

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

**Appeal under Article 108 against a decision made under Article 19 to grant
a planning permission**

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Madeline A Willcocks

Planning permission reference number and date:

P/2019/0713 dated 11 October 2019

Applicants for planning permission:

Anfray & Palmer Developments Ltd.

Site address:

4 The Terrace, La Route Orange, St. Brelade, JE3 8JG

Description of the approved development:

"Convert existing 1No. three bed dwelling into 2No. one bed flats with associated amenity space and parking. Construct balcony to North elevation."

Inspector's site visit date:

4 February 2020

Hearing date:

5 February 2020

Introduction

1. This is a third-party appeal against the grant by the Growth, Housing and Environment Department on 11 October 2019 of planning permission P/2019/0713 for the development described above. The permission was granted subject to conditions, two of which are relevant to the appeal, namely:

"2. No part of the development hereby approved shall be occupied until the balcony to the north elevation at first floor level is fitted with an obscure privacy screen along the length of both the east and west side, to a height of

1800mm from finished floor level. Once constructed, the screen shall be retained as such thereafter, unless otherwise agreed in writing with the Department.

3. No part of the development hereby approved shall be occupied until the respective car parking spaces have been laid out and surfaced as indicated on the approved plans. The car parking spaces shall thereafter be retained solely for the use of occupants of the development hereby approved."

2. The reasons given for these conditions were:

"2. To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

3. To ensure that the development provides adequate provision for off-street parking for users of the site, in the interests of highway safety and the general amenities of the area, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014)."

The site and its surroundings and the approved development

3. 4 The Terrace is the most easterly of a row of four terrace houses which are set back from La Route Orange and have their vehicular accesses from Le Clos des Sables at the end of their rear gardens. The house has in the past been extended eastwards by a two-storey addition, which increased its width by about one half. It is connected on the west side to 3 The Terrace. JT (Jersey Telecom) have commercial property beyond its eastern side.
4. Permission P/2029/0713 authorises the conversion of the house into two flats, one on the ground floor and one on the first floor. The garden areas at the front and the rear would be divided between the flats. An outdoor balcony would be constructed for the first-floor flat in a position where there was previously a first-floor bedroom window in the rear of the two-storey extension. Condition 2 requires the balcony to be fitted with 1800mm obscure-glazed privacy screens at each side. Four parking spaces would be provided for the flats, one in the existing garage, which has direct access to Le Clos des Sables, and three in the open towards the end of the rear garden. The existing vehicular access to the garden from Le Clos des Sables would be widened and an extension to the existing dropped kerb has been approved. Condition 3 requires all the parking spaces to be provided as approved and to be retained thereafter.

The case for the appellant

5. The appellant owns No 3, which is occupied by members of her family. She is particularly concerned about the effect of the balcony and the parking spaces on the residential amenities of No 3, due to overlooking and disturbance. She maintains that the balcony would be out of character with the locality, that it is not needed in order to meet the amenity space standard for the flat and that its use would be more disturbing than the previous use. Further disturbance, she states, would arise because two of the parking spaces would be in an area of garden not previously been used by vehicles, and they would be close to the boundary fence and rear garden of No 3, which should be protected. She has also raised concerns about the potential for conflicting

traffic movements due to the proximity of the vehicular access and the vehicular access to JT's property.

Other representations

6. Representations about on-street parking problems were received at the application stage from the Parish of St. Brelade Roads Committee and a nearby resident. These were addressed to the Department's satisfaction by the addition of a fourth parking space for the flats.

The case for the applicants

7. The applicants state that the approved development is in accordance with Island Plan policies and will not have an unreasonable effect on the residential amenities of the occupiers of No 3. They maintain that the privacy screen will only allow a restricted view over No 3's garden, which will be less than the existing overlooking from first-floor windows, and they do not expect the noise from the balcony to be any more than noise that could occur in a garden. They state that the arrangements for vehicular access and parking are satisfactory and will provide sufficient off-street parking facilities for the flats. A new fence and a planter have been provided between two of the parking spaces and the boundary with No 3's rear garden.

The case for the Growth, Housing and Environment Department

8. The reasons given by the Department for approving the development state:

"It is considered that the proposal accords with the terms of Policies H6, GD1, GD7, LWM2 and LWM3 of the 2011 Island Plan (Revised 2014) in that the proposed scheme is consistent with the Island Plan Spatial Strategy; it is permissible under Policy H6; the proposals make more efficient use of the site, delivering the "highest reasonable density", whilst having appropriate regard to the site and its built context and its relationship to neighbouring land users."

9. In response to the appeal, the Department accept that the balcony is not required to meet the minimum standard for amenity space, since this will be satisfied by the garden area at ground level. However, they state that the balcony will allow easy access to additional outside space for the occupiers of the first-floor flat and that the screens will prevent any unreasonable level of overlooking. The Department indicate that the parking facilities comply with adopted standards and are appropriately situated at the rear of the site, with a satisfactory access from Le Clos des Sables.

Inspector's assessments and conclusions

10. The balcony is out of character in so far as there appear to be no others in the locality. I do not consider that this would be a sound reason for refusing permission for it if it is acceptable in other respects.
11. The balcony is not needed in order to satisfy the space standard for the first-floor flat. However, the applicants are not obliged to demonstrate a need for it and it will add to the amenities of the flat.

12. Construction works have been carried out to the stage where I was able to stand on the slab of the balcony. The privacy screen required by Condition 2 will cut off the view towards No 3's rear windows and the part of No 3's garden nearest the house. There will be a view of the rest of the rear garden, and of an outbuilding and a garage, but they are several metres away since the balcony is an addition to No 4's extension. Closer overlooking already exists from the first-floor windows of No 2 and the original part of No 4, although the view from the balcony is likely to be enjoyed more frequently since the balcony will be accessed from the living room of the flat. The balcony is not likely to be used routinely for noisy activities, but noise generated here could be more audible than it would be if the same activities took place in the rear garden.
13. The increased use of the rear garden area for the parking of vehicles will generate more disturbance, as a result of the extra noise from engines, doors and voices, and some of this will be audible at No 3. The new fence and the planter will protect the boundary from vehicular impact, but I do not regard them as essential. The planter has not unacceptably reduced the space needed for manoeuvring.
14. JT's access is used by car drivers parking at their property and by commercial vehicles going to and from the property. The additional use of No 4's access might cause some inconvenience when both accesses were used at the same time, but I do not envisage that any significant congestion or safety concerns would arise.
15. The flats will be in a residential area next to the extensive retail and community facilities that are available at Red Houses. Island Plan Policies SP1 (Spatial strategy), H6 (Housing development within the Built-up Area) and GD3 (Density of development) encourage development of this kind, in principle. The standards for housing, design, amenity space and parking referred to in Policies H6 and GD3 have been satisfied in this instance. The outstanding issue is whether the impact on the residential amenities of the occupiers of No 3 is acceptable.
16. Policy GD3 states that there should not be an unreasonable impact on adjoining properties and Policy GD1 (General development considerations) states at paragraph 3 that development must not unreasonably harm the living conditions for neighbouring residents, in particular the level of privacy they might expect to enjoy, and in particular it must not adversely affect their health, safety and environment by virtue of a range of emissions, including noise. Whether the approved development would be in conflict with any of these criteria is a matter of planning judgement to be exercised by the decision taker.
17. In my opinion, the occupiers of No 3 would experience some change in the degree of privacy that they currently enjoy, but this would result more from the perception of being overlooked from the balcony than from an actual increase in the amount of overlooking that already exists. They are also likely to be aware from time to time of noise caused by the use of the balcony or the additional parking spaces, although the volume and frequency would not in my opinion be so substantial as to cause unreasonable harm to their living conditions. The criteria I have referred to would therefore be complied with, in my opinion, and I have concluded that the appeal should not succeed.

Inspector's recommendation

18. I recommend that, in exercise of the power contained in Article 116(2)(c) of the Planning and Building (Jersey) Law 2002 (as amended), the appeal should be dismissed.

Dated 2 March 2020

D.A.Hainsworth

Inspector