

## **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 29 April 2024. Hearing held on 30 April 2024.

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### **Reference: P/2023/0567**

### **Field No. T817, La Verte Rue, Trinity, JE3 5AW**

- The appeal is made under Article 108 against a decision made under Article 19 to refuse planning permission.
  - The appeal is made by Simon Silbernagl against the decision of the States of Jersey.
  - The application Ref P/2023/0567 by Simon Silbernagl, dated 3 May 2023, was refused by notice dated 18 January 2024.
  - The proposed development is construct 1no. 4bed residential unit with detached garage. Form new vehicular access onto La Verte Rue.
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### **Recommendation**

1. I recommend that the appeal be upheld and that planning permission be granted, subject to conditions.

### **Introduction and Procedural Matters**

2. This Report refers to the Planning Department as "the Department."
3. The Bridging Island Plan, adopted on the 25<sup>th</sup> March 2022, is referred to in this Report as "*the Island Plan*."
4. The decision notice adds the following to the description of the proposed development refused planning permission: "AMENDED PLANS: Rationalisation of scheme to provide consistency in application plans. Submission of Transport Statement & Site Waste Management Plan."
5. For clarity, the amendments referred to in the Decision Notice form part of the proposed development the subject of this appeal.
6. The summaries of the various cases set out below are neither exhaustive nor verbatim but summarise main points made by the relevant parties. In reaching the recommendation set out in this Report, I have considered all of the information before me.

### **Case for the Appellant**

7. In reaching the decision that it did, the Department afforded insufficient weight to Island Plan Policies, particularly those that support development in the Built-Up Area.
  8. The Department's assessment of subjective matters of design was incorrect and its assessment of the character of the area was incorrect. The scale, mass, layout and design of the proposal is appropriate.
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9. The Department afforded too much weight to the site's interface with the Green Zone and to residential amenity; and insufficient consideration was given to the destination and end-user of topsoil arising from excavation works.
10. Trees will be protected and a condition can ensure this.
11. There is a presumption in favour of new residential development in this location and there is an evidenced shortage of single 4-bedroom dwellings, such as that proposed.
12. The scheme has been well-designed. It respects its surroundings and proposes the use of high quality local and traditional materials.
13. The proposal has been designed in a way that it would respect the amenity of neighbours. It would not result in a loss of privacy or sunlight/daylight and would not appear overbearing.
14. The proposal would provide for the privacy of future occupiers. It would also provide suitable outside amenity space for future occupiers.
15. There are no objections from the Department's Natural Environment team and any protected species found on the site would be dealt with in accordance with the prevailing Law.
16. There are no significant issues in respect of parking, movement or traffic.

#### **Case for the Department**

17. The design of the dwelling would not comprise high quality design and would not conserve, protect and contribute positively to the surrounding area.
18. There is currently a gentle transition between the Built-Up Area and the rural area. The proposal would result in an abrupt interface between the rural and urban area.
19. The proposed glazing and upper floor balcony would be at odds with the surrounding character and style of housing. The proposal would be visually incongruous and would result in an uncomfortable relationship with adjacent properties to the west.
20. The eastern elevation of the proposal would be in very close proximity to La Verte Rue and would result in a sense of overbearing enclosure to the neighbouring property.
21. Whilst the proposed garden to the south of the site appears to meet Residential Space Standards, the useability of the area is not clear from the plans and it would provide for unacceptable levels of privacy within the streetscape.
22. The proposed glazing on the south elevation would result in unacceptable levels of privacy for the occupiers of the proposed dwelling.
23. The development would result in the excavation of large volumes of material which would require transporting off-site, contrary to the waste hierarchy. This does not satisfy the requirements of sustainable waste management.

24. The proposal would not result in an improvement to the existing green infrastructure and trees and hedgerows marked for retention may not survive after the proposed development is constructed.

### **Other Comments**

25. A number of comments were received from neighbours (Messrs Gallichan, Stevenson, Holt, Moseley, Robinson, Whittingham and Truscott).

26. Concerns were raised in respect of the proposal's impact on ecology, levels of daylight, noise and disturbance, parking, construction traffic, traffic, highway safety, privacy, design.

### **Main Issues**

27. Taking all of the above into account, the main issues in this case are the effect of the proposal on the character and appearance of the area; its effect on the living conditions of neighbouring occupiers, with regards to outlook and daylight; and whether the proposed development will result in acceptable living conditions for future occupiers in respect of privacy and private amenity space.

28. I note that one of the Department's reasons for refusal related to the excavation and removal of large volumes of material, contrary to the waste hierarchy. This is a matter considered under "Other Matters" below.

### **Reasons**

#### *Character and appearance*

29. The appeal site comprises a small, unkempt, triangular shaped piece of land, narrow to the north and wider to the south. It is currently occupied by two somewhat ramshackle single storey buildings which stand amidst a larger area of scrub, shrubs and unmanaged, largely self-seeded trees.

30. The appeal site is located within Trinity, in the Built-Up Area. Whilst located towards the edge of the village, the site is situated adjacent to housing to the north, south and west and is located within a very short walk of Trinity's village amenities, including the village store, local pub and bus shelter.

31. On the opposite side of the site to La Verte Rue, which appears as a narrow, unpaved country lane, is a field separated from the road by trees; and to the south of the site is the vehicular entrance to Les Maisons Cabot, a retirement village comprising a small, thoughtfully laid out estate of single storey dwellings around a green square.

32. The immediate presence of housing to the north, south and west of the site results in it appearing visually contained within the village envelope and this is a characteristic reflected by the site's inclusion within Trinity's Built-Up Area.

33. The proposed development would comprise a detached one and half storey dwelling, together with a small detached garage. Excavation and partial levelling of the site would result in the dwelling appearing "nestled" into its surroundings.

34. Notably, whilst the nearest dwellings, at Les Maisons Cabot, are single storey, I consider that the proposal has been designed such that its main ridge would sit well below the ridge height of the nearest dwellings.
35. Further to the above, in respect of design, I am conscious that the proposal seeks to combine local traditional materials with modern materials in a manner that would, to my mind, result in a strikingly attractive modern dwelling that would respect its surrounding heritage.
36. In particular, the use of local granite would reflect the traditional design of Jersey dwellings and would tie the proposal in with various traditional features found elsewhere in the locality; whilst the use of zinc, glazing, render and timber cladding would integrate modern design features.
37. The proposal achieves the above in a modest and unpretentious manner, avoiding pastiche and garishness; and in so doing, I find that it would provide for modern living requirements in a way that would add positively to the Island's architectural palette and distinctiveness.
38. Overall, the proposal relates to a relatively unattractive area, including scrubland, dilapidated buildings and unmanaged self-seeded trees. The site is located within the Built-Up Area, close to the village centre and the proposal seeks to transform it into a development comprising a family dwelling surrounded by landscaped gardens.
39. There would be space around all sides of the proposed dwelling, most notably to the north, between the dwelling and its small detached garage and to the south, where the dwelling's main garden would be located. I find that this and the careful treatment of the site's boundaries, to include granite walling and tall hedgerows, along with the retention and protection of identified trees worthy of retention, would provide for a dwelling that would sit comfortably within this edge of settlement location.
40. In this regard, I am mindful that the appeal site, being at the edge of the village, close to its centre and adjacent to the junction of La Verte Rue and the entrance to Les Maison Cabots, is situated in a prominent location.
41. I consider that the proposal, by demonstrating a careful approach to design, as noted above, would result in a more satisfactory visual experience than that currently provided by this site within the Built-Up Area. In this way, the proposed development would enhance its surroundings.
42. The suitability of the site for residential development is not disputed by the Department. Indeed, the Island Plan strongly advocates for the residential development of sites such as the appeal site. Given this and taking all of the above into account, there would be no harm to the character and appearance of the area and the proposed development would not be contrary to Island Plan Policies GD6, SP3, NE2 and PL3, which together amongst other things, seek to protect local character.

#### *Living conditions*

43. Island Plan Policy H1 ("*Housing quality and design*") requires new homes to provide for good quality accommodation and 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..."*

44. The western edge of the proposed dwelling would be situated in very close proximity to the rear of Number 10 Les Maison Cabots.
45. During my site visit, I walked along a footpath which runs alongside the rear of No 10 and its attached neighbours in this terrace. I observed that windows to the rear elevation of the terrace of bungalows tend to serve bathrooms and bedrooms and that the outlook from these is generally gloomy – into and across the appeal site.
46. By way of contrast, the outlook to the front of No 10 and its neighbours is from principal rooms and entrances across to a large, bright, open, green and spacious square.
47. Noting the above, I consider that the rear elevation of this part of Les Maison Cabots does not currently provide for a significant or attractive outlook.
48. Notwithstanding the above, I note that the proposed development has been designed to step down in height towards Les Maison Cabots and find that this, when combined with the sensitively designed landscaping proposed, would serve to prevent the proposed dwelling from appearing unduly overbearing when seen from Les Maison Cabots.
49. Furthermore, I am conscious that the amount of daylight reaching the rear of No 10 Les Maison Cabots and that of its neighbouring dwellings within the same terrace is, to some degree, restricted by the presence of unmanaged vegetation. The proposed development would change this situation and there is no substantive evidence before me to demonstrate that in doing so, it would result in a reduction of the amount of daylight reaching the rear of this part of Les Maison Cabots.
50. Island Plan Policy H1 ("*Housing quality and design*") requires new homes to provide for good quality accommodation.
51. The proposed development would not, according to the Department, result in a failure to meet or exceed adopted private amenity space standards. Indeed, the proposal would provide for a rear garden running across the whole of the southern end of the triangular plot; and this would be directly accessible from three separate ground floor rooms.
52. There would be a small step up to the garden area, but this would hardly be unusual nor unduly constrain the amenity value of the garden. In this regard, I am also mindful that Jersey contains plentiful examples of dwellings with very steeply-terraced gardens, incomparable to the proposal before me, but still enjoyed by occupiers.
53. In addition to the rear garden, the proposed development would enjoy a large driveway, a detached garage and garden areas to the front, side and rear. Taking this and all of the above into account, I find that the proposal would

provide sufficient private residential amenity space and there is no substantive evidence before me to the contrary.

54. The design of the proposed dwelling includes large areas of glazing to the south elevation. As a design for a new dwelling, this is not unusual and it would provide for light and spacious interiors. In this regard, I am conscious that light and space are widely regarded as residential design cornerstones for the creation of good quality, modern living environments and in this case, I consider the large windows to be reflective of good design.
55. Noting the large areas of glazing, it is the Department's contention that the proposal would result in unacceptable harm in respect of the privacy of future occupiers. However, I find that the manner in which future occupiers might wish to enjoy their property would be up to them. If, for example, they felt that their windows impinged upon their privacy, they could hang curtains or install blinds and draw or close these at a time of their own choosing.
56. Given this, there is nothing that leads me to conclude that the proposed development would result in unacceptable harm to the living conditions of future occupiers, with regards to privacy or to private amenity space.
57. Consequently and taking all of the above into account, I find that the proposed development would not result in unreasonable harm to the living conditions of neighbouring occupiers, with regards to outlook and daylight; and would not result in unacceptable living conditions for future occupiers, with regards to privacy and private amenity space. Given this, the proposed development would not be contrary to Island Plan Policies GD1 or H1.

### **Other Matters**

58. One of the Department's reasons for refusal referred to the excavation of large volumes of material and the subsequent transporting of the material off-site. The appeal site is relatively small and whilst there would be some excavation and off-site transporting of material, this would not amount to a significant volume in Island-wide terms.
59. In the interests of minimising waste arising from demolition and construction activity and to encourage re-use, recycling and recovery, Policy WER1 of the Island Plan supports development where a satisfactory site waste management plan has been provided. Policy WER1 does not demand that excavation of material should not take place, nor that material should not be moved off-site.
60. The appellant has provided a Transport Statement and Site Waste Management Plan. This appears to me to be commensurate with the scale of development proposed and I am satisfied that the proposed development would not be contrary to the aims and requirements of Island Plan Policy WER1.
61. Also in its reasons for refusal, the Department states that the proposed development would be contrary to Island Plan Policy NE2. This Policy requires the appropriate protection and improvement of existing green infrastructure assets.
62. During my site visit, as set out above, I observed that whilst there is greenery across that part of the site not occupied by buildings, this largely takes the form of scrub and unmanaged, self-seeded trees.

63. The appellant has set out ecological mitigation, protection and enhancement measures and these have been considered by and are supported by, the Department's Natural Environment Team, subject to the imposition of an appropriate condition.
64. Given this and subject to the conditions referred to below, I am satisfied that the proposal proposes an appropriately balanced approach to the protection and improvement of existing green infrastructure assets and that it would not be contrary to Island Plan Policy NE2.

### **Conditions**

65. During the Hearing it was agreed that there is no reason not to impose the two standard planning conditions normally imposed by the Department, requiring development to commence within three years of the decision date and requiring development to be carried out in accordance with approved plans. The appellant and the Department concurred with this approach.
66. A landscaping condition has been proposed by the appellant. During the Hearing, it was agreed that the condition, as proposed, would not control landscaping beyond the completion of the development, especially the height of hedgerow to the southern boundary, nor matters relating to a garden level discrepancy. It was considered that revised conditions could seek to address these matters and the appellant subsequently set out proposals and these were forwarded to the Department for consideration.
67. I have taken this information into account in recommending the conditions below.
68. In addition and as noted above, the Natural Environment Team has proposed a condition relating to the implementation of the ecological mitigation, protection and enhancement measures proposed by the appellant.
69. Taking all of the above into account, I recommend the imposition of the following conditions in addition to the two standard conditions:

*Condition 3. "No part of the development hereby approved shall be commenced until an Arboricultural Method Statement and Tree Protection Plan specific to this scheme has been submitted to and approved in writing by the Chief Officer."*

Reason: To protect biodiversity and in the interests of local character.

*Condition 4. "Notwithstanding approved drawing 889-010 Rev C, prior to commencement of development, plans detailing a revised level to the south garden shall be submitted to and approved in writing by the Chief Officer."*

Reason: In the interests of local character.

*Condition 5. "The hedgerow to the southern boundary of the scheme shall be planted and maintained at a height of no less than 1500mm above road level. In the event the hedgerow fails or dies, it shall be replanted in the next available planting season to the same minimum height of 1500mm and maintained at no less than this height."*

Reason: To protect residential amenity and in the interests of local character.

Condition 6: *“The measures outlined in the approved Initial Ecological Assessment Report (ref: NE/ES/LF817.01 May 2023, Nurture Ecology) shall be implemented prior to commencement of the development, continued throughout (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 the Land Resource Management Team prior to works being undertaken.”*

Reason: To protect and enhance biodiversity.

**Conclusion**

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

Nigel McGurk BSC(HONS) MCD MBA MRTPI  
PLANNING INSPECTOR