

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005

AND SECTION 19 OF THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS) ORDINANCE, 2007

NOTIFICATION OF REFUSAL OF PLANNING PERMISSION

PROPOSALS: Erect two dwellings to north of site (Protected Building and Trees) (Revised Scheme).

LOCATION: The Manor, Brock Road, St. Peter Port.

APPLICANT: Manor House Limited

I refer to the application referred to below received as valid on 21/09/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 03/04/2023

Drawing Nos: DRP Architecture - 2010 DR-01, DR-02, DR-03, DR-100, DR-200, DR-201, DR-210, DR-211, DR-300,

Application Ref: FULL/2022/1764

Property Ref: A205290000

The Development & Planning Authority has decided to refuse your application under the provisions of section 16 of the Land Planning and Development (Guernsey) Law, 2005 for the following reasons:-

1.By virtue of their siting and design, the proposed dwellings would have a moderate adverse effect on the setting of the protected building which would not be outweighed by the benefits of the development and/or its contribution to the vitality of a Main Centre. The proposal is contrary to Policy GP5.

2.Works are proposed within the root protection area of protected trees. The information submitted has not demonstrated that the development would not adversely affect the health and vitality of the protected trees, particularly trees T7 and T10. In addition, the size and location of trees T7 and T10 raises concerns about the potential for post development pressure to cut back or fell the trees which would diminish the overall contribution the trees make to the character and appearance of the Conservation Area. The proposal fails to accord with Section 42 of the Law and Policy GP4.

3. With regards to sustainable design, the information submitted is not sufficient to demonstrate that the proposal complies with Policy GP9 with particular regard to how the proposal has been located and orientated to minimise the use of energy and resources, the form of construction, the use of renewable energy technologies and the proposed building materials.

OTHER REMARKS:-

Right of appeal against planning decisions

Your attention is drawn to the provisions of Section 68(1) of the Land Planning and Development (Guernsey) Law 2005, which provides a right of appeal, against a decision to refuse an application for planning permission or outline planning permission to the Planning Tribunal on the merits. An appeal to the Planning Tribunal under section 68 of the Law against this decision must be made before the expiry of the period of six months beginning with the date on which the Authority made this decision.

Copy of representations made

In reaching this decision the Development & Planning Authority took into account any written consultations made under Section 11(1) of the Land Planning and Development (General Provisions) Ordinance, 2007 ('the Ordinance'). A copy of any consultation responses made to the Authority under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

A J ROWLES

Director of Planning
Planning Service

PLANNING APPLICATION REPORT

Application No: FULL/2022/1764
Property Ref: A205290000
Valid date: 21/09/2022
Location: The Manor Brock Road St. Peter Port Guernsey GY1 1RB
Proposal: Erect two dwellings to north of site (Protected Building and Trees)
(Revised Scheme).

Applicant: Manor House Limited

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. By virtue of their siting and design, the proposed dwellings would have a moderate adverse effect on the setting of the protected building which would not be outweighed by the benefits of the development and/or its contribution to the vitality of a Main Centre. The proposal is contrary to Policy GP5.
 2. Works are proposed within the root protection area of protected trees. The information submitted has not demonstrated that the development would not adversely affect the health and vitality of the protected trees, particularly trees T7 and T10. In addition, the size and location of trees T7 and T10 raises concerns about the potential for post development pressure to cut back or fell the trees which would diminish the overall contribution the trees make to the character and appearance of the Conservation Area. The proposal fails to accord with Section 42 of the Law and Policy GP4.
 3. With regards to sustainable design, the information submitted is not sufficient to demonstrate that the proposal complies with Policy GP9 with particular regard to how the proposal has been located and orientated to minimise the use of energy and resources, the form of construction, the use of renewable energy technologies and the proposed building materials.
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OFFICER'S REPORT**Site Description:**

The site comprises of a large Edwardian Villa that sits within relatively large garden grounds and forms a corner plot to the south-west of the junction between Brock Road and Elm Grove. The building has been converted into flats and the whole of the building is a protected building. The roadside boundary to the east comprises of a low granite

wall with hedging, the north boundary comprises of a high granite wall and both boundaries are lined on the inside of the site by mature trees. All of the trees on the site are the subject of a Tree Protection Order. The site is in the St Peter Port Conservation Area and Main Centre Outer Area.

Relevant History:

02/03/2022 – FULL/2021/1745 – Application refused to erect two dwellings to north of site (Protected Building and Trees)

Existing Use(s):

Residential use class 2 - Flats

Brief Description of Development:

Planning permission is requested to erect 2, three bedroom dwellings to the north of the existing building. The dwellings are proposed to be a modern three storey flat roof design and finished with a mix of rendered and composite timber clad walls, uPVC windows and an Alkor roof.

The application is supported by Tree Management and Impact Assessment reports dated 13/08/2020 and 01/08/2022 and a letter dated 02/08/2022 from the agent which sets out details of the history of the existing building and provides commentary on policies of the Island Development Plan.

Relevant Policies of any Plan, Subject Plan or Local Planning Brief:

Policy MC2: Housing in Main Centres and Main Centre Outer Areas

Policy GP4: Conservation Areas

Policy GP5: Protected Buildings

Policy GP8: Design

Policy GP9: Sustainable Development

Policy IP7: Private and Communal Parking

Policy IP9: Highway Safety, Accessibility and Capacity

Representations:

None

Consultations:

Agriculture, Countryside & Land Management Services, 03/03/2023

"Your email of 3rd Jan 2023 requested an opinion as to the impact of the proposed development at The Manor, Brock road, on: 1) the protected trees, during construction and 2) from "post development pressure". Following on from the previous planning application ref: FULL/2021/1745, which was refused, a further application, FULL/2022/1764, was submitted which attempts to address the concerns raised on the

previous one. I have tried to answer the questions, below, in the order you have raised them in your email and I have added further information, citing British Standard BS5837:2012 which provides the basis for any conclusions and recommendations (your text in italics):

I still have concerns about the impact of the development on the trees both during and after construction. With regards to the construction phase, if as they say damage has been caused to tree T7 already by works to the substation, would this effect how susceptible the tree may be to further works/damage within the RPA? If damage has been caused to the tree by the substation would this not make it more important that no further harm is caused to the tree?

I concur that causing further damage on top of that caused by the installation of the substation will be detrimental to the health of the tree. There needs to be a clearer statement in the Loyd report about what mitigations and offsets might be applied to T7 & T10.

BS 5837:2012 states:

5.3.2 The cumulative effects of incursions into the RPA, e.g. from excavation for utility apparatus, are damaging and should be avoided. Where there is evidence that a tree has been previously subjected to damage by construction activity, this should be taken into account when considering the acceptability of further activity within the RPA.

With regards to the post development pressure the tree report suggest that tree T7 is going into a period of managed decline and therefore I believe they are suggesting the size and stature of the tree is going to reduce limiting the impact on future occupiers of unit 2? However, if tree T7 was heading in this direction, I am not sure how quickly and by how much it would reduce/decline and as a protected tree should this tree be removed in future we would want to ensure replacement trees would be planted which could eventually reach a similar stature but to me unit 2 seems too close to the north boundary to enable any tree(s) of a substantial stature to become established due to the likely post development pressure.

Tree T7 along with T10 and a number of the other larger boundary trees form an important three dimensional living greenspace, in terms of their visual impact and amenity and this is provided in an otherwise intensively developed area. The benefits which derive from trees of this stature are proportionately greater per unit volume of tree canopy, when compared to an equivalent volume of smaller trees. These benefits include pollution removal, sound attenuation, shelter, shade, biodiversity and carbon sequestration. It follows that their retention and protection is justified and that, crucially, the space required to enable trees to reach their full stature should, where possible, be preserved both below and above ground.

It is difficult to answer the question about the rate of decline since it depends on a number of variables, some of which are difficult to influence directly, such as future climactic conditions. Decline may be reversible or can at least be slowed down if stress and its causes can be mitigated or compensated for. Once a tree's system becomes strained (a physiological state reached by a tree which has been stressed beyond the

point of recovery) death of the tree is inevitable but this could take several years, again depending on a number of factors.

I agree that post development pressure, from future occupants, will likely increase the risk of any replacement tree being removed before it reaches its full potential size, even where the tree is protected by a TPO. Although the loss of direct sunlight to the proposed new dwelling is limited, since the tree is located to the north of the dwelling, it is the loss of indirect light that would have the greatest impact in a site already well shaded from both the existing building and other nearby trees. Another contributory factor to future pressure for removal is the perceived risk triggered by the proximity of large trees to a dwelling house.

Relevant sections from BS 5837:2012:

5.2 Constraints posed by existing trees

5.2.4 Particular care is needed regarding the retention of large, mature, over-mature or veteran trees which become enclosed within the new development (see 4.5.11). Where such trees are retained, adequate space should be allowed for their long-term physical retention and future maintenance.

NOTE The presence of large species trees is increasingly being seen as advantageous, since it contributes to climate change resilience, amongst other benefits. Achieving successful integration of large species trees requires careful consideration at the conceptual and design stages.

5.2.2 The attributes listed in the Note to 5.2.1 can significantly affect potential land use or living conditions, including the effect of the tree on daylight and sunlight. Whilst either shade or sunlight might be desirable, depending on the potential use of the area affected, the design should avoid unreasonable obstruction of light.

NOTE 1 An indication of potential direct obstruction of sunlight can be illustrated by plotting a segment, with a radius from the centre of the stem equal to the height of the tree, drawn from due north-west to due east, indicating the shadow pattern through the main part of the day.

A general comment on the phrase “managed decline” as referred to in the Loyd report. It is perhaps a point of grammar but decline is only managed if it is indeed, “managed” i.e. where, as a consequence of decline, some deliberate and targeted intervention is made. The pedant in me would state that, according to the Loyd report, tree T7 is simply “in decline”. I have not assessed the tree and it may well require management, however it is the case that all the trees on this site, located as they are adjacent to either a road or a building, will require management to a greater or lesser degree. The questions to answer are firstly, whether tree T7 offers significant public amenity, even if that amenity has been degraded somewhat by its reported decline and, secondly, would an improved T7 or replacement for T7 continue to offer the same amenity into the future? Given T7’s juxtaposition relative to the road and to the buildings it is my view that the public amenity, in particular its visual public amenity is very significant. So even if the tree were lost to, say disease, it would be important to preserve the space, above and below ground to enable a replacement to grow and reach a tree of equal stature.

General points:

The Loyd report under Section 8.1 "Potential for risk" refers to excavation (within the RPAs of the trees) being "...a small proportion of the maximum acceptable as set out within guidelines (Recommendations) of (the) British standard..." In fact no such maximum or indeed any limit is given within the British Standard. The only reference made to a percentage impact on an RPA relates to the placement of hard surfaces over *undisturbed* ground which states no more than 20% of the RPA should be covered with such a surface.

The Loyd report cites a percentage encroachment of 7% for T7 and 3% for T10. However it is not clear whether this relates to the strict footprint of the proposed dwelling or if this includes any working space around the footprint.

Where encroachment into the RPA is unavoidable the British Standard is unambiguous in requiring an arboriculturist to demonstrate that a tree can remain viable, how lost RPA can be compensated and propose specific mitigations. See excerpt 5.3.1 below:

BS 5837:2012 states:

5.3 Proximity of structures to trees

5.3.1 The default position should be that structures (see 3.10) are located outside the RPAs of trees to be retained. However, where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree(s) (see Clause 7). If operations within the RPA are proposed, the project arboriculturist should:

- a) demonstrate that the tree(s) can remain viable and that the area lost to encroachment can be compensated for elsewhere, contiguous with its RPA;
- b) propose a series of mitigation measures to improve the soil environment that is used by the tree for growth.

5.3.4 A realistic assessment of the probable impact of any proposed development on the trees and vice versa should take into account the characteristics and condition of the trees, with due allowance and space for their future growth and maintenance requirements. To maximize the probability of successful tree retention, the following factors should be taken into account during the design process.

- a) Shading. Shading by trees affects buildings and open spaces.
- b) Shading of buildings. Shading of buildings by trees can be a problem, particularly where there are rooms which require natural light. Proposed buildings should be designed to take account of existing trees, their ultimate size and density of foliage, and the effect that these will have on the availability of light.
- c) Shading of open spaces. Open spaces such as gardens and sitting areas should be designed to meet the normal requirement for direct sunlight for at least a part of the day.

NOTE 1 Shading can be desirable to reduce glare or excessive solar heating, or to provide for comfort during hot weather. The combination of shading, wind speed/turbulence reduction and evapo-transpiration effects of trees can be utilized in conjunction.

- d) Future pressure for removal. The relationship of buildings to large trees can cause apprehension to occupiers or users of nearby buildings or spaces, resulting in

pressure for the removal of the trees. Buildings and other structures should be sited allowing adequate space for a tree's natural development, with due consideration given to its predicted height and canopy spread. However, this does not mean that trees should not be retained within any particular distance of a structure (see Table A.1 for new planting).

- e) Seasonal nuisance. Trees are naturally growing and shedding organisms. Leaves of some species can cause problems, particularly in the autumn, by blocking gullies and gutters. Fruit can cause slippery patches, and accumulation of honeydew can be damaging to surfaces and vehicles. Buildings, footpaths and hard-standing areas should be designed with due consideration to the proximity of retained trees, especially in terms of their foliage, flowering and fruiting habits. Where conflicts might arise, detailed design should address these issues, e.g. use of non-slip paving; provision of leaf guards or grilles on gutters and gullies; provision of access and means of maintenance.

The Loyd report refers to a need for a tree protection plan (TPP). If permission was granted for this or any other development on this site the drafting and proper implementation of a TPP is essential because of the number of important trees on site and because of the very real risk that contractors would regard the whole area as a building site for the storage, handling and mixing of potentially injurious materials, parking for contractor vehicles and plant/equipment all of which would have the capacity to compact and damage the soil and its structure. A TPP is a recommendation in BS5837 and for the sake of completeness I have reproduced the text from section 5.5 of the document for your information.

5.5 Tree protection plan

5.5.1 The tree protection plan should be superimposed on a layout plan, based on the topographical survey (see 4.1 and 4.2) and showing all hard surfacing and other existing structures within the RPA.

5.5.2 The plan should clearly indicate the precise location of protective barriers to be erected to form a construction exclusion zone around the retained trees. It should also show the extent and type of ground protection, and any additional physical measures, such as tree protection boxes, that will need to be installed to safeguard vulnerable sections of trees and their RPAs where construction activity cannot be fully or permanently excluded.

5.5.3 These measures should be indicated on the plan, accompanied by descriptive text as required. Barrier and ground protection offsets should be dimensioned from existing fixed points on the site to enable accurate setting out. The position of barriers and any ground protection should be shown as a polygon representing the actual alignment of the protection (see 4.6).

5.5.4 Where temporary access is to be permitted into a construction exclusion zone, the extent of the set-back of the permanent barrier should be clearly indicated, along with the temporary ground protection measures to be adopted for the duration of the works within the RPA (6.2.3).

5.5.5 These details should be incorporated into relevant subsequent plans, method statements used for design purposes and construction drawings issued for use on site, to ensure that all interested parties are fully aware of the areas in which access and works may and may not take place.

5.5.6 To avoid disturbance to the physical protection, it is essential to make allowance for, and plan, all construction operations which will be undertaken in the vicinity of trees. Factors that need to be considered include, but are not limited to:

- a) site construction access;
- b) the intensity and nature of the construction activity;
- c) contractors' car parking;
- d) phasing of construction works;
- e) the space needed for foundation excavations and construction works;
- f) the availability of special construction techniques;
- g) the location and space needed for all temporary and permanent apparatus and service runs, including foul and surface water drains, land drains, soakaways, gas, oil, water, electricity, telephone, television or other communication cables;
- h) all changes in ground level, including the location of retaining walls, steps and making adequate allowance for foundations of such walls and backfillings;
- i) working space for cranes, plant, scaffolding and access during works;
- j) space for site huts, temporary toilet facilities (including their drainage) and other temporary structures;
- k) the type and extent of landscape works which will be needed within the protected areas, and the effects these will have on the root system;
- l) space for storing (whether temporary or long-term) materials, spoil and fuel and the mixing of cement and concrete;
- m) the effects of slope on the movement of potentially harmful liquid spillages towards or into protected areas.

NOTE Attention is drawn to the Construction (Design and Management) Regulations 2007 [5] and the Construction (Design and Management) Regulations (Northern Ireland) 2007 [6].

I trust these comments prove helpful but please do come back to me if you need more information”.

Traffic Services, 03/02/2022 in response to previous application FULL2021/1745

“Further to our meeting and review of the plans in respect of the proposed new build at the Manor House, I would comment as follows from a THS perspective.

Although the new build is likely to be considered an intensification of the site from a planning perspective, the current unregulated parking at the site is heavily utilised by the tenants of the existing property, and as such, irrespective of the number of dwellings within the property boundary, unless areas of the garden were made into parking, the number of vehicle movements to and from the site is unlikely to materially change if this application is approved.

As discussed, I understand the risk to pedestrians cited within consultation responses that you have received, and whilst acknowledging that if a section of the foliage adjacent to the access was removed, the granite pillars form the significant obstruction to the sightlines. Ultimately, as an existing access that has been in use for many years, the experiential aspects of driver behaviour when egressing are the biggest factor in relation to the road safety risk at the site. On the basis of my previous comment regarding the number of vehicle movements not increasing under this application, my

view is that the removal of foliage could actually encourage drivers to use less caution when egressing. Fundamentally, the geometry of the access in relation to the traffic signals and junction is not the cause of the road safety risk per se, it is the responsibility of the driver egressing to stop and check for pedestrian movements before crossing the footpath.

Therefore, to confirm my overall analysis of this application, I would raise no objections from a traffic management perspective, and the road safety risk at the access is not increased or changed under this application. THS would not object to this application on either grounds.

The above said, I believe it would be appropriate for the concerns raised in relation to pedestrian safety highlighted and my comments above to be conveyed to the applicant. If the applicant wishes to contact me directly, I will be happy to advise them and assist as necessary”.

Summary of Issues:

The main issues in deciding this application are:

1. The impact of the development on the setting of the protected building.
2. The impact of the development on the protected trees.
3. The design and impact of the development on the character and appearance of the Conservation Area.
4. The impact of the development on the amenity of people living in the area.
5. Whether the development would result in a satisfactory living environment for the occupiers of the new dwellings.
6. Road safety and traffic management issues.

Assessment against:

- 1 - Purposes of the law.**
- 2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.**
- 3 - General material considerations set out in the General Provisions Ordinance.**
- 4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).**

As set out in Policy MC2, the majority of the Island's housing supply is to be provided within and around the Main Centres. The site is located in a Main Centre Outer Area and does not form Important Open Land. Current evidence regarding private market housing suggests a need for homes of 1-3 bedrooms, with an emphasis on 2 and 3 bedrooms. The proposal broadly reflects current housing need and taking into account the layout and character of the site and surrounding area, the proposed mix and type of housing is considered to be appropriate in this case. As such Policy MC2 supports the development of the site for housing where it accords with all other relevant policies of the Island Development Plan.

The impact of the development on the setting of the protected building

The application is supported by a covering letter which sets out the applicants' reasons why they consider the proposal does not impact on the setting of the protected building and it concludes that the development will make a positive contribution to the setting. Whilst the Planning Service is in agreement with some aspects of the submitted information, other parts demonstrate the applicant does not have a full appreciation of the setting of this protected building. Furthermore it does not set out why any effect on the setting of the protected building will be outweighed by the 'benefits' as defined by Policy GP5.

The existing building is a large Edwardian Villa that sits within relatively large garden grounds, which contain a group of trees that are subject to a Tree Protection Order. Public views of the protected building from the adjacent streets are limited to glimpsed views over boundary walls and through the tree canopy/trunks. Views are also available of the building from within the garden grounds. The building fronts onto a front garden, which includes a driveway that gives access to two car parking areas to the east and north of the building.

A pair of modern semi-detached three storey dwellings are proposed to the north of the protected building. This area of the site contributes to the setting of the protected building. However, it is not the most important part of the setting (the most important part would be the front garden) as it has been eroded by car parking although it contributes to the setting of the protected building by being part of the garden grounds. It is therefore considered that the value of this part of the site to the setting of the protected building to be medium.

The closest part of the proposed dwellings is 2 metres from the protected building and is set back approximately 8 metres from its front building line. The proposed dwellings will obscure views of the west elevation of the protected building. Due to the scale of the proposed dwellings they will appear subservient to the protected building. The proposed dwellings are of a contemporary appearance which does not attempt to draw from the architectural style or elements of the Edwardian protected building. The proposed development will result in the loss of three protected trees, although they are relatively small trees. Drawing the above considerations together, it is concluded that the impact of the development on the setting of the protected building would be moderate.

Policy GP5 requires any harm to the setting of the protected building to be balanced against the social, economic or other benefits; or the contribution the development will make to the vitality of a Main Centre. As noted above, the submitted application has not attempted to explain how the development might achieve these benefits.

With regards to the social, economic or other benefits, providing two new dwellings will bring benefits in so far that 3 bedroom houses will contribute to meeting housing needs. However, the benefits would be limited to the overall need for housing on the Island and would not outweigh the harm to the setting of the protected building. Similarly there would be economic benefits of building two dwellings, but the same benefits could accrue by building dwellings on land that would not negatively affect the setting

of a protected building. With regards to the vitality of a Main Centre, providing dwellings in a Main Centre will contribute to its vitality.

With regards to the setting of the protected building, the application is similar (i.e. the location and scale/mass) to the previously refused application, but the appearance of the dwellings has changed. The change in external appearance does not alter the main reasons why the setting of this protected building is harmed, with the main issues being the siting, scale and mass of the dwellings and the effect on setting would only be marginally reduced if the appearance of the dwellings was drawn from the Edwardian architecture of the protected building. Overall it is concluded that by virtue of their siting and design, the proposed dwellings would have a moderate adverse effect on the setting of the protected building which would not be outweighed by the benefits of the development and/or its contribution to the vitality of a Main Centre. The proposal is contrary to Policy GP5.

The impact of the development on the protected trees

All of the trees on the application site are subject to a Tree Protection Order. The application drawings shows development in close proximity to the protected trees, with 3 protected trees to be removed.

There is a statutory duty under Section 42 of The Land Planning and Development (Guernsey) Law, 2005, to secure as far as possible that existing trees are protected and to pay special attention to the desirability of protecting that tree or land, when exercising functions with respect to land or buildings in the vicinity of a protected tree.

The existing trees contribute to the setting of the protected building and make a significant positive contribution to the character and appearance of the Conservation Area. Trees T7 and T10, along with a number of the other larger boundary trees, form an important three dimensional living greenspace, in terms of their visual impact and amenity and this is provided in an otherwise intensively developed area. The benefits which derive from trees of this stature are proportionately greater per unit volume of tree canopy, when compared to an equivalent volume of smaller trees. These benefits include pollution removal, sound attenuation, shelter, shade, biodiversity and carbon sequestration. Therefore their retention and protection is justified and, crucially, the space required to enable the trees to reach their full stature should, where possible, be preserved both below and above ground.

The application is supported by Tree Management and Impact Assessment reports which provide an assessment of the current condition and health of 33 protected trees, an assessment of the impact of the development on tree T10 and measures to mitigate risk for potential damage caused during construction.

It is proposed to remove trees T3, T4 and T5. Due to their size and location, these trees are relatively less important than other trees along the boundary of the site and their contribution to public visual amenity is limited.

Tree T7 is classified as a category B Oak tree and T10 is a category A Beech tree. Trees T7 and T10 are not shown to be felled but due to the siting of the northern-most

dwelling, works would be required within the root protection area of the trees, calculated as 7% and 3% of the root protection areas respectively in the Tree Management and Impact Assessment reports. The Tree Management and Impact Assessment reports state that extent of excavation within the root protection area is only a small proportion of the maximum acceptable, as set out within the guidelines of the British Standard. It goes on to conclude that although the roots of T10 would be impacted to some extent, through careful management and monitoring of the construction process it is anticipated that this will have no effect on the health of the tree nor impede on its continued development. With regards to T7, the report concludes that the tree is declining following considerable root damage from the construction of the substation which will have had a life-limiting effect on the tree which will result in it becoming a managed declining tree requiring extensive remedial works as the crown declines and the eventual loss of the tree. The Tree Management and Impact Assessment reports set out measures to reduce the impact on trees during construction including the use of tree protection fencing, construction exclusion zones, an arboricultural oversight and the use of a toed foundation system, with further mitigation through additional tree planting along the boundary to the north of the proposed dwellings. In addition, the agent notes that the encroachment of the works on the root protection area of trees T7 and T10 will be significantly less than the existing infrastructure encroachment.

With regards to the comments in the Tree Management and Impact Assessment reports about the encroachments within the root protection areas not exceeding maximum acceptable guidelines, it is noted that no such maximum or indeed any limit is given within the British Standard. The only reference made to a percentage impact on a root protection area relates to the placement of hard surfaces over undisturbed ground which states no more than 20% of the root protection area should be covered with such a surface. In addition, it is unclear whether the stated encroachments into the root protection areas (3% and 7%) relate to the strict footprint of the proposed dwelling or if this includes any working space around the footprint. In addition, the plans indicate the parking area would be extended within the root protection area of T10. With regards to the proximity of structures to trees, section 5.3.1 of British Standard 5837:2012 states that the default position should be that structures are located outside the root protection areas of trees to be retained. Where encroachment into the root protection area is unavoidable the British Standard is unambiguous in requiring an arboriculturist to demonstrate that a tree can remain viable, how lost root protection areas can be compensated and to propose specific mitigations.

The Tree Management and Impact Assessment report does not assess the impact of the development on tree T7 but concludes that even without the proposed development the tree is in decline. No indication of the rate of decline is given but the reports classify the tree as a category B which relates to trees of moderate quality and a life expectancy of at least 20 years. The rate of decline depends on a number of variables, some of which are difficult to influence directly, such as future climatic conditions. Decline may be reversible or can at least be slowed down if stress and its causes can be mitigated or compensated for. Once a tree's system becomes strained (a physiological state reached by a tree which has been stressed beyond the point of recovery) death of the tree is inevitable but this could take several years, again depending on a number of factors.

With regards to tree T7, an assessment of this tree should include whether it offers significant public amenity, even if that amenity has been degraded somewhat by its reported decline and, secondly, would an improved T7 or a replacement for T7 continue to offer the same amenity into the future? Given the juxtaposition of T7 relative to the road and to the buildings, it is concluded that the public amenity, in particular its visual public amenity is very significant. As a result, even if the tree were lost, for example to disease, it would be important to preserve the space, above and below ground to enable a replacement to grow and reach a tree of equal stature. In addition, although it is advised that the proposed works will be less invasive than previous works to install the substation, no details have been provided about the previous works undertaken to install the substation and if these previous works have caused damage to the health and vitality of the tree, it is possible that the tree would now be more susceptible to damage caused by further works, which could accelerate its reported decline.

Although a tree is proposed along the boundary to the north of the proposed dwellings, there are concerns that there is insufficient space for a tree of any substantial stature to establish and mature in this location.

In summary, it has not been demonstrated that the development would not adversely affect the health and vitality of the protected trees, particularly trees T7 and T10. The proposal fails to accord with Section 42 of the Law.

In addition to direct impacts on trees resulting from the construction of the development, the actual or potential risk of damage, the impact on living conditions and safety considerations associated with developments within close proximity to large mature trees also requires consideration. British Standard 5837:2012 recognises the potential effect of mature trees on residential amenity for example shading, apprehension to occupiers or users, leaf fall and the accumulation of honeydew causing damage to surfaces and vehicles. Allowing a development underneath large trees will increase the pressure to lop, top or fell the trees from future occupiers of the dwellings.

Trees T7 and T10 are not shown to be felled but due to the size and location of T7 within the modest back garden of the northern most dwelling and the spread of the canopies of both of these trees relative to the front and rear elevations of the northern most dwelling, there are concerns that the trees would considerably shade the northernmost dwelling, particularly its garden, as well as potentially causing apprehension to occupiers due to the proximity of large trees to a dwelling and issues with leaf fall. With regards to shading, although the loss of direct sunlight to the proposed new dwelling is likely to be limited, as the tree is located to the north of the dwelling, it is the loss of indirect light that would have the greatest impact on a site already well shaded from both the existing building and other nearby trees.

Post development pressure to cut back or fell the trees would reduce the visual amenity of the trees. In addition, should tree T7 decline to the point that it requires removal, post development pressures are likely to increase the risk of any replacement tree being removed before it reaches its full potential size. If post development pressure increased to keep the trees cut back or to fell the trees, this would diminish the overall

contribution the trees make to the character and appearance of the Conservation Area and to the setting of the protected building, contrary to Policies GP4 and GP5.

The design and impact of the development on the character and appearance of the Conservation Area

The existing protected building and its boundary walls as well as the existing trees contribute individually and collectively to the character and appearance of the Conservation Area. The boundary walls and trees help to screen the existing building from public views from outside the site.

The proposed dwellings will be visible from outside the site, but this will only be over the boundary walls and in glimpses between the trees. The agent proposes the planting of a tree to the north of the dwellings in the gap in the tree line although no details have been provided. The proposed dwellings themselves have a coherent architectural composition and design and the buildings are fit for purpose. The design and appearance of the proposed dwellings in themselves will have a limited effect on the character and appearance of the Conservation Area.

However, as discussed above, there are concerns about the impact of the development as it has not been demonstrated that development would not have an adverse effect on the health and vitality of the protected trees and there are concerns that there is the potential for post development pressure to keep the trees cut back or to fell the trees. The cutting back or felling of trees T7 and T10 would diminish the overall contribution the trees make to the character and appearance of the Conservation Area, contrary to Policy GP4.

The impact of the development on the amenity of people living in the area

The revised design of the dwellings, incorporating only obscure glazed windows serving bathrooms and ensuites or high level windows serving dressing areas to the rear (west) elevation, has the potential to address previous objections regarding the impact on the privacy of the neighbouring property to the west.

The proposed dwellings would be sited in close proximity to windows of flats in the north elevation of the existing building. Whilst the scale and siting of the proposed dwellings will reduce the outlook from some ground and 1st floor study and bedroom windows, due to a combination of the nature of the rooms served, the size, layout and outlook from other windows in the affected flats, the proposed dwellings are unlikely to have a material adverse effect on the amenities of the occupiers of the existing flats.

Whether the development would result in a satisfactory living environment for the occupiers of the new dwellings

The health and well-being of the occupiers of the development requires consideration as set out in part (d) of Policy GP8 and explained in more detail in Annex I (Amenities). The objective to build at high densities is to be balanced with, but not override, the need to create acceptable living environments. Although there are no rigid standards for amenity provision, the factors to be considered include internal space provision, privacy, aspect/outlook, access to external open space and daylight/sunlight.

The combination of the layout and design of the dwellings provides a scheme with adequate daylight, sunlight, amenity space, aspect and outlook. The development would provide a satisfactory quality of residential environment for future occupiers, in accordance with Policy GP8.

Road safety and traffic management issues

As part of the previously refused application Traffic Services advised that the existing unregulated parking at the site is heavily utilised by the tenants of the existing property and as the proposal does not increase the size of the parking area, the number of vehicle movements to and from the site is unlikely to materially change as a result of this application. Traffic Services concluded that they raised no objections from a traffic management perspective, and that the road safety risk at the access is not increased or changed under this application. Traffic Services did not object to the previous application on either grounds. The parking and access arrangements of this current application remain the same as the previous application and therefore the previous conclusions of Traffic Services remain valid.

The proposed car parking provision is adequate for the existing and proposed dwellings and accords with the Parking Standards and Traffic Impact Assessment Supplementary Planning Guidance. There would be potential to provide secure covered storage for bicycles. Further details of the bicycle storage would be required but as the application is not otherwise acceptable this has not been explored further at this stage.

Other Matters

Policy GP9 is wide-ranging and includes requirements for sustainable design and construction with reference to the design, layout and orientation of buildings, flood risk and surface water run-off, renewable energy, the use of materials and the management of waste.

A letter from the agent states that the dwellings will be highly energy efficient with high levels of insulation along with modern fittings and appliances to reduce energy and water use. However, no firm commitments are made and a number of proposals are not followed through on the proposed plans such as the installation of air source heat pumps and solar/photo voltaic panels. The information submitted is not sufficient to demonstrate that the proposal complies with Policy GP9 with particular regard to how the proposal has been located and orientated to minimise the use of energy and resources, the form of construction, the use of renewable energy technologies and the proposed building materials.

All material considerations as set out in the Land Planning and Development (Guernsey) Law, 2005 and the Land and Planning (General Provisions) Ordinance 2007 have been taken into account in the assessment of this application.

It is recommended that the application is refused.

Date: 31/03/2023