

STATES OF JERSEY

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

APPEAL OF A DECISION UNDER ARTICLE 108

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

by Mr Philip Staddon BSc, Dip, MBA, MRTPI

an Inspector appointed under Article 107

APPEAL BY: 'The residents of 27 – 32 Sarina Road' (third party appellants)

AGAINST: Grant of planning permission for a proposal to: *Demolish existing buildings. Construct 18 No. one bedroom, 43 No two bedroom and 93 No. three bedroom Affordable housing flats with associated community facilities, car parking, stores and landscaping.* Decision dated 16 November 2015.

LOCATION: Le Squez Phase 4, Le Squez Road, St Clement

REFERENCE: P/2015/0616

APPEAL PROCEDURE: Hearing – 12 May 2016

SITE VISIT: 12 May 2016

DATE: 31 May 2016

Introduction

1. This report contains my assessment of the Planning appeal made by the residents of the six properties on Sarina Road (nos. 27 – 32). This is a 'third party' appeal made against the decision of the Department of the Environment to grant planning permission on 16 November 2016 for Le Squez Phase 4 development.
2. The 'Phase 4' development is the final phase of a major estate renewal project, which is replacing life expired poor quality housing with new affordable houses and flats.
3. The project is being undertaken by Andium Homes, the States owned company that provides and manages affordable housing in Jersey. Phase 4 comprises 154 affordable flats provided in five blocks. The appeal focuses on blocks A and B and the impact the Appellants consider these would have on their homes.
4. I have focused my consideration on the particular elements of the scheme that the Appellants consider to be unacceptable. I do not consider it necessary or helpful to re-examine comprehensively the whole application proposal. Indeed, I think it is fair to say that Le Squez estate renewal has broad support and that the already completed phases are impressive in terms of their architecture and the quality of the living environment created.
5. Phase 4 continues in that vein. It is unquestionably a quality scheme in a highly sustainable location and seeks to make best use of brownfield land to address the Island's evidenced need for affordable housing. However, the scale, proximity and impacts of the proposed new build on existing housing has caused concerns and led to this appeal. It is on these matters that I focus.

The site and its surroundings

6. Other than a few retained trees, the application site is now fully cleared and hoarded ready for redevelopment. However, it previously contained houses and flats constructed in the 1960's. I understand that the layout and architectural design was typical of its time, with blocks of flats set in expansive open grassed areas, along with two storey terraced housing.
7. To the east of the site is the completed Phase 2 development of flats and houses. To the south are Le Squez School and Youth Club. To the west is the Florence Boots (FB) Field sports ground. The Appellants' Sarina Road properties lie to the north of the site – the rear of these six linked two storey properties (and their gardens) enjoy a south facing aspect.
8. Prior to clearance, there was a three storey block of flats on the application site to the south of the Sarina Road houses. It was a brick built flat roofed structure with just four windows (in a recessed wall) looking towards the Sarina Road houses. To the west of the Sarina Road houses, and across a road, were two storey houses with small front gardens.

The Block A and Block B proposals

9. Block A is proposed to the west of no. 32 Sarina Road and there would be a separation distance (wall to wall) of about 16 metres. It would be primarily three storeys in scale, although an element on its southern section would rise to a fourth floor.
10. Block B is a significantly larger U shaped building complex. The northern leg of the block is of most relevance, as it faces the Appellants' homes. This would be five storeys and would have a height of 16 metres and a width of 51.5 metres. It would be sited at a distance ranging between 31 – 35 metres from the south facing rear elevations of the Appellants' homes. It would contain 57 windows and 7 balconies. A combination of louvred shutters and obscure glazing is proposed to reduce overlooking / privacy effects.

The grounds of appeal

11. When the appeal was first lodged, there were two principal grounds of appeal. The first related to loss of light / privacy and the second related to garage and parking access issues. It became clear through the appeal process, that the second matter had been satisfactorily addressed by amendments to the scheme and that these had been accepted by the Department. Accordingly, the focus of the Hearing was on the first ground.
12. In terms of the light / privacy matter, the Appellants' grounds of appeal can be summarised:
 - Block B is of greatest concern in terms of impacts on natural light and privacy. Block A is also of concern for similar reasons.
 - The submitted sun path studies prove that, in December, the Appellants' properties will be put in shade and deprived of sunlight.
 - Solar gain is important to the Sarina Road houses, as they do not have central heating. Solar gain will be compromised by the development.
 - Overlooking and loss of privacy will be considerable from over 60 windows (Blocks A and B combined).
 - Block B should be reduced by two storeys and the displaced units re-assigned to Blocks C and D.

The Island Plan 2011 (Revised 2014) – policy considerations

13. The Island Plan's overarching spatial strategy is set out in Policy SP 1. It seeks to concentrate new development within the Island's built-up area, which is clearly defined on the Plan's proposals map. Policy SP 2 sets out a strategic objective of using resources, including land, as efficiently and effectively as possible and Policy SP 3 adopts a sequential approach to new development, directing it to the most sustainable locations. Policy SP 6 seeks to reduce dependence on the car and SP 7 seeks high quality design.

There is no argument that, in principle, the development accords with, and supports, these high-level strategic principles.

14. The Housing chapter of the Plan includes objectives to meet the Island's housing needs and to promote the housing led regeneration of urban areas. Policy H 1 identifies a range of 'outworn' Category A affordable housing sites for redevelopment.
15. The sites specified in Policy H 1 include Le Squez with an indicative overall net increase of 56 units (arising from phases 2c, 3 and 4). At the Hearing, I was advised that the whole scheme would now yield a total of 338 homes, representing a gain of 95 on the previous number (243). Much of this increased density is achieved in Phase 4, which would account for 69 (of the 95) 'net gain' units.
16. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on the amenities of neighbouring uses and occupiers, economic impact, transport and design quality. With regard to amenity impacts, the policy states that developments must:

"...not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, in particular:

 - a) *Not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy;*
 - b) *Not unreasonably affect the level of light to buildings and land that owners and occupiers might expect to enjoy;"*
17. Policy GD 3, in support of the spatial strategy, seeks to ensure that *'the highest reasonable density is achieved for all developments, commensurate with good design, adequate amenity space and parking...and without unreasonable impact on adjoining properties.'*
18. Policies SP 7 and GD 7 require developments to achieve a high quality of design. GD 7 includes a detailed set of criteria against which schemes will be assessed.
19. Policy BE 5 addresses 'tall buildings' which are defined as being above 18 metres or rising more than 7 metres above their neighbours. The policy states that the exceptional height of such buildings will need to be fully justified in urban design terms and states that development which exceeds the height of buildings in the immediate vicinity will not be approved.
20. The Supplementary Planning Guidance (SPG) document *A Minimum Specification for New Housing Development – Planning Policy Note No. 6* (2009) is also of some relevance.

Discussion and assessment

General principles

21. As I have already observed, there is little, if any, Planning contention over the principle of Le Squez estate renewal. It is a comprehensive and impressive project and it is being executed to a high standard.
22. It is worth noting here that the Island Plan's spatial strategy brings with it an inevitable intensification of development in parts of the defined built up area. If such urban land is to be used more efficiently and sustainably (and thereby enable the countryside to be protected), it requires that new buildings may need to be bigger, taller and closer together than layouts of past eras. That does bring with it unavoidable impacts on existing properties which, in turn, elevates the importance of good design and careful Planning judgements.
23. In terms of those Planning judgments, the concept of 'reasonableness' permeates the key policies (GD 1 and GD 3) but it is a term loaded with subjectivity. In assessing what are reasonable / unreasonable impacts arising from Blocks A and B, the judgements of the Appellants, the Applicant, the Department and indeed my own, are unlikely to all align neatly in a consensual manner.
24. Jersey does not currently have any adopted Supplementary Planning Guidance (SPG) to set benchmarks of reasonableness in terms of matters of privacy, sunlight, daylight and the overall 'massing' effects of new developments. This may be a matter worth exploring beyond this appeal, as it could assist all parties, reduce the number of appeals and prevent scheme delays.
25. There are a number of components to the amenity impacts. These include the effects on sunlight and daylight, along with overlooking impacts (actual and perceived). It is important to look at these individually but it is equally important that the Planning judgement (on reasonableness) is made 'in the round' i.e. the different elements need to be triangulated and balanced to reach a sound conclusion.

Daylight and Sunlight

26. 'Daylight' is the volume of natural light that enters a building between sunrise and sunset. 'Sunlight' refers to direct sunshine. These are not static phenomena and assessments of impact need to take account of the sun's passage (rising in the east and setting in the west), its height (which will be highest around noon) and the season (the sun is higher in the summer and lower in the winter months).
27. In terms of sunlight / shadowing, the relationship between Block B and the Sarina Road houses falls within the most sensitive part of the spectrum, being directly due south. Block A sits in a less sensitive location, being to the side and west of the Appellants' homes.

28. Sun path / shadowing studies were conducted and submitted as part of the application. These followed an accepted methodology, modelling the sun's path and the shadowing effects of the formerly existing flats and houses (the 'before') and comparing these with the effects of the proposed Blocks A and B (the 'after'). Sun / shadow study images were produced at 9.00am, 12.30 pm and 5.00 pm in March, June and December.
29. In the summer (June) scenario, the development would not cause any loss of sunlight or shadowing at any of the tested times; the gardens and rear elevations of the Appellants' home would remain exposed to direct sunshine. In the spring (March) scenario, the modelling actually shows some slight improvement from the 'before' situation (when the former housing to the west was still in situ); at 5.00 pm previously obscured sunlight from the west can reach the gardens.
30. In the winter (December) test, there would be no difference at 9.00 am and 5.00 pm as the low sun would mean that the gardens / rear elevations would remain in shade in the 'before' and 'after' scenarios. However, there is a definite negative impact at 12.30 – the modelling shows that sun reaches the rear walls of the houses and parts of the gardens in the 'before' scenario, but Block B would place them in shadow (the modelled shadow line would actually fall on the roof plane of the houses).
31. The evidence on sunlight / shadowing is clear. For much of the time, the sunny aspect that the Appellants' homes have enjoyed will be unaffected. However, at certain times of the year, it will be both improved (March 5.00 pm) and diminished (December 12.30). I will return to this in my overall assessment.
32. I now turn to the broader issue of 'daylight'. A difficulty here is, as I noted earlier, the absence of any adopted guidelines in Jersey. Through the appeal process, reference was made to SPG adopted by the London Borough of Hammersmith and Fulham, which promotes a guiding 45° line drawn upwards from a boundary fence to define a potential build zone. However, that borough is a very different urban context, with a very high density of existing development and often little space between buildings. Furthermore, the guidance is aimed at domestic extensions, rather than developments of new five storey blocks. Caution needs to be applied in using 'borrowed' SPG.
33. There are in fact many similar SPG documents used by mainland Local Planning Authorities. Most of them are based on, or at least influenced by, the Building Research Establishment (BRE) document *Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (second edition)*. This is a very useful resource. Although it includes a range of different tests, perhaps the most relevant in this case is its '25° rule of thumb'. This is used where a development is directly opposite an existing window (or windows), as in the case of Block B. A line is drawn from the lowest window at an elevation of 25° to define an 'unobstructed zone of daylight'.
34. Based on the Applicant's Drawing No. 4978/0597, Block B would breach this line at its closest point, albeit only marginally. At that closest point (31 metres separation), I calculate that the top of Block B would be at an angle

of 25.067°¹. As the distance increases, the angle falls under the line, such that where it reaches its maximum of 35 metres separation, the angle is 22.5°.

35. The BRE document is purely a guide and is not mandatory. It does not seek to determine what is or is not acceptable in overall Planning terms but it does provide a useful scheme 'barometer' to assist decision makers. Decisions need to be reached in context, considering all relevant Planning matters.

Overlooking

36. The development will result in substantially more windows and a good number of balconies facing towards the Appellants' homes. However, what existed before (very little overlooking) does not predetermine what is acceptable today in Planning terms.
37. There are no set Jersey standards in terms of overlooking and spatial separation. At the Hearing, reference was made to the often applied 21 metre 'back to back' guide, used by many Planning authorities in England. This is a useful starting point but its origin and application is primarily in more domestic scale development (typically two storey).
38. For taller developments, greater spatial separation is more appropriate. In the case of Block B, the separation is between 31 and 35 metres and this does reduce the severity of overlooking. Overlooking is also reduced by the use of obscure glazing and shuttering.
39. However, there are a substantial number of windows (57) and balconies (7) on this elevation of the building and, combined, with the height of the building, will undoubtedly reduce the perception of privacy and create a sense of being looked down upon, especially from the highest level. Indeed, even with shuttering and obscure glazing in place, the presence of the window openings and their regular artificial illumination (given their north facing aspect) may still lead to perceived privacy impacts, particularly from the top storey of the block. This is an important factor in terms of residents' expectation of living conditions.

Overall amenity assessment

40. It was apparent from the Officers' report, and their contributions at the Hearing, that the judgement call in this case was very finely balanced. I share the view that the Planning balance is a delicate one. However, my overall assessment reaches a different conclusion. It is my view that, whilst Block A is acceptable, Block B, as currently proposed, strays too far into the 'unreasonable' spectrum in terms of its overall amenity impacts on the Appellants' homes.
41. Block B will have tangible negative amenity impacts on the Sarina Road properties. It is a very big building with its facing elevation being circa 800

¹ I have employed the same window origin point as drawing number 4978/059 and assumed 14.5 metres of vertical building height above this and a horizontal separation of 31 metres.

square metres. Whilst sited over 30 metres away, it will be more than double the height of the Sarina Road houses, and it will impinge on the aspect and enjoyment of these properties.

42. Viewed from the pleasant south facing rear gardens of the Appellants' homes, a substantial amount of currently visible sky will be obscured and the building will appear overbearing. There is no right to protect a view in Planning law, but there is an expectation that reasonable levels of amenity will be maintained for existing homes and this is enshrined in Policies GD 1 and GD 3.
43. In my analysis, Block B is one storey too tall. Reducing the building by one storey would bring it well under the 25° 'rule of thumb,' which as currently proposed it would breach (in part). Indeed, it would reduce the angle to less than 20° and bring the building below the Policy BE 5 'tall buildings' height threshold. This would retain more daylight and sky, lessen any winter shadowing and generally create a much more comfortable relationship with the existing homes. Furthermore, it would also serve to reduce the perceived overlooking from the most intrusive (highest) points of the building.

Conclusions and recommendation

44. Le Squez estate renewal project is unquestionably a positive and desirable initiative. The earlier completed phases are testimony to a high quality and successful programme of estate renewal and regeneration, which accords with and supports the Island Plan's objectives and policies.
45. Phase 4 continues that programme and much of the application content is entirely acceptable and desirable and is unchallenged by this third party appeal. However, the sudden interface of proposed new multi-storey blocks with much lower two storey homes has caused concerns, some of which I share.
46. I consider that the Appellants have been pragmatic and reasonable. They are accepting of change and have already experienced much change from earlier phases nearby. However, they consider that the scheme, notably Block B, is excessive and should be reduced by two storeys. I do share their view that it is too large and tall, but I do not feel that a two floor reduction is necessary to bring the scheme back into reasonable parameters. A one floor reduction would achieve this.
47. My remit is limited to making a recommendation on the scheme in front of me. However, I am mindful that my conclusions, if accepted by the Minister, could be readily addressed by revisions to the scheme. Indeed, I sensed through the Hearing process, that a single floor reduction may be workable and the units displaced could potentially be re-provided elsewhere in less sensitive locations, thereby maintaining overall numbers.
48. Accordingly, I have framed my recommendations in a manner that would, in effect, re-open the current application to allow for revised plans to be submitted, consulted upon and determined. If this were achievable, it would seem a much neater and quicker route than a refusal and resubmission of

an entirely fresh application. It would also allow officers to tidy up some administrative matters concerning drawings and conditions that were raised at the Hearing. However, if that is not possible, my second recommendation sets out a reason for refusal in respect of the current scheme.

Recommendation A : That the Minister advises the Applicant that he is minded to allow the appeal based on the negative impacts of Block B on nos. 27 – 32 Sarina Road, but wishes to allow an opportunity for the preparation, submission and consideration of amended plans, reducing the height of the northernmost section of Block B by at least one full storey.

Recommendation B : In the event that amended plans are not submitted pursuant to recommendation A within two months from the date of this decision, that the appeal be allowed and that Planning Permission be refused for the following reason:

Reason 1: The proposed development of Block B, by virtue of its five storey scale, proximity and overlooking windows and balconies, would lead to unreasonable impacts on the residential amenities and living conditions of numbers 27 -32 Sarina Road by virtue of its overbearing presence, loss of daylight, shadowing effects at certain times of year, and loss of privacy. As such, this element of the application proposal is contrary to Policies GD 1 and GD 3 of the Island Plan 2011 (revised 2014).

P. Staddon

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