

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (a) against a decision to grant planning permission

Report to the Minister for the Environment

By Sue Bell MSc., BSc, FCIEEM, CEcol, CEnv, CWEM
An Inspector appointed under Article 107

Appellant: Mr Charles Denton & Ms Angela Capaldi

Planning Permission Reference Number: P/2020/0233

Decision notice date: 8 July 2020

Location: Highview, La Route de Noirmont, St Brelade, JE3 8AJ

Description of Development: Construct 1 No. three bed dwelling to East of Highview with altered access and pavement to La Route de Noirmont. 3D Model

Appeal Procedure: Site Inspection & Hearing 16th October 2020

Site Visit procedure and Date: Unaccompanied 12th October 2020

Date of Report: 25 November 2020

Introduction

1. This is a third-party appeal against the decision of the Planning Committee to grant planning permission for the construction of a new dwelling within the grounds of Highview and formation of a new footpath along the site's roadside boundary.

The appeal site and surroundings

2. The appeal site forms the western part of the rear garden of a residential property known as Highview, located on the eastern side of La Route de Noirmont.
3. Portelet Drive lies to the north of the site; Cicadella, a recently constructed 2-storey dwelling lies to the east of the site; to the south are three houses, which form the newly constructed 'Peninsula' development. These houses sit one behind the other, parallel to La Route de Noirmont.

The proposed development

4. The proposed dwelling would be a single-storey, L-shaped, three-bedroom bungalow, with a shallow-pitched roof. It would be lower than the surrounding dwellings and have a maximum height of approximately 3.6 metres.
5. The dwelling would be positioned along the eastern and southern sides of the site and would be a minimum of 3.4 metres from the northern boundary; and a minimum of 1.1 metres from the eastern boundary. It would have a garden/ patio to the north and west, which would provide 138 m² of amenity space. The western part of the site would have a paved drive/ courtyard, which would provide parking space for at

least 3 vehicles and a visitor space. It would occupy 31% of the total site area, compared to between 24% to 35% for surrounding properties.

6. Access to the site would be via the existing shared access drive from La Route de Noirmont, which currently serves Cicadella and the existing Highview property.
7. The existing building would retain two areas of garden, to the front and rear of the property.
8. The proposals include for the construction of a new pedestrian footpath, 1.9 metres wide, across the front of Highview. This would also improve the existing poor visibility at the exit to the shared access.

Case for the appellant

9. The appellant has appealed on the following six grounds:
 1. By virtue of its siting, the proposed dwelling will cause unreasonable harm to the outlook, living conditions, privacy and general residential amenity of the occupiers of neighbouring dwellings (Numbers 2, 3, 4, 5, 6 and 7 Portelet Drive to the north; and Cicadella to the east). For this reason, the application fails to satisfy the requirements of Policy GD 1 (3) and GD 3 of the adopted Island Plan 2011 (revised 2014).
 2. By virtue of its siting, the proposed dwelling will cause unreasonable harm to the outlook, living conditions, privacy and general residential amenity of the occupiers of Highview. For this reason, the application fails to satisfy the requirements of Policy GD 1 (3) and GD 3 of the adopted Island Plan 2011 (revised 2014).
 3. The approved building represents an overdevelopment of the area. By virtue of its coverage of the site, parking spaces and hard surfaces, the development will represent a cramped and unsatisfactory overdevelopment of this small site that will be harmful to the character and appearance of its surrounding built context. As such, the proposal conflicts with Policies GD 1, SP 7 and GD 7 of the adopted Island Plan 2011 (revised 2014) and one of the principal intentions of the Planning and Building (Jersey) Law 2002 defined in Part 1 (2) (a).
 4. The development's layout and form will not make a positive contribution to its local character, and sense of place, which is one of the components of Island Plan Policy SP7. The building fails to achieve a 'high quality of design' and does not adequately address and appropriately respond to Criteria 1 and 2 of Policy GD 7 as respect its scale, form, siting and outward views and its relationship to existing buildings and settlement form and character.
 5. The Planning Department and the Planning Committee failed to give sufficient weight to the relationship between Highview (the main house) and Highview (the proposed house). Both sites are in the ownership of the developer (though Highview main house is offered for sale and Highview proposed house will be sold when built). By virtue of its siting, proximity and relationship to Highview main house, but also relative to surrounding dwellings, the proposed development suffers from very poor amenity standards.
 6. The Planning Department and the Planning Committee failed to give sufficient weight to advice given by its own Senior Planning Officer, who wrote in 2017:

“Given the constraints of the site, particularly in respect of the close proximity of neighbouring properties, I remain to be convinced that the site is able to take any form of new development.”

Case for the Growth, Housing and Environment Committee (“the Department”)/ Planning Committee

10. The Planning Committee approved the application following the recommendation set out in the Department’s report.
11. The site is located within the Built-up Area, the area where new development will be directed and encouraged in line with the spatial strategy of the Island Plan.
12. The scheme is considered to be of an appropriate design, which comfortably meets and exceeds the Department’s required residential standards in all regards. The proposed number of car parking spaces is satisfactory. The existing Highview dwelling would retain two good-sized garden areas to the front and rear.
13. As the new dwelling would be lower than the surrounding buildings, it would not have a significant visual impact from public areas beyond the site, but would potentially be glimpsed by those passing on La Route de Noirmont.
14. Two previous applications were rejected by the committee owing to impacts on neighbouring properties. The applicants have sought to address the concerns, through re-design and re-positioning of the dwelling within the site. In addition, the dwelling has now been reduced to a single-storey design, with a shallow-pitched roof.
15. The concerns raised by near neighbours are acknowledged, but must be balanced against the wider requirements of the Island Plan. In the Department’s view, the proposed development would not cause ‘*unreasonable harm*’ (the test under Policy GD 1) to neighbouring residents.
16. The formation of a new footpath and the increases to visibility would result in a significant improvement in road safety for pedestrians and drivers.

Case for the Applicant

17. The concerns of neighbours in relation to impact on amenity must be balanced against the wider requirements and expectations of the Island Plan, and in this case, the requirement to make best use of land within the Built-up Area.
18. From the wording of Policy GD3, the test is “unreasonable” impact on amenities. It is acceptable, within the scope of the policy that there are some impacts. This approach is carried forward into GD 1 (3). The policy test requires an appreciation of context by referencing the amenities that neighbour ‘might expect to enjoy.’
19. The analysis provided with the application shows that the scale and form, and any impacts which result from it, are below the threshold set by the buildings within the surrounding context. The application accords with the requirements of Policy GD3 and benefits from considerable support within the overall strategic policy framework of the Island Plan as articulated by Policy SP 1, SP 2 and H6.

20. The existing property has an enclosed rear garden to the east of 121 sqm and a front garden to the west of 210 sqm. There is no negative impact on living conditions, privacy or general residential amenity from the proposed application.
21. The application delivers a detached house standing in its own plot, with all necessary services and infrastructure. That context is the same as the surrounding buildings and there cannot be any suggestion that this is somehow 'dis-orderly'. It maintains the semi-suburban character and appearance in a high-quality development which has high quality design characteristics.
22. There is no planning policy concern in relation to site coverage, parking spaces and hard surfaces. There cannot be a suggestion that this is over-development or somehow unsatisfactorily cramped.

Consultation Responses

23. The **Growth, Housing and Environment - Operations & Transport** (9 April 2020) supported the proposal, noting that it would be of significant benefit to the public in terms of provision of a much-needed section of footway and also for improving the visibility for the two existing dwellings that currently use the access, thus improving road safety for all road users.
24. The response also noted that both dwellings will have satisfactory parking on site, with turning areas in line with current requirements.
25. The **Department of the Environment - Natural Environment Team** (14 April 2020) did not object to the proposal, but noted that the ecological assessment had identified negative impacts on protected species and their habitats would arise from the proposal. It requested that should the application be approved; a condition should be appended to require the measures contained within the Species Protection Plan to be fully implemented. Any variations that may be required as a result of findings on site are to be agreed in writing by Natural Environment prior to works being undertaken.

Representations

26. Seven representations were received, including one from the appellant. The issues raised in these representations relate in broad terms to the effects of the proposals on the amenity of neighbouring properties; the quality of the design; and effects of the proposals on the character of the area, particularly in relation to the scale of the development.
27. A number of representations also refer to the number of previous applications for this site and to advice which the authors of the representations, believe was made by a Planning Officer.
28. A further representation was received during the appeal process, which reiterated points made during the original application.

Main issues

29. Based on the written documentation, hearing and my site inspection, I conclude that the main issues in this appeal are the effect of the proposals on the amenity of neighbouring properties including the occupiers of properties in Portlet Drive to the north; Cicadella to the east and the existing Highview property to the west; and the

design of the proposed development and its effects on the character of the surrounding area.

Inspector's assessment and analysis of the issues

30. The spatial strategy of the adopted Island Plan 2011 (revised 2014) directs development to the Built-up Area, where Policy H6 sets a presumption for housing development, subject to it meeting the published standards for housing. Policy SP 2 requires that development should make the most efficient and effective use of land and this requirement is supported through Policy GD 3, Density of Development. As the proposal is located within the Built-up Area, comfortably exceeds the minimum standards for housing and represents a more efficient use of land, I conclude that it is located in an area where the principle of development is broadly accepted.

Effects on neighbouring amenity

31. Part 3 of Policy GD 1 recognises that development may result in changed relationships between neighbouring properties. It requires that development does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents. In particular, it should not unreasonably affect either the level of privacy or light that owners and occupiers might expect to enjoy. That may not be the same as the level of privacy or light that the owners and occupiers have previously enjoyed or may wish to enjoy in the future. What constitutes 'unreasonable' has to be determined on a case-by-case basis in light of the particular characteristics of the location and the proposed development.
32. The proposals would introduce a building in closer proximity to the shared boundary between Highview and No. 4 Portelet Drive. Nevertheless, it would be set back by at least 3.4 metres from this boundary. Such relationships between residential properties are not uncommon within the Built-up Area. When considered in combination with the single-storey design of the proposed property, the low pitch to the roof and that it would be located at a lower ground level than Portelet Drive, I do not consider that the proposed building would be overbearing to No. 4 or any of the other properties in Portelet Drive. For the same reasons, I do not consider that the proposed property would result in increased shading or act as a barrier to sunlight to the south-facing gardens or ground floor rooms of properties in Portelet Drive.
33. The boundary between the properties would be formed by a wall in the order of 2 metres in height, which would provide a solid visual screen between the ground floor rooms and external space of each property. As noted above, the proposed building would be at a lower level than Portelet Drive. I consider that these factors would be sufficient to prevent any overlooking of the ground floor private amenity space of No. 4 Portelet Drive from the new property.
34. The properties in Portelet Drive have been fortunate in being able to benefit from 'borrowed views' of the generous garden space to the rear of Highview. The occupant of Highview is entitled to use this private amenity space for his personal enjoyment and there would be nothing to prevent him from planting trees along the common boundary. The area between the proposed dwelling and the shared boundary would continue to be private amenity space, albeit that it would be subdivided between two properties (the existing Highview and the proposed new property).

35. Taking all the above points together, I conclude that the proposals would not have an unreasonable effect on the amenity for occupiers of properties in Portelet Drive generally and No. 4 specifically in relation to light, privacy or noise.
36. Cicadella lies to the east of the proposed property. It is located to the east of its plot and hence is set back by some distance from the mutual boundary with Highview. Whilst I saw that the main amenity space for Cicadella lies between it and the mutual boundary, the portion immediately adjacent to that boundary is currently used as a drive and garage, creating separation between the amenity area and the boundary with the proposed property. The mutual boundary is formed by a wall, which forms a solid screen between the plots. Further screening is provided by soft landscaping planted along the boundary wall within Cicadella's grounds.
37. The proposed property would have two windows in its eastern elevation. Nevertheless, I find that the presence of the wall and landscaping would be sufficient to avoid any unreasonable effects through mutual overlooking between the proposed dwelling and Cicadella's external amenity space.
38. The single-storey design and low pitch to the roof would minimise the height of the building visible above the boundary wall and garage. When considered in combination with the existing planting, I do not consider that it would result in unreasonable effects in respect of over-bearing or be 'un-neighbourly'.
39. The proposals would result in a substantial reduction of the eastern external amenity space of Highview. Nevertheless, usable garden space would be retained by the existing house, more than sufficient to meet the required building standards. Whilst the proposed parking area for the new dwelling would intrude into this amenity space, I am content that the boundary treatment would provide adequate screening.
40. I am not persuaded by the appellant's concerns about the loss of amenity to both Highview and the proposed house as a result of cars using the access lane. This access is already in place and is separated from Highview by a reasonable distance, including the parking area and garage. The proposed house would also be set back from the access and shielded from it by a wall. The numbers of vehicles accessing the two properties would be low and, given the nature of the access, are unlikely to be travelling at speed. I do not therefore consider that the proposed arrangement would result in unreasonable effects on the amenity of either property as a result of noise or any other factor.
41. Likewise, I am not convinced by the concerns about the safety of the proposed access arrangements. The access lane would be bordered by walls and buildings and a hedge. Whilst that may alter the neighbour's perception of the drive, I saw that the access lane is straight, and would allow good visibility along its length from either end. Based on my observations there would be adequate space within the entrance to Cicadella, the proposed property and adjacent to Highview for vehicles to wait safely if they encounter another vehicle using the access lane. In terms of visibility for cars departing the proposed dwelling or Cicadella, this could readily be addressed through the installation of mirrors, which are commonly used in such situations.

Design of development and effects on character of area

42. I note the appellant's view that the proposal represents overdevelopment of the area. I also acknowledge his concerns about tandem or 'backland' development, including his reference to examples in the English planning system, where such

arrangements have been considered unsatisfactory. However, I do not consider that these have any particular bearing on the current appeal, which must be considered within the context of the Jersey planning system.

43. Policy GD 3 of the adopted Island Plan 2011 (revised 2014) encourages more efficient use of land and the highest reasonable density for development commensurate with good design, adequate amenity space and parking and without unreasonable impact on adjoining properties. Indeed, the plan notes that the *density of existing development in an area should not dictate that of new housing by stifling change or requiring replication of existing style or form.*
44. The plan is not prescriptive in terms of defining how increased density might be achieved, but does identify 'infill' development within the Built-up Area as one of the principal sources for supply of homes. Whilst the plan does not specifically refer to 'tandem' development, I note that similar arrangements have been consented elsewhere on Jersey. This includes the existing 'tandem' arrangement of Cicadella located to the rear of Highview and the new 'Peninsula' development of three parallel dwellings to the south of the appeal site.
45. As noted above, the proposed dwelling would be single-storey and would be lower in height than the surrounding buildings. It would occupy 31% of the total site area compared to between 24% to 35% for surrounding properties. Hence, the scale of development is consistent with the character of the area.
46. I accept that to avoid effects on neighbouring properties through shading and over-bearing, the pitch of the proposed roof is less steep than surrounding properties. Nevertheless, I do not find that the proposed design and finishes are out of character with the varied styles of development that are present in the immediate area. I find that the proposed dwelling would not result in relationships with neighbouring properties that are either unusual within the Built-up Area or would result in unreasonable effects on neighbouring amenity in respect of inward and outward views. Overall, I am content that the proposals satisfy the requirements of Policy GD 7.

Other matters

47. The proposed property would exceed the minimum standards for housing including external amenity space. Nevertheless, I accept that a substantial portion of the external amenity area would be capable of being over-looked from neighbouring properties, particularly No. 4 Portelet Drive and the existing Highview House. The proposed arrangement is not one that is exceptional within a Built-up Area, where there can often be overlooking from first floor windows into adjoining gardens. Prospective purchasers will make their own decisions about the personal acceptability of the arrangement. Given the distances and angles involved and the change in ground levels between properties, I am content that the arrangement would not result in any unreasonable overlooking into the proposed property.
48. I note that the Operations & Transport Department has supported the proposals because it would result in improved visibility for the existing access lane and provide a new section of footpath. Whilst I accept that the length of footpath is short, it represents a gain. Nevertheless, I do not consider it to be a significant determining factor in the acceptability of the proposal.

49. The appellant has made reference to advice given in response to a previous application at the site. Whilst the planning officer in that instance appears to have provided generic advice about the suitability of the site to accommodate development, such advice is given without prejudice and in no way should be treated as binding. Each application must be considered on its own merits. It is up to prospective developers to consider any advice they are given and then determine whether or not they can identify a scheme that may be acceptable.

Conditions

50. The permission was accompanied by two standard conditions and three scheme-specific conditions. These scheme-specific conditions relate to provision of a footpath and visibility splays; implementation of measures in a Species Protection Plan and removal of permitted development rights. I am content that these would be necessary and appropriate for the development proposed for the reasons set out on the original Decision Notice.
51. There was discussion at the hearing about a condition to define working hours for construction. I am conscious that the appeal site is within a residential area and hence there is potential for construction noise and disturbance to have an unreasonable impact on residential amenity. Notwithstanding the Department's concerns that it may not be able to monitor such a condition, I recommend the imposition of a condition to control working hours and to prevent operations taking place during times when local residents can reasonably expect a higher degree of peace and quiet. This helps to set out expectations of what is acceptable, for both contractors and residents, in case of potential disputes about disturbance.

Inspector's Conclusions

52. The proposal would result in the sub-division of a plot located within the Built-up Area. It is located within a settlement where there is a mixed pattern of development and there have been other recent developments that have contributed to an alteration in the pattern and grain of development.
53. The promotion of higher density development in the Built-up Area can introduce a tension with the requirements to safeguard neighbouring amenity. The adopted Island Plan 2011 (revised 2014) provides for this by allowing for some change, provided it does not result in unreasonable harm.
54. For the reasons set out above, I conclude that the proposed arrangement would increase the density of development, whilst providing adequate amenity space and car parking for both dwellings and without unreasonable impact on neighbouring properties. Hence it meets the requirements of Policies GD 1, GD 3 and GD 7 of the adopted Island Plan 2011 (revised 2014).

Recommendation

55. I recommend that the appeal should be dismissed and that planning permission should be granted, subject to the conditions set out in Annex A.

Sue Bell

Inspector 23/11/2020

Annex A: Scheme-specific Conditions

1. Prior to the first occupation of the new development, the new 1.9m wide footpath and new visibility splays shall be laid out and constructed in accordance with the approved plans. Thereafter, the visibility splays shall be maintained, and no visual obstruction of any kind over the height of 900mm shall be erected within them.
REASON: In the interests of highway safety, in accordance with Policy GD 1 of the adopted Island Plan 2011 (revised 2014).
2. The measures outlined in the approved Species Protection Plan (ref. NE/ES/HIG.01, 03/04/2019, Nurture Ecology) shall be implemented prior to the commencement of the development, continued throughout the phases of development (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by Natural Environment prior to works being undertaken.
REASON: To ensure the protection of all protected species in accordance with Policies NE 1, NE 2 and NE 4 of the adopted Island Plan 2011 (revised 2014).
3. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011, or any amendment to or replacement of that order, no works involving the erection of a building, extension, or other structure (other than those shown on the drawings approved with this permission), is permitted without the prior written approval of the Development Control section of Regulation.
REASON: Owing to the form, design and layout of the new development (taking into account its surrounding context), additional controls are considered to be necessary in order to safeguard the character and visual amenities of the area, and to ensure that adequate private amenity space is retained within the curtilage of the dwelling, in accordance with Policy GD 1 of the adopted Island Plan 2011 (revised 2014).
4. Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.
REASON: In the interests of protecting neighbouring occupiers from noise and disturbance.