

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

Site visit made on 7th December 2021

by N McGurk BSc (Hons) MCD MBA MRTPI

Reference: RP/2021/0410

Secret Garden, Les Ruisseaux House, Les Ruisseaux, St. Brelade, JE3 8DD

- The appeal is made under Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended) against the granting of permission to develop land.
 - The appeal is made by Mr and Mrs Fauvel against the decision of the States of Jersey. The appellants live within 50 metres of the appeal site.
 - The application Ref RP/2021/0410 by Karim Hirani, dated 22 April 2021, was approved by notice dated 20 August 2021.
 - The application granted permission is "Revised Plans to P/2015/0261 (Construct 1 No. four bed dwelling to the North-East of site): Block up first floor window and install cladding to South elevation. Construct first floor bridge to North elevation and alter fenestration throughout."
-

Recommendation

1. I recommend that the appeal be upheld and planning permission be refused.

Introduction and Procedural Matters

2. The description of development on the Decision Notice is the same as that on the application form (as set out above), with the addition of a reference to "amended plans received."
3. An existing planning permission¹ to construct a two storey house has been implemented in part.
4. The proposal the subject of this appeal seeks to introduce a number of changes to the development permitted by the planning permission relating to application number P/2015/0261. The most significant of these and the focus of this appeal, are proposed alterations to the first floor of the part-built dwelling's north elevation. This elevation faces towards the side of the neighbouring property located on Cowdray Drive and referred to in this Report as "Le Picachon".
5. Permission P/2015/0261 (referred to below as the "original 2015 permission") was granted subject to six conditions, including one which effectively serves to remove permitted development rights from the approved dwelling.²

¹ Ref: P/2015/0261.

² Ref: "Condition 6. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011, or any amendment to or replacement of that order, no works involving the erection of a building, extension, structure, or other means of enclosure, conversion of garages or lofts is permitted without the prior written approval of the Department of the Environment."

6. The application site has been the subject of several planning applications. These included an application in 2004³ for the construction of a two storey house, which was approved. Amendments,⁴ including the lowering of the house in the site, were subsequently approved in 2006. Revised plans for the repositioning of the approved dwelling were then approved in 2010.⁵
7. The Department notes that the application case officer visited the application site and the appellants' property and that, in respect of the application the subject of this appeal, "amended plans were received removing a chimney flue and relocating one window away from the north elevation which faces the Appellant's property."
8. The Department is satisfied that construction levels comply with the original 2015 permission.
9. Both the applicant and the appellants refer to previously approved planning applications and I note that these references provide some planning history.
10. With reference to the original 2015 permission and the related officer's report, the appellants state that "it seems very clear" that the windows on the first floor would be an issue in respect of Policy GD1. However, the original 2015 permission does not include the window and door to the first floor proposed by the application the subject of this appeal and I find that there is nothing in the officer's report that supports the appellants' opinion in this regard.
11. The summaries of the various cases set out below are not exhaustive but provide a reasonable indication of the main points made by the parties. I confirm that, in reaching my recommendation, I have considered all of the available information.

Case for the Appellants

12. The appellants consider that the proposal would result in unreasonable harm to the enjoyment of their property and would harm the outlook from their property, contrary to Island Plan Policies GD1 and GD7.
13. Some of the information provided in respect of the appellants' case relates to matters outside the scope of this appeal and the summary below (and Report as a whole) focuses on relevant planning matters only.
14. The appellants set out concerns in respect of noise and disturbance, privacy, sunlight and outlook.
15. The appellants consider that there will be potential for "uncontrolled significant noise," from the area adjacent to Le Picachon's patio in particular and also emanating from the proposed door and window at times when they are open.
16. The appellants also consider that the provision of access to the terraced area would provide an opportunity for occupiers of the appeal property to be "much closer" to Le Picachon's garden and to its lounge windows and that future occupiers of the appeal property would be able to overhear private conversations taking place in Le Picachon.

³ Ref: P/2004/1943.

⁴ Ref: RP/2006/1121.

⁵ Ref: RP/2009/1959.

17. The appellants are concerned that views from the proposed doorway over the boundary fence and into Le Picachon's lounge will be harmful to privacy.
18. The appellants state that raising the patio fence would not alleviate concerns in respect of noise and privacy but would reduce the amount of sunlight received by Le Picachon's patio area.
19. The appellants state that raising the boundary fence would create a more hemmed in, overbearing and claustrophobic feeling to that area.
20. The appellants consider that they are being asked to compromise their own amenities (by raising their fence) in order to provide betterment for the appeal property. Whilst the proposed changes may be minor in terms of construction alterations, the appellants consider them to be "major in terms of impact to us. This is in particular due to the close proximity of the properties, and our main family rooms, the lounge area and patio, facing south and their property being only 3.5m from the boundary."
21. The appellants state that there was no question of the original 2015 permission being for a substandard design.
22. The appellants note the applicant's comments in respect of Policy GD7. It is the view of the appellants that the proposed development would change the relationship between Le Picachon and the appeal property in a harmful manner, contrary to Policy GD7.

Case for the Planning Authority

23. The Department sets out the Island Plan's presumption in favour of achieving new development within the Built-up Areas and its recognition that "new relationships between properties will be unavoidable" as part of the "highest reasonable density of development" being achieved.
24. The Department points to Island Plan Policy GD3, which states that "A more sustainable approach to development and redevelopment of land requires the application and delivery of higher densities and, in particular, greater housing yields than have generally been achieved in Jersey."
25. The Department emphasises that Policy GD1 of the Island Plan seeks to prevent development from having an *unreasonable* impact on residential amenities.
26. Having regard to the aims and provisions of the island Plan, it is the Department's view that, in this case, the proposed development would "not have any *unreasonable* (my emphasis) impact upon the adjoining property."
27. The Department considers that together, the proposal (as per amended plans) and the conditions attached "will mitigate" against overlooking and in doing so will safeguard the amenities of occupiers and neighbouring occupiers. The conditions referred to require obscure glazing to the proposed door and window on the north elevation at first floor level.
28. The Department notes that levels differ between Le Picachon and the appeal property, such that the first floor of the part-built dwelling is lower than the patio level of Le Picachon. Taking this into account, the Department considers that the impact of the proposal would be less than that which a single storey

building would have if the levels between Le Picachon and the appeal property were not different.

29. The Department's view is that "it is normal" for adjacent properties in the Built-up Area to have windows facing each other at ground floor level and that taking levels into account, the potential for overlooking the Appellant's property would be less than is "normally the case" in the Built-up Area.
30. Further, the Department states that overlooking at ground floor level is "normally" prevented by a boundary wall, fence or hedge and that such boundaries may not require planning permission. The Department notes that Le Picachon's boundary fence to the side is 1.2 metres tall and that this is "unusually low."
31. The Department considers that erecting a taller fence would address the Appellant's concerns regarding overlooking and that it would "not object to" a condition requiring such. Notwithstanding this, it is the view of the Department that together, the difference in levels and obscure glazing conditions mean that there would be no "unreasonable impact" on Le Picachon.
32. In respect of outlook, it is the Department's view that the proposed alterations to the previously approved development are "modest" and that they would not result in a significant change in outlook or in an unreasonable impact. In reaching this conclusion, the Department notes that there are no proposed changes to the position, scale and massing of the approved building.
33. The Department states that in the Built-up Area it is not reasonable to expect that "adjoining properties" must not generate any noise and nor is it reasonable to expect them to be designed and positioned so that "any noise created...cannot be heard on the adjacent site."
34. The Department states that it is unreasonable for "the new dwelling to be denied any openings on the north facing first floor" and that the impact of raising the fence at Le Picachon would be "modest" because the key outlook affected is directly to the south of the house and the existing fence need only be raised by 60cm.

Case for the Applicant

35. The applicant considers that the proposed development complies with the Island Plan, including Policies GD1 and GD7, because the proposal would not unreasonably harm the amenities of the appellants and nor would it harm the appellants' outlook.
36. The applicant considers that planning permissions granted prior to RP/2015/0261 would have had a greater impact on Le Picachon than would the proposal the subject of this appeal.⁶

⁶ I note above in this Report that this appeal relates to planning application RP/2021/0410, which itself relates to planning permission RP/2015/0261 and not to earlier planning permissions. The applicant acknowledges in his statement that "the 2009 plans are not relevant to this appeal."

37. The applicant states that he has offered to raise the height of the appellants' boundary fence, but that this offer was turned down "because it would cause loss of light."
38. The applicant states that Le Picachon's principal garden and aspect is to the east and that its garden to the south is only a narrow strip. The applicant also states that, due to the change in levels, Le Picachon's 1.2 metre fence "is effectively 2.2 metres high when measured from on the application side."
39. The applicant points out that, due to the change in levels, the first floor of the proposed dwelling "effectively appears lower than a single storey building to Le Picachon" and that the top of the proposed door and the proposed window on the first floor of the north elevation are lower than the top of the boundary fence.
40. The appellant considers that the difference in levels, the conditions requiring obscure glazing and the restrictions to the opening mechanism of the proposed study window, would combine to prevent overlooking.
41. The applicant notes that expectations of privacy are less in the Built-up Area than in a rural location and that in a suburban location such as this one, where houses are routinely adjacent to one another, or even closer than Le Picachon and the part-built dwelling, the relationship between the two properties is "fairly normal." The applicant considers that the relationship between the two properties and the mitigation measures proposed and secured by condition, mean that the loss of privacy to Le Picachon would not be unreasonable.
42. The applicant states that it is inconceivable that the level of light to Le Picachon resulting from the proposal would be unreasonable and notes that the proposed development would appear "as less than a single storey building to Le Picachon."
43. The applicant states that the proposed development would not cause emissions (including noise and other emissions) over and above a normal residential property and cannot be deemed to be unreasonable in this regard; and goes on to state that "the proposal does not come anywhere near exceeding the bar of unreasonableness."
44. The applicant considers that, because the proposed dwelling already has consent, it is difficult to understand how the proposed door, window and footbridge will affect the neighbour's outlook as "the outlook would be affected by the building, not the features within the building."

Main Issues

45. The main issues in this case are the effect of the proposed development on the living conditions of the occupiers of No 5 Cowdray Drive (referred to in this Report as "Le Picachon"), with regards to privacy, noise and disturbance, outlook and sunlight.

Reasons

46. The appeal site formerly comprised part of the garden area of Les Ruisseaux House and is accessed via a driveway immediately alongside Les Ruisseaux House's garden, to the south-eastern boundary of that property.

47. As noted above, the Secret Garden, the subject of this appeal, is partly built.
48. It is located in a residential area characterised by the presence of largely detached two storey dwellings, set back from the road and with modest gardens to the rear.
49. The appeal site is located between Les Ruisseaux House, to the south and Le Picachon, to the north. Le Picachon is the last in a short row of detached dwellings along a narrow track accessed from Route de Noirmont. It is a small detached dwelling set back from the track behind a driveway. It has a modest garden to the rear and a small patio area to the south, between the side elevation of the house and its boundary with the appeal site.
50. Topographically, Le Picachon sits above the appeal site and Les Ruisseaux House, as land falls away to the south. This provides for an attractive open outlook looking south from Le Picachon and despite the relatively dense layout of built development in the area and the very close proximity of the appeal site to its southern boundary, affords a considerable sense of spaciousness to Le Picachon's patio area.
51. During my site visit, I observed the sense of openness and spaciousness from Le Picachon's main internal living area – which has patio doors opening out onto the small patio area; and from the patio area itself. I noted in particular, that the relatively low height of the boundary fence between Le Picachon and the appeal site, together with the low height of the part-built dwelling – due to a combination of its design and much lower ground floor level than Le Picachon – combine to make a significant contribution to these attributes.
52. I also noted during my site visit that, due to the immediate proximity of the part-built dwelling to Le Picachon's south-facing ground floor windows and patio area, any activity associated with the northern elevation of the part-built dwelling would be very keenly felt by the occupiers of Le Picachon. The ground floor of Le Picachon looks directly across to the upper part of the first floor elevation of the part-built dwelling, which appears to be and is, in very close proximity to the side of Le Picachon.
53. The Island Plan has a clear and stated aim of achieving higher densities within the Built-up Area. In order to achieve this, it is recognised that "new relationships between properties will be unavoidable" in order to achieve the *"highest reasonable density of development."*
54. Within the Built-up Area, the Island Plan makes an explicit presumption in favour of sustainable development. In the light of this, the relevant test when considering the effect of development proposals on the living conditions of neighbouring occupiers is not simply whether the proposed development would result in harm, but whether such development would result in *unreasonable* (my emphasis) harm.
55. Essentially, the Island Plan recognises that a policy of achieving higher densities across the Built-up Area means that a degree of harm in respect of the living conditions of neighbouring occupiers is something to be expected and accepted. The policy test is whether any such harm is so great as to be unreasonable.

56. As a consequence of the identified relationship between the two properties, the proposed window, door and bridge of the part-built dwelling are clearly visible from and appear to be in the immediate proximity of, Le Picachon. As such, I find that these features would draw attention to themselves as prominent additions to a first floor façade that would otherwise be notable for an absence of openings.
57. Indeed, the door and the bridge leading from the Secret Garden would appear so close to Le Picachon as to almost give the impression that they could provide for immediate access between the two dwellings. Occupiers of the Secret Garden could stand at the door, on the bridge, or on land accessed by the bridge and look directly over Le Picachon's patio and into Le Picachon's lounge from extremely close by. I find that this would severely erode the privacy currently enjoyed by the occupiers of Le Picachon's lounge and terrace.
58. Both the Department and the applicant refer to "normal" relationships between properties in the area, such that it is expected that there will be some degree of overlooking. However, I find that the relationship between the appeal property and Le Picachon is unique to those two properties such that it does not conform to what might generally be considered to be the "norm."
59. Le Picachon's southerly aspect from within the dwelling and from the patio area is a characteristic of that dwelling important to the occupiers' enjoyment of it. For the reasons set out above, the proposed development would result in harm the privacy of Le Picachon's occupiers. In addition to this, the proposed development would, due to its immediate proximity to an area where the occupiers of Le Picachon might reasonably expect to enjoy their patio doors and patio area in relative privacy, give rise to significant scope for overhearing – and I find that this would lead to a further erosion of the sense of privacy currently enjoyed by the occupiers.
60. In the above regard, I am mindful that Le Picachon's southerly outlook – from its lounge patio doors and from its patio – does not correspond to the "normal" relationships referred to. Rather, the patio area in particular is an established and important outdoor living space to the side of Le Picachon and it is enjoyed by that property's occupiers for its identified attributes. The patio comprises an especially sensitive area that is not, for example, directly comparable to an area between two houses commonly used for say, access, storage and little else.
61. Further to this, I observed during my site visit that the very close proximity to Le Picachon of the proposed window, door and bridge, and the immediate proximity of the garden land accessed by the bridge, would mean that even modest noise levels arising from these areas of the appeal property would be clearly audible to occupiers of Le Picachon when occupying the patio area, or its ground floor rooms adjacent to the appeal site, when doors or windows are open.
62. Also, I find that the level of harm arising in the above respect would be exacerbated as a result of an inevitable increase in the scope for noise and disturbance. It is reasonable to expect that the doorway, bridge and garden area would generate use by the occupiers of the Secret Garden and such use would take place in a location where any activity would be very keenly felt by

the occupiers of Le Picachon, due to the immediate proximity and sightlines associated with these features.

63. Consequently, I find that the proposed development would give rise to noise and disturbance and that this would detract from the ability of the occupiers of Le Picachon to enjoy their property. I find that the level of harm arising would, when combined with the identified harm to privacy, amount to unreasonable harm.
64. In respect of all of the above, I am mindful that the original 2015 permission does not provide for a door, a bridge or a study window at first floor level and that consequently, the levels of harm identified would not occur were the proposed development not to go ahead and the permitted development to go ahead as planned.
65. It has been suggested that the occupiers of Le Picachon could increase the height of their fence from 1.2 metres and that doing so would prevent overlooking without unreasonable harm arising.
66. In this regard, it is certainly the case that a significantly taller fence between Le Picachon and the appeal property could prevent overlooking. However, Le Picachon's patio area and southerly outlook has bright, open and spacious qualities and the relatively low height of the boundary fence makes a positive contribution to these attributes.
67. Conversely, I find that even a small increase in height to the boundary fence would inevitably reduce the sense of openness, spaciousness and the amount of sunlight reaching the patio area. This would be to the detriment of the occupiers' enjoyment of the patio area and the outlook from it, as well as from the lounge through the patio doors.
68. Taking the above into account, I find that the specific characteristics of this part of Le Picachon are such that a taller fence would appear as a dominant feature, detracting from the patio's qualities and drawing attention to what would be an awkward relationship between Le Picachon and the Secret Garden.
69. In this regard, I am especially mindful that the sensitive design of the original 2015 permission respected the qualities of the space and southerly outlook to the side of Le Picachon.
70. By way of contrast, I consider that the introduction of a tall fence to the boundary between the two properties in order to prevent overlooking would result in an undue sense of enclosure. It would radically alter an area notable for its open and spacious qualities by creating a patio that would appear tightly constrained, hemmed in and to some considerable degree, claustrophobic.
71. Taking all of the above into account, I find that the proposed development would result in a level of harm to the living conditions of the occupiers of Le Picachon, with regards to privacy, noise and disturbance, outlook, and sunlight that would amount to being unreasonable.
72. As the proposal would result in unreasonable harm, it would be contrary to Island Plan Policy GD1 which, amongst other things, serves to protect residential amenity.

Conclusion

73. For the reasons set out above, I recommend to the Minister that the appeal be dismissed and that planning permission be refused.

N McGurk

INSPECTOR