainty.

*Grounds 1 and 2 – impact on the amenity of the neighbouring property, Clos Fleuri and the relevance of 'permitted development' provisions.*

32. The store element of the outbuilding would be largely screened by the higher (2.8 metre high) granite wall. A limited part of it would be visible rising above the lower part of the boundary wall when viewed from the appellant's property. However, this would be just its upper part and its shallow sloping roof, which rises to a height of 2.564 metres<sup>3</sup> furthest from appellant's property. I assess that the store element would not have any substantive impact on the appellant's amenities in terms of outlook, physical presence or overlooking.
33. The office element would be higher and somewhat more visible from the appellant's property. The granite boundary wall would screen most of the bulk of the office, but the top of its rear elevation (north-east) would be visible, along with its metal shallow pitched roof (containing 2 modest sized rooflights), which would rise to just over 3 metres<sup>4</sup> in height. That high point appears to be around 6 metres away from the boundary wall and over 13 metres from the 4 *Clos Fleuri* glazed doors which face towards the site. Upper parts of the end (north-west) elevation would be visible.
34. Although the gently rising roof structure will be visible from the glazed doors and the elevated decked patio, I do not consider that the physical impact on *Clos Fleuri* would be severe or indeed unreasonable, although I do think that its limited impact could be softened further by landscaping. The proposed structure is of a neat design and would not appear out of place or overlarge in its garden setting which, when viewed from the appellant's property, would include the much taller tree (which is to be retained) in its backcloth. There would be no loss of privacy from overlooking effects and, whilst the 2 rooflights might emit some artificial light if the office was in use after dark, this would not be an unusual or intrusive effect in the Built-up Area. Overall, I assess that the proposed building would fall well within reasonable parameters for extensions and outbuildings within the defined Built-up Area.
35. I do recognise that making such assessments is not a precise science and inevitably involves a degree of judgement. The appellant's second ground of appeal contends that officers, in making their judgement and granting permission, placed too much emphasis on what alternatives would be

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<sup>3</sup> As notated on drawing number M06/115

<sup>4</sup> 3.081 metres as notated on drawing number M06/115

available under 'permitted development' rights, i.e. a building that would be exempt from planning control.

36. Schedule 1 of the Order<sup>5</sup> allows for the erection of a structure within the curtilage of a dwelling house subject to certain size limits. The relevant scenario in this case is that the Order would allow a building up to 30 square metres in floorspace which, if set 1 metre from the boundary and having a sloping roof, could be 2.5 metres high rising to 3.5 metres at its highest point above ground level, i.e. higher than the proposed structure in this case.
37. At the Hearing, it did appear that the issues surrounding 'permitted development' alternatives had become a little adversarial and the appellant's agent perceived such alternative development scenarios as an implied threat of harm to the appellant's living conditions.
38. Whilst noting the different views expressed, there are 2 important points to make here. The first is that the proposed development is not permitted development and requires planning permission, and therefore falls to be determined under the policy provisions of the Island Plan. The second is that 'permitted development' provisions can be a relevant material consideration in application decision making, as they may provide a 'fallback' option to an applicant, should their planning application be unsuccessful.
39. Bringing those 2 points together, the relevance in this case is simply that 'permitted development' provisions can help to inform and calibrate the GD 1(3) assessment of what is 'unreasonable' in amenity terms. Put simply, if an application proposal were assessed to have similar impacts on a neighbour's amenity to those arising from a 'permitted development' alternative, it would generally be difficult to sustain a view that the impact was 'unreasonable'. This is simply because the States has legislated that similar developments, and their inevitable impacts on neighbours (and most will have some) are not sufficient to require formal planning control and scrutiny.
40. In this case, my assessment is that whilst the development would have some impacts on the appellant's amenities and there would be some change in the outlook from *Clos Fleuri*, the effects are limited and not unreasonable. The effects of a permitted development alternative could be similar or greater and, whilst this is not determinative in my findings, it does inform, calibrate and corroborate the main finding I have made.

#### *Planning conditions*

41. At the Hearing, I held a without prejudice discussion on planning conditions in the event that the Minister was minded to confirm the permission.
42. In addition to correcting the standard condition A, a landscaping condition would be beneficial and was seemingly endorsed by all parties. Whilst I do not consider that soft landscaping is pivotal to the main issue in this case,

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<sup>5</sup> Planning And Building (General Development) (Jersey) Order 2011

the proposed landscaping is not clearly captured on the current plans and there is scope to clarify the trees and vegetation to be retained, and to include some additional planting which will soften the limited impact when viewed from the appellant's home.

43. There was some discussion about whether PDR should be removed from the property to guard against potential further impacts on the appellant's home. This suggestion was supported by the appellant. It also seemed to find favour with Mr Townsend (IHE), although no such restriction appears on the permission initially granted. The applicants were relaxed about the prospect of such a restriction, as it was made clear that the current proposal is the limit of their aspirations to develop buildings within the garden and that the remaining open garden area is an important amenity for the family. Whilst noting this general consensus amongst the parties concerning the removal of PDR, I am unconvinced that this would be justified in this case. As a general rule, I do not regard it as good practice to remove householder's rights which are enshrined in Law and, in this case, the residual garden area remains quite spacious and could accommodate some future 'permitted development' without causing any undue planning harm.

### **Conclusions and recommendation**

44. The proposed single storey outbuilding would be located within the rear garden of a suburban property, within the defined Built-up Area where such developments are acceptable in principle. The appellant's concerns about the accuracy and certainty of building plans and heights have been satisfactorily addressed through the submission of further clarification drawings, some of which have emerged in the appeal process.
45. The substantive main issue in this case relates to the impacts of the proposal on the amenities enjoyed by the appellant at her home *Clos Fleuri* and, more specifically, whether any impacts cross the 'unreasonable' threshold under policy GD 1(3). My assessment is that, whilst there will be some change, the impacts on the appellant's amenities are limited and well within those that would be expected within the context of the Built-up Area. I therefore conclude that the proposal accords with the relevant requirements of policy GD 1 and with the design policies GD 7 and SP 7.
46. For the reasons stated above, I recommend that the appeal should be dismissed. However, I do also recommend that the Minister confirms the planning permission under reference P/2020/1654 with some amendments and additions to the decision notice to achieve greater precision, certainty and to secure some landscaping works. I recommend the following amendments and additions:
- (i) For accuracy, revise the development description to: *Construct single storey office / store to south of site.*
  - (ii) For completeness and to set an appropriate period for the development to be commenced, correct standard condition A to read: *The development shall commence within three years of the decision date.*



- (iii) Add Condition 2 – standard landscaping condition LDC01 and standard reason.
- (iv) Add drawing numbers 21/1063/01 (the topographical survey) and drawing M06/115 to the list of approved drawings.
- (v) Revise the decision date to the date of the Ministerial Decision to address time lost through this third party appeal process.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**

Main Appearances at the Hearing

For the Appellant

Mr Sheehan (appellant's son and agent)

Mr Sheehan (appellant's other son)

For the Applicant

Mr Masterman (applicant)

Ms J Ingram (applicant's agent)

For the IHE Department

Mr A Townsend