

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Adrian Galvin against a decision to grant planning permission.

Reference Number: P/2022/1627.

Site at: L'Avarison,¹ Le Mont de Gouray, St Martin, JE3 6ET.

Introduction

1. This appeal is being determined using the written representations procedure. I inspected the site and surroundings on 5 July 2023.
2. The appeal is against a decision to grant planning permission for development described in the application as: "Demolish existing summer house to West of site. Construct single storey extension to West of site". In the planning authority's decision notice, the description of the proposal contained the added words: "AMENDED PLANS RECEIVED."
3. The application was made by Mr G Blackstone. (See "Procedural Matters" below.)

Format of Report

4. This report refers to some procedural matters, followed by a description of the site and surroundings and summaries of the cases for the appellant, the planning authority and the applicant. Representations by other parties are also reported. I then set out my assessment, conclusions comments on possible conditions, and recommendation. The full written submissions by all parties are in the case file.

Procedural Matters

5. The application as published and available online has been "redacted" to the extent that the identity of the applicant or applicants has been blacked out. References are made in the submitted documents to Mr and Mrs Blackstone as being the "applicants" (plural).² At the site inspection I sought to check this matter and although Mr Blackstone did not appear to be certain, he said that he was the applicant.
6. Blacking out published parts of an application so that the applicant's identity is concealed (which appears to have been carried out selectively to only some recent applications) is wrong for legal and procedural reasons. I hope that this point will be brought to the attention of those responsible.

¹ In the application, the name of the property is specified variously as "L'Avarison" (at the top of the first page) and "L'Avarizon" in the first line of the address). Documents submitted for the appellant use the name "L'Avarison". The application drawings use the spelling "L'Avarison" and I believe that is the correct version (as shown in a photograph in the case file showing the property's name-plate on the road frontage "L'Avarison").

² There is confusion in the written submissions by the applicant's agent. Within the same statement there are singular and plural references to: "our clients"; "our client"; "our client's application"; and also to "our client's Mr and Mrs Blackstone".

7. The appellant's statement has commented on the wording "AMENDED PLANS RECEIVED" and assumes that this is not part of the approved development. I know it is common practice for the planning authority to add these words to development descriptions when applications plans have been amended – usually with CAPITAL LETTERS for reasons not known to me. But that should not be done, as it conflates a procedural matter with what should be a plain description, and other procedural matters, such as "Design Statement Received" (or perhaps DESIGN STATEMENT RECEIVED) are not similarly included in the description. If there is potential for confusion about which plans relate to a planning application and decision, this should be dealt with by conditions on a permission or by an "information note" on a refusal.
8. There is a wider issue here concerning the extent to which the planning authority allows or encourages changes to applications after they have been lodged - a practice which is liable to cause confusion, inconsistency and legal problems. I have commented on this issue in previous reports to Ministers, with no apparent effect.³ Be that as it may, the proposal subject to the decision to grant planning permission is evidently that shown in amended plans. Fortunately the differences in this instance appear only to involve site boundaries - a note on the later proposed site plan⁴ indicates that site boundaries have been "rationalised" (which I take to mean amended) following "planning officer liaison" (which I take to mean either advice or instruction by a planning officer).

Site and Surroundings⁵

9. The dwelling at L'Avarison and its immediate neighbours along Le Mont de Gouray stand on levelled parts of land which has a general slope down quite steeply towards the coast. At the front towards the north, the dwellings abut or almost abut the road.
10. The topography enables extensive elevated views of the nearby coast from the rear of the appeal property and its neighbours. The land attached to these dwellings includes up to about five levels including balcony and plot areas, descending generally south or south-eastwards. The house at L'Avarison and its neighbours form what is in effect a curved terrace, each dwelling being of individual design. Because of the curved grouping (convex along the road frontage and concave at the rear) each dwelling faces a slightly different direction, with their rear outlooks angled towards each other. The rear of L'Avarison faces approximately south-south-east. The rear of the adjacent property, Les Vagues, faces approximately south-east.
11. On their coast-facing elevations, the dwellings at L'Avarison and Les Vagues have various terraces, balconies and extensive window areas at different heights (as can be seen, for example, in the photograph at Figure 5 of the appellant's statement of case). A large window at Les Vagues serves a kitchen-diner living

³ I have mentioned the unsatisfactory nature of this practice in reports in December 2022, July 2021, and 2018 (References: P/2021/1450; RP/2020/0855; and P/2017/1023. I made a specific recommendation about the matter in the December 2022 report. I am not aware of any resultant Ministerial action.

⁴ Both of the Proposed Site plans are dated "November 2022". The one which was apparently submitted first has the reference number 986-21-A11. The one which was apparently submitted later has the reference number 986-21-A11A.

⁵ Because of the rather complicated layout of the properties at L'Avarison and Les Vagues this description is probably best understood by reference to the plans and photographs in the submitted evidence. I use the term "front" here to mean the elevation facing the road, although these properties are laid out with their main outlook towards the coast, not towards the road.

room, which is at a roughly similar elevation to the upper part of the existing summerhouse at L'Avarison. From this room there is access to a large outside terrace or balcony, the eastern end of which is bordered by a wall. Les Vagues also has a higher level balcony next to living accommodation on an upper floor.

12. The ownership boundary and site boundary between L'Avarison and Les Vagues has an irregular, zig-zag shape in places, and the existing summerhouse at L'Avarison is positioned partly in front of Les Vagues.⁶ The interior of Les Vagues at this point (ie partly "behind" L'Avarison's summerhouse) has an area which appears to be used partly as a utility room and partly as a passageway to a toilet, and also has a doorway access on the landward side to a garage. There is a glazed door and window on the seaward side in this part of Les Vagues. The glazed doorway opens on to a small outside area of decking, which at the time of my inspection appeared to be used for clothes drying. Part of this outside area is bordered by the walls of the existing summerhouse at L'Avarison.⁷
13. A bedroom on an upper level at Les Vagues has a coast-facing window, the outlook from which is at a level a little above the roof of L'Avarison's existing summerhouse.
14. The existing summerhouse at L'Avarison is a structure about 3.4m by 2.7m in size with a ridged, gable-ended roof (the ridge being aligned approximately east-west). It has windows facing south and glazed doors facing east. As noted above, the upper part of the summerhouse is at about the same level as the adjacent living room and balcony at Les Vagues, although the base of the summerhouse is lower. The summerhouse appears to be in poor structural condition, with cracks visible in the walls.
15. A stepped footpath leads down from positions next to the dwellings at Les Vagues and L'Avarison, between some properties at a lower level and on to the coast road. During the inspection I was told that there was a shared access arrangement along this path but it is apparently not open to the public and I did not see any signs indicating a public right of way.

Case for Appellant

16. The appellant occupies "Les Vagues", adjacent to L'Avarison. The dwelling at Les Vagues faces south-east overlooking Gorey Bay and has living spaces benefitting from sunlight and daylight throughout the day. There are also balconies on two levels and lower-level gardens. The kitchen/dining room and utility room have south-east facing windows with outlook onto the balcony area.
17. The roof shape of the existing summerhouse at L'Avarison allows a good level of natural light to the utility room and adjacent decking at Les Vagues, and to the kitchen-diner. A first-floor bedroom in the south-eastern corner of Les Vagues has an open outlook over the existing summerhouse. The proposed summer room would have a flat roof 0.48 metre higher than the existing summerhouse and 1.59 metre higher than the eaves of the existing structure. The proposal would harm residential amenity for occupiers of Les Vagues, would be overbearing and oppressive and would cause loss of privacy through overlooking. The balcony area south-east of the utility room at Les Vagues would be completely enclosed with a severe negative effect on daylight and sunlight levels on this balcony and in the utility room and kitchen/diner.

⁶ The term "in front of" here refers to the east-south-east coast-facing elevation.

⁷ This is shown in Figures 7 and 8 in the appellant's statement of case. The wall on the left of these photographs is the side wall of the existing summerhouse.

18. The proposal would be contrary to policies GD1 and GD9 of the Island Plan. Under policy GD1, development should not create a sense of overbearing or oppressive enclosure. Policy GD9 requires that new structures or extensions should not obstruct significant shoreline or sea views.
19. The proposed structure would extend southwards beyond the existing building line and would have windows larger than those in the existing summer room, providing an outlook on to the private garden space south of Les Vagues. This would unreasonably affect the level of privacy for occupiers of Les Vagues contrary to policy GD1.
20. The development would be excessively large and visually prominent, and would harm the character and appearance of a sensitive area, contrary to a number of Island Plan policies including SP3 (placemaking), SP4 (protecting and promoting Island identity), SP7 (planning for community needs), GD6 (design quality), GD8 (Green Backdrop zone, GD9 (skyline views and vistas), NE3, (landscape and seascape character), and HE1 (protecting listed buildings and places and their settings).
21. In summary, the Chief Officer's decision to grant planning permission was unreasonable and did not properly consider the harmful impact of the proposal on occupiers of Les Vagues or on the character of the area. The development would be contrary to several policies. Planning permission should be refused.

Case for Planning Authority

22. The application was decided under the policies of the Island Plan. Policy GD1 requires that development would not have an unreasonable impact on the amenities of adjoining properties. Although the proposed extension would be larger in terms of eastwards projection and height than the existing structure, the increase in depth would be limited and would not impact on the appellant's kitchen/dining room or upper ground floor balcony, with those areas being west of the proposed extension and having their main orientation southwards. The upper floors of Les Vagues would only be marginally affected, with their main outlook above the proposed extension. The eastwards projection of the proposed extension would be set well away from Les Vagues and would not cause loss of light or privacy or overbearing impact.
23. The outlook and light from the utility room at Les Vagues would be affected to a degree, but this is not a principal habitable room and in this heavily built-up area the impact is judged not to be unreasonable.
24. The impact of the proposal on the character and landscape of the area has to be considered with reference to policy GD6. The proposed extension would have a high quality of design and materials relating well to the existing building, would be seen as an extension to the existing living areas, and would be in keeping with the character of the area.
25. The planning authority conclude that the proposal would not have an unreasonable impact on the property at Les Vagues or on the character and appearance of the area. The proposed Condition 1 would be in the interests of potential impact on the area by controlling the type of glazing in the south elevation so as to reduce any glare from south-facing windows.

Representations by Applicant

26. The applicant supports the planning authority's response to the appeal and contends that all the points raised were properly considered when the decision to

grant planning permission was made. The conditions on the approval have been accepted by the applicant. Submissions by a Mr Rogerson (whose address is not available in published documents and is unknown to the applicants) do not appear to be from any neighbour, are general in nature and the impact of the development has been considered acceptable by the planning authority.

Representations by Other Parties

27. At application stage Mr Robert Matthews raised a number of questions in written comments including whether a site investigation has been carried out, as proposed piles may be in the position of existing cotil rock anchors; vibration for piling could be very disruptive to residents below, as could noise. Access rights up and down the cotil are only for foot and maintenance traffic and existing covenants on the cotil need to be the subject of full consultation.
28. St Martins Conservation Trust points out in a written submission that the proposed extension would be larger than the existing summerhouse and would be cantilevered over the terrace wall. The Trust also says that glass balustrades can be highly reflective and visually damaging in coastal locations.
29. Other comments by Grant Rogerson contend that the proposal would significantly increase the size, height and look of the summerhouse separate from the main house and would create an ugly eyesore when looking up from the promenade.
30. Comments were also submitted on Mr Galvin's behalf at application stage. These are covered in the summary above.

Assessment and Conclusions

31. The dispute in this case mainly concerns the visual impact of the proposed development and its effect on the outlook from or amenities of the neighbouring property, Les Vagues.
32. The spatial relationship between the properties at L'Avarison and Les Vagues has three unusual features relevant to this proposal. One is the way the dwellings and plots are laid out, with their principal outlook from a height towards the coast. Another is the angled juxtaposition of the dwellings as described in my site description. The third is the irregular shape of the boundary between the properties and the location of the proposed extension, close to and partly projecting into the outlook from Les Vagues.
33. The key issue here is whether the increased size (both area and height) of the proposed extension compared to the existing structure would so harmfully affect the amenities of Les Vagues as to justify refusing planning permission. If the proposal were to be implemented, the living rooms and main balcony areas at Les Vagues would still have extensive views and plentiful daylight and sunlight. The utility room and passageway and the adjacent outside area would become more enclosed, although because these are not principal living areas the loss of amenity to the property as a whole would be limited.
34. With those points in mind the planning authority's decision to grant planning permission is understandable. However, I can also understand why neighbouring occupiers have objected. The proposed extension would be larger in area and higher than the existing summerhouse structure, and the shape of what is proposed would be much bulkier, especially taking into account the difference between the existing ridged roof and the flat roof of the proposal. The proposed flat roof would not only be about 0.48 metre higher than the ridge of the existing roof, but the different shape would mean that at the south and north sides, the

roof would be nearly 1.6 metres higher than the eaves of the existing building's roof. Another factor which needs to be considered is that unlike the existing summerhouse, the southern part of the extension would be cantilevered out (for a distance of about 1 metre) above the sloping ground.

35. The additional height would not significantly affect the outlook from the upper floor bedroom at Les Vagues. However, when looking from the kitchen-diner inside Les Vagues, or from the adjacent balcony or the lower outside area, the proposed structure would be more obtrusive and more dominating than the existing summerhouse. The presence of a high wall projecting outwards above the slope quite close to the kitchen/diner area in Les Vagues would also reduce the incidence of morning sunlight to that part of Les Vagues.⁸ These effects would be even more noticeable in the utility area or passageway and adjacent external platform. The southerly projection of the proposed building (compared with what exists) combined with the presence of two windows in the south elevation would also be likely to create a sense of being overlooked and loss of privacy in parts of Les Vague's lower garden area.
36. Taking all the above points into account I consider that the proposal would make the residential environment at Les Vagues materially less pleasant, and would go beyond what I would term neighbourly development.
37. The extent to which the proposal would comply with or conflict with planning policies is a matter of judgment. For example, under Policy GD1 development will only be supported where it will not "unreasonably harm the amenities of ...neighbouring residents" or "create a sense of overbearing or oppressive enclosure"; and under Policy GD9 development which would lead to "adverse impacts on the skyline" will not be supported except in specified circumstances not relevant here; and proposals for new structures or extensions will only be supported where they do not obstruct "significant views to the shoreline and sea".
38. These policies are not decisive either way, because of qualifying words such as "unreasonably" and "significant". As the planning authority point out, the question to be decided from a policy viewpoint (with specific reference to Policy GD 1) is not whether the development would have an impact, but whether the impact would be unreasonable. On balance, I consider that the proposed development would go against the aims of those policies to a degree which would be significant and unreasonable.
39. Other policies quoted on the appellant's behalf on topics such as community needs, "placemaking", and design quality do not in my view provide clear arguments for either side in this case. The appellant has contended that the design of the proposal would be incongruous. The boxy shape of the proposed structure would lack design interest or quality, but that is a weak objection taking into account that the buildings in the vicinity of this site have a variety of designs including large areas of flat roof. The proposed extension's partial projection out from the natural ground slope would increase its obtrusiveness in the landscape, but that applies to some other buildings nearby, including Les Vagues.
40. Some of the appellant's comments refer to the validity of the application, and to the fact that Mr Galvin was not notified of the application even though some of the land within the application site was within his ownership. He also raises

⁸ Some of the dimensions shown on illustrations submitted for the appellant have to be interpreted with care. For example, Figure 21 in the appellant's statement of case shows what is labelled as "3M high wall" close to the kitchen/dining area of Les Vagues – but the 3 metre height is from a lower level than the floor level of the neighbour's kitchen/dining room.

queries about the accuracy of the labelling on some of the submitted drawings. The planning authority accepted and processed the application and I do not consider that any inaccuracies are so serious as to make the application invalid at this stage.

41. The concerns expressed in written representations by a local resident about disruption from construction activity would be a matter for control under non-planning legislation if planning permission were granted. The objection by another resident about the visual impact of the proposal from viewpoints near the coast is in my judgment overstated. Given the mixture of building shapes and styles and the quite high density of building here, the development would not be so harmful to the appearance or character of the wider scene as to justify refusing planning permission on this ground.
42. I conclude that planning permission should be refused and that the appeal should succeed, primarily because of the adverse impact of the proposal on the outlook and other amenities of the neighbouring property, Les Vagues.

Conditions

43. If you decide to grant planning permission the standard conditions requiring compliance with submitted details would be appropriate (although as far as I can tell from the available documentary evidence, these conditions would not have been imposed originally).
44. I note the comment in written submissions by the St Martin's Conservation Trust about glare. This seems to have been misinterpreted by the planning authority - the Trust's concern is about glass balustrades rather than windows, and the condition which would have been imposed by the planning authority in the absence of the appeal would have referred to "the south elevation of the extension". I do not consider that a condition requiring the installation of anti-glare glass (or an anti-glare coating) to the windows of the proposed extension would be necessary - there is no evidence that there is any real problem involving glare from windows in this locality and the windows in the south elevation would be quite small compared with many others nearby. However, a condition aimed at controlling the type of glass in the balustrade would probably be appropriate. This could be achieved by substituting the words "proposed balustrade" for the words "south elevation" in the condition as set out in the planning officer's report.

Recommendation

45. I recommend that the appeal be allowed and that planning permission be refused, for the reason that the proposed development would cause unacceptable harm to the residential amenity of the neighbouring property at Les Vagues, contrary to Policies GD1 and GD9 of the Bridging Island Plan.

G F Self

Inspector

19 July 2023