

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

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

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Adam Mackie

Site address: La Coupe House, St. Martin, JE3 6BS

Application reference number: P/2021/1061

Proposal: 'Construct single storey enclosable rooftop pergola to centre of site'.

Decision notice date: 10 March 2022

Procedure: Hearing held on 5 September 2022

Inspector's site visit: 5 September 2022

Inspector's report date: 30 September 2022

Introduction

1. This report contains my assessment of the planning appeal made by Mr Adam Mackie against the decision to refuse to grant planning permission for a rooftop pergola proposal at a property known as *La Coupe House*.

Procedural matters

2. The appellant requested the Hearing procedure due to the 'complex history and the sensitive nature of the scheme'. I agreed to that request.
3. Since the date of the decision, a new development plan, the Bridging Island Plan (BIP), has been adopted. Following adoption, the BIP policies have full weight in decision making and supersede the policies of the earlier Revised Island Plan (2014) (the RIP). Ahead of the Hearing, I invited the parties to consider the relevant new BIP policies and, if they wished, to make written submissions to me. The new BIP policies were discussed at the Hearing.

The appeal site

4. *La Coupe House* is a very large modern house situated within extensive grounds on the north side of La Rue de la Coupe, in the north-east corner of the Island in the Parish of St. Martin and within the Coastal National Park (CNP). The house sits in an elevated position above La Coupe Bay. It is of a striking contemporary art deco inspired design, with 3 tiered levels of above ground accommodation with extensive glazing and balconies, designed to enjoy the panoramic views. From the road there is a drive that leads down to parking and accommodation at a lower basement level.

5. When viewed from La Rue de la Coupe, the house appears as a 2-storey flat roofed structure with a central stairwell feature which rises above the first floor. The upper part of the stairwell provides access to a roof terrace above the central part of the house. All 3 storeys of accommodation are visible from the north and east.

The appeal proposal and the refusal decision

6. The application sought permission to add a rooftop pergola above the existing roof terrace over the main central part of the house. The submitted plans notate the existing terrace as being 123.7 square metres in area. The pergola would cover the majority of this area (87.51 square metres¹), although it would be inset on all sides, leaving a small margin which would remain open to the elements.
7. The pergola would comprise a steel structure with single glazed screen panels forming 'walls' on its 4 sides. The roof would be constructed in aluminium and would contain a central louvred panel and 2 further panels that could be covered with retractable fabric awnings. At the Hearing, the appellant's agents indicated that the framework and fixed roof panels would be finished in a white colour.
8. The application was refused under officer delegated powers on 6 October 2021. However, a review request was made and the Planning Committee reconsidered the application at its 10 March 2022 meeting. The committee resolved to maintain the refusal decision which states:

"The design of the proposal would, by virtue of its scale, form and rooftop location, add to the visible bulk and massing of the dwelling house, which is in a prominent coastal location. This would represent an increased visual impact on the landscape which would be harmful to the Coastal National Park. As such, the proposal is contrary to policies GD 7 and NE 6 of the Adopted Island Plan 2011 (Revised 2014).

Summary of cases of the parties

The Appellant

9. The appellant's grounds of appeal are:

The historic planning applications referred to by [the] planning officer in her assessment were all approved by the Planning Department in a fair and open manner, and in full cognizance of the Island Plan policies that applied at the time.

All of the historic approvals have been undertaken in full consideration of the natural context in which La Coupe is located, and, over the years, the owners have implemented costly and very significant landscape conservation and enhancements which have undeniably enforced [stet] the local natural environment and the context of the site, to the benefit of the Island as a whole.

¹ The dimension notated on drawing number 1443/003

La Coupe as a whole is located within both the Coast national Park and the Green Zone. The area of the new pergola is located within the Coastal National Park. As stated in the Island Plan, and in the letter from the National Trust, Island Policy NE6 (Coastal National Park) requires the highest level of control; of new development. However, certain exceptions to the policy may be permissible, but only where they do not cause harm to the landscape character. Exception 1a permits the extension of a dwelling, but only where the extension remains subservient to the existing building in terms of design and scale and having regard to the planning history.

The current proposal does not disproportionately increase the size of the dwelling in terms of floorspace, building footprint or visual impact.

We would, as the original architects for the main building and subsequent extension, state that this proposal for the rooftop pergola is subservient to the existing building. It is not any higher than the highest part of the existing structure, there is no effective increase in floor area or building footprint, and the carefully designed structure will have minimal visual impact on the surrounding area. We also feel that the proposed semi-enclosed pergola complements the existing house by 'topping' off the architecture, a feature which is typical of many Art-Deco style houses.

We would assert that the proposed rooftop pergola has minimal impact on the Coastal National Park environments, and that it would cause no harm to the landscape character.

The proposal will deliver a huge benefit to the owners by allowing significantly extended use of the existing roof terrace, which at the moment can only rarely be used due to the exposed nature of the site.

The Department for Infrastructure Housing and the Environment (IHE)

10. The IHE case is set out in the officer report and a response document.
11. The officer report was written when the RIP was still in place. It noted that the site was within the CNP where the RIP imposed the strongest presumption against all forms of development, although exceptions such as the extension of a dwelling, may be permissible, but only where they would not cause harm to landscape character. It noted that the site is in 'a highly sensitive area' of the CNP and visible from the bay and other locations. The report acknowledged that, whilst permission was granted for the construction of a new dwelling in 1996, the site has '*garnered a variety of subsequent application[s] to extend the dwelling by numerous extensions*'. It says that, in 2019 a pre-application advice request for a sunroom in a similar location was not supported. The report assessed that the dwelling has a substantial footprint, is considered particularly prominent within the surrounding sensitive landscape, and that the proposal would appear as an additional floor/storey, increasing the height and mass of the house, which is already extremely large. This is considered to disproportionately increase the size of the dwelling and its visual impact, resulting in landscape harm which is unacceptable in the CNP.
12. The later response document updated the IHE case with regard to the BIP policies. It set out that the site remained within the CNP and the wider Protected Coastal Area (PCA). It identified the following BIP policies as

relevant: SP2, SP3, SP4, SP5, PL5, GD6, NE3 and HE9. It makes particular reference to policy PL5, NE3, and H9. Overall, IHE considers that there are conflicts with all of the identified policies and contends that *'fundamentally the problem is that the extension is too large and dominant, located to the top of an already very large house, in a very prominent location in the CNP...'*

Other parties' views

13. At the application stage, National Trust Jersey (NTJ) submitted a formal objection. It stated that the site had been subject to 'numerous' planning applications since 1994 and that the cumulative effect (of successive applications) is a material increase in size of the property which 'now exerts a very substantial presence in one of the most sensitive coastlines in Jersey'. NTJ considers that the proposal will appear as an additional floor and will lead to *'an even more imposing aspect than the current one, with the significantly increased mass from the extra storey being particularly visible from the bay'*. It considers that the proposal conflicts with RIP policy NE 6.
14. NTJ updated its case with regard to the BIP policies and sets out its view that the proposal was in conflict with policies PL5 and NE3, as it did not protect or improve landscape and seascape character.

Inspector's assessment

The main issue and the planning policy framework

15. The main issue in this case is the effect of the proposal on the CNP. The CNP is primarily a designation designed to protect its outstanding landscape and seascape character, along with its special heritage and biodiversity value. The purposes of the CNP are stated² as being a) the conservation and enhancement of the natural beauty, wildlife and cultural heritage of the park, and b) the public understanding and enjoyment of its special qualities. Those special qualities are listed in the BIP³ as: variety, uniqueness and drama; spectacular coastline; diverse and unusual geology; abundance of habitats; unique prehistoric archaeology; a rich built heritage; a legacy of defensive sites; and spectacular views.
16. Whilst the transition from the RIP to the BIP has maintained the CNP designation, the CNP is now a subset within the geographically more extensive PCA. The BIP increases the protection afforded to these special and unique assets in the Island and has moved away from an exceptions based policy approach (the now superseded RIP policy NE6) to a suite of policies that, in essence, gives primacy to landscape and seascape character considerations. The approach, and assessments against policies, are informed by the Integrated Landscape and Seascape Character Appraisal (May 2020) (ILSCA), which was part of the BIP evidence base.

² Bridging Island Plan (adopted March 2022) page 74

³ Bridging Island Plan (adopted March 2022) pages 74 – 75

17. BIP policy SP2 provides that, outside the built-up area, development will only be supported where a countryside location is appropriate, necessary and justified in its location; or where it involves the conversion, extension and/or subdivision of existing buildings. It further states that development in the PCA will be 'very limited to protect its outstanding landscape and seascape character'. This is reinforced in policy SP4 which, amongst other matters, requires development to respect landscape and seascape character, and policy SP5 which states that protecting landscapes, coastline and seascapes, is a high priority.
18. Policy PL5 addresses 'countryside, coast and marine environment' and requires development in the CNP to 'protect or improve its special landscape and seascape character...and be compatible with the purposes of the park'.
19. Policy NE3 specifically addresses 'landscape and seascape character' and it also requires new development to protect or improve landscape and seascape character. It affords the highest level of protection to the PCA and the CNP. It says that proposals that do not protect or improve landscape/seascape character will not be supported unless they meet a range of criteria, including being demonstrably necessary; there being no reasonable alternative; that harm has been avoided, mitigated and reduced as far as reasonably practicable; and that the public benefit of the proposal outweighs the harm to the landscape and seascape character and where the nature of that benefit to the public is clear, direct, and evidenced.
20. Policy H9 addresses housing development outside the built-up area and presumes against new residential development, unless it falls into one of 6 specified exception categories. Exception 1 allows for a home extension provided that *'it remains, individually and cumulatively, having regard to the planning history of the site, subservient to the existing dwelling and does not disproportionately increase the size of the dwelling in terms of gross floorspace, building footprint or visual impact'*.

Assessment

21. The existing house is of relatively recent⁴ construction. Whilst I have noted comments about the number of previous planning applications, I have not been provided with full details of the planning history, nor do I have any reason to believe that the dwelling is not in full accordance with all relevant planning permissions.
22. On my site inspection, I observed that the house is very large, prominent and conspicuous in this essentially undeveloped part of this coastal headland. Other than a more modest dwelling on the south side of Rue de La Coupe, the landscape is dominated by open fields, and a wooded/vegetated bank which falls to the attractive coastline of La Coupe Bay and Fliquet Bay.
23. When viewed from the small car park at the end of La Rue de la Coupe, the house notably breaks the skyline and appears as quite an imposing structure in the landscape, notwithstanding its rather impressive art deco

⁴ The Google street view image dated August 2010 shows the house at an advanced stage of construction.

inspired design. Further inland, the scale and height of the house is also visible from a number of locations, including from Rue de Scez (to the west), where the house appears as a notable interruption to the coastline view, albeit softened a little by trees either side of it.

24. The appeal proposal would make the house appear bulkier and taller. Whilst I note the submissions about the lightweight structure, it would be enclosed on all sides by glazed panels and would contain a roof structure over much of its area, such that it would appear as an additional storey and would further intrude into views within the PCA, including from the sea. This would be even more pronounced if used after dark with artificial light, which I consider to be a likely scenario if used for entertaining.
25. When judged against the requirements of policies PL5 and NE3, the proposal fails. By increasing the bulk and height of the main part of an already large and prominent building, it would not 'protect or improve' landscape and seascape character. I noted Mr Godel's submission that *La Coupe House* is now part of the area's character. However, its imposing presence is not closely linked to the CNP's purposes or its special qualities. Making this large and prominent modern building appear bulkier and taller, with an effective additional top tier of accommodation, would cause some harm to the CNP's purposes and its special qualities.
26. I do appreciate that the proposal would be desirable for the occupants. It would make the, often blustery rooftop terrace, which was always intended for use as an amenity/entertaining area, a more comfortable and useable space. It would allow it to be used for more days and for an extended season. However, this is a private benefit and would not meet any of the NE3 exceptions, including that the proposal is not demonstrably necessary and that there is no identified and evidenced public benefit of the proposal that would outweigh the harm caused by it. There are consequential conflicts with policies SP2, SP4 and SP5, which each seek to protect the outstanding landscape and seascape character of the PCA and CNP within it.
27. With regard to policy H9, I note the appellant's view that the structure would be 'subservient' to the existing house, being set below the higher level of the central stairwell. However, it would nonetheless create a greater visual impact and, given the fact that the existing building notably breaks the skyline in a range of public views within the CNP and PCA, this would be a disproportionate impact and would conflict with policy H9.
28. I have also considered the appellant's architect's support for the scheme and his view that the development would be an appropriate 'topping out' of the design. However, I consider that argument to be a weak one and a key design characteristic of art deco style architecture is the clean and uninterrupted horizontal line formed by the roof level, with minimal adornments. This would be eroded by the proposal which, in my assessment, would always look like a later 'add on'.
29. I have also noted submissions concerning the applicant's endeavours to improve the local landscape and the offer of continuing landscape management work, previously secured through a planning obligation

agreement on one of the earlier planning permissions. However, whilst commendable, these matters do not provide a basis for allowing harmful development which is in clear conflict with BIP policies.

Conclusion and recommendation

30. I conclude that the proposal would be harmful to the landscape and seascape character of this part of the CNP within the PCA. This conflicts with BIP policies NE3, PL5, H9, SP2, SP4 and SP5. There are no public benefits, or other material considerations, that would justify a decision other than in accordance with these policies.
31. For the reasons stated above, I recommend that the Minister dismisses the appeal.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appearances at the Hearing

For the Appellant: Mr Bob Godel and Mr Chris Wenham

For IHE: Mr Jonathan Gladwin and Ms Kristiana Ambrasa