

STATES OF JERSEY

Report to the Minister for Growth, Housing and the Environment

3rd party appeal by Mr & Mrs Burgess under Article 108 (2) (a) of the Planning and Building (Jersey) Law 2002, as amended, against the grant of planning permission ref RC/2019/0307 to vary standard condition A attached to planning permission ref RC/2013/1888, thereby extending the currency of the original planning permission ref 2009/0801 for the construction of an extension and balcony above the ground floor car park at Haut Rive Penthouse, Le Mont de la Rocque, St Brelade, JE3 8BQ.

Date of hearing and site inspection: 6 August 2019

Inspector: Roy Foster MA MRTPI

Introduction

1 The appeal site is part of a short terrace of houses built into a steep bank rising from La Rue du Crocquet to Le Mont de la Rocque. Many of the individual buildings within the terrace are divided vertically with lower dwellings fronting the former street and upper units accessed from the latter. The appeal site is an upper unit (Haut Rive Penthouse) above one of the lower units (Haut Rive). Haut Rive Penthouse has a covered car port fronting Le Mont de la Rocque while its living accommodation is at the 'rear' overlooking the sea.

2 The land on the opposite side of Le Mont de la Rocque continues to rise steeply up the hill away from the sea. Opposite the appeal site is Clos des Pins, a substantial house owned by the appellants. Further up the road (beyond a side garden to Clos des Pins) are the recently built La Rocque Apartments. Beyond the terrace containing Haut Rive Penthouse is another substantial recent development, Martel View.

3 The permitted scheme would provide an extension to the accommodation at Haut Rive Penthouse in the form of a library room above the present car port opening onto a new balcony facing the sea. Planning permission was first granted in 2009 and then renewed in 2014 and again in 2019.

The main issues in this appeal

4 It is clear from the appeal documents, discussion at the hearing and the evidence of my site visit that the main issues in this appeal are the effects of the scheme on (a) the amenities of nearby residents through the potential for loss of privacy and/or increased noise and disturbance and (b) the character and appearance of this part of St Aubins.

Discussion of the issues

Effects upon the privacy of nearby residents

5 Current Island Plan (IP) policy GD1 (3) (a) states that development will should not 'unreasonably affect the level of privacy' which nearby residents 'might expect to enjoy'. As

pointed out for the appellants, this is a slightly more specific test than that which applied in 2009 when the original permission was granted. At that time policy G2 of the then current approved version of the IP applied a more general test (ii) concerning unreasonable impacts on neighbouring uses and the local environment by reason of visual intrusion or other amenity considerations.

6 Applying the present policy GD1 (3) (a), I find no reason to conclude that the proposed development would have unreasonable effects upon the privacy of occupiers of the house at Clos des Pins or the La Rocque Apartments, all of which stand higher (some very much higher) than the proposed extension and balcony and command views towards the sea across the roofs of the terrace of buildings including Haut Rive Penthouse. Moreover, in renewing the planning permission for a second time in 2019 the committee saw fit to impose a condition that the single circular window on the elevation of the extension facing Le Mont de La Rocque be fitted with obscure glazing.

7 There are 3 windows within rooms in a section of Beaumont adjoining Haut Rive Penthouse; these look out towards the sea across sections of the flat roof of the appeal site. Although physically close to the site of the proposed new balcony/terrace, the latter would be almost entirely hidden from these windows, partly by a small section of the extension itself and otherwise by the proposed side-screen to the new balcony which should effectively retain privacy for users of both the existing balcony at Beaumont and the new one at Haut Rive Penthouse. In my view the development would cause no unreasonable effects upon the privacy of neighbours.

Potential noise and disturbance

8 IP policy GD1 (3) (c) also identifies noise nuisance to neighbours as a more specific consideration than was the case in former policy G2. However, the new roof terrace would be separated from La Mont de la Rocque by the proposed extension and is both smaller and lower than the existing nearby terrace on the roof of Beaumont (which extends from front to back of that property), albeit that feature appears not to have been the subject of any planning application.

9 Having inspected the local area from that larger balcony I find no reason to conclude that normal domestic use of the proposed balcony on the seaward side of the appeal site would cause any adverse effects amounting to 'unreasonable harm' to occupiers of nearby dwellings higher up the hill at Clos des Pins, La Rocque Apartments or any other property in the area where residents enjoy similar normal domestic use of their own outdoor living areas on local terraces and balconies. Some concern was raised that the applicant intends to create the balcony first with the extension following later as a second phase. It is feared that this would expose nearby properties to the risk of greater noise and disturbance because of the lack of protection afforded by the physical presence of the extension. The Department indicated its lack of objection to a condition preventing the provision of the balcony prior to construction of the extension if the Minister were to find this necessary. However, in the context of the interrelationships between all the domestic terraces and balconies present in the area of Le Mont de la Rocque I do not find it necessary to recommend this as an essential precondition for renewal of the permission.

10 Although windows at Beaumont would be much nearer to the new balcony at Haut Rive Penthouse I consider that use of that area for normal outdoor domestic activities would not have unreasonably harmful effects, bearing in mind the physical relationship between the two properties discussed at paragraph 7 above and that the balcony at Beaumont is set somewhat higher than the proposed balcony at the appeal site..

Character and appearance of this part of St Aubins

11 It is evident that recent developments in this part of St Aubins have substantially changed its scale and character. Compared with the nature of those alterations the extension at the appeal site would bring about only a minor change to the street scene in Le Mont de La Rocque. I support the judgement of the Department in its report that the simple design of the extension represents an improvement to the existing flat roof to the car port. Seen at distance from the sea front, harbour or foreshore the changes to the roofline of the terrace including Haut Rive Penthouse would be very hard to distinguish, especially against the backdrop of the recent new, and much more prominent, large buildings in Le Mont de la Rocque. Overall, the development would not undermine the design objectives and policies of the IP.

Other matters

12 A considerable number of other matters have been raised, including concerns over the sufficiency of on-site car parking. Two small cars can currently be accommodated in the car port but the area within it would be slightly reduced in size by the installation of new steps. However the appellant does not wish not to lose the potential for two vehicles to be parked on site and states that the changes to the steps will not be implemented if the alteration to the steps would indeed lead to that effect. According to the Department's parking standards, adopted over 30 years ago in 1988, the site already has a deficiency of one space compared with a requirement for 3 spaces for a new dwelling with the type of accommodation provided at Haut Rive Penthouse. That requirement would remain unchanged by the permitted scheme for one additional room. In the circumstances I concur with the committee that the scale of the changes on-site do not amount to sufficient reason to refuse to renew the permission on grounds of inadequate parking. Reference was made by the appellant to a June 2018 'closed consultation' draft of supplementary planning guidance on 'Technical standards related to the car parking standards' but a document at this very early stage of policy evolution cannot bear any material weight in decision making.

13 A number of other objections raised against the renewed permission concern a range of matters such as land ownership, neighbours' consent and compliance with Building Bye-Laws. These include the means of structural support for the extension above the car port, the provision of rainwater goods without encroachment onto neighbouring property, the relocation of a light well serving an adjoining upper unit at Maison Haute to a new roof light on the roof of that property and the future of a chimney and some soil vent pipes.

14 The applicant explains that the soil vent pipes are covered by a joint management arrangement with the owner of the unit below (Haut Rive) and no issue is anticipated at Bye-Law stage. The chimney serving the appeal site is on the other side of the property and is shared with Beaumont/Greystones, not with Maison Haute; the chimney adjoining that property does not appear to be in use. The relocated light well/roof light has been agreed with the owner of Maison Haute and will improve light at that flat. Issues of structural support and

rainwater dispersal were explored when Bye-Law approval was gained in 2012, and despite the fact that the scheme may need more adjustment (or minor modification of the planning permission) after Bye-Law matters are revisited, there is no reason why the current renewed planning permission should not stand. If it were to be that issues arising from the above (or any other) matters necessitated modification of the permission, an appropriate further submission would have to be made. Likewise, if ownership issues occurred, development could not occur without their prior resolution.

15 Concern is also expressed that a second renewal of an original permission without any sign of the development being commenced creates uncertainty for neighbours which is not 'within the spirit of the law'. Such uncertainty may be understandable but there is no reason why renewals of permission should not be granted, or indeed expected, if planning policy and/or circumstances on the ground still justify that outcome, as is the case here.

RECOMMENDATION

16 I recommend that the appeal be dismissed.

Roy Foster