

## **PLANNING AND BUILDING (JERSEY) LAW 2002**

### **Appeal under Article 108 against a decision made under Article 19 to grant a planning permission**

#### **REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

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#### **Appellants:**

Paul & Joanne Fauvel

#### **Planning permission reference number and date:**

RP/2022/0558 dated 4 November 2022

#### **Applicant for planning permission:**

Karim Hirani

#### **Site address:**

Land at Les Ruisseaux House, Les Ruisseaux, St Brelade JE3 8DD now known as Secret Garden

#### **Approved development:**

"REVISED PLANS to P/2015/0261 (Construct 1 No. four bed dwelling to the North-East of site): Install solar panels to roof plane and air source heat pump to Northeast elevation. Alter external stairs to East elevation. Install timber cladding to North elevation. Various internal and external alterations."

#### **Decision date:**

4 November 2022

#### **Inspector's site visit date:**

3 May 2023

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#### **Introduction and procedural matters**

1. This is a third-party appeal against the grant by the Chief Officer of planning permission for the development described above. The appeal was dealt with by way of written representations with the agreement of all the parties. No representations were received from anyone else either at the application stage or the appeal stage.

2. The permission was granted subject to the standard planning conditions relating to the commencement of the development and compliance with the approved details and to the following additional condition, which was imposed to protect the amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the Bridging Island Plan:

"1. Prior to the first installation of the air source heat pump, details of noise attenuation, acoustic screens/louvres and calculations of noise emissions at source and at noise sensitive receivers shall be submitted to and approved in writing by the Chief Officer. The pump on the site shall be installed and operated in such a way that the noise generated from the site shall be at least 5dBA below background noise levels, when measured in accordance with BS4142:2014. All agreed noise measures and performance levels shall be retained and maintained thereafter."

3. The reason given for the grant was:

"The proposed development is considered to be acceptable having due regard [to] all of the material considerations raised. In particular, the development has been assessed against Policy GD1 and GD6 of the 2022 Bridging Island Plan. Notably, the relationship with the Northern neighbour has been specifically considered in relation to possible overlooking and generation of noise nuisance. In this case, the proposed works are regarded as acceptable due to the marginal impact it would have on the Northern neighbouring property." (The appellants' house is the "Northern neighbouring property".)

### **The appeal site and its surroundings and the approved development**

4. The appeal site is a newly-built detached dwelling known as Secret Garden, which has been constructed in the grounds of Les Ruisseaux House and is occupied by the applicant and his family. The appellants live at Le Picachon, 5 Cowdray Drive, which is a detached house at the end of Cowdray Drive on higher ground immediately to the north of Secret Garden. There is no direct pedestrian or vehicular access between the two properties.
5. The development approved by permission RP/2022/0558 has five distinct elements – (1) the installation of solar panels on the roof plane, (2) the installation of an air source heat pump on the northeast elevation, (3) the alteration of the external stairs on the east elevation, (4) the installation of timber cladding on the north elevation and (5) the "Various internal and external alterations". The five elements are all separate, both functionally and as building operations. The Minister can therefore deal with the appeal by issuing a 'split' decision under Article 116(2), which authorises the Minister to allow an appeal in full or in part and to reverse or vary any part of the Chief Officer's decision.
6. In paragraphs 7 to 23 below I have set out my assessments and conclusions in respect of each element. I have taken into account all the representations relating to each of them that have been submitted by the parties both at the application stage and the appeal stage, but I have not dealt with matters raised by the appellants that are beyond the scope of this appeal.

## **The solar panels**

7. The approved development includes the installation of thirty-seven solar panels on the mono-pitched roof of Secret Garden, which would take up most of the roof plane. They would be installed in three rows of nine panels (one row at the top and two rows at the bottom) and two rows of five panels in the middle (grouped around the roof lights).
8. Solar panels operate most efficiently in the northern hemisphere when they are angled towards the south. The applicant has sought to compensate for the roof's slope to the north by mounting the panels on triangular frames that would lift the northern edges that face Le Picachon to about 0.4m above the level of the roof.
9. Policy SP1 "Responding to climate change" of the Bridging Island Plan seeks to reduce carbon emissions and lessen the impact of climate change by encouraging the use of efficient forms of development that minimise energy demand and maximise energy efficiency and by supporting renewable energy schemes. The policy therefore encourages and supports the installation of the solar panels but, as with all proposals, the acceptability of the installation should be considered in the light of the provisions of Policies GD1 and GD6 and a balanced judgment reached.
10. Policy GD1 states that development will only be supported where it will not unreasonably harm the amenities of nearby residents by creating a sense of overbearing or oppressive enclosure. Policy GD6 indicates that development will be supported where it can be demonstrated that the design successfully addresses certain key principles, which include its relationship to existing buildings, having regard to its layout, form and scale, and its impact upon neighbouring uses and the public realm.
11. All of Secret Garden's roof is visible at close proximity from Le Picachon. The solar panels would dominate the outlook when they were viewed from the sitting-out area at the side of Le Picachon and from Le Picachon's side windows. They would also be an intrusive feature when viewed from the front forecourt of Le Picachon and for a considerable distance northwards along Cowdray Drive. I consider that the extent of the panels' coverage of the roof plane together with the height and appearance of their mounting frames would make them unreasonably overbearing and oppressive contrary to Policy GD1 and would fail to address successfully the key principles in Policy GD6 set out above.
12. In the exceptional circumstances that arise in this instance, these factors in my opinion outweigh the considerations arising under Policy SP1. The appeal should therefore succeed as regards the solar panels.

## **The air source heat pump**

13. The approved location for the air source heat pump (ASHP) is towards the north-eastern corner of the site, in the position it is shown on the version of Drawing No. 831-009 Proposed Site Plan that has the notation "New location of air source heat pump shown hatched in red". Condition 1 of the planning permission relates to its installation in this location.

14. The ASHP that has now been installed is a short distance to the south of the approved location. Details of it have not been submitted to or approved by the Chief Officer pursuant to Condition 1. A noise impact assessment commissioned by the applicant from a specialist firm has concluded: "Our assessment in accordance with BS4142 leads to an outcome of an *Indication of an adverse impact depending on the context* during the night, but a low likelihood of impact during the day. We note that the *Rating Level* of the installation does not achieve the local authority's common planning requirement to be at least 5 dB(A) quieter than pre-development *Background Sound Levels*." I have no reason to believe that this outcome would change if the ASHP was moved the short distance to its approved location.
15. The specialist firm recommend that further noise control is considered. They suggest that the simplest method of attenuation is not to operate the ASHP at night time or, alternatively, to move it to the location they recommend on the southern perimeter of the site, where attenuation would be provided and the ASHP could be operated at all times. The applicant has stated that it will not be operated in its present position except between the hours of 0700 and 2300. The appellants consider that noise nuisance will occur not only at night time, but at other times when background noise levels are low, and that a requirement to turn off the ASHP at night time, when it is likely to be needed for heating, would be impossible to enforce.
16. The considerations arising out of the matters disclosed in paragraphs 14 and 15 above cannot be resolved within the context of this appeal. The appeal should succeed as regards the ASHP because, as matters stand, the available evidence indicates that Condition 1 as drafted cannot be complied with.

### **The external stairs**

17. The appellants have raised no concerns about the alteration in the position of the external stairs. They are being moved a short distance from one position to another at the front of Secret Garden, on the far side of the dwelling from Le Picachon. The change will not harm the appearance of the dwelling or alter neighbours' standard of privacy or other amenities.
18. The appeal should fail as regards the external stairs, but the description in the permission should be changed because the stairs are on the south elevation of Secret Garden rather than on its east elevation as stated.

### **The timber cladding**

19. The appellants have also raised no concerns about the installation of the timber cladding, which is at the front of Secret Garden as well. The cladding will not harm the appearance of the dwelling or affect neighbours' amenities.
20. The appeal should fail as regards the timber cladding, but the description in the permission should be changed because the cladding is on the south elevation of Secret Garden rather than on its north elevation as stated.

### **The "Various internal and external alterations"**

21. It is advisable not to issue a planning permission for development where parts of it are described loosely as "Various internal and external alterations". This is because (a) everyone reading the permission should be able to ascertain in

sufficient detail from the permission itself what kinds of alterations have been approved and (b) it could be difficult in the future to establish whether or not a breach of planning control had occurred in relation to any alterations that had been made.

22. I have identified the "Various internal and external alterations" in this development by looking at the proposals shown on the approved plans that are not dealt with elsewhere in the permission and by being shown their whereabouts at my site visit. The alterations consist of minor changes to the ground-floor window and door arrangements, a minor repositioning of the rooflight and the repositioning of internal walls, doors and staircases. None of these make a significant change to the appearance of the dwelling or to its impact on neighbours' privacy or other amenities.
23. The appeal should fail as regards this matter, but a description of the alterations should be included in the permission so that they are identified in sufficient detail.

### **Inspector's recommendations**

24. I recommend that the appeal is allowed in so far as it relates to the solar panels and the air source heat pump and that planning permission is refused for the installation of the solar panels on the roof plane and the installation of the air source heat pump on the north-east elevation at Secret Garden, Les Ruisseaux, St Brelade JE3 8DD.
25. I recommend that the appeal is dismissed in so far as it relates to the external stairs, the timber cladding and the internal and external alterations and that planning permission is granted for development at Secret Garden, Les Ruisseaux, St Brelade JE3 8DD consisting of:

REVISED PLANS to P/2015/0261 (Construct 1 No. four bed dwelling to the North-East of site): Alter external stairs to south elevation. Install timber cladding to south elevation. Internal and external alterations, being changes to the ground-floor window and door arrangements, the repositioning of a rooflight and the repositioning of internal walls, doors and staircases

in accordance with the application RP/2020/0558 and the plans and documents submitted therewith relating to the external stairs, the timber cladding and the internal and external alterations, subject to the following conditions: -

#### *Standard conditions*

- A. The development shall commence within three years of the date of this appeal decision.

Reason: The development will need to be reconsidered in the light of any material change in circumstances.

- B. The development shall be carried out entirely in accordance with the approved plans and documents in so far as they relate to the external stairs, the timber cladding and the internal and external alterations.

Reason: To ensure that the development is carried out as approved.

Dated 1 June 2023

*D.A.Hainsworth*  
Inspector