

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

Appellant: Gail Ellis (Third Party Appellant)

Site address: *Purbeck Lodge*, Park Estate, St Brelade, JE3 8EQ

Application reference number: P/2020/0838

Proposal: 'Demolish existing residential dwelling and construct 4 bed residential dwelling with associated parking and landscaping. AMENDED PLANS: Alterations to design of rear (north-east corner) first-floor extension.'

Decision notice date: 10 March 2021

Procedure: Hearing held on 13 July 2021

Inspector's site visit: 12 July 2021

Inspector's report date: 23 August 2021

Introduction

1. This report contains my assessment of the third party appeal made by Gail Ellis. The appeal is made against the decision to grant planning permission for a replacement dwelling proposal at a property known as *Purbeck Lodge* in St Brelade, which is near to the appellant's home.

Procedural matters

2. In the course of the appeal, the appellant's grounds expanded from those stated in the initial appeal form. A specific issue that did not feature in the initially stated grounds relates to whether the proposal satisfies policy GD 1 1(a) of the Revised 2011 Island Plan (2014). This part of the policy sets a 'light presumption' against the demolition and replacement of buildings that can be repaired and refurbished.
3. As the Minister will be aware, the Royal Court's judgement in the Pine Grove case¹ has established how that policy should be approached in decision

¹ Therin v Minister for Planning and Environment Royal Court (Samedi Division) 2018.

making and it is therefore a material consideration in this case. As the matter was raised early in the appeal process, and other parties have had the opportunity to make submissions, I am satisfied that no injustice is caused to any party by allowing the expanded grounds of appeal to be considered. Moreover, given the case law concerning this policy, it would be remiss to not address policy GD 1 1(a) in my report, whether it featured in the appellant's grounds of appeal or not. Indeed, the matter scarcely featured at all in the Pine Grove appeal proceedings, but the Royal Court has determined that it is a policy matter that must be addressed in sound decision making. I therefore included the matter in the Hearing discussions and in my assessment below.

The appeal site

4. *Purbeck Lodge* is a dormer bungalow situated within the defined Built-up Area and being part of an informal layout of residential properties on the headland slopes to the south of La Route des Genets. It is accessed via a drive from Park Estate (road) which also serves a number of other dwellings.
5. The existing bungalow is said to date from the 1960s and is sited towards the top (north) of a generous sized plot, which is roughly triangular in shape and covers an area of 3,050 square metres². In common with other dwellings in this area, it is sited and designed to enjoy the attractive aspect to St Brelade's bay to the south.
6. The existing floor plans show that the ground floor comprises a living room, conservatory, kitchen and utility room, 3 bedrooms and 2 bathrooms (one being an en-suite to the master bedroom). In the roofspace there is a 4th bedroom and a study, each with dormer windows facing the bay. To the west of the dwelling there is a detached double garage and vehicle hardstanding area. To the south of the bungalow there is a swimming pool set within a level terrace area and, further south, there are gardens at a sloping lower level, beyond which the site falls further.
7. There are neighbouring dwellings to the west (*Frenchman's Cove*) and north-west (*La Solanita* and *Tramontano*), all accessed from the same drive from Park Estate. There are also dwellings to the north-east (*Cornerways*) and south-east (*Highcliffe*) which are accessed from Tabor Drive which connects to La Route des Genets. The appellant's property is *Highcliffe*, which sits towards the northern end of a rectangular plot such that it is directly to the east of the appeal property's sloping garden areas. The boundary between *Highcliffe* and the appeal site is comprised of a timber fence. There is some screening vegetation which rises above the fence on the *Highcliffe* side.
8. The area is predominantly residential in use and it has a low density, verdant and spacious character. There are a variety of dwelling types, styles and ages and no one design. The layout in the area around the site is informal and unregimented and appears to be the product of small scale

² As stated on application drawing number GA(10)-014RevP1

residential proposals over time. Most of the dwellings are detached and the majority sit on good sized plots with mature gardens.

The proposal and the application determination

9. The application seeks planning permission to demolish the existing 1960s dormer bungalow, remove the swimming pool and to construct a replacement dwelling with attached garaging and a new swimming pool. The application was accompanied by reports on the existing bungalow's structure and condition and the presence of asbestos.
10. The proposed 4 bedroom dwelling would be of a contemporary design, with flat roofs, extensive glazing on the south elevation (facing the coast) and a simple palette of materials, the walls being primarily faced in white stone cladding and white painted render.
11. Although the new dwelling would occupy a similar position on the plot, the main 2 storey part of the dwelling would be further south than the existing *Purbeck Lodge* elevation, and there would be some site remodelling (raising) beyond this, where the existing patio level would be extended forward to include a new pool, before stepping down to a lower garden level. To the north and west of the main 2 storey block would be single storey elements, under flat green roofs, which would include garaging, an office, an entrance lobby, laundry room, stores and a plant room.
12. Overall, the building would be larger and a little higher than the existing dormer bungalow. The footprint would increase by 42% and the floorspace would increase by 61% (to 593 square metres). The proposed house would be 710 mm higher than the existing bungalow roof ridgeline.
13. The application was determined by the Planning Committee following a site inspection. The committee resolved to grant planning permission. In addition to the standard time limit and plans compliance conditions, 2 further conditions, requiring the implementation of a species protection plan and landscaping works, were imposed. For clarity, under the Law³, this decision remains in effect, but the development cannot be implemented until this appeal has been decided.

Summary of the appellant's grounds of appeal

14. The appellant's case is set out in the appeal form which set out 6 grounds of appeal, a statement of case with 2 appendices and a final comments document.
15. As noted above, the appellant's grounds of appeal expanded somewhat from those initially put forward. The initial 6 grounds of appeal were as follows:

³ Article 117(1) and (2) - Planning And Building (Jersey) Law 2002 (As Amended)

1. *The footprint of the house has been raised and expanded significantly on the south and east towards my property (without respect to the existing contours of the land) and is overbearing. The proposed development will overlook two bedrooms, the entrance to and landing of my property, my garden and yard which will significantly impact my privacy.*
 2. *The height of the house has been measured from the top of the chimney of the existing dormer bungalow however this increased height has been applied to the whole second floor of the proposed development. This increased height means the south wall of the new house (which has been brought to the edge of the current swimming pool) is materially higher than the current southern wall and is overbearing. It also includes glazing and a balcony which will look into my property and impact my privacy.*
 3. *The garden and pool area are to be raised significantly (above the existing contours of the land) and will overbear and look into my garden, affecting the privacy to the west and south side of my property.*
 4. *There is adequate room within the existing footprint of the property for a sympathetic redevelopment. At the planning committee meeting no rationale was given as to why the property needed to be moved south and east of the existing footprint or the height of the property and its garden increased above the existing contours of the land.*
 5. *The pool plant and air-source heat pump are to be placed in close proximity to the boundary and the bedrooms on the west side of my property and my patio area. This is likely to impact my ability to quietly enjoy my property. I do not believe a noise survey was submitted with the application and note the following guidance on the government website in relation to pumps of this type: [a web link was included]*
 6. *During the planning committee meeting, the house was credited as being designed in an ecologically exceptional manner, however insufficient consideration seemed to be given to the impact the increased volume of the house (which appears to include six garages and a 25m heated (outdoor) swimming pool) had on this assessment.*
16. The statement of case expanded on these grounds and included a further ground that insufficient information had been provided to justify demolition under policy GD 1 1(a).

Summary of the applicant's case and responses

17. The applicant rebuts the grounds of appeal. His case is set out in a statement of case document with 6 appendices (labelled A – F) and a final comments document with 5 appendices (labelled A – E).
18. The statement of case explains the application proposal and how a pre-application advice process was followed. It explains relevant planning law and undertakes a review of planning policies, identifying that the site is in

the Built-up Area and making the case that the proposal is considered to comply with the Island Plan's strategic, general development and other relevant policies. It makes specific reference to the policy GD 1 1(a) case for demolition, highlighting the evidence from consulting engineers and asbestos surveys. It explains the committee consideration and includes complimentary quotes from Planning Committee members about the merits of the scheme.

19. Recognising that the appellant does not share the committee's view, the appellant then responds to each of the grounds of appeal and contends that the proposal will not cause any unreasonable harm to the appellant's living conditions through overbearing, overlooking or loss of privacy effects. Specifically, the applicant points out that the height of the proposal will be 1.2 metres lower than the appellant's house. He also contends that air source heat pumps and pool plant are not inherently noisy and are usually permitted development.
20. The applicant's final comments document responds further on the widening grounds of appeal. It also addresses the appellant's concerns about interpreting a number of plans. It also addresses the policy GD 1 1(a) case in greater detail and responds to comments from 2 interested parties. The appendices to the document include some selected drawings to show the proposed landscape ground levels; a letter from the Minister regarding policy GD 1 1(a); a schematic drawing showing elements of the building that would need to be removed to address the asbestos issues; and an annotated site plan with dimensions marked to show the distances between the proposed dwelling and neighbouring properties.

Summary of the Infrastructure Housing and the Environment (IHE) Department's case

21. The IHE case is set out in the committee report, the committee minutes, a response document and a second response.
22. The main response to the appeal explains the strategic policy context which directs new development to the Built-up Area (policy SP 1) and policy GD 3 which seeks to achieve the highest reasonable density in such locations, but recognises that, in all cases, other policies apply including achieving satisfactory accommodation (H 6), avoiding unreasonable impacts on neighbouring occupiers (GD 1) and achieving good design (GD 7). It also notes that the site falls within the Green Backdrop Zone where policy BE 3 applies.
23. It assesses that the primary focus of the appeal is on the amenity implications in respect of the appellant's home, and recognises that she does not share the view of the IHE department. It explains that, although the proposal would be higher than the existing dwelling, it would still be lower than all 3 neighbouring properties. It sets out that officers consider the separation distances from neighbouring properties to be acceptable and that the resulting relationships are similar to those found elsewhere in the Built-up Area and would not be overbearing or cause undue loss of privacy.

It confirms that pool plant and air source heat pumps would normally be permitted development.

24. The response also confirms that the IHE department is satisfied that the case for demolition and replacement has been made. It endorses the contemporary design and considers that it will represent a 'significant enhancement'.
25. The second response document further reinforces the above submissions and concludes that the proposal will not result in unreasonable harm to the adjacent property and satisfies all relevant Island Plan policies and should be supported.

Inspector's assessment

26. Given the expansion of the grounds of appeal, I structured the Hearing around a series of main issues and questions. I have used the most relevant issues and questions as sub-headings for my assessment below. I have followed more or less the same order as in the Hearing itself, the exception being the GD 1 1(a) case concerning demolition, as this is best addressed as the first contested matter.

Relevant Island Plan policies

27. The appeal site is within the defined Built-up Area where the Island Plan's overarching spatial strategy, set out in policy SP 1, seeks to concentrate new development. Policy H 6 makes a positive presumption for new housing development within the Built-up Area and policy GD 3 seeks to achieve the 'highest reasonable density'. However, the site is also located within the defined Green Backdrop Zone, where policy BE 3 recognises the landscape importance of the backdrops to the main built areas and only permits development where landscape remains the dominant element, existing trees and features are retained, and satisfactory new planting proposals are introduced. The interplay between policies SP 1, GD 3 and BE 3 means that new development remains acceptable in principle, but the policy objective of maximising development and its density (in the Built-up Area) is tempered by the overriding landscape considerations in these defined areas.
28. Other relevant strategic policies seek to maximize the efficient use of resources (SP 2), adopt a sequential approach to new development (SP 3), protect the natural and historic environments (SP 4), reduce dependence on the car (SP 6) and be 'better by design' (SP 7).
29. Policy GD 1 sets out a wide range of general development criteria against which all planning applications can be considered. These are based around 6 themes of sustainable development, impact on the environment, impact on neighbouring land and users, the value of the development (to the Island), travel and transport, and design quality. Of particular relevance to this appeal are subsections 1 (a) and 3 which, respectively, state that a development 'will not replace a building that is capable of being repaired or refurbished' and 'not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents.'

30. Other relevant policies are GD 7 which reinforces the SP 7 requirement for high standard of design, policy NE 2 with regard to species protection and policies WM 1, LWM 2 and LWM 3 concerning waste minimisation, foul and surface water drainage.

Whether the case to demolish and replace the existing building has been adequately made.

31. Policy GD 1 1(a) says that a building capable of being repaired or refurbished will not be replaced. The Minister will be aware that the application of policy GD 1 1(a) has been illuminated by case law, which is now a material consideration. The case concerned a proposed (larger) replacement dwelling development at a site known as Pine Grove which is located within the Built-up Area. I am very familiar with the case, as I was the appointed Inspector and I provided a supplementary report following the Royal Court judgement. In essence, the Royal Court established that GD 1 1(a) amounts to a 'light presumption' against demolition and replacement of existing buildings. It further clarifies that 'capable' (of being repaired or refurbished) should be seen in terms of economic viability.
32. Paragraph 92 of the Pine Grove judgement establishes 3 clear steps in the assessment against GD 1 1(a). The first step is to establish whether the building is capable of being repaired or refurbished. The second step is to assess whether the new development makes such efficient use of resources for the purposes of policy SP 2 that there is no breach, i.e. the negative sustainability effects are more than cancelled out by the sustainability / efficiency of the new scheme. The third step is then to consider whether, under Article 19, there is adequate justification for departing from this policy in the Island Plan.
33. In this case, the applicant submitted a structural condition report (dated 18 November 2019) produced by consulting engineers. It stated that there was evidence of mild structural cracking, assumed to be from foundation settlement. It also found damp penetration in a number of rooms and highlighted elements of poor repair (such as the dormer windows), ill-advised construction (extension built into a bank), inadequate insulation, and a poor internal layout. The report concluded: *'it is unrealistic that the property could be cost-effectively updated to present day Jersey Building Bye-Law standards to produce a quality residence lasting a further 60 years. Therefore, we conclude that demolition is the only viable option.'*
34. Taken on its own, I find the structural condition report unconvincing in terms of the first step of establishing whether the building is capable of being repaired or refurbished. It seems to highlight a range of building condition issues that do not seem unusual in a dwelling of this age and they do not present a compelling case for demolition.
35. However, the application was also supported by an asbestos survey report, which was updated in the period the application was live, as more surveying and some asbestos material removal was undertaken. This evidence

confirms that there is extensive asbestos within the dwelling and, more significantly, the asbestos pipework lagging is concreted into the floor structure. This means that the entire floor slab would need to be removed and replaced and this, in turn, would require the clearance of the perimeter walls and the roof supported by those walls.

36. I am satisfied that this body of evidence, taken together, demonstrates that the works necessary to achieve a repaired and refurbished modern day dwelling would be so extensive that they would amount to a new building. Indeed, the 'building' itself would no longer exist and would have to be reassembled using significant elements of new materials to meet modern standards. This demonstrates that the building is not realistically capable of being repaired or refurbished and policy GD 1 1(a) is therefore satisfied. Accordingly, this ground of appeal should fail.

Whether the impact on neighbouring occupants' living conditions at Highcliffe arising from the physical proximity, height and mass of the proposed dwelling, pool and garden works (grounds 1, 2, 3 and 4 stated in the appeal form) is acceptable.

37. The appellant is particularly concerned about the greater size, increased height and closer proximity of the new house, compared to the existing dwelling. As a result, I have examined the relationship between *Highcliffe* and the proposal in some considerable detail. I have done so by reference to the submitted plans, site inspections of both properties, by reviewing the digital model, and by considering the submissions made by the appeal parties both in writing and through the Hearing sessions.
38. I can appreciate the appellant's sensitivity to the proposal, given that the current relationship between *Highcliffe* and *Purbeck Lodge* has persisted for many years. There can also be no dispute that the proposal is bigger, closer, and taller than the existing dormer bungalow and that it will entail the loss of some trees and vegetation which are currently visible from *Highcliffe*. As a result, the change will be discernible and may be unwelcome to the appellant, who has enjoyed the existing state for many years. However, the key policy test is not whether neighbours can perceive the change, or indeed whether they endorse it, but, under policy GD 1(3), whether the impacts on neighbours' living conditions would be 'unreasonable'.
39. What constitutes 'unreasonable' is not defined and is a matter of judgement for the decision maker. That judgement is an inescapably contextual one as confirmed by relevant case law⁴ and it will differ by location. The locational context here is that this is a site in the Built-up Area and the principle of new development, albeit restrained somewhat by Green Backdrop policy BE 3, is acceptable and indeed encouraged. The physical context is one where *Purbeck Lodge* and *Highcliffe* are each individual detached dwellings set within a loose and informal low density cluster, most positioned to enjoy

⁴ Boyle and Kehoe v Minister for Planning and Environment [2012] JRC036 and Winchester v Minister for Planning and Environment [2014] JRC118

panoramic views of the bay, and where the sloping topography means that each dwelling has some impact on its immediate neighbours.

40. Whilst closer to *Highcliffe*, the proposed house would remain comfortably separated from it. The applicant's evidence demonstrates that the distance from the south-east corner of the new house to the main body of *Highcliffe* would be well over 20 metres and well over 30 metres to its south-west corner. Furthermore, the new house would be set well inside the property boundary, with a substantial buffer (about 8 metre width) within the site, where landscaping is proposed. In terms of height, the modest increase (710 mm) over the existing bungalow is comfortably accommodated in the site context, and the new dwelling will remain well below the height of *Highcliffe* and the 3 properties to its north (*La Solanita*, *Tramontano* and *Cornerways*). I have also examined the change in proposed garden levels where the new pool and a lawn are proposed, but these are well away from the *Highcliffe* boundary and will not cause any undue loss of amenity in my assessment.
41. Overall, I consider that, in physical terms, the proposal respects its context and will not result in any overbearing or other undue physical effects upon its neighbours that could be considered unreasonable for the purposes of policy GD 1(3).

Whether the impact of the proposal on neighbouring occupants' living conditions at Highcliffe in terms of any privacy / overlooking effects is acceptable (grounds 1, 2, 3 and 4).

42. Linked to the physical impact issues explored above, is whether the proposed building, being closer and taller, would result in any privacy / overlooking effects for *Highcliffe* or other neighbouring properties.
43. The privacy of *Highcliffe's* principal south facing windows, and its attractive gardens, would not be unduly affected by the proposal, given the separation distance, the screening effect of *Highcliffe* itself and intervening boundary treatments and landscaping (existing and proposed). However, the house does have some windows in its west and north elevations. On the west elevation, which is the side facing the appeal site, there are 3 first floor bedroom windows and, at the lower level an office window, an attached conservatory, and a glazed side screen (to the side of the veranda). The north elevation contains 4 small windows and 1 larger window at first floor level. When I made my inspection, I was able to see the first floor windows (in the north and west elevations) from various vantage points within the appeal site, but the ground floor openings are largely out of sight.
44. The appellant is understandably most sensitive to overlooking from the closest point of the proposed property. This would be from the vantage point of the south-east part of the first floor balcony of the proposed dwelling (by the master bedroom). I assess that it may be possible to see limited parts of the *Highcliffe* property from this vantage point. However, the separating distance is quite considerable and quite commonplace in such locations in the Built-up Area and in this locality. Furthermore, with regard to the windows in the west elevation, the angle is oblique such that it

would not be possible to see into the rooms behind. Some sideways views of parts of *Highcliffe's* parking area would be possible until the intervening proposed landscaping was established. However, it does not feel like an unduly intrusive or uncomfortable relationship, given the context and distances involved.

45. Whilst recognising that the proposal would alter the existing inter-relationships between the 2 properties, I consider that there would be no unreasonable impact on the levels of privacy enjoyed by the appellant or any of the occupants of other neighbouring properties.

Whether noise from the pool plant and air source heat pump would create an unreasonable loss of amenity to the occupants of neighbouring Highcliffe.

46. The appellant is concerned that the proposed pool plant and the air source heat pump will cause unreasonable noise nuisance. Both the applicant and the IHE officer contended that pool plant and air source heat pumps are often installed as 'permitted development' under the provisions of the Order⁵ and are therefore usually considered uncontentious and unproblematic in noise terms. The applicant also submitted that these installations are inherently quiet and would not be audible at the boundary. The applicant's agent indicated a willingness to submit details and acoustic information pursuant to an additional planning condition, should that be considered necessary.

47. As there is no technical evidence before me to substantiate the appellant's concern about noise nuisance, I find no conflict with the requirements of policy GD 1(3) in terms of amenity implications for neighbours. However, an additional planning condition would provide a 'belt and braces' check on noise implications.

Whether the proposal is acceptable in terms of its effects on ecology and biodiversity (ground 6).

48. Whilst I noted this ground of appeal, it was not supported by any meaningful evidence. Moreover, the IHE Natural Environment Team raised no objection to the proposal subject to the implementation of a Species Protection Plan (SPP) which is required through a planning condition which appears on the Decision Notice. It also seems to me that the landscaping proposals have the potential to enhance the biodiversity interest on the site.
49. I therefore consider that the proposal is acceptable in terms of its biodiversity and ecology implications, subject to the implementation of a SPP, as required by policy NE 2 (and secured by condition 1 on the planning permission).

The effect of the proposal on the character and appearance of the area (Statement of Case pages 6 and 7).

50. The appellant's statement of case alleges that the proposal's increased size and height, and its design, would result in a significant and harmful change

⁵ Planning And Building (General Development) (Jersey) Order 2011

to the settlement form and character and would therefore conflict with policies SP 7, GD 1 and GD 7. The applicant and IHE dispute this and consider the design to be of a high standard and appropriate in its context.

51. This is clearly an area where there is a degree of subjectivity, but my assessment is that the proposal would not be harmful to the character and appearance of the area and that it represents a high standard of design. There are a number of key factors that lead me to that view. First, whilst inescapably larger than the dwelling it would replace, it would sit on a large plot and substantial open areas would be retained, such that it would not appear cramped or overdeveloped. Second, and related to the first point, the main 2 storey part of the dwelling is set a very comfortable distance away for the plot boundaries, creating space with regard to neighbouring properties. Third, whilst there is a mix of house sizes in the area, the size of the proposal is not excessive by comparison and would not stand out as being overlarge or uncharacteristic. Fourth, the height increase over the existing property must be assessed in the context of higher still properties surrounding it, such that it will sit comfortably, and not jar or break the skyline, from key viewpoints. Fifth, there is a mixture of architectural styles and ages of dwellings in the area and no one style is predominant, but there are other modern design examples nearby, which I consider to be successful in design terms, and there is no reason to suggest the proposal will not fit seamlessly into its context.
52. Taking all of the above into consideration, I am satisfied that the proposal will not be harmful to the character and appearance of the area, including the landscape importance of the Green Backdrop Zone. I therefore conclude that the proposal accords with the requirements of policies SP 7, GD 1(6), GD 7 and BE 3.

Other matters

53. I have also considered the representations made by interested parties and consultees.
54. I have noted the significant amount of garaging contained within the proposal and that the applicant indicates that some of this is for classic vehicles. Whilst a dwelling containing up to 6 garage spaces may not sit entirely comfortably with policy SP 6, which seeks to reduce dependence on the car, I am mindful that this is a sustainable location with access to services nearby and is accessible by sustainable modes of travel.

Planning conditions

55. At the Hearing, I held a 'without prejudice' session on planning conditions to explore whether any additional conditions might be added to make the decision more robust. There was agreement that an additional condition requiring details of the pool plant and air source heat pump would add certainty in respect of noise issues (see paragraphs 46 – 47 above). There was also agreement to produce for approval a more detailed landscape scheme, with precise planting details and densities; this would provide greater certainty and ensure opportunities for attractive landscaping and

screening were maximised. These matters are reflected in my formal recommendation.

Conclusions and recommendation

56. This replacement dwelling proposal relates to a site within the defined Built-up Area where there is a presumption in favour of new development, subject to other considerations including those relating to sustainability, impact on neighbours, good design and the Green Backdrop Zone. I have found that the case to demolish and replace the building has been made due to the condition of the property and, in particular, the extensive and integral presence of harmful asbestos, the removal of which would, in effect, require a dismantling of the building which clearly strays beyond any concept of repair and refurbishment under policy GD 1 1(a).
57. Whilst the appellant's primary ground of appeal relates to potential amenity implications, I have examined these closely and found the proposal to be acceptable and well within reasonable parameters, given its context and location within the Built-up Area.
58. Specifically, I have assessed that the proposal would not have any undue overbearing physical impact on the appellant's property or on other dwellings nearby. I am also satisfied that the proposal will not result in undue loss of privacy or overlooking of windows and private garden areas, and that the inter-relationship between the properties would not be unusual or intrusive. There is no evidence to suggest that noise from the proposed pool plant and the air source heat pump would create any nuisance, but an additional planning condition could provide certainty in that regard. I have assessed that the proposal is acceptable in terms of its biodiversity implications. I have judged that the proposal is of a high standard of design and will not be harmful to the character and appearance of the area and that the landscape importance of the Green Backdrop Zone will be preserved.
59. For the reasons stated above, I recommend that the Minister dismisses this appeal and confirms the grant of planning permission under reference P/2020/0838. However, I also recommend that the Minister deletes the existing condition 2 and adds the following 2 conditions (recommended condition 3 would replace and expand the deleted condition 2):
 2. *Prior to commencement of the development hereby approved, details of the proposed swimming pool plant and air source heat pump, including noise levels whilst in operation, and proposed sound insulation measures, shall be submitted to and approved in writing by the Department for Infrastructure Housing and the Environment. The approved details and measures shall thereafter be implemented in full prior to the occupation of the dwelling and shall be retained and maintained in good order thereafter.*

Reason: To ensure the protection of the amenities of occupiers of neighbouring properties, in accordance with policy GD 1(3) of the Adopted Island Plan 2011 (Revised 2014).

3. *Prior to commencement of the development hereby approved, a detailed scheme of landscaping shall be submitted to and approved in writing by the Department for Infrastructure Housing and the Environment. The scheme shall provide details of:*

- (i) All existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site.*
- (ii) The position of all new trees and / or shrubs, including the species of plants / trees to be planted, their size, number and spacing and the means to be used to support and protect them.*
- (iii) The measures to be taken to protect existing trees and shrubs.*
- (iv) A landscape management plan for the maintenance of the landscaped areas.*

Once agreed, the approved scheme shall be implemented in full and thereafter retained and maintained as such.

I further recommend that the Minister revises the decision date on the Decision Notice to the date of the Ministerial Decision. In the interest of fairness, this will address the time lost to the applicant through this third party appeal process.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Main Appearances at the Hearing

For the Appellant

Mrs S Steedman (Planning Consultant)

Mrs Ellis (and family members)

For the Applicant

Mr J Nicholson (Planning Consultant)

Mr N Socrates (Architect)

For the Department

Mr A Townsend

Mr L Davies