

**PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)**

Appeal under Article 108 (2) (b) against a refusal to grant planning permission

**Report to the Minister**

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

**Appellant:** LD Developments

**Planning application reference number:** P/2024/0304

**Date of decision notice:** 20 June 2024

**Location:** Le Feugere de La Marquanderie, La Route Orange, St. Brelade, JE3 8GP

**Description of development:** Construct first floor extension to North Elevation.

**Appeal procedure and date:** site inspection and hearing.

**Site visit procedure and date:** accompanied 29 October 2024; unaccompanied 1 November 2024.

**Hearing:** 31 October 2024

**Date of Report:** 20 November 2024

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**Introduction and relevant planning history**

1. The appeal concerns a refusal to grant permission for construction of a first-floor extension above an existing garage on the northern elevation of the property.
2. A previous application (P/2022/0515) for an extension in the same location was subject to a third-party appeal raised by residents of the neighbouring property to the east (Dene Court). The Minister issued a ‘split decision’ - allowing the appeal in respect of the proposed northern extension over the garage but refusing the appeal in respect of the other works at the property. The current proposal has been submitted to address the reasons for refusal.
3. The application was determined by the Infrastructure and Environment Department (the ‘Department’) using delegated powers. It was refused because:

“1. The proposed first floor extension by virtue of roof pitch and height, and proximity to the neighbouring property to the east, would unreasonably harm the amenities of neighbouring uses by creating a sense of overbearing enclosure. This is contrary to Policy GD1 of the Adopted Bridging Island Plan 2022.

2. The proposed first floor extension by virtue of design is considered to be incongruous in form and detail, and does not conserve, protect and contribute positively to the distinctiveness of the built environment. This is contrary to Policy GD1 of the Adopted Bridging Island Plan 2022.”

## **The appeal site and proposed development**

4. The appeal site is a substantial, two-storey detached property located to the south of La Route Orange, approximately 200 metres to the west of Waitrose at Red Houses. The property is set well-back from the road and is accessed via a gate through a wall of varying height along the northern boundary. The dwelling has granite-clad walls and a tile roof. The proposed extension would be constructed over an existing double-garage which projects northwards from the eastern end of the building. To the east lies Dene Court, which is a three-storey apartment block. Ground levels drop to the east. The boundary of the two properties is defined by a fence located on top of a step down in ground levels.
5. The proposal seeks to add a second storey to the existing garage. It would comprise an asymmetric pitched roof design, with an angle of approximately 45 degrees to the east. The proposed roof eaves line would be the same as existing. The northern end would be hipped, and this would be extended southwards to create a flat-roofed structure approximately 3.5 metres above eaves level. This has been introduced to reduce the height of the structure by 1 metre, to respond to the reasons for refusal as part of P/2022/0515. A linear three-pane high level window would be installed in the northern end of the wall.

## **Case for the appellant**

6. The appellant's grounds for appeal can be summarised:
  - The previous scheme was found to be in accordance with planning policy and the reasons for the decision being overturned on appeal have been addressed by the current application.
  - The proposed roof height has been reduced by 1 metre from the previous application and the massing has been reduced through the addition of a hipped gable to the north. The proposed extension is modest in scale and massing and in keeping with the existing character and would not create a sense of overbearing or oppressive enclosure to the apartments of Dene Court.
  - The decision does not consider the impact of Dene Court on the applicant's amenity and privacy which is unfairly compromised by the overbearing impact and windows of Dene Court. The proposals would help to restore privacy to the appellant's property.
  - The applicant has demonstrated that good standards of daylighting are maintained in accordance with industry standards. The proposals would not result in an unreasonable loss of light.
  - The statement that the proposals are incongruous in form and detail is subjective and has not been justified by the Department. The design is in keeping with the traditional context in terms of form, roof pitch, materials, and fenestration.

## **Case for the Department**

7. In addition to the reasons for refusal, the Department noted:
  - The impact of the proposals on Dene Court needs to take into account the current and proposed relationship between Dene Court and the appeal site, rather than at the time when Dene Court was built and any impact that Dene Court may have had.

- It is acknowledged that the proposed extension has been altered, but taking into account the appeal decision, as well as the representations, the proposed changes were not sufficient to overcome the reason for refusal.
- The second reason for refusal should have referred to Policy GD6 not GD1.
- The text in Policy GD6 is whether a high quality of design has been achieved that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting. In trying to overcome the previous refusal, the proposal is of a convoluted design that is out of keeping with the existing house and the area.

### Consultations

8. **Land Resource Management** issued two responses. The first (12 May 2024) sought further survey effort in relation to bats. The second (19 May 2024) confirmed no objection, provided the mitigation and habitat creation measures set out in a supporting letter from Nurture Ecology (4 April 2024) were required by condition.

### Representations

9. Eight comments were received during the application. These all objected to the proposals owing to concerns about effects on neighbouring amenity from loss of light and a sense of overbearing. Several of the responses referred to the previous appealed decision, suggesting nothing has changed. Noise and disturbance during construction is also referred to in some responses.

### Inspector's assessment

10. Article 19 of the Planning and Building (Jersey) Law 2002 as amended states "In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan". Planning permission may also be granted for proposals that are inconsistent with the Island Plan if there is sufficient justification for doing so. In reaching a decision, all material considerations should be taken into account.
11. The current Island Plan is the Bridging Island Plan, March 2022 ('the Island Plan'). Having regard to the policies within that plan, the reasons for refusal, the grounds for appeal, and points raised in representations, I conclude that the determining issues in this appeal are:
  - The effect of the proposals on neighbouring amenity.
  - The design of the proposed extension and its effect on the streetscape.

### The effect of the proposals on neighbouring amenity

12. The western face of Dene Court adjoins the boundary with the appeal site. There are windows relating to Flat 2 (ground floor); Flat 4 (middle floor); and Flat 6 (top floor) in this elevation.
13. Policy GD1 - Managing the health and wellbeing impact of new development states all development proposals must be considered in relation to their potential health, wellbeing and wider amenity impacts. Part 1 of the policy notes that development will only be supported where it will not unreasonably harm the amenities of occupants and neighbouring uses, including those of nearby residents. It identifies four different potential sources of impact. Those relevant to the current application are part 1(a), which relates to a sense of overbearing or oppressive enclosure and

part 1 (c), which relates to unreasonably affecting the level of sunlight and daylight to buildings and land that owners and occupiers might expect to enjoy.

14. The previous scheme (P/2022/0515) was refused, in part, because the Minister found the proposals to have an unreasonable impact upon neighbouring amenity “by virtue of loss of outlook, sunlight and overbearing appearance.”
15. I saw that the outlook from the bedroom window of Flat 2 is already compromised, owing to ground levels. It faces a vertical bank, in the order of 2 metres high, which has a fence on top. Whilst the wall and eaves height of the garage would not be increased, the angle of slope of the proposed roof would be increased compared to the present situation (from approximately 30° to 45°). This would act to bring the face of the roof closer to the side elevation of Dene Court than at present. The height of the roof would also be increased. Given the existing restricted outlook, I conclude that the proposals would have little effect on the outlook from Flat 2.
16. The proposed increase in roof height and pitch would have greater effects on the outlook from Flats 4 and 6. Flat 4 currently has an outlook of the upper part of the fence, the face and ridge of the roof and the sky beyond. The proposals would extend the height of the roof by approximately 2 metres and bring the face of the roof in the order of approximately 1 metre closer to the window. I conclude that this would act to exclude any wider outlook other than of the roof face and would lead to a feeling of oppressive enclosure.
17. Flat 6 currently enjoys a largely unobstructed view over the ridge of the garage roof to trees beyond and consequently has an open and airy outlook. The proposals would act to effectively truncate this outlook, through the introduction of the roof plane and ridge height to within approximately 6 metres of the window (as measured from Drawing No. 011).
18. The appellant has provided a daylight study (Appendix 6 of Statement of Case), which shows the effect of the proposals on afternoon light levels at the spring and autumn equinoxes and summer and winter solstices. This shows there would be no change in the shade experienced by Flat 2. Flat 4 would experience shading earlier in the day during the spring and autumn equinoxes (estimated as by 4pm and 5pm respectively). There would be no change in the shading experienced by the windows of Flat 6 at any point in the year.
19. The Bridging Island Plan recognises that development will result in changes in the relationship between properties. Consequently, Policy GD1 refers to ‘unreasonable impacts’ on neighbouring amenity. In assessing the ‘reasonableness’ of the predicted changes, I have taken into account that the affected windows serve second bedrooms. I also saw that these rooms also have additional windows, albeit on the north elevation. Whilst I do not find the effects on light levels to be unreasonable, I conclude that the proximity and height of the proposed roof, which would act to truncate and dominate the outlook from the upper windows, would result in unreasonable effects on neighbouring amenity as a result of a sense of overbearing and oppressive enclosure.

### The design of the proposed extension and its effect on the streetscape

20. Policy GD6 - Design quality of the Bridging Island Plan seeks a high quality of design that conserves, protects, and contributes positively to the distinctiveness of the built environment, landscape and wider setting. Factors to be assessed include the relationship to existing buildings, settlement form and distinctive characteristics of a place having regard to the layout, form and scale of the development; and the use of materials, details, colours and finishes relative to the character and identity of the area and its townscape setting. I have commented on the relationship to existing buildings above.
21. The proposed pitch of the roof and the asymmetric arrangement would mirror those of the western gable. Whilst I understand that the hipped gable and flattened ridge have been designed to reduce the overall height of the proposed structure, this would introduce a new roof feature onto the 'public' face of the building. I accept that there is an existing flat roof between the garage and main house, but this is obscured in views from the north.
22. The appellant has suggested that the building is not particularly visible in the streetscape. That does not accord with my observations. When walking along La Route Orange, views of the property are possible, particularly the upper storey, above the wall and through the gates. Ground levels rise on the northern side of La Route Orange and there is a raised footpath and access roads to housing there. I saw that when travelling along these raised paths, the front of the house was clearly visible.
23. I conclude that the proposed hipped roof would appear out of character with the building. The trio of narrow windows in the end wall would also appear inconsistent and out of place with the other styles of window present on the building. I note that the appellant considers that this is a minor matter and has suggested that the design could be modified, or the windows removed. However, I consider this to be more than a minor change capable of amendment at appeal. Overall, I conclude that the proposals are not consistent with Policy GD6.

### Other matters

24. The appellant maintains that his property is overlooked by the windows of Dene Court and the proposals would reintroduce a degree of privacy. Dene Court was consented and constructed some time ago, prior to the adoption of the current Bridging Island Plan. Thus, the relationships between the properties are well-established. The proposals require to be assessed against current planning policies. Based on my observations, the front of the appeal property is not a particularly private space, and views into the property are possible from the public domain. The area is currently used for parking, and I understand that there is additional amenity space to the rear of the property. Therefore, I do not consider that these concerns about privacy are a material consideration.
25. The planning history of the site, including the findings of the previous third-party appeal are a material consideration in this case. Whilst the Department and the Planning Committee considered the previous proposals to be acceptable, that view was not shared by the Inspector for the third-party appeal, or the Minister. The Inspector's report set out clear reasons for reaching a different conclusion to the Planning Committee, which the Minister accepted. It is therefore appropriate that the Department considered those reasons in reaching its view on the current

proposals. I acknowledge that the appellant has sought to address these reasons. Nevertheless, in my view the pitch, height and proximity of the roof would still result in a sense of overbearing enclosure.

26. I note the appellant's concerns that undue weight may have been given to the views of neighbours. However, I am content that the proposals have not adequately addressed the concerns raised during the previous appeal in respect of creating an overbearing aspect to properties in Dene Court.

#### Conditions

27. I invited parties to submit a list of any conditions that should be appended, should permission be granted. The Department suggested a single condition:  
"The measures outlined in the letter dated 04 April 2024 from 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 Chief Officer prior to works being undertaken.  
Reason: To ensure the protection of all protected species in accordance with the requirements of policies SP5 and NE1 of the Adopted Bridging Island Plan 2022."
28. I find this condition would address comments made by the Land Management Team and should be applied.

#### **Conclusions**

29. For the reasons set out above, I conclude that the proposals would not be consistent with the Bridging Island Plan 2022.

#### **Recommendations**

30. I recommend that the appeal should be dismissed, and that planning permission should be refused.
31. If the Minister disagrees with my recommendation and determines to grant planning permission, then I recommend that this should be subject to the condition, as set out in paragraph 27 above.

*Sue Bell*

Inspector 20 November 2024