

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

## **Appeal under Article 108 against a decision to refuse planning permission**

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

**By Mr Philip Staddon BSc, Dip, MBA, MRTPI**

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Appellant: Neutral Estates Ltd

Site address: Millbrook Place, La Route de St. Aubin, St. Lawrence

Application reference number: P/2023/1356

Proposal: '*Construct 2-storey extension to the South elevation of East-Wing of dwelling. Minor landscaping amendments.*'

Decision Notice date: 26 February 2024

Procedure: Hearing held on 26 June 2024

Inspector's site visit: 24 June 2024

Inspector's report date: 9 August 2024

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#### **Introduction**

1. This report contains my assessment of the appeal made by Neutral Estates Ltd against the decision to refuse planning permission for a domestic extension at a dwelling known as *Millbrook Place*, located on La Route de St Aubin in the parish of St Lawrence.

#### **Procedural matter**

2. In the course of the appeal, it became apparent that there was confusion regarding the postal addresses of the adjacent properties to the east. The Decision Notice refers to alleged harmful effects to '*2 and 3 Springland*'. However, it became clear through site inspections, and the helpful input of Mrs Deans (an interested party), that the adjacent properties are actually Nos 4 and 5 *Springland*. Whilst I do not consider that there could be any doubt about which properties the planning authority had concerns about, the Decision Notice does contain an error, which would need to be corrected should the Minister dismiss this appeal and uphold the refusal decision.

#### **The appeal property, the proposal and the application determination**

3. *Millbrook Place* is a substantial detached dwelling located on the north side of La Route de St Aubin. It sits well back from the road on a large and deep plot, accessed by a driveway that runs alongside its western boundary, beyond which is an open field (Field L875B). The house itself dates from the 1960s and is quite imposing, being built in a neo-classical style, and set

within formal landscaped gardens to the front and rear. Its principal south facing front elevation is of a symmetrical composition, with two 2-storey wings, each with first floor balconies, with a central single storey orangery<sup>1</sup> set between the wings.

4. The appeal proposal would add a 2-storey extension to the western wing. It would extend forward by 5.1 metres and have a width of about 4.9 metres, which means that it would be inset slightly from the existing wing walls. It would be faced in materials to match the main house and would include a pitched and hipped slated roof. Internally, the extension would provide a gym room at ground floor level, and an enlargement of a guest bedroom at the first floor level, with doors opening onto a small (4.6 square metre) south facing balcony.
5. At the application stage, the officer report records that one objection had been received. The grounds of objection related to the concern about loss of daylight and winter sun to the adjacent property (*Springland*).
6. Officers assessed the proposal to be unacceptable and refused to grant planning permission for the following reason: "*By virtue of the first floor terrace to the South Elevation the proposed development would unreasonably affect the level of daylight, sunlight and privacy to neighbouring and adjacent properties known as '2 & 3 Springland' [now known to be Nos 4 & 5] and be overbearing to said properties contrary to Policy GD1 of the Bridging Island Plan 2022.*"
7. Neutral Estates Ltd's appeal is made against that planning decision.

### **Summary of the appellant's grounds of appeal**

8. The appellants' case is set out in the appeal form with an attached, more detailed, Statement and a final comments document. The 2 grounds of appeal are:

#### Ground A

*The Appellant disagrees with Reason 1 on the Decision Notice. The proposed development will not unreasonably affect the level of daylight, sunlight and privacy, nor will it be overbearing, to neighbouring and adjacent properties at 2 and 3 Springland, and the proposed development is not contrary to Policy GD1 of the Bridging Island Plan 2022*

#### Ground B

*The Appellant is of the opinion that, in accordance with Article 19 of the Planning and Building (Jersey) Law 2002, when taking account of the Island Plan as a whole and all other material considerations, planning permission should be granted.*

9. At the Hearing, the appellant's case was presented by the company's agent, Mr Nicholson, with contributions from the scheme architect, Mr Riva.

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<sup>1</sup> Approved under planning reference P/2015/1324

### **Summary of the planning authority's case**

10. The planning authority's case is set out in its officer report and a succinct Response document. The Response explains that the proposal was considered against the relevant BIP policies and assessed to result in unreasonable harmful effects to its immediate neighbours. It considers that the reason for refusing planning permission is justified.
11. At the Hearing, the planning authority's case was presented by Mr Gladwin (appeals officer) and Ms Sellors (the application case officer).

### **Interested party's case**

12. Mrs Deans lives at No 5 *Springland*. She made representations at the application and appeal stages, and attended and spoke at the Hearing. Her particular concern relates to loss of light and winter sun. Mrs Deans also submits that there are other locations on this large plot that could accommodate the extension without causing any harm.

### **Inspector's assessment**

13. The appeal proposal relates to a modest extension to a large detached dwelling house, which is located within the Built-Up Area (BUA), as defined in the Bridging Island Plan (adopted 2022). The site is not subject to any particular policy constraints or sensitivities, and there is no dispute between the main parties that a domestic extension to the house could be acceptable in principle, subject to detailed considerations.
14. The refusal reason focuses on the amenity protections set out in policy GD1, which covers 'managing the health and wellbeing impact of new development'. The policy requires all development proposals to be considered in relation to their potential health, wellbeing and wider amenity impacts. It requires that developments must not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It cites some particular matters that developments must avoid, the most relevant in this case being: creating a sense of overbearing or oppressive enclosure and unreasonably affecting the level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy.
15. The appellant has cited Jersey caselaw<sup>2</sup> which it says informs how amenity assessments should be made in planning determinations. Whilst these cases related to an earlier Island Plan era, and policies have changed since that time, there is nothing to suggest that I should depart from the main principles that arise from those judgements. These include the recognition that assessments are contextual and relative and that, in locations where development is directed, i.e. the BUA, some harm from new developments is to be expected. The key consideration for the decision maker is whether any identified harm crosses the threshold of being unreasonable. These are

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<sup>2</sup> Boyle and Kehoe -v- Minister for Planning [2012] JRC036; Winchester -v- Minister for Planning and Environment [2014] JRC118.

often complex and difficult judgements, and what constitutes unreasonable is not defined, but is a matter for the decision maker to assess in each particular case.

16. Turning specifically to the alleged harms identified in the refusal reason, it is helpful to separate them for analysis and then draw overall conclusions.

#### *Daylight/sunlight*

17. Directly to the east of the proposed extension is No 4 *Springland* and behind it, and to the side of the existing house, is No 5 *Springland* (Mrs Deans' property). These dwellings are housed within a 2-storey wing of *Springland* which has a traditional granite wall facing west, and containing ground and first floor windows, along with some rooflights. Mrs Deans kindly allowed me to view from her property, and I was able to see the appeal site from her first floor living space, and from the rooflights in her hobby room in the roof space. I did not gain access to No 4, but I am satisfied that I could accurately assess the relationship with its side windows and rooflights, which I assume serve habitable rooms; I also noted that No 4 appears to have a first floor window in the front (south) facing elevation.
18. The appeal proposal would be set well into the *Millbrook Place* site and not close to the boundary. At the Hearing, it was agreed that the side wall of the extension would be between 5.6 – 5.8 metres from the boundary, which is formed of a granite wall, which is about 2.8 metres high, and somewhat higher on the *Springland* side, due to a lower land level. The distance between the proposed extension and No 4 *Springland* was agreed to be 10.5 metres, and this includes the width of a driveway on the *Springland* side beyond the boundary wall.
19. The appellant submitted shadow studies which utilise the States of Jersey's terrain model. The modelling simulates the shadowing effects, with and without the proposal, at different times of day at 4 points in the year, these being the spring and autumn equinoxes, and the winter and summer solstices. This modelling demonstrates that the shadowing effects of the proposal on *Springland* would be very limited, amounting to a marginal increase in evening shadowing at the spring equinox, summer solstice, and autumn equinox (it is dark at this time at the winter solstice).
20. Whilst I do appreciate that Mrs Deans would not welcome any additional shadowing falling over her property (No 5) and her neighbour's (No 4), the test of policy GD1 is whether any effect would be unreasonable. Informed by the shadowing evidence and my site inspection, I am satisfied that any effects on daylight and sunlight would be negligible and would fall well below the unreasonable policy threshold.

#### *Privacy*

21. The proposed extension would not include any first floor side windows facing *Springland*. The planning authority's concern relates solely to potential overlooking from the east side of the balcony area. However, I do not share these concerns, for a number of reasons.

22. First, there is an existing projecting open balcony at first floor level, which allows sideways views and there are also first floor windows in the side elevation of *Millbrook Place*; this means that some overlooking towards *Springland* (and from *Springland* to the appeal property) is an established contextual factor. Second, the proposed balcony is small in size and further constrained by the swing of the opening doors, such that its frequency and duration of use is likely to be limited; it is just not large enough to be used for social gathering purposes, and is more likely to be utilised to let fresh air in to the extended bedroom on warm days. Third, the main aspect from the proposed balcony would be the southward view of the landscaped gardens, and not sideways to the east. Fourth, there is a reasonable separation distance, of over 10 metres, from the side of the balcony to the nearest windows in *Springland*. Fifth, whilst not determinative, neighbours who are most likely to be sensitive to any concerns about privacy, have not objected on these grounds; indeed, Mrs Deans made plain that she, personally, had no concerns about overlooking, or to someone taking a morning coffee on the balcony.
23. At the Hearing, there was some discussion about whether a planning condition requiring a privacy screen on the east side of the balcony would be justified. However, as I have assessed the relationship between the proposal and neighbouring properties to be acceptable without the need for mitigation, I do not consider that such a condition would pass the usual tests for planning conditions, most notably the test of necessity.

#### *Overbearing*

24. As a direct consequence of my findings above, I do not consider that the extension could be regarded as unreasonably overbearing.

#### **Conclusion and recommendation**

25. Whilst the proposal will result in some change in the local environment that will be experienced by near neighbours, the changes will be limited and will not result in unreasonable harm to living conditions enjoyed by occupants at Nos 4 & 5 *Springland*. I am satisfied that the proposal is acceptable with regard to the relevant policies contained within the BIP, and in particular policy GD1 concerning the health and wellbeing impact of new development.
26. I therefore recommend that the Minister **ALLOWS** this appeal and grants planning permission for the development proposed under planning application reference P/2023/1356. Other than the standard time limit and confirmation of plans conditions, I do not consider any further planning conditions are required.

*P. Staddon*

**Mr Philip Staddon BSc, Dip, MBA, MRTPI**