

## **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/2023/1207**

#### **L'Avarison, Le Mont de Gouray, St Martin, JE3 6ET**

- 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 Mr A Galvin against the decision of the States of Jersey. The appellant lives within 50 metres of the appeal site.
- The application Ref P/2023/1207 was approved by notice dated 15 January 2024.
- The application granted permission is "REVISED PLANS to P/2022/1627 (Demolish existing summer house to West of site. Construct single storey extension to West of site.): Demolish existing summer house to West of site. Construct single storey extension to West of site. AMENDED DESCRIPTION Demolish existing summer house to South of site. Construct single storey extension to South of site."

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### **Recommendation**

1. I recommend that the appeal be dismissed and that the original planning permission be upheld, 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 description of the application granted permission above is taken from the decision notice.
5. A previous application<sup>1</sup> for a similar form of development to that the subject of this appeal was approved by notice in August 2023. This previous approval was appealed and the Planning Inspector recommended to the Minister that the appeal be upheld. The Minister accepted and agreed with the Planning Inspector's recommendation and the appeal was upheld<sup>2</sup>.
6. The proposal the subject of this appeal, like the previously appealed proposal, seeks to replace an existing summer house with an extension to L'Avarison. However, the detail relating to the proposed development the subject of this appeal is different from that of the previous proposal that was refused at appeal.

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<sup>1</sup> Reference: P/2022/1627.

<sup>2</sup> Reference: MD-ENV-2023-578. Date of decision: 30 August 2023.

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7. The flat roof of the proposal the subject of this appeal would be lower than that previously proposed. Furthermore, a pitch would be introduced to that part of the roof closest to Les Vagues' utility area; and the south west corner of the proposed extension would be chamfered, or angled, away from the southerly outlook from Les Vagues. The proposal the subject of this appeal also proposes the use of render instead of cladding.
8. The appellant has referred to private law considerations. These relate to what is referred to by the appellant as "*a very unusual private law arrangement between L'Avarison and Les Vagues which provides some access rights over the property Les Vagues by the owners of L'Avarison.*" I observed this arrangement during my site visit.
9. Whilst private law matters tend to sit outside the scope of planning appeals, I note that the appellant considers that his privacy is compromised by the existing arrangement and that he is sensitive to any further changes that result in "*the loss of more privacy.*" Whilst I do not seek to make recommendations in respect of these legal matters, I acknowledge the appellant's concerns in the above regard.
10. I note that this appeal decision focuses on the effect of the proposed development on the living conditions of the occupiers of Les Vagues and that, amongst other things, it considers matters of privacy.
11. The appellant has provided information relating to party wall matters. I consider such matters to be outside the scope of this planning appeal.
12. Comments have been made in respect of the submitted plans. I note that the Department accepted and processed the application relating to this appeal. The submitted plans are sufficiently clear to understand the development that is proposed and there is nothing before me to lead me to conclude that there are such inaccuracies in the plans as to make the application invalid.
13. The appellant states that it is not clear on what basis the Department made its decision. The Department's decision takes relevant information into account and I am satisfied that the Department determined the application in an appropriate manner and that it provided adequate information and sufficient clarity in doing so.
14. The summaries of the various cases set out below are neither exhaustive nor verbatim but seek to 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**

15. L'Avarison has reached the limit of development potential in its surroundings – the building is at capacity and any change, however small, has the potential to be harmful to the amenity of neighbours.
16. Allowing the building line to be extended further south has the potential to harm built character and the existing building line should prevail.

17. The proposed development will fail to protect built character, as required by planning policy.
18. There is sufficient justification for the Minister to overturn the approval of planning permission.
19. Privacy is already compromised by the private rights enjoyed by the applicant. The proposed development would result in greater use of the area the subject of the appeal. It would comprise an extension as opposed to an ancillary out-building. This together with an increase in south-facing glazing, including sliding doors and a balcony, provides the potential for a significant increase in the overlooking of the appellant's private terrace, resulting in a harmful loss of privacy.
20. Further to the above, overlooking during the construction phase would result in unreasonable harm through loss of privacy and disturbance.
21. The proposed development would create a sense of overbearing and oppressive enclosure to a private balcony. It would unreasonably affect the level of sunlight and daylight received by Les Vagues.

### **Case for the Department**

22. The appeal site is in the Built-Up Area, regarded as the optimal location for development on the Island. The proposed development aligns with the expectations of planning policy in this regard and would not result in unreasonable harm to residential amenity.
23. The proposal is a minor application for an extension to replace an existing structure in a suburban residential area. Its form would be consistent with the overall character of the area and would be of high quality design; it would be appropriate in scale, nature and design.
24. Property deeds and other forms of legislation besides that of the Planning and Building (Jersey) Law 2002, are not material considerations in the assessment of planning applications.
25. Whilst larger than the summer house it would replace, the proposal is modest in size. Any impacts on Les Vagues in respect of loss of light or feelings of enclosure would not amount to unreasonable harm. Such impacts would principally affect ancillary rooms, such as a corridor rather than bedrooms or living rooms and Les Vagues would continue to enjoy generous outlooks, levels of privacy and levels of natural light.

### **Case for the Applicant**

26. The applicant agrees with the case set out by the Department.
27. During the appeal hearing, the applicant stated that the proposed development incorporates changes made further to the previous proposal.
28. The applicant considers that the proposal would not result in unreasonable harm.

## **Main Issues**

29. The main issues in this case are the effect of the proposal on the character and appearance of the area; and its effect on the living conditions of the occupiers of Les Vagues, with regards to outlook and privacy.

## **Reasons**

### *Character and appearance*

30. The appeal property is situated within a residential area along Le Mont de Gouray. The dwelling abuts the pavement to the front and its terraced garden steps down steeply to the rear, towards the coast.
31. L'Avarison forms one of what appears as a row of several dwellings. The dwellings are all situated close to the road at the front and all sit high above land that drops steeply to the south. There are numerous terraces and terraced gardens.
32. The appearance of the row of dwellings is such that the southern elevations of a number of neighbouring dwellings are angled partly towards one another. In the above way, the rear outlooks from L'Avarison and other dwellings along Le Mont de Gouray provide for views and over-looking across one another's gardens and to some degree, between neighbouring dwellings.
33. During my site visit, I observed there to be a significant variety in the design and appearance of the rear elevations of the row of dwellings along Le Mont de Gouray. Many dwellings have been extended and/or altered and there are numerous rear projections, of different sizes and with varied roof forms.
34. Existing forms of development appear to take advantage of distant views across the coast and the result is an eclectic mix of designs, copious areas of glazing and numerous balconies, patios and terraces.
35. The proposed development would comprise a box-like cantilevered extension of modest proportions. It would replace a somewhat dilapidated summer house. Whilst it would be larger than the summer house, the proposal would be relatively small in scale relative to the overall size of the host dwelling and neighbouring dwellings; and its projecting box-like design would appear similar to and in keeping with, other projections elsewhere along the row of dwellings.
36. Given this and all of the above, the proposal would appear entirely in keeping with its surroundings and there would be no harm to local character.
37. Consequently, the proposed development would not be contrary to Island Plan Policies GD6, SP3 and SP4, which together amongst other things, seek to protect local character.

### *Living conditions*

38. 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...”*

39. Thus, 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*.

40. In his Report relating to the previous application and subsequent appeal<sup>3</sup>, the previous Planning Inspector concluded that there would be unreasonable harm to the living conditions of the occupiers of Les Vagues.

41. In reaching this conclusion, the Planning Inspector was concerned that the height and projection of the proposal would result in a development that would appear more obtrusive and dominating than the summer house when seen from Les Vagues’ kitchen-diner, adjacent balcony and lower outside area; and that it would result in reduced morning sunlight reaching Les Vagues’ kitchen-diner.

42. The Planning Inspector went on to find that the effects of the above would be even more noticeable in Les Vagues’ utility area and adjacent external platform; and that the proposal would create a sense of being overlooked and a loss of privacy in parts of Les Vagues’ lower garden area.

43. The Inspector recognised that the consideration of what is and what is not unreasonable is a matter of judgement and that, on balance, he felt that this previously proposed development would amount to unreasonable harm.

44. As I note above, the proposal the subject of this appeal differs from the proposal previously dismissed at appeal.

45. In this case, the proposed extension would be lower in height. It would be chamfered to the projecting corner closest to Les Vagues; and that part of its roof closest to Les Vagues’ utility area would be pitched.

46. I find that these amount to significant changes.

47. During my site visit, I observed that whilst a small part of the proposed development would be visible from part of Les Vagues’ kitchen diner, the overall height and projection of the proposed extension, together with its proposed chamfer, would mean that any impacts arising in respect of daylight, sunlight or outlook would be negligible.

48. Similarly, whilst the proposal would be visible from Les Vagues’ kitchen-diner’s adjoining balcony, the design of the proposal would mean that it would barely

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<sup>3</sup> Reference: P/2022/1627.

impinge upon the amount of daylight and sunlight received by, or on the outlook from, that part of Les Vagues.

49. I therefore find that the proposal would appear neither dominant nor obtrusive in the outlook from Les Vagues' kitchen-diner and adjoining balcony.
50. In the above regard, I am mindful of two specific factors. Firstly, the very nature of dwellings along this part of Le Mont de Gouray is such that a degree of overlooking between dwellings is characteristic of the area; and secondly, like that of neighbouring dwellings, the rear elevation of Les Vagues is largely south-facing and consequently, rear-facing rooms benefit from high levels of sunlight and daylight for the majority of the day.
51. I note that the proposed development would be situated at a higher level than Les Vagues' lower garden and sitting area. This area would be visible, albeit at an oblique angle, from the proposed extension. However, this relationship would be little different from relationships that already exist along Le Mont de Gouray, where a degree of over-looking across and between rear garden areas is characteristic of the area.
52. The main outlook from Les Vagues' lower garden area is out across the coast, providing for significant open views. The proposed development would not interfere with the greatest extent of these expansive views and would appear neither dominant nor intrusive. Rather, as noted earlier in this Report, it would appear similar to and in keeping with, its surroundings.
53. Further to the above, I consider that the proposed pitched area of roof and the lower height of the proposed development when compared to the previous proposal, would result in an acceptable outlook from Les Vagues' corridor/utility area and that it would not result in any unreasonable loss of daylight or sunlight.
54. In setting out all of the above, I am mindful that the juxtaposition of Les Vagues and L'Avarison is such that there is an inevitability of a degree of interplay and inter-visibility between the two dwellings, in addition to that arising from any access arrangements between them.
55. The Island Plan, in focusing and promoting development within the Built-Up Area, acknowledges that development may result in some degree of harm and it allows for harm that does not amount to something unreasonable.
56. I note earlier in this Report that the appellant is, due to the applicant's rights of access across the rear of Les Vagues, especially sensitive to development that would harm his amenity. I acknowledge and am sympathetic to this. However, for the reasons set out above, I find that any harm arising as a result of the proposed development, either individually or in its totality, would not amount to unreasonable harm.
57. Consequently, taking everything into account, I find that the proposed development would not result in unreasonable harm to the living conditions of the occupiers of Les Vagues, with regards to outlook and privacy. The proposed development would not be contrary to Island Plan Policy GD1.

## Conditions

58. In granting planning permission, the Department imposed the two standard planning conditions. These require development to commence within three years of the decision date and require development to be carried out in accordance with approved plans.
59. No change is recommended in respect of imposing the two standard conditions.
60. During the course of the appeal, the appellant expressed concerns in respect of construction and related matters, should the appeal be dismissed. In this regard, I find that a condition in respect of the management of demolition and construction is necessary in the interests of residential amenity, public health and the wider environment.
61. The applicant proposed such a condition and comments were subsequently provided by the appellant and the Department. I have considered these comments.
62. Whilst I note that the appellant would like conditions imposed that include references to a range of matters including legal matters outside the scope of this appeal, I am mindful of not recommending the imposition of a planning condition that would not be necessary, relevant to planning and to the development to be permitted, precise and reasonable in all other respects.
63. In addition to the two standard conditions, I recommend the imposition of the condition set out below:

*“No part of the development hereby permitted shall be begun until a Demolition/Construction Environmental Management Plan has been submitted to and approved by the Chief Officer. The Demolition/Construction Environmental Management Plan shall be thereafter implemented in full until the completion of the development and any variations agreed in writing by the Chief Officer prior to such work commencing. The Plan shall secure an implementation programme of mitigation measures to minimise the adverse effects of the proposal on the environment and neighbours, and shall include but not be limited to:*

- A. A Health and Safety Document covering contact details including office hours and out-of-hours contact numbers; specified hours of working, which shall not be outside 0900-1700 hours Monday to Friday and not at all on any Public or Bank Holiday; site set-up; site access; preventing objects falling from heights; material storage and supervision to avoid nuisance to neighbouring properties.*
- B. A Methodology Statement for the excavation, demolition, construction technique, finishes and decoration of the development to avoid nuisance to the neighbouring property, Les Vagues and to protect ground stability.*
- C. A demonstration of compliance with best practice in controlling, monitoring, recording and reporting on any emissions to the environment (such as noise and vibration, air, land and water pollution).*

Reason: In the interests of residential amenity, public health and the wider environment.

**Conclusion**

64. For the reasons set out above, I recommend to the Minister that the appeal be dismissed and that the Department's decision to grant planning permission be upheld.

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PLANNING INSPECTOR

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