

**STATES OF JERSEY**

**Report to the Minister for Planning and the Environment**

**Appeal by Mr and Mrs Sheehan under Article 108 of the Planning and Building Law (Jersey) 2002, as amended, against the grant of retrospective planning permission to increase the height of the balcony on the west elevation the new dwelling at La Hougue Farm previously approved under ref P/2012/0345.**

**Site address: La Hougue Farm, La Route du Petit Port, St Brelade, Jersey JE2 8HH**

**Date of hearing and site inspection: 8 December 2017**

**Inspector: Roy Foster MA MRTPI**

## **Introduction**

1 This 3<sup>rd</sup> party appeal concerns revised details of the new house recently constructed at La Hougue Farm under permission ref P/2012/0345. The retrospective application which is the subject of the current appeal (ref RP/2017/0889) followed concerns raised by the present appellants that the new house was not being constructed in accordance with the approved plans. The appellants live at the neighbouring house, Tramonto.

2 The application was submitted after the DoE commissioned a digital survey from an independent surveyor. This found that the deck of the new first floor west-facing balcony is some 17cm higher than shown on the approved plans as a result of an increase in the ceiling insulation to the room below.

## **The issue in this appeal**

3 From what was said at the hearing, my reading of the appeal papers lodged on the Jersey Planning Register and the site inspection, I consider that the only issue in this case is whether or not the balcony as constructed would result in unreasonable harm to the living conditions of neighbours by causing a level of damage to the privacy enjoyed by residents at Tramonto such as would undermine the objectives of policy GD1(3) of the Island Plan.

## **Consideration of the above issue**

4 Although the parties have disagreed about the precise extent to which the balcony has been raised, the independent survey calculated the difference as 17cm as measured to the top of the decking. I understand that at an earlier visit to the site in connection with .....the Minister was able to simulate the effect of future decking by standing upon appropriate blocks placed on the balcony. In my case I was able to judge the privacy issue in the context of policy GD1(3) with experience of the decking in place. Therefore, even were there to be any residual doubt about the amount of the precise height increase, I do not consider this material to determination of the appeal.

5 A Ministerial Order dated 28 March 2017 served a Notice of Modification concerning the original permission (P/2012/0345). This required *'The planting of a semi-mature evergreen hedge inside the western boundary of La Hougue Farm from a point immediately north of the existing yew hedge for the remaining extent of this boundary as indicated on plan A attached to this Notice.'* It was a condition of this requirement that *'At the time of planting the whole of the hedge (including the existing yew hedge) must be a minimum of 6 feet in height above the level of the manhole (used as the datum for survey purposes – denoted by an x on the attached plan B). Thereafter the hedge must be grown and kept to a minimum height of 8 feet [2.43m] above the level of the said manhole.'*

6 A condition attached to the revised permission (RP/2017/0889) stated *'With reference to Ministerial Decision MD-PE-2017-0030, the height of the hedge which has been required to be planted along the western boundary of the site shall be maintained at a height of not less than 2.6m above ground level'*. Although this increase of 0.17m in height reflects that of the raised height of the balcony, the wording of the condition does not reflect the Ministerial Order's use of the manhole as a datum. This appears to be an oversight.

7 It was apparent from my visit to Tramonto that people using any part of the courtyard at the rear of that house are afforded good privacy by the boundary hedge in its present state.

The effectiveness of the hedge has also been supplemented in terms of thickness by further evergreen planting within the narrow strip of land within the site of Tramonto between the hedge and the retaining wall rising from the courtyard below. For the most part only the upper section of the gable window to the balcony is visible and these views are limited to positions close to the bedroom window or within that room. In ordinary circumstances this relationship (assured by use of the 2.6m minimum height above the manhole datum) would meet the requirement of policy GD1(3).

8 However, the appellants consider that special circumstances apply in the case of their son's serious autistic condition. Documentary evidence from the relevant Jersey body gives clear support to the appellants' strongly expressed submission that he is very reliant on the availability of accommodation in which he can feel safe, calm, and unlikely to be disturbed by lights, noise and other unexpected events. The bedroom and courtyard in question have been designed to provide such a refuge. I therefore conclude that it would be appropriate to allow the appeal to the extent of amending condition 1 attached to permission RP/2017/0889 to require the whole length of the hedge along the northern boundary to be maintained at a height of 3m, thus closing off views of the upper sections of the gable window to the balcony and any light emanating from it. This outcome would respect the special circumstances of the appellants' son while having no material impact on the westerly aspect from La Hougue Farm and its balcony because the effect would be limited to cutting off a slightly greater proportion of the existing views of the flank walls and prominent substantial sloping roof surfaces of Tramonto, just beyond the mutual boundary.

9 It was also suggested on behalf of the appellants that a screening hedge should be required along the boundary between the La Hougue Farm and the recently-built dwelling within the grounds of Tramonto known as The Old Garage. The approved revised plans (RP/2017/0889) do not indicate any hedge planting in that area although they do show some (presumably low level) 'plants'. The drawings for the original permission (P/2012/0345) indicate 'screen planting' at this point, but in a different form from the hedge along the western boundary. Neither permission was conditioned to require any planting on the northern boundary.

10 There is a change in level between the two properties at this boundary. Viewed from the appeal site the boundary is marked by a wall. On the Tramonto side the ground is lower. Here the boundary wall adjoins a narrow strip of earth which is itself supported by a retaining wall rising from the surfaced area behind The Old Garage. This strip contains a few intermittent leggy shrubs.

11 Looking northwards from the balcony the eye is drawn to more distant rising countryside views to the north and north-west rather than the largely featureless area behind The Old Garage. In my view compliance with policy GD1(3) does not require planting within La Hougue Farm on its northern boundary since the degree to which the area behind The Old Garage is overlooked from the balcony is not unusual or unreasonable in the context of neighbouring residential properties in a developed area.

12 Although the appellants expressed an aspiration that their son may at some point be able to occupy The Old Garage and its garden, this future possibility is not an existing 'exceptional circumstance'. There is no certainty that it will become so and I consider this factor too uncertain to bear material weight in this appeal. Moreover, it would be within the

power of the appellants to re-plan, re-model, and plant the levels and space on their own land at the rear of The Old Garage so as to create greater privacy for that area if they wished to do so at some stage.

13 Although there were other grounds raised for the appeal, in my view none are as relevant to the outcome of the appeal as the issues discussed above. I understand the appellants' frustration about the place chosen to display the site notice since it was not in a location visible from the section of the road over which they have a right of way. However, the appeal process has permitted their views to be expressed and considered. Similarly, any remaining dispute about land ownership has no effect on the determining issue in this appeal.

### **Recommendation**

14 I recommend that the appeal be allowed to the extent of varying condition 1 to RP/2017/0889 to read 'With reference to Ministerial Decision MD-PE-2017-0030, the height of the hedge which has been required to be planted along the western boundary of the site shall be maintained at a height of not less than 3m above the level of the manhole marked 'x' on plan B attached to that Order.'

*Roy Foster*

Inspector