

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr N and Mrs T D D'E Radcliffe against an approval of planning permission.

Reference Number: P/2018/1328

Site at: Clos du Mur, La Route de Plémont, St Ouen

Introduction

1. This appeal is a "third party" appeal against the decision to approve planning permission for proposed development. The application (dated 17 August 2018) was made (or purported to have been made - see paragraphs 6-8 below), by Mr and Mrs B Schofield . The proposal was described in the application as:

"Proposed garage extension, plus new dormer window, entrance canopy, external stair and internal remodelling of existing dwelling. Proposed swimming pool and decking and associated external works."
2. In the planning officer's written assessment, the proposal was described as:

"Construct garage extension to north-west elevation. Demolish existing conservatory, construct extension and install external stair to south-west elevation. Construct entrance canopy and install 1 No. dormer window to north-east elevation. Various internal alterations. Construct swimming pool and install decking to north-east of site."
3. In this report a brief description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellants, for the planning authority, for the applicant, and for other parties. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine to the extent you consider necessary.

Procedural Matters

Appeal Procedure

4. Arrangements were originally made for this appeal to be the subject of a hearing with associated site inspection. With the agreement of all parties, instead of a hearing I carried out a site inspection, but before starting the inspection, I asked the appellants, the applicants and the representatives of the Department of Growth, Housing and Environment some questions; these were mainly to clarify points in the submitted written statements, plans and photographs. I inspected the site and surroundings on 7 February 2019. My inspection included the appellants' property at La Place (neighbouring the appeal site). I also walked along part of the coastal path to look at views towards the appeal site.

My Request for Information

5. Before the site inspection I arranged for a message to be sent to the appellants (with a copy to all other parties) asking for a plan or drawing showing the various parts of the appellants' property, as the layout was difficult to understand from the available information. The appellants sent a plan labelled with letters describing the uses of different parts of the property at La Place. This plan is now

among the submitted documents. At the site I established that the letter "I" on the plan was intended to label these areas as orchard - the appellants apparently inadvertently omitted the reference to this letter from the key on the sheet attached to this plan.

Identity of Applicants

6. As noted in the summary details above, the applicants as named in the application were Mr and Mrs B Schofield. The applicants' contact was named as Lynne Schofield. A firm of architects (Tim Skudder Architects) was the agent for the application. One of the points I sought to clarify at the site inspection was the identity of the applicants, because as far as I could tell from the submitted written material, no persons named Mr and Mrs B Schofield had made the application. Several documents referred to the owners of the appeal property as Mr and Mrs Scholfield or Brian and Lynn Scholfield and for data protection reasons I was not able to see any signatures on published versions of the application form.
7. From the responses to my questions I established that the real applicants were Mr and Mrs B Scholfield and that no person named Schofield is involved with the application or appeal. Nor is any person whose first name is Lynne, as named in the application. (Mrs Scholfield's first name is evidently Lynn).
8. In some circumstances, making an application for planning permission in the name of persons who are not in fact applicants could invalidate the application. In this instance, taking the above points into account I judge that the application can be treated as having been validly made by Mr and Mrs Scholfield.

Site and Surroundings

9. The house at Clos du Mur is a detached two-storey dwelling which stands south-east of La Route de Plémont. A driveway leads to the north side of the house from the road. As can be seen in the photographs and other images on the application drawings, the main part of the house has a fairly modern design with a low-pitched ridged roof and large lazed areas. Part of the property is linked to an older building.
10. The topography in this area is varied. The land immediately around the house at Clos du Mur has been partly cut into the side of a valley, which slopes down south-eastwards towards a watercourse, then rises on the opposite side of the valley, beyond which are more open fields. The lower part of the valley side immediately east or south-east of the plot of Clos du Mur is part of the area within the appellants' ownership. Parts of the valley and nearby land are covered by trees or other vegetation and some of the land appears to be used for grazing horses.
11. Mr and Mrs Radcliffe's house, La Place, is located south of Clos de Mur. The property at La Place includes (in addition to the house) a separate dwelling which is apparently let to residential occupiers, a cottage evidently used as a self-catering holiday let, a workshop, hay barns and stables, and an extensive area of land. The land owned by Mr and Mrs Radcliffe surrounds Clos du Mur except for the width of the driveway to Clos du Mur. Within this land there are areas where

young saplings have been recently planted.¹ A driveway to La Place leads off the nearby road at an angle from a point further to the south.

Case for Appellants

12. In summary, the main points made by Mr and Mrs Radcliffe in their appeal grounds are:
 - The approval of permission was based on false claims. Contrary to those claims, the development would be visible from public areas. The building is poorly designed and not in keeping with the area.
 - The proposal would cause overlooking over Mr and Mrs Radcliffe's property, particularly from the dormer and balcony area.
 - Light pollution would also be caused. There should be more screening, but trees would be lost and trees have recently been removed.
 - The self-catering business at La Place would be affected. Tourists like peace and quiet, and the imposing dormer would be off-putting to tourists who like their privacy.
 - The proposal is contrary to policy which sets a general presumption against development in the green zone. The development would not enhance the green zone and would bring an urban lifestyle to the countryside. Protected wildlife species would be harmed.
13. Various other objections are set out in the bundle of documents submitted with a letter dated 28 January 2019. The appellants feel that Mr and Mrs Scholfield are trying to wear down and harass Mr and Mrs Radcliffe by constantly complaining. The appellants say that visitors to their self-catering cottage are amazed when they see such an imposing and ugly building as Clos du Mur in such a beautiful area, and that the proposed balcony and dormer would make the property even more imposing. The Scholfields have made their property more visible by removing trees, and unauthorised development has been carried out (for example, the rock face next to the drive has not been reinforced, there is an extra window in the east gable, and the roof line is hugely higher than was shown in the approved plan of 6 June 1967).
14. The submitted documents include photographs from various publicly accessible viewpoints, a 1:2500 scale map showing the location of the different parts of the property at La Place (mentioned in paragraph 6 above) and copies of letters and emails between the appellants and applicants.

Case for Planning Authority

15. The Department's case is set out in their response statement with attached report ("Application Assessment Sheet"). The main points made by the Department are, in summary:
 - The key issue is whether the proposals comply with Island Plan policy NE7. This sets out a presumption but not an absolute moratorium against development in the green zone. One of the permissible exceptions to the presumption is the extension of a dwelling where specified criteria would be met.
 - The Department consider that relevant policy criteria would be met, as the design would be appropriate to the context, no significant increase in

¹ Some of this land is labelled on the map submitted by the appellants as fields used for agricultural and horticultural purposes (letter A on the appellants' map), some is labelled as smallholding fields (letter B on the map), some as orchard (letter I).

occupancy would be facilitated and landscape character would not be seriously harmed.

- The proposal would involve relatively modest alterations to the house. The proposed swimming pool would sit within an existing garden area and would not have a wide impact on the landscape.
- The proposals would not have any impact on the fabric or setting of the neighbouring Grade 3 listed building, would not unreasonably harm the amenities of any adjacent property, and would not be likely to cause unacceptable levels of light pollution.
- A public meeting has been held about a high hedge complaint. A deadline has been set for February 7th to allow the two parties to agree a way forward; this matter remains outstanding.

Case for Applicants

16. Written comments in response to the appeal are put forward in two letters (one from the applicants, one from their agent, both dated 29 January 2019). Reference is also made to earlier letters (both 29 October 2018), which responded to the issues raised by the appellants at application stage. The agent also refers to the Design Statement submitted with the application. In essence, the applicants support the Department's case that planning permission should be confirmed, having regard to the following points.
 - The proposals would not increase the footprint of the house or make it more visible from public areas, or change existing views from the property. The house is essentially screened from view by vegetation and hardly seen from public areas.
 - None of the proposed new windows would have a view over the neighbour's house or garden.
 - Any noise during construction works would be subject to statutory controls and the appellants are aware of their obligations in this respect.
 - The proposals would meet relevant policy tests arising from the site's location in the green zone and adjacent to the Coastal National Park.

Assessment and Conclusions

17. I comment first on the nature of the objections raised in Mr and Mrs Radcliffe's letter of 29 January 2019. Their main concern is stated to be the likelihood of overlooking of their property from the proposed dormer window and balcony, which the appellants consider will breach their right to peaceably enjoy their property and lead to more complaints by the applicants about how the appellants are going about their life. The appellants refer here to Article 12 of the universal declaration of human rights.
18. The appellants and the applicants have clearly been in dispute about various matters for some time. One of the factors behind the dispute is that the land owned by Mr and Mrs Radcliffe virtually surrounds Mr and Mrs Scholfield's property, and activities carried out by the former on their land can be observed by the latter and appear to cause annoyance. The reverse is also the case - an example being that bright light from Clos du Mur can shine over the surrounding land. This has evidently caused disturbance and possibly potential danger when horses have been spooked.
19. The scope of planning control is limited, as is the scope of this appeal. It is a human right that nobody shall be subjected to arbitrary interference with his

- privacy or family home and everyone has the right to protection of the law against such interference or attacks. However, I have no jurisdiction over accusations of harassment or allegations that disturbance has been caused by noise whilst decorating. The way any person behaves towards a neighbour, for example by allegedly depositing rubbish or removing a boundary stone, is not a planning matter unless what is done amounts to a breach of planning control.
20. Both sets of disputing parties should note that *from a planning perspective*, when considering privacy-related amenity, what is relevant is safeguarding privacy in a home and where applicable in its immediate domestic surroundings. It is not normally a proper purpose of planning control to safeguard privacy on land used for purposes such as agriculture, woodland, horse grazing, or related activities. The same applies in reverse: it is not normally a proper function of planning control to safeguard the amenity value of views from a residential property over someone else's fields in non-residential use. Other legislation may apply, both to activities on land surrounding a residential property and to activities by occupiers of that property, if disturbance, annoyance or harassment is caused, but non-planning legislation is outside the scope of this appeal.
 21. One of the appellants' objections concerns the effect of the development on visitors staying in their holiday let. This is located near the boundary between Clos du Mur and the group of buildings at La Place. Inside, it has a living area on the ground floor and two bedrooms on the first floor. There is only one small, high level window on the ground floor facing towards Clos du Mur, and the upper part of the building has a blank gable wall facing in that direction. Bearing those points in mind I do not consider that occupiers would suffer any material loss of privacy or amenity from the proposed development. Nor would occupiers of the main house or the dwelling occupied by tenants at La Place, both of which are further away from the boundary with Clos du Mur. The workshop, which appears to be used for commercial or industrial purposes as part of an overall mixed use of the planning unit at La Place, would also be unaffected.
 22. Turning to other matters, the house at Clos du Mur, which appears to have been built in the 1960s, does not have a particularly attractive design. In that respect I am inclined to agree with the appellants. The dormer and external staircase would probably be the most noticeable features of the proposed changes to the house, particularly the dormer which would be a flat-roofed feature within a low-pitched, ridged roof. But the proposals as a whole would not make an undistinguished 1960s-design property significantly more unattractive visually.
 23. I also agree with the appellants that some of the proposed alterations would be visible from some public viewpoints. The degree of visibility would vary depending on the precise location of the viewpoint, the time of year and whether vegetation is in leaf. However, the effect of the development on the appearance or character of the area would be slight, and certainly much less than is claimed by the appellants. Two of the photographs submitted by the appellants were evidently taken using a telephoto lens, though this was not made clear when the photographs were submitted in evidence (Mr Radcliffe only admitted it in response to one of my questions); and not all of the photographs were taken from public viewpoints. I noted that from parts of the coastal path, including an elevated point where it rises around a headland, the upper part of the house at Clos du Mur could be seen and the proposed dormer would be visible; but the view is quite distant and would probably be further reduced at times when deciduous vegetation is in leaf.
 24. The construction of the swimming pool would entail some earthworks and other operations to create sufficient level area. Nevertheless the valley side here is not

overlooked from any readily accessible public viewpoint and I consider that the wider visual impact of this part of the proposal would be acceptable. There is no good reason to believe that the proposed development would cause harm to protected species or unacceptable loss of vegetation, and these points could be suitably safeguarded by a condition. Existing problems of lighting overspill from Clos du Mur should if anything be reduced by the proposed replacement of high-mounted lights, although some aspects of lighting (such as whether window blinds are drawn) are outside normal planning controls and have to be left as a matter of sensible neighbourly relations.

25. It seems to me that the planning authority has struck the right balance in applying relevant policy to this case. Under Policy NE7 of the Island Plan there is a general presumption against most types of development in the Green Zone, but the policy sets out permissible exceptions where, among other things, development would not "seriously harm" landscape character. The alterations to the property would not breach other restrictive criteria in the policy (for example, relating to increased occupancy or creation of a separate household). Nor would the proposal significantly harm the fabric or setting of La Place as a Grade 3 listed building.
26. Taking into account the points about overlooking and privacy explained in paragraphs 20-21 above, the development would also meet the requirements of Island Plan Policy GD1 - parts of Mr and Mrs Radcliffe's land would be overlooked, as happens to some extent already, but the residential amenities or privacy of neighbouring occupiers would not be unreasonably harmed.
27. The appellants have alleged that various breaches of planning control have occurred at Clos du Mur, such as the insertion of a window and construction to an unauthorised roof height. I am not empowered to investigate or enforce any such alleged breaches. In any case, I give these points little weight as I get the impression from what I have read and seen that the appellants are prone to exaggeration and to some selectivity in the presentation of evidence.

Conditions

28. If you are minded to grant planning permission, I suggest that the standard conditions setting a three year time limit for implementation and requiring compliance with submitted details should be imposed (the Department's standard conditions A and B). For the reasons stated in the planning officer's report, it would also be appropriate to impose the conditions set out in that report, covering approval of finishing materials for the swimming pool and implementation of the species protection plan.

Recommendation

29. I recommend that the appeal be dismissed and that the grant of planning permission, subject to conditions as mentioned above, be confirmed.

G F Self

Inspector

17 February 2019.