

**STATES OF JERSEY**

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

**APPEAL by Amberley Investments SA Ltd under Article 108(2)(c)(ii) of the Planning and Building (Jersey) Law 2002, as amended, against refusal of planning permission to construct a new dwelling as a revision to permission ref RP/2014/0004.**

**Site Address: Field 621, La Route de Noirmont, St Brelade**

**Department of the Environment (DoE) ref P/2015/0336**

**Hearing and site inspection on 9 February 2016**

**Inspector Roy Foster MA MRTPI**

## **INTRODUCTION**

1 The appeal site has a complex planning history. Field 621 was previously defined by the 2002 Island Plan (IP) as being within the Built-up Area but later became included in the Green Zone within which IP policy NE7 sets a general presumption against development including new dwellings. Despite this, the acceptability of one dwelling on the site has been conceded since 2004.

2 Following an action in the Royal Court outline planning permission for one dwelling was granted in 2010. This was followed by a reserved matters approval in 2011. A Planning Obligation Agreement (POA) secured landscaping works and, in particular, the protection of a view corridor across the southern part of the site, thus preserving a break along part of the site's frontage to La Route de Noirmont including a view from the road to the sea.

3 A further application (RP/2014/0004) was subsequently approved in July 2014. This remained live both when the application was submitted and when the appeal was made. Landscaping works, including the creation of a pond, have been implemented on the lower south-west end of the site, farthest away from the road.

## **CASE FOR THE APPELLANT**

4 The permission of 2014 (extant at the time the appeal was made) is a fundamental material planning consideration in this case and provides a fall-back position outweighing the presumption against development in IP policy NE7. The current scheme has a floor area of 442sq.m compared with that approved in 2014 (480sq.m) and is much smaller than the approved reserved matters scheme of 2011 which was 918sq.m. The only material differences between the current appeal scheme and that approved under RP/2014/0004 is that the present proposal results in the building being generally 1m higher. Two small additional windows are also included in the elevation facing the road but this is a minor change to which no objection was made by the PAC.

5 Drawing 4946/14E indicates the front and rear elevations of the proposed house in relation to those of the neighbouring houses at Sherwood and Somenos. The broken blue line shows the outline of the 2014 permission and the red line that of the 2011 scheme. Drawing 4946/15E shows the side elevations of the proposed building in relation to those of Sherwood and Somenos, with the blue and red lines making the same comparisons with the 2014 and 2011 schemes. Although the height variations change from place to place the proposal would not increase the maximum height of the building as compared with the reserved matters approval in 2011 and would be only 1m higher than the permission in 2014. This increase would have minimal effect on the scale and massing of the structure and not significantly increase its visual impact on the area. The roof line would remain significantly lower than neighbouring houses and the development sits away from the road and uses the gradient to ameliorate its visual impact. The position of the proposed dwelling is within the footprint of the extant permission. The building would include large glazed areas interspersed with natural stone in a horizontal slip form with rendered panels and a flat roof, giving a light and airy appearance identical to that previously approved. The proposal would sit more naturally within the site contours than excavating a hole and placing the building into it and the scheme cannot not be said to cause serious harm to the landscape character of the Green Zone.

6 In describing the appeal scheme as running counter to the principles of the original design concept the PAC has failed to identify which design concept this is, which principles have not been observed, and how the scheme runs counter to them.

### **CASE FOR THE PAC**

7 The Planning Applications Committee (PAC) refused the scheme against the advice in the officers' report. Although the principle of development has already been accepted the earlier permissions required the scale, form and position of development to respect the specific nature of the site and not simply continue the pattern, scale and design of other development along La Route de Noirmont. In PAC's view raising the level of the building by 1m would run counter to the original design concept, upset the agreed balance, undermine previous efforts to achieve a sympathetic bespoke development and harm the landscape character of the Green Zone.

8 Although the highest part of the proposed building would indeed be the same as that in the reserved matters scheme of 2011, the highest part of that scheme was a linear section of granite walling running north to south, whereas the front elevation facing the road would be around 750mm taller than the 2011 approval and 1m higher than the 2014 scheme.

### **CASES FOR OTHER PARTIES**

9 Letters from occupiers of nearby houses comment that:

- Somenos (the neighbouring house to the south) – the increased height would considerably increase the whole mass of the building and compromise the privacy of neighbours. The only beneficiary of the revised plan would be the developer, who would not need to excavate the site.

- Sherwood (the neighbouring house to the north) – the additional height would be oppressive and the scheme would resemble a large ship moored alongside Sherwood, rising above the boundary hedge and blocking morning and early afternoon sun entering the length of the garden and outdoor living space and dominating the south-facing skyline from ground level.

- La Tocque, La Route de Noirmont – after six or more years of deliberation the changes are unacceptable and may cause privacy issues to neighbours and prospective residents of the new house.

- 2 Portelet Drive – previous Ministers have restricted the height of this development to minimise impact on surrounding properties and the developer should accept this and not keep trying to push the boundaries to get what they really wanted, ie to reduce costs by reducing excavation.

### **INSPECTOR'S OBSERVATIONS AND CONCLUSIONS**

10 Although the planning history of the site provides a clear 'exception' to the presumption against development in the Green Zone, policy NE7 still requires that any exception should 'not cause serious harm' to its landscape character. The issue in this appeal is whether or not serious harm would arise.

11 This part of La Route de Noirmont is lined by generally large two-storey houses on large plots. The proposed house would be another such dwelling. Although its striking

contemporary design would be different from its neighbours this approach has already been accepted by the earlier permissions. The single storey front part of the house would be substantially lower than its immediate neighbours at Sherwood and Somenos and the taller two-storey section would be set well back from the road within the falling levels of the site.

12 In my view the height differences between this and the two earlier schemes that have been found acceptable are not such that such ‘serious harm’ is identifiable. The appeal scheme would still follow the basic approach of its predecessors and result in a low-profile scheme with broadly the same relatively limited impact on the street scene in this part of La Route de Noirmont.

13 Although neighbours have raised issues concerning loss of privacy and overshadowing these are not raised as critical objections in the officers’ report and are not referred to in PAC’s reason for refusal. From my visit to the site I consider that the design of the scheme, the degree of separation between the buildings here, and the retention of the boundary hedges all combine to ensure that IP policy GD1 part 3 is not contravened in these respects, subject to the condition recommended by the officers concerning first floor north and south-facing windows (see below).

14 I conclude that the appeal should be allowed.

## **CONDITIONS**

15 If the Minister were minded to allow the appeal, the conditions set out in the officers’ report provide an appropriate starting point for consideration.

16 Conditions 1 and 2 are said to be non-standard conditions and in my view are unsatisfactory in that they inappropriately remove the Department’s powers and responsibilities concerning these matters and devolve them to specified individuals outside the employment of the DoE. In the case of condition 1 it would be more appropriate to require that the development hereby permitted be completed in accordance with the details shown in the approved plans unless the Department gives written consent for any variation.

17 In the case of condition 2 it would be appropriate to replace this (and condition 3) by the following wording ‘Before the commencement of the development hereby permitted a landscaping scheme shall be submitted to and approved in writing by the Department of Environment including details of new planting and the means by which the existing hedgerows on the northern and southern boundaries of the site shall be retained and protected from damage by the erection of protective fencing until the completion of the construction works. The new planting specified within the scheme shall not include any planting within the view corridor between La Route de Noirmont and the south-west boundary of the site. All planting specified within the approved scheme shall be completed within the first planting season following the completion of the development. Any new or existing trees, hedgerows, shrubs or plants which die, are removed or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of similar size and species unless the Department gives written approval to any variation.’

18 Conditions 4-7 are appropriate for the reasons stated in the officers' report except that I recommend deletion of the words '...and maintained...' from condition 7. The permanent involvement of the DoE in maintenance matters is likely to be excessive and unenforceable.

19 Finally, it appears that no POA is in place for this particular application. It could not be confirmed at the hearing that the existing POA would automatically transfer to the new permission if this appeal is allowed and it seems to me doubtful that it would. Therefore, if the Minister is minded to allow the appeal he may need to require completion of a POA in the same terms but referring to the current appeal reference and drawing numbers so that anyone implementing that new permission would be bound by the same obligation as that attached to the earlier permission.

### **RECOMMENDATION**

20 I recommend that the appeal be allowed subject to conditions (and probably a new POA) as discussed above.

Roy Foster, Inspector

24 February 2016

### **PERSONS SPEAKING AT THE HEARING**

For the appellants -

Mr A Morris, Architect

Ms Samantha Hoare, Carey Olsen

Mr I Jones, Carey Olsen

Mr D Shepherd, Amberley Investments

For the Department -

Mr A Townsend