

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Michael and Patricia Guyoncourt against a grant of planning permission.

Reference Number: P/2021/0967.

Site at: Stella Maris, Victoria Avenue, St Helier JE2 3LU.

Introduction

1. This case concerns an appeal under Article 108 of the 2002 Law against the grant of planning permission for development described in the application as: "Raise roof to enlarge first floor habitable space and construct 2 No. balconies to South-West elevation with various internal alterations". In the decision notice, the development was described mostly similarly, but with the added words: "AMENDED PLANS RECEIVED". The application was made by Mr and Mrs Darren Bray.
2. The appeal is being assessed by the written representations procedure. My main accompanied inspection was on 9 March 2022; I also made a later unaccompanied inspection to see the view from the rear and garden area of the property known as Bay View Apartments.
3. In this report a brief description of the appeal site and surroundings is provided, followed by summaries of the cases for the appellants, the planning authority and the applicants. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

The Planning Permission Decision

4. The decision to grant planning permission was made after a planning committee meeting held in public in October 2021 and a site visit by the committee. The "Reason for Approval" stated in the planning officer's report was:

"Permission has been granted having taken into account the relevant policies of the Adopted Island Plan, 2011 (Revised 2014), together with other relevant policy and material considerations, including consultations and representations received. Notably, the development's relationship with neighbouring properties has been specifically considered in relation to the potential for there to be detrimental intrusions of privacy and loss of light. Based on the representations received, as well as the amending of the proposal, it is considered that the proposal will not significantly, or unreasonably impact the amenities that occupants should expect to enjoy."
5. The following condition as set out in the planning officer's report would have applied to the permission:¹

"Before any development first commences on site, a full recording and template, of the existing Grade 4 Listed Victorian Railings and Wall, located on site shall be submitted to, and approved in writing by, the Department. This recording should include the methods, for the subsequent repair and

¹ The comma punctuation in the text quoted here is not mine!

restoration of the existing railings, and shall be implemented in full, and retained thereafter, as such.”

Site and Surroundings

Photographs of the site and adjacent properties are among the submitted plans (Drawing Numbers 103 and 104).

6. The property subject to this appeal is within a row of residential properties situated on the north-east (inland) side of Victoria Avenue, which is close to the shoreline. The existing dwelling on the site is a “chalet-bungalow” style building with most of its accommodation including two bedrooms on the ground floor and a bedroom and bathroom on the first floor, with a dormer window at the front. At the rear there is a single-storey flat-roofed addition housing a kitchen. Seen from the front, the dwelling has a raised ground floor, with steps up to the front door. The roof of the main part of the dwelling is hipped at both ends with a slope angle of about 40 degrees.
7. The appeal site is bordered at the front by a low stone wall topped with iron railings. The front of the plot is mostly lawned, except for a path leading from a pedestrian gate towards the dwelling from the pavement next to the road. At the rear there is a small courtyard bordered by a high wall.
8. The properties fronting Victoria Avenue back on to the rear of properties which front on to St Aubins Road. The building immediately behind (north-east of) the appeal site is a block of apartments. The ground floor apartment has a living room and outside terrace facing the appeal site. Because of the slope of the land, the level of the ground floor and of its external terrace are above the level of the adjacent garden, which slopes down towards the southwest, where there is a boundary wall. The top of the wall is about at the same height as the level of the guttering at the rear of the dwelling at the appeal site.²
9. The dwellings on each side of Stella Maris both have two storeys, though their ground floor levels are little below that of Stella Maris. The appellants’ dwelling at Studio Villa stands on a much narrower plot than its neighbours. It has its main living room on the first floor, with a full-height glazed opening and a deep balcony at the front. The ground floor front of Studio Villa is approximately in line with the front of Stella Maris but the enclosed part of the first floor (ie excluding the balcony) is set back behind the general frontage line of adjacent dwellings on both sides.

Case for Appellants

10. The main grounds of appeal are, in summary:
 - The proposed larger roof is going to take away skylight, sunlight and views away from the appellants. When the planning committee visited the appellant’s property they went on to the balcony where the extension would have least impact. It would have a detrimental impact shown from inside, where most people spend most of their time.
 - It was deceitful for the committee not to be shown the loss of light, skyline and vistas from inside the appellants’ home. The appellants were not allowed to put their case forward whilst in their own home.

² The submitted documents include a letter from Mrs D Long, occupier of the ground floor dwelling at Bay View Apartments, appended to which is a photograph showing the view from this property and a photomontage depicting the proposed development. These illustrations appear to me to be reasonably accurate.

- The roof facing towards Mr and Mrs Guyancourt's property would be much too intrusive; it needs to be angled more and lowered.
- There would be views from a proposed balcony into Mr and Mrs Guyancourt's living space. Contrary to a statement by the applicant's architect, this feature is not shown on the plans as a Juliette balcony. The architect's statement that it would be unable for anyone to see into the appellants' living space is a blatant lie.
- The application plans also show the existing roof in the incorrect position, so that the proposed roof appears wrongly to be not much different. The decision to grant permission was unfair.

Case for Planning Authority

11. The main points in response to the appeal as set out in the planning authority's written statement are:
 - The proposal as amended would have a half-hipped roof with its ridge no higher than the existing roof. Under Island Plan policies there is a general presumption in favour of development in the built-up area, provided that development does not have an unreasonable impact on the amenities of neighbouring properties. The question is not whether there is some impact, but whether it is unreasonable. The planning authority consider that the impact in this case would be reasonable.
 - It is accepted that the two balconies in the south-west elevation would not be Juliet balconies as they would have a small area for standing or sitting outside. People on these balconies would be likely to look towards the sea rather than looking towards the adjacent property to the south-east. If this were considered to be a potential problem a condition could be imposed requiring a privacy screen to be added.
 - The proposal would not have an overbearing impact on adjacent properties or cause material loss of daylight. The reduction of a sea view is not a determinative matter.
12. The committee report attached to the planning authority's statement contains further detail on the authority's appraisal.

Case for Applicants

13. The applicants dispute the appellants' case and put forward the following main points.
 - The proposal followed discussion with the planning department about a previous scheme, an application for which was withdrawn. The revised scheme takes account of concerns expressed about roof height, window design and other matters such as drainage.
 - The proposal is considered to be a modest extension which complies with applicable planning policies.
 - As regards the impact on the view from the balcony of Studio Villa, there may be some loss of view to the west because of the projecting proposed roof; but no one has a right to a view under Jersey law or policy. The full southwards and eastwards view from the Studio Villa balcony would be maintained.

Representations by Other Parties

14. At appeal stage, a letter submitted by Mrs D Long objects to the proposal and expresses support for the appeal on the grounds that the development would

have a serious impact on the enjoyment of her property, a ground floor apartment. In summary, Mrs Long raises the following issues:

- There were procedural failings and irregularities in the way the application was handled, including: the absence of any committee meeting minutes; misinformation being supplied to the planning committee; Mrs Long not being allowed to speak at a resumed meeting; submitted plans did not match what the applicants' architect said at the meeting; the applicants' architect showed only a "before" picture, not an "after" picture to the committee.
 - The officer's report contains speculation, used vague language, was not founded on fact, and drew conclusions without any site visit having been made and without proper consideration of evidence.
 - Recent development along Victoria Avenue does not mean that the planning authority is bound by precedent.
 - The proposal contravenes various Island Plan policies, including Policies GD1, GD5, GD7 and BE6.
15. At application stage, eight written submissions objecting to the proposal were submitted (including one from the appellants and one from Mrs Long whose objection at appeal stage is reported above). In summary, these submissions make the following points.
- Insufficient consideration has been given to the loss of light and vista which the proposal would cause for the properties to the north-east. Loss of light would be particularly caused in winter months.
 - The proposed roof would be too large and too wide. It would have an overbearing impact on properties located behind and reduce light on their ground floors. Windows on the rear could influence privacy in properties and in the communal garden serving six properties. The plans suggest that opaque glass could be installed.
 - The proposal would not meet the requirements of Policies GD1, GD5, GD7, BE6 as it would unreasonably harm neighbours' amenities (GD1), would not protect or enhance the skyline or skyline views (GD5), would not meet design quality criteria of Policy GD7, would not be sympathetic to the existing building or complement the quality of the surrounding area (BE6).

Assessment

16. The main issue raised by this appeal is the visual impact of the proposal and whether it would unreasonably harm the amenities of neighbouring properties, having regard to relevant planning policies.
17. The shape of the upper part of the dwelling at the appeal site would be changed by this proposal. The roof slope angle would be increased slightly and at the top there would be a small area of flat roof instead of the existing ridge. The sides would have a half-hipped shape. These aspects of the proposal have evidently resulted from modifications to a previous scheme which would have had side gables and a higher roof; the roof now proposed would not be any higher than the existing roof, but it would be bulkier. To the front, two dormers with full-length glazed doors would be set into the roof slope with two small balconies (each labelled "mini-balcony" on Drawing 106 Revision A).
18. During my accompanied inspection I looked at the view from the balcony at the appellant's property, Studio Villa, and from inside its first floor living room. Compared with the existing situation, the forward projection of the proposed roof

would intrude into angled views from Studio Villa in a westerly direction. However, the first floor living room and the balcony at Studio Villa would still offer extensive views of the coast. In my judgment the alterations at the appeal site would not have the sort of impact which could be described as overbearing or oppressive on the outlook from Studio Villa.

19. It would be possible for a person on the "mini-balcony" at the front of proposed Bedroom 1 to look eastwards, towards Studio Villa and its balcony. The restricted size of the proposed balcony, the additional restriction caused by outward-opening doors, and the fact that the principal outlook would be towards the sea would help to reduce the likelihood of overlooking or loss of privacy in Studio Villa. However, the distance between the balcony at Studio Villa and the nearer of the two proposed balconies at Stella Maris would only be about 3 metres, and both of the balconies as proposed at Stella Maris would be edged with clear-glass screens only about 1 metre high.
20. As can be seen in the photograph in the bottom left of Drawing 103, other nearby properties have front balconies close to each other, some without any side screening. An obscure-glazed side-screen on the south-east side of the proposed balcony nearest to Studio Villa could also be obtrusive in views from Studio Villa; but on balance I consider that the benefits of such a screen would outweigh the disbenefits by minimising any mutual loss of privacy or disturbance. This panel would need to be about 1.8 metre high to be effective; details including the type of material could be made subject to a condition.
21. At the rear, the changed roof shape would make the outlook south-westwards from the rear of the neighbouring apartments and their garden less open, and would reduce the extent of view towards Victoria Avenue and St Brelades Bay. I can understand why, for example, one objector (Ms Chatterley) mentions "losing the enjoyment of events that traditionally take place along Victoria Avenue and in the bay". Another (Mrs Long) refers to being "potentially boxed in".
22. The roof of the proposed building would be bulkier than the existing roof. The amount of low winter sunlight reaching the garden of Bay View Apartments and possibly immediately adjacent properties would be reduced, but this effect would only arise from the changed shape of the two ends of the roof. The ridge would not be any higher than it is now (except for the minimal effect of the small projection of the frame of the window on the flat roof) and would not be any closer to the properties at the rear. Allowing for the distance of about 20 metres between the highest part of the proposed roof and the rear of the apartment building, I judge that the effect on the amount of sunlight or daylight reaching the apartments or their garden would not be so severe as to be unacceptable.
23. The limited views of the coast currently obtainable from the ground floor rear of Bay View Apartments when looking between the buildings fronting Victoria Avenue would be reduced to narrower glimpses, though the mansard-shaped roof would be better in this respect than the previously proposed gable-ended shape. I return to this point when considering planning policies below.
24. Privacy in the apartments and their garden area behind the appeal site would be reasonably preserved by the revised design details including the use of obscured glazing with top-hinged windows for the high-level roof windows in the rear bathroom and shower room, and the absence of any rear-facing windows for the first floor rear bedroom (as the windows for this room would be in the flat section of roof).

25. The main policy criterion against which this case is to be judged is in Policy GD1 of the Island Plan, under which development proposals should not unreasonably harm the living conditions of nearby residents. Privacy and level of light are two aspects of amenity specifically mentioned in this policy. I find that although the proposal would have some impact on the outlook and amenity currently enjoyed by occupiers of Studio Villa, the effect would not be unreasonable, and would not be such as to justify refusing planning permission. The same applies to other neighbouring properties.
26. Policy GD5 of the Island Plan provides that the Minister for Planning and Environment will seek to protect or enhance the skyline, strategic views or important vistas. The explanatory text leading to this policy refers to views of the coastline from within the built-up area. Whether the view from Bay View Apartments (particularly the ground floor and rear garden) should be regarded as strategic or important with regard to Policy GD5 is ultimately a matter for your judgment; I consider that this policy has to be interpreted bearing in mind that it is not normally a proper function of planning control to preserve one person's view over another person's property. On that basis, the fact that the proposal would cause the partial loss of a sea view from some properties is not a compelling reason for refusing planning permission.
27. Other policies on matters such as design would also be satisfied. I have some reservations about the design, which would give the front elevation of the dwelling a rather "top-heavy" appearance, but there is a variety of building shapes and styles in the area and in this setting the proposal would not look out of place.
28. The government's Historic Environment Team has raised concerns about the railings and granite supporting wall along the front of the site, which would apparently be temporarily removed during the development and then reconstructed. The railings are evidently of Victorian age and are "listed" (Grade 4) because of their historic interest. These concerns can be suitably safeguarded by a condition, as was proposed in the originally intended permission – but not using the wording of that condition for the reasons explained below.

Other Matters

29. I have noted the comments by Mrs Long about various procedural matters and alleged irregularities, including her statement that at a planning committee meeting members of the committee were seen shaking the hand of the applicant's father. Mrs Long also states that she was not allowed to draw attention to errors and misinformation in a presentation for the applicants. Obviously I do not know exactly what happened or what was said during planning committee meetings. An appeal inspector's role is primarily to provide an independent assessment of the planning merits or demerits of a proposal subject to appeal. If there were procedural irregularities during the consideration of the application I can only suggest that they should be brought to the attention of the relevant body empowered to investigate such matters.

Possible Conditions

30. Standard conditions A and B covering the timing of implementation and reference to plans would be appropriate. As for a condition to control the replacement of the railings and wall, the wording in the planning officer's report would be unsuitable because of its poor English - it refers to "a full recording" and then requires that: "This recording should include the methods...etc...and shall be implemented in full, and retained thereafter, as such". But it is not the *recording* which needs to be implemented and retained, nor is it the *methods* which need to

be retained. What the condition should be seeking is submission for approval and then implementation and retention of a scheme for restoring the railings and wall.

31. A suitable condition to cover this matter would be:

"No development shall be carried out until details of the existing Listed Victorian railings and wall at the site together with proposals for their subsequent repair and restoration have been submitted to the planning authority and approved in writing. The repair and restoration as set out in the approved proposals shall be carried out within 3 months of the completion of the development hereby permitted, and the railings and wall as repaired and restored shall not subsequently be removed without the prior written approval of the planning authority.

32. A suitable condition to control the provision of a screen on the south-east side of the balcony to Bedroom 1 would be:

"Before any of the development hereby permitted is carried out, details of the provision of a privacy screen to be fixed to the south-east side of the proposed balcony to the bedroom labelled "Bed 1" on Drawing Number 106 Revision A shall be submitted to the planning authority for approval. No development shall be carried out until these details have been approved in writing. The development shall not be carried out otherwise than in accordance with the approved details. The screen as approved and installed shall be permanently retained, or if a need for replacement arises it shall be replaced by a screen having the same specification as that approved unless the planning authority issue prior written approval for a variation."

33. Several changes have evidently been made to this proposal during the processing of the application. The planning officer's report on the application lists eight drawings "for approval", most with titles beginning with the words "Amended Proposed", but none of the drawings have such a title. It would be more satisfactory to list the approved plans by referring to their date, to differentiate them from superseded drawings. The relevant date appears to be April 2021.

Note on Island Plan Policy

34. While drafting this report I received information that the government had decided to adopt a new "Bridging Island Plan", but at the time of writing this, the new plan has not been published in final form; only a "pre-publication draft" is available. You may wish to consider whether the appeal parties should be offered an opportunity to comment on any matters of potential relevance arising from the adoption of the new plan, and if so, whether a supplementary report might be needed.

Conclusion and Recommendation

35. I conclude that the planning authority's original decision to grant planning permission should be confirmed, except for revised conditions. I recommend that the appeal be dismissed and that planning permission be granted subject to conditions as described above.

G F Self

Inspector

7 April 2022.