

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

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

Appellant: Mrs Lyn Hamel

Planning Permission Reference Number: P/2022/0709

Decision notice date: 6 August 2022

Location: Pres de la Gare, La Grande Route des Sabions, Grouville, JE3 9FJ

Description of Development: Construct 1 storey extension to South elevation, add 1 no. Pergola to West of site and construct no. 1 dormer window to west elevation

Appeal Procedure and Date: Hearing, 9 November 2022

Site Visit procedure and Date: Accompanied, 8 November 2022

Date of Report: 6 January 2023

Introduction

1. This is a third-party appeal by Mrs Lyn Hamel against a decision to grant planning permission for works to Pres de la Gare.
2. Permission was granted by the Infrastructure, Housing and Environment Department ('the Department') under delegated powers on 5th August 2022.
3. A summary of the cases presented by each party during the application and the appeal are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

The appeal site and proposed development

4. The appeal property forms one of a number of dwellings located to the west of La Grande Route des Sablons, from which it is accessed. It is a detached two-storey dwelling, sitting in landscaped grounds. The property has been extended previously.
5. The proposal has 3 main elements: installation of a pergola adjacent to the west elevation; installation of a new dormer window in the western elevation; and construction of a single storey, flat-roofed extension to the southern elevation.

Case for the appellant

6. The appellant has provided statistics of her understanding of the history and scale of development at the site. She considers that the proposed extension when

considered cumulatively with previous extensions, would result in over-development of Pres de la Gare. It would overpower the curtilage and appear squeezed in.

7. The proposals would bring the development close to the north wall of the appellant's property to the south resulting in unreasonable harm to her amenity and privacy, contrary to the requirements of Policies GD1 and GD6 of the Bridging Island Plan.
8. The appellant considers that conditions 1 and 2 of the permission, which relate to retention of a hedge along the boundary of the site, are incapable of being complied with. The location of the proposed extension would result in the existing hedging and vegetation being reduced along a distance of 7.7 metres (half the extension's length). The last 3 metres would leave less than 500 mm width for any planting and this would taper to nothing at the south-west corner.
9. The hedge is required to provide screening of the new development. Without it, the proposed extension would cause unreasonable overbearing prejudice into her garden.
10. The footings of the proposed extension would create damage to trees within the appellant's garden, one of which is within 2.8 metres of the proposal. Trees are included within the definition of green infrastructure within the Bridging Island Plan, A tree survey should have been undertaken in line with the requirements set out in paragraph 117 of the Bridging Island Plan. The appellant questions whether the effects of the proposal on biodiversity and habitats and green infrastructure have been assessed, in line with the requirements of Policy NE1 and Policy NE2.
11. The proposed second floor dormer window would result in overlooking of the appellant's private rear garden.

Case for the Department

12. The site lies within the built-up area and eastern cycle route corridor of Grouville. Given the presumption in favour of achieving new development within the built-up area, the Island Plan anticipates that change and new relationships between properties will be unavoidable. Due to the surrounding vegetation and location of the dormer window it is not considered that it would "unreasonably affect the level of privacy" to adjacent dwellings and hence would comply with Policy GD1.
13. The proposed pergola to the west elevation is not considered to look incongruous with the character of the dwelling.
14. The design of the extension to the south-east elevation remains subservient to the dwelling and is not believed to be out of character with the dwelling as a whole. It is not unreasonable in scale nor would it create "a sense of overbearing or oppressive enclosure" to the neighbouring property. Hence it would comply with Policy GD1.
15. A condition is required for a maintenance scheme for the hedging and vegetation to provide screening for adjacent neighbouring properties and to comply with policies NE1 and NE2 of the Bridging Island Plan.

Case for the Applicant

16. The applicant did not produce a written response to the appeal, but participated in the hearing.

17. The applicant notes that the proposal is in the built-up area, where development is encouraged. It would not represent over-development, nor would the dormer window result in loss of privacy to the neighbouring land.
18. Trees in a neighbouring garden should not restrict development on an applicant's land.

Representations

19. A single representation was received, from the appellant. This raised concerns about the height of the proposed structure and its proximity to the property boundary.

Key Issues

20. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states "In general planning permission shall be granted if the development proposed in the application is accordance with the Island Plan." The current Island Plan is the Bridging Island Plan, dated March 2022.
21. Having regard to the provisions of the Bridging Island Plan and other material considerations, I consider that the key issues in this appeal relate to:
 - The scale of development
 - The effects of the proposal on neighbouring amenity
 - The effects of the proposal on biodiversity and green infrastructure

The scale of development

22. The proposal site is within the built-up area. Policy SP2 Spatial Strategy of the Bridging Island Plan 2022 states that this is the area within which most development will be concentrated.
23. The Bridging Island Plan does not appear to set limits on the number or scale of extensions that are permissible. Instead, each proposal requires to be assessed against relevant policies in the plan, including in terms of the quality of design and effects on neighbouring uses.
24. Policy GD6 Design quality requires that development should have "a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting". It sets out eight key principles for design. These include (amongst other factors) the relationship to existing buildings having regard to layout, form and scale of the development and the use of materials and its impact upon neighbouring uses.
25. I saw that the appeal property is set back from the public road. The proposed extension to the south would be single-storey and would be subservient to the existing building. The scale of the extension is such that it would not appear out of place when viewed in the context of the existing dwelling. Likewise, the proposed pergola would not appear out of place in its setting. An ample area of external amenity space would be retained. Subject to my comments on effects on

neighbouring amenity, I am content that the proposal meets design quality criteria and does not represent an over-development of the site.

The effects of the proposal on neighbouring amenity

26. Policy GD1 Managing the health and wellbeing impact of new development requires that all development proposals must be considered in relation to their potential impacts on health, wellbeing and neighbouring uses. In particular, development should not “create a sense of overbearing or oppressive enclosure”; “unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy”; or “unreasonably affect the level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy”.
27. During my site inspection I saw that the proposal site and appellant’s property lie within a residential area. There are dwellings to the west of each property and consequently there is already a degree of mutual overlooking of external amenity spaces.
28. The proposed dormer window would be orientated in the same direction as existing windows on the floor below. It would be at an oblique angle to the neighbouring property, reducing the scope for casual over-looking. Risks of overlooking are further reduced as the window would serve a bathroom, which is not anticipated to be occupied for extended periods of time. Nevertheless, I accept that the function of the room could be changed.
29. I have considered the appellant’s wish that the dormer window should have obscured glass and be of restricted opening to further reduce the risk of overlooking. The applicant is not opposed to this and the Department has confirmed that this type of condition would be acceptable to them. It has also indicated that in some instances a condition has been applied requiring glass to be obscured only up to a certain, specified height (1.8 m).
30. Although the cill height of the proposed dormer window is below 1.8 metres, it would be similar to that of the existing windows on the floor below. It would, however, be at a higher elevation and consequently, the screening effect from the trees along the boundary of the appellant’s property may be reduced. Nevertheless, I am not persuaded that the degree of any potential increase in overlooking that would result from the proposal would meet the test of ‘unreasonable’ as required by Policy GD1.
31. Turning to the effects of the proposed extension, the proposal would bring development closer to the shared boundary with the neighbouring property to the south. Because of the orientation of the existing building, the distance between the proposed extension and the mutual boundary would vary, decreasing from east to west. At its closest point it would lie within 1 metre of the boundary.
32. During my site inspection I saw that the main dwelling house of the neighbouring property to the south is offset from the mutual boundary and is further separated from it by a single-storey garage attached to the house, a path and boundary planting. For the most part the proposed extension would lie opposite the side walls of the neighbouring property and garage. The exception would be the western-most corner of the proposed extension, which would be closest to the mutual boundary.

33. The proposed extension would be single storey and would not have any openings in the side facing the neighbouring property to the south. Consequently, there would be no scope for overlooking from the extension.
34. The height of the extension from external ground levels would be 3.1 metres, which is higher than the existing boundary features. However, when considered in the context of the neighbouring property being set back from the boundary, the use of the area adjacent to the proposed extension as an access path and boundary planting, and the stated location of the appellant's main amenity seating area, I do not consider that it would result in a sense of overbearing or oppressive enclosure on the neighbouring property sufficient to be considered unreasonable.
35. Given the relatively low height of the proposed extension and its location to the north of the neighbouring property it would not have an effect on light levels to the neighbouring property.
36. During my site inspection I saw that there is an evergreen hedge on the applicant's side of the boundary. This appears to be well-established, but not of any significant age. At the hearing, the applicant confirmed that this was a fairly new feature, planted by the applicant and that she hoped it would increase further in height.
37. Condition 2 to the permission that was granted requires that following the completion of the proposed extension "the boundary hedge on the South of the site shall be maintained at a level to provide sufficient screening of the new development." A replacement hedge would be required should the existing hedge die or be felled.
38. One of the stated reasons for this condition is to "safeguard the character and appearance of the existing building and surrounding area, in accordance with Policies GD1 and NE3 of the Adopted Bridging Island Plan 2022" and the Department has confirmed that the intention is that the hedging should provide some screening of the proposed extension.
39. The purpose of conditions is to enhance the quality of development. They can be used to mitigate adverse effects and hence allow development, where it would otherwise have been necessary to refuse planning permission. The Planning and Building (Jersey) Law 2002 as amended notes that conditions should fairly and reasonably relate to the proposed development. It is also important that conditions are clear - in that all parties can understand what is required.
40. The Department acknowledged at the hearing that part of the applicant's hedge would need to be removed in order to accommodate the extension. I therefore find the inclusion of conditions to safeguard the remaining hedge to be incongruous. If the Department has concluded that the proposed development requires to be screened in order to mitigate its impact, then it seems logical that the part that would most require to be screened would be the portion of development that is closest to the appellant's property i.e. the western end. Yet, this is the part of the hedge that requires to be removed and cannot be safeguarded alongside the development.
41. Furthermore, condition 2 as currently worded is imprecise in its reference to "sufficient screening". The Department's report does not explain why screening would be required. Indeed, it notes that "the department does not believe that the proposed extension is unreasonable in scale or will create 'a sense of overbearing or

oppressive enclosure' as expressed in Policy GD1". In the absence of an explanation as to why screening is required, it is not possible for parties to understand what might be considered "sufficient screening."

42. At the hearing, I questioned parties further about this matter. The appellant does not consider that any height of hedge would mitigate a development so close to the boundary or that a hedge could be accommodated along the full length of the extension. The Department did not suggest a suitable height and the applicant has indicated that she wishes to allow the hedge to continue to grow further than its existing height.
43. I accept that the hedge would act to provide a 'green screen' between the proposal and the appellant's property. However, for the reasons set out above, I do not consider that it would be possible to accommodate the hedge between the proposed extension and the boundary at its narrowest point. Nor is it clear what height, if any, would be appropriate to provide adequate screening.
44. Retention of the hedge has also been justified in terms of Policy NE3 of the Bridging Island Plan. This policy relates to the need to protect or improve landscape and seascape character. The hedge is a recently introduced feature into a garden setting. Given the location of the proposed extension, within the built-up area, adjacent to a main road and substantially shielded from public view, together with the acceptable scale and design of the proposal, it is difficult to understand how it would impact on or alter landscape character. That is, I can see no justification for requiring retention of the hedge to ensure compliance with Policy NE3 of the Bridging Island Plan.

Effects of the proposal on biodiversity and green infrastructure

45. Reason 1 for safeguarding part of the hedge refers to policies NE1 and NE2 of the Bridging Island Plan.
46. Policy NE1 requires that development must protect or improve biodiversity and geodiversity. The importance of habitats, designated sites and species must be taken into account and the policy notes that applicants will need to demonstrate that a proposal will neither directly nor indirectly, singularly or cumulatively, cause harm to biodiversity or geodiversity value.
47. Policy NE2 relates to green infrastructure and green networks. Part a of Policy NE2 requires development to retain and improve existing green infrastructure, including trees (and hedgerows), as far as is practicable and part e of the same policy notes that green infrastructure assets, including tree root zones should be adequately protected during construction works. The policy requires sufficient information to be provided to enable the likely impact of a proposal to be understood.
48. At the hearing, the Department confirmed that it had considered the effects of the proposals on biodiversity and green infrastructure, as evidenced by the inclusion of the conditions to the permission. It considered the proposal would have a small limited impact, which would not affect the green infrastructure of the area. Given the scale of the impact there had been no need to consult with the Land Resource Management Team.
49. The supporting text for Policy NE1 notes that "an appropriate level of supporting information will be required with all planning applications that have the potential to

impact upon biodiversity or geodiversity, even where they might lie outside of a designated or defined site or area.” It also notes that the detail and content of this information should be proportional to the scale of the proposal and its location relative to sites and areas of biodiversity and geodiversity interest. The Department does not appear to have asked for any information on this matter. This seems to suggest that either it considers the scheme too small to have any effects on biodiversity or that the hedge does not have any biodiversity value. If the latter, then it is not clear what justification there is for the condition to safeguard the hedge, particularly given that part of it would require to be removed.

50. As already noted, the hedge is a relatively new feature comprised of a single evergreen species. A short-length of this would be lost as part of the proposal. Whilst I accept that its removal would be associated with a proposed development, I note that there is nothing that would prevent the householder from removing the hedge that they have recently planted. Whilst the appellant has suggested that removal of the hedge would result in harm to habitats and biodiversity, I have not been provided with any evidence to support that claim. The scale of the proposal is relatively small, resulting in the loss of a short section of hedge. This hedge is located within a built-up area with no obvious links to open space of high biodiversity value. When considered in combination with the type of hedge (species composition) and its age I conclude that it would have limited value to biodiversity. I consider that there is an appropriate level of information to conclude that effects on the hedge would not result in harm to biodiversity.
51. The proposal would not result in any direct loss of trees. However, there are trees close to the boundary within the appellant’s garden, one of which is estimated to be within 2.8 metres of the proposed works and may have roots that extend beyond the mutual boundary into the proposal site. The preamble to Policy NE2 notes that it is particularly important to retain trees in the island’s built-up areas, where trees are relatively scarce. It states that where a development impacts on trees or hedgerows then a tree survey will be required.
52. I accept that where trees are present in relatively small garden settings within the built-up area, it may not always be practicable to protect trees in adjoining land holdings whilst satisfying the overall requirements of the Bridging Island Plan by concentrating development within the built-up area. Policy NE2 allows for such circumstances, but requires that details be provided about how these features will be protected as far as practicable and that measures to minimise, mitigate or compensate loss are in place.
53. The Department considers that there would be limited impact on trees, but it is not clear what evidence has been used to reach this conclusion. Unlike the hedge, the trees are long-established and mature. They are located relatively close to the mutual boundary and there is a credible risk that the root zone may extend into the neighbouring property. No tree survey has been supplied. It is not clear whether there would be impacts on trees and if so, how these could be minimised, mitigated or compensated. I therefore find that the proposal fails to satisfy the requirements of Policy NE2.

Conclusions

54. In general, proposals that are in accordance with the Bridging Island Plan shall be granted planning permission, unless there are material considerations otherwise. In reaching a decision, the plan must be considered as a whole, rather than treating

each policy in isolation. In explaining how the plan should be used, the plan acknowledges that some policies relevant for consideration of a particular development can appear to pull in different directions. It notes that this is not a flaw in the system, but is a reflection of the natural tensions that arise in seeking to meet the community's economic, social and environmental objectives.

55. The spatial strategy of the Bridging Island Plan is aimed at concentrating development within the built-up area. There is a general presumption for development there, provided it meets other tests.
56. I find that the proposal would not result in unreasonable harm on neighbouring uses through overbearing or creating a sense of oppressive enclosure. Nor would it unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy. I do not find that the hedge has any particular biodiversity value, or contributes significantly to green infrastructure. However, I find that the proposal does represent a risk to mature trees within the appellant's garden and that insufficient information has been provided as to the likely effects of the proposal on these trees and hence whether any mitigating or compensatory actions are required.
57. The effects of any potential harm to these trees needs to be balanced against other policies within the Bridging Island Plan and the reasonable expectations of owners to be able to modify or extend their homes. Nevertheless, in the absence of information about the effects, if any, on those trees, I am unable to reach a conclusion as to whether the impacts are acceptable. For that reason, I conclude that the proposals would not be in accordance with the Bridging Island Plan.

Recommendations

58. I recommend that the appeal should be allowed and that the original Planning Permission be refused.
59. If the Minister is not minded to follow my recommendation and determines to refuse the appeal, I would recommend that the second condition to the permission either be removed or modified to specify an acceptable height range for the hedge. For the reasons set out above, I do not consider that the current wording of this condition is sufficiently precise as to allow parties to understand what is required.

Sue Bell

Inspector 06/01/2023