

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

by **N McGurk** BSc (Hons) MCD MBA MRTPI,
an Inspector appointed by the Judicial Greffe

Site visit made on 6 March 2023. Hearing held on 7 March 2023.

Reference: P/2022/0083

13 Duhamel Lane, St Helier, JE2 4ZG

- The appeal is made under Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended) against the granting of permission to develop land.
- The appeal is made by David Allen against the decision of the States of Jersey. The appellant lives within 50 metres of the appeal site.
- The application Ref P/2022/0083 by Catherine Buckley, dated 14 February 2022, was approved by notice dated 10 November 2022.
- The application granted permission is "Construct 1 no. 3 bed residential unit with associated amenity space. AMENDED PLANS RECEIVED: Reduce the height of the proposed dwelling from 3 to 2 storeys and alter its roof profile; change from a 3 to a 2-bedroom property."

Recommendation

1. I recommend that the appeal be upheld and planning permission be refused.

Introduction and Procedural Matters

2. This Report refers to the Planning Department as "the Department."
3. The electronic application form refers to files being uploaded on 20 January 2022 but does not include a dated declaration. The Department's Officer Assessment Sheet shows an application "Valid Date" of 14 February 2022 and this is the date referenced in the information set out above.
4. A previous planning application¹ for a different form of development to that the subject of this appeal was refused in November 2021. The applicant states that the proposal the subject of this appeal was prepared in response to the reasons for refusal and following consultation with the Department.
5. For clarity, the proposed development the subject of this appeal is a two-storey, two-bedroom dwelling and the description of the proposal above is taken from the Department's Decision Notice and reflects post-application amendments.
6. The Bridging Island Plan, referred to in this Report as "*the Island Plan*" was adopted on the 25th March 2022. This post-dates the submission of the planning application, but pre-dates the application's subsequent determination in November 2022.
7. The appellant occupies Flat 1 in Melva House, a basement flat. Melva House is located at 13 Duhamel Place and is referred to as "Melva House" in this Report.

¹ Reference: P/2021/1015.

8. The appellant's grounds of appeal are effectively two-fold – that the proposed development would result in harm to living conditions (outlook, sunlight and daylight); and that the proposed development would contravene Building Bye Laws in respect of fire safety. A public comment in objection to the proposed development also refers to Building Bye Laws in respect of fire safety.
9. Notwithstanding that Building Bye Laws in respect of fire safety are beyond the scope of this Report, I note that the appellant states that the appeal site currently provides a fire escape route and that this would be lost were the proposed development to go ahead.
10. Again, notwithstanding that Building Bye Laws in respect of fire safety are beyond the scope of this Report, I note that the applicant states that the owner of the appeal site cannot be compelled to provide access to residents of Melva House for fire safety reasons and that this is not something that can or should be achieved through the planning process. The applicant has pointed out that the occupiers of Melva House have no legal right of access over the appeal site.
11. This Report focuses upon the effect of the proposed development on the living conditions of the occupiers of Melva House with regards to outlook, sunlight and daylight and makes a recommendation based upon the main issue as set out below.
12. The applicant states that, to her knowledge, the patio area has never been used as a patio and the owner of the patio refutes this. In this regard, I am mindful that the area referred to as a patio area provides outside space for Flat 1 and that it can be used as a patio area. I refer to it as a patio area in this Report and note that, during my site visit, I observed that the position of the patio area is such that it catches the sun at various parts of the day.
13. The Department refers to the appeal site as undeveloped. However, during my site visit, I observed that the site has a tarmac surface and the Department states, elsewhere, that the site is used for car parking. For clarity, there is no built structure above the surface of the appeal site and the site appears to be used for vehicle parking.
14. The Department and the applicant draw my attention to the proposal the subject of this appeal being "reduced" in scale in response to comments to a previous planning application. In this regard, I note that this previous application was refused and that it does not, in itself, provide any precedent for the proposal the subject of this appeal.
15. The Department states that the test under Island Plan Policy GD1 is whether the proposed development would lead to oppressive enclosure of neighbouring residents. This is not strictly the case. For clarity, Island Plan Policy GD1 states that development will only be supported where it will not, amongst various other things, "create a sense of overbearing *or* (my emphasis) oppressive enclosure."
16. The relevant test is whether or not the proposed development would result in unreasonable harm. This might arise in various ways and it is not restricted to the creation of a sense of oppressive enclosure.

17. The summaries of the various cases set out below are not exhaustive but provide a reasonable indication of the main points made by the main parties. I confirm that I have considered all of the available information in reaching my recommendation below.

Case for the Appellant

18. The appellant seeks to appeal on grounds relating to Building Bye Laws in respect of fire safety. As noted above, this is a matter beyond the scope of this Report.

19. The appellant states that he owns land between Melva House and the proposed development site and that this land is used as a patio/garden and enjoys natural sunlight. The appellant states that the patio is used as a recreational area in the summer “as it faces west and is a sun trap.”

20. The appellant considers that the proposal will block out natural light and sunlight and that the height of the proposed development would appear overbearing.

21. The appellant states that his basement flat receives sunlight through two windows that face towards the development site. The appellant considers that the proposed development would block out sunlight to his patio/garden and that it would have a detrimental effect on the natural light entering his flat and other flats in Melva House.

22. The appellant refers to High Hedge (Jersey Law) 2008. The appellant states that the intention of restricting hedge heights to 2 metres is to prevent high hedges from seriously affecting people’s lives by making gardens dank and miserable. In this regard, the appellant considers that the proposal would have a much greater impact than a 2 metre high hedge.

23. The appellant states that the BRE 25-degree rule method to measure daylight is not embedded in Jersey Planning Law.

Case for the Planning Authority

24. The Department “is comfortable” with the overall scale and form of the proposal and considers that it would not result in unreasonable harm being caused to neighbouring amenities.

25. It is the Department’s view that the development would not unreasonably affect the outlook from the ground floor windows of Melva House and notes that the BRE 25-degree rule is intended as a rule of thumb, indicative of potential impacts.

26. The Department considers that there will “clearly be an increased impact” on neighbouring residents but that this would not result in oppressive enclosure.

27. The Department states that the Island Plan seeks to increase development yields across the Built-up area, particularly on sites which can be considered to be under-developed and notes that windfall sites have an important role to play in helping to meet the Island’s housing needs.

28. The Department states that neighbours' concerns must be balanced against the Island Plan including, in this case, the applicant's reasonable expectations of developing their site in the Built-up Area.

29. The Department considers that the proposal is for a modest 2-storey unit. The proposed siting and height of the dwelling is typical of the area and allows a reasonable distance between the rear ground and first floor elevations of the proposed dwelling and Melva House.

Case for the Applicant

30. The applicant considers that the proposed development would not unreasonably affect the outlook from the appellant's property.

31. The applicant states that the ground floor rear wall of the proposed development would align with the ground floor extension of the adjoining property, 15 Duhamel Lane and that its main rear wall at the first floor would also align with this adjoining property. The applicant considers that these factors would result in the proposal appearing in keeping with the surrounding context.

32. The applicant states that the proposal has been re-designed from a previous proposal and that changes include a hipped roof and altered living space, lessening any impacts on residents of Melva House.

33. The applicant states that it is common practice for neighbouring properties to have private open spaces at the rear which back onto one another.

34. The applicant considers that, further to a daylight study having been undertaken, the proposal does not breach the BRE 25-degree rule. In this regard, the applicant states that the appellant's rear facing window adjoining his front door is not a habitable window captured by the BRE rule; and that the patio area is not covered by the BRE guidance.

Other Comments

35. A representation has been made by Robert Cabot. In addition to comments relating to Building Bye Laws (see above), Mr Cabot states that the Department's position is subjective and is not evidence based. He notes that the Historic Environment Team did not comment on the proposal the subject of this appeal.

Main Issue

36. The main issue in this case is the effect of the proposal on the living conditions of the occupiers of Flat 1, Melva House, with regards to outlook, daylight and sunlight.

Reasons

37. The appeal site comprises a small, narrow area of open land between Duhamel Lane and the rear of Melva House.

38. The appeal site is located close to the centre of St Helier, along Duhamel Lane which runs parallel to Duhamel Place. The surrounding area is predominantly residential comprising tall terraces of housing, interspersed with dwellings at a

lower level and occasional gaps, walls and gardens. Houses tend to be set adjacent to the back of pavements or set back slightly from pavements behind narrow gardens.

39. Duhamel Lane itself comprises a cul-de-sac between the rear of Duhamel Place and the rear of New Street. It does not have pavements to each side of the road and it has the appearance of a narrow back street.
40. Along the same side of Duhamel Lane as the appeal property, there are a number of rear extensions to properties along Duhamel Place, gaps largely utilised as parking areas and immediately to the north of the appeal site two dwellings.
41. Along the opposite side of Duhamel Lane to the appeal site there are extensions to properties along New Street, small parking areas and mews dwellings including a tall new dwelling being constructed directly opposite the appeal site.
42. During my site visit I noted that, whilst Duhamel Lane is narrow and largely built-up, the presence of occasional gaps provides for a degree of “breathing space” within what is a densely developed area.
43. The appeal site itself has a tarmac surface and is used for vehicle parking. It is open to an area of land immediately adjacent to the rear of Melva House. Melva House is a tall, terraced property split into apartments and with rooms over four levels, including a basement and rooms in the roof.
44. The area immediately to the rear of Melva House forms an external area to Flat 1, Melva House, which is a basement flat. The owner of Flat 1 utilises this external area as a patio area. The patio area is paved.
45. The entrance to Flat 1 is gained down a flight of steps from Melva House’s rear elevation. These steps are accessed from a door to the rear of Melva House, which faces towards and is located at a higher level than, the appeal site.
46. Flat 1 has two windows facing towards Duhamel Place, serving the Flat’s main living area/kitchen. Flat 1 also has two windows facing towards the appeal site, serving a bedroom. One of these windows is a small window adjacent to the entrance to the flat, the door for which has glazed lights to its upper section. The other window is a small window set well above eye level and provides a limited source of light to the bedroom.
47. The windows and the lights above the door described above provide the only sources of natural light to Flat 1. There are no other windows.
48. In this regard, whilst I note the applicant’s consideration that the window to the rear of Flat 1 serves a bedroom - as opposed to the main living area/kitchen - I am also mindful that the windows and door lights to the rear of Flat 1 provide an important source of daylight to a basement flat with few other sources of daylight.
49. As a basement flat, the only window at eye-level to the rear of Flat 1 is positioned largely below ground level. It is also a small window relative to the size of other windows at Melva House.

50. As a consequence of this and the above, I consider that any reduction in the amount of daylight received by Flat 1 via this rear window would have a significant impact on the occupiers of that Flat.
51. Also, as the only window providing an outlook at eye level in any direction from Flat 1 other than towards Duhamel Place, I find it reasonable to conclude that any loss of outlook from this window would also have a significant impact on the occupiers of Flat 1.
52. Further to the above, I am mindful of the location of the front door, which provides the only access to Flat 1. The glazed light to the top section of the front door provides the entrance hall with daylight and consequently, it provides an important source of the overall daylight received by Flat 1.
53. I observed during my site visit that, due to the open nature of the land between the steps to the front door and Duhamel Place, the entrance to Flat 1 currently benefits from a reasonably light and airy character, despite being set below ground level.
54. The appeal site effectively comprises a gap along Duhamel Lane between mews dwellings. The proposed development would fill this gap. In doing so, it would bring a two-storey dwelling with a hipped roof very close to the rear of Melva House.
55. In addition, the rear of the proposed dwelling would project towards Melva House at single storey height, resulting in a considerable, albeit flat-roofed, structure within extremely close proximity of the rear elevation of Melva House. A very small outside living space and a tall boundary fence would fill the remaining gap between the appeal site and the patio area to Flat 1.
56. Taking the above into account and in the absence of any substantive evidence to the contrary, I find that the above would inevitably result in the significant loss of sunlight reaching the patio area immediately outside Flat 1 and would severely reduce the amount of daylight reaching the rear of Flat 1 via that apartment's rear-facing windows and glazed door light. I also find that there would be a considerable reduction in the amount of daylight reaching the steps leading down to Flat 1's entrance.
57. In this regard, I am mindful that the applicant has provided information relating to the BRE 25-degree rule. However, this information serves to demonstrate that the amount of daylight and sunlight reaching Flat 1's windows and door lights would be reduced by the proposed development, due to their location close to and/or below ground level.
58. Flat 1's patio attracts the sun for part of the day, particularly in the warmer months and consequently, it provides scope to provide the occupiers of Flat 1 with a pleasant outside amenity area.
59. During my site visit, I observed the appeal site from the appellant's property. The proposed development would, due to its height, scale and immediate proximity, result in a significant loss of sunlight to the patio area. I consider that this would be to the severe detriment of the ability of any occupiers of Flat 1 to enjoy this private amenity space.

60. The proposed development, again due to its height, scale and close proximity, would severely reduce the amount of daylight reaching the steps, entrance and rear area within Flat 1.
61. The currently light and airy stairwell and entrance area would be darkened, as would the rear area within Flat 1. As a consequence, an important and actively used area of the appellant's property would effectively be cast in gloom for an extended period of time as a direct result of the proposal. I find that this would be to the considerable detriment of the occupiers of Flat 1.
62. During my site visit, it was apparent to me that the proposed development would be so large and so close to Flat 1 as to appear to "tower" above it when seen from the rear of Flat 1. There is no doubt that the proposal would unduly dominate the rear outlook from Flat 1. This, when combined with a loss of sunlight and a reduction in daylight, would result in an unduly oppressive outlook from that property. This would be to the significant harm of the living conditions of the occupiers of that property, with regards to outlook.
63. In providing for the Island's needs, it is recognised that some degree of harm to residential amenity arising from development, particularly in the Built-Up Area, is likely to be acceptable. However, the Island Plan seeks to achieve an appropriate balance between safeguarding the amenities of Jersey's residents and meeting Jersey's development needs.
64. To achieve this, Island Plan Policy GD1 ("*Managing the health and wellbeing impact of new development*") requires development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts and only supports development where it:
- "...will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents..."*
65. Thus, as noted earlier in this Report, in determining whether or not to support a development impacting upon residential amenity, the appropriate test for the decision-maker is not whether such development will result in harm, but whether or not such harm would be *unreasonable*.
66. In this case, for all of the reasons set out above, I find that the proposed development would result in unreasonable harm to the living conditions of the occupiers of Flat 1, Melva House, with regards to outlook, sunlight and daylight.
67. The proposed development would be contrary to Island Plan Policy GD1.

Other Matters

68. I acknowledge that the proposal would result in an additional dwelling within the Built-Up Area and that is a factor in favour of the proposal. However, the proposed development would result in unreasonable harm and consequently, would be contrary to the requirements of the Island Plan and hence my decision below.

Conclusion

69. For the reasons set out above, I recommend to the Minister that the appeal be upheld and that planning permission be refused.

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PLANNING INSPECTOR