

STATES OF JERSEY

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

APPEAL by Mr Stuart Newman under Article 108(2)(b) of the Planning and Building (Jersey) Law 2002, as amended, against refusal of planning permission for a single dwelling with garage.

Site Address: Domus, Parcq de l'Oeillere, St Brelade

Department of the Environment (DoE) ref no P/2015/0524

Hearing and site inspection on 10 February 2016

Inspector Roy Foster MA MRTPI

INTRODUCTION

1 This appeal is against the refusal of planning permission for the construction of a house within the existing garden of Domus. The decision of the Planning Applications Committee (PAC) was contrary to the recommendation in the officers' report and was reached after a site visit by members.

THE MAIN ISSUES

2 Two main issues arise in this appeal, covering the topics identified in PAC's stated reasons for refusal. These are whether or not the proposal would (1) represent cramped overdevelopment out of keeping with the character of the area and/or (2) have a harmful effect on the living conditions of residents of nearby houses.

The impact of the proposal on the character of the area.

The case for the appellants

3 Reliance is placed on remarks about relevant Island Plan (IP) policies in the officers' report to PAC. Policy SP1 seeks to make the most efficient use of land within the defined Built-up Area. The scheme would not have a detrimental impact on the natural environment (SP4) and the site is in a sustainable location close to a bus service (SP6).

4 The officers' report also considers that Parc de l'Oeillere has a varied character with no consistency of design, height or relationship to boundaries so this modern approach, which is of a good standard of design, would both respect the built context and add to its diversity.

5 The report also goes on to draw a distinction between the character of the areas making up the northern and southern parts of the estate as indicated by the line drawn on drawing PL03A. To the south there are larger dwellings on large plots while to the north there are comparatively smaller dwellings on smaller plots. The appeal site is to the north of this line and the report therefore considers the scale, form and siting of the house to be appropriate to the area.

6 The scope for infilling within gaps between houses to the south of the line on PL03A (which covers most of Parc de l'Oeillere) is limited by the existence of restrictive covenants. Only the area to the north, including the site of Domus, is without such covenants so the appeal case provides a rare opportunity for further development and could not set a general precedent.

7 The proposed property is of a modest scale and sits within ample amenity space exceeding the Minister's space minimum garden space criteria. The height of the building would not be dissimilar from other buildings in Parc de l'Oeillere and its mass would be less than many other buildings on the estate.

8 The officers' report recognises that the northern part of the estate comprises a distinct linear row of smaller houses than the more generous detached dwellings set in large plots elsewhere on the estate. The line of this division is indicated on drawing PL03A. There is a mix of house styles, sizes and heights throughout the estate including several examples of two storey buildings of greater height than now proposed. Many houses have been modified and extended. There is no consistency in pattern or relationship of buildings with boundaries

and some are very close to their boundaries. It is not agreed that this is an overdevelopment or at odds with the character of the area.

The case for the PAC

9 The minutes of the PAC meeting on 11 June note that representations were heard from a number of neighbours. It was acknowledged that the scheme accorded with the relevant IP policies but having visited the site it was concluded that its design, including a shallow pitched roof, was out of keeping with the general character of the area. Having viewed scaffold poles erected to represent the profile of the building it was concluded that (due to the size and relatively narrow shape of the site) the house would appear cramped on its plot, being at its closest 1.2m from the northern boundary of the plot and 1m from the southern boundary. The garden would be 74sq.m in size, compared with the DoE's minimum adopted standard of 50sq.m.

The case for nearby residents

10 Neighbours at Chant de Mer and Vilamoura (to the south) and Belle Rocque (to the north across the road) consider the scheme out of character with Parc de l'Oeillere which consists primarily of low-slung buildings set in relatively large plots, causing unreasonable harm to its character and contrary to policies GD1 and 7 of the Island Plan. In their view the building would be squeezed into a very small, awkwardly shaped plot and its height and scale would be completely out of character with the area around it. This was clearly demonstrated by the scaffolding erected at the time of the PAC's visit and clinched their decision to refuse the application.

11 The owners of Vilamoura believe that the scheme goes against the original concept of the estate where all properties were provided with generous plots and designed not to overlook their neighbours. This modern 2-storey 'upside down' house with living accommodation at first floor would be totally out of character - built on probably the smallest plot on the estate, shoehorned into the narrowest corner of the plot at Domus, with only a postage stamp size garden, and its living areas at first floor level.

12 The owner of Belle Rocque did not originally appreciate that the plot of Domus could be considered capable of accommodating a new house and had assumed that this was a proposal for redevelopment of that house, not for an additional one.

The effect of the scheme on the living conditions of residents of nearby houses.

The case for the appellants

13 The officers' report recognises that the building would not 'unreasonably harm the...living conditions of nearby residents' with regard to privacy (GD1.3a) or light (3b) and it would not be overbearing.

14 A building of 6.5m height located some distance from neighbouring buildings would not cause an unreasonable or overbearing impact. There would be change, and therefore some impact, but the building would not be overbearing. Its relationship with nearby properties would not be uncommon in the context of a built-up area. The buildings to the south of the appeal site stand close to each other but this does not result them impacting negatively upon each other. Similarly, while the proposed building is close to its boundary it

would not ‘unreasonably’ affect the levels of privacy which neighbouring occupiers might expect to enjoy.

15 The 5 windows on the southern elevation of the new building facing Chant de Mer and Vilamoura would all be high-level, thus preventing overlooking from floor level. The two ground floor windows serve a bedroom and an en-suite bathroom on the ground floor, while the 3 on the first floor would be subsidiary windows to a kitchen (1 window) and dining/living room (2 windows). Overlooking of neighbours’ houses and gardens from within these rooms could not occur. There would be no contravention of the test in policy GD1 that proposals should not ‘unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy’. The suggested ‘perception of overlooking’ cannot be a reasonable effect in terms of that test.

16 The only potential for overlooking would be from the first floor west-facing balcony. However direct views towards the nearby back lawn and driveway of Vilamoura would be prevented by a 2m wall along the southern side of the balcony. Only an oblique westwards view of a part of the garden of Vilamoura would be available and this would not be an uncommon or harmful situation in an urban area. Views across the road and the front garden of Belle Rocque to the nearest point of the windowless front wall of that house, would be at a distance of more than 25m.

The case for the PAC

17 The minutes of the PAC meeting on 11 June 2015 note the receipt and content of 8 letters of representation, including those from Chant de Mer, Vilamoura and Morland, the nearest houses to the south of the appeal site, and from the occupier of Belle Rocque, the nearest house to the north. The majority view of the PAC was that the proposal would have a detrimental impact on neighbours in terms of perceived loss of privacy. The minute notes some discussion of the weight that could be given to ‘perceived’ loss of privacy. It refers to representations on behalf of neighbours concerning an Appeal Court judgement in the case of *Geha v Secretary of State* (29/11/93) in which the impression of overlooking had been considered rational and meaningful within the notions of privacy. It also noted a more recent decision by a Planning Inspector in England in May 2010 (APP/K0425/A/09/2114275) in which it was noted that “The perception of harm is capable of being a material planning consideration and fear of overlooking can inhibit adjoining occupiers’ enjoyment of their private garden. However, there must be an objective basis for this perception.” The factors discussed in that context included, among others, the relatively high sill level of the windows involved.

The case for nearby residents

18 As well as expressing their views to PAC, the residents of Chant de Mer (Mr and Mrs Ruane), Vilamoura (Mr D Marett) and Belle Rocque (Mrs S Bell) submitted further written representations in the context of the appeal and contributed to the hearing.

19 Mr J Ruane considers that the proposed high level windows would give a ‘permanent perception’ of overlooking of Chant de Mer, thus making them feel very uncomfortable, especially when their 3 young children are playing in the garden as they very often do. The new building would be a large edifice hard against the northern boundary and be unreasonably overbearing and intimidating.

20 Mr Marett objects that the proposed west-facing terrace would overlook the front lawn at Vilamoura, which serves a flat on one side of the property.

21 Mrs Bell comments that although Belle Rocque is situated back from the road and its single storey frontage is mainly blank (containing a front entrance and garaging but no living room windows) she has planning permission for alterations to the house (Ref P/2015/0726) which will provide a front-facing ground floor study. She also plans to lay out the front garden to increase its attraction as a place to enjoy the southerly aspect as well as continuing to provide a hardstanding for vehicles.

INSPECTOR'S OBSERVATIONS AND CONCLUSIONS

22 Dealing with the first issue, Parc de l'Oeillere consists of somewhere above 30 homes probably built mainly in the 1960s. These are primarily bungalows and 'chalet bungalows', mainly with white-painted rendered walls, although there is a small number of two-storey houses. The dwellings are set within plots which are of various sizes, but generally fairly large. The principal parts of the buildings are mostly set back from the roads within well-planted front gardens separated from the road by white-painted walls.

23 While Domus and the few houses to the east of it stand on smaller than average plots, a walk around the estate does not reveal them as contrasting notably strongly with the prevailing character of the estate as a whole. Turning the corner of the estate road between Vilamoura and Belle Rocque, there is a sense of considerable openness in the street scene derived from the adjoining gardens of Vilamoura and Domus and the isolation of Belle Rocque between the undeveloped land to the west and east of it.

24 The insertion of a two-storey house into the proposed new small triangular plot, so close to its boundaries and with a garden remarkably small in the local context, would result in a cramped development at a prominent corner location. This would be strongly at odds with the generally spacious character of Parc de l'Oeillere as a whole and this part of it in particular. The sense of overdevelopment and unfortunate contrast would be exacerbated by the nature of the two-storey modern design, albeit this design could be acceptable in the right setting. It does not surprise me that PAC reached the decision that it did on this issue, assisted by the scaffolding which was erected and which is recorded by the photographs in the representations.

25 Turning to the second issue, the use of high-level windows on the southern elevation facing the garden and rear windows of Chant de Mer would prevent direct overlooking and I do not consider that policy GD1 (3a) would be infringed, subject to the imposition of a condition on any permission to ensure an appropriate minimum height difference between floor and sill level (eg 1.8m). Some views between the appeal site and the garden and back rooms of Chant de Mer are already filtered by planting in the garden of the latter and there is room for neighbours to supplement this to further screen out 'perceived overlooking' if considered an issue. On the other hand, the need to adopt the device of high-level windows itself reflects the cramped nature of the scheme, while the largely blank wall facing Chant de Mer would be somewhat overbearing.

26 The potential for overlooking of Vilamoura would be limited because of the screen wall along the southern edge of the balcony. Any nearby views of this plot from the western edge of the balcony would be limited to that part of the back lawn of Vilamoura visible

through trees in the garden of that house. This would not be incompatible with normal standards in a relatively low density urban area. This also applies to views from the appeal site towards the more distant Belle Rocque, either as it is or as it would be if altered.

27 I conclude that the decision of PAC should be upheld on the grounds discussed above relating to the first issue, since the proposal's poor relationship to the character of the area would conflict with IP policies GD1 and GD7.

CONDITIONS

28 If the appeal were to be allowed the conditions set out in the committee report provide a generally sound and appropriate starting point. However, in my view it is questionable whether the final two lines of condition 2 (LDC001) impose clear or proportionate requirements particularly in the use of the words '...thereafter retained and maintained as such'. If this is intended to convey some concept of the 'permanent retention' of a particular feature this would be inconsistent with the natural life cycle of tree/plant species. As for 'maintenance' the Department clearly would not have the resources to monitor the detailed maintenance of gardens and this requirement is unenforceable.

29 Rather than stultify the ability of home and building owners to evolve their gardens in recognition of the age and condition of the planting within them, it may be better to delete part vi and the last two lines of the condition. These could be replaced with a requirement to undertake all planting within the approved landscaping scheme during the first planting season following the completion of the building and then to replace within a certain number of years (say 5) any trees or plants which die, are removed or become seriously damaged or diseased with others of similar size and species.

30 A similar question arises concerning condition 3, in that the detailed 'maintenance' of buildings is beyond reasonable planning control and anyway would impose a very heavy enforcement burden. I recommend deletion of the two references to maintenance.

31 I have referred above to the need for a condition to specify a minimum height difference between the floor level and sills in the case of the intended high level windows.

32 It was also indicated that there would be no objection to imposition of the Department's standard condition concerning visibility splays. The gist of this condition states that 'Before the dwelling is first occupied, visibility splays ensuring no visual obstruction over the height of 900mm shall be laid out and provided in accordance with the approved plans and thereafter permanently retained in such form.'

33 I make no comment upon the content of the 'Informative' included in the officers' report following condition 5. I consider that it is for the Minister to decide as a matter of principle whether or not he considers it appropriate for him to follow the Department's practice of attaching such informatives to his decisions.

RECOMMENDATION

I recommend that the appeal be dismissed.

Roy Foster, Inspector

22 February 2016

PERSONS SPEAKING AT THE HEARING

Appellants	Mr and Mrs Newman
Dept of the Environment	Mr A Townsend and Ms S Duffell
Other parties	Mike Stein – Planning Consultant
	Derek Marett – Vilamoura
	Mr J Ruane – Chant de Mer
	Mrs Bell – Belle Rocque