

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr F R Binnington against a decision to grant planning permission.

Reference Numbers: P/2015/1406

Site at: Parasol, Tabor Heights, St Brelade.

Introduction

1. This appeal is against the decision to grant planning permission for development at Parasol, Tabor Heights, St Brelade JE3 8EU. The appeal is being decided by the written representations procedure. I inspected the site and surroundings on 4 April 2016.
2. This report provides a brief description of the appeal site and surroundings, summarises the gist of the cases for the appellant, the planning authority and the applicant, and then sets out my assessment and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

Background and Procedural Matters

3. An appeal appears to have been originally made, or attempted, by three people (including Ms K Jackson and a Mrs N Alcock as well as Mr Binnington). The appeal form appears to have been signed by "K A Jackson" on behalf of those three people. However, later documents have referred only to Mr Binnington as the appellant, possibly because only Mr Binnington had a right of appeal under the 2002 Law. (In September 2015 he submitted written objections to applications referenced 1406 and 1327.)
4. There is potential for confusion in this case, because it purported to concern two separate applications for planning permission; also the descriptions of both developments differ between the applications and permissions. Both applications were evidently made on 18 August 2015.
5. For application reference 1327, the development was described in the application as: "Erect new glass balustrading". The development was described in the permission notice as: "Install glazed balustrades to South West Elevation. Construct panel over open area to South of utility".
6. For application reference 1406, the development was described in the application as: "Construct extension to front of building". However, the development was described in the permission notice as: "RETROSPECTIVE: Construct ground floor extension to South West Elevation with balcony over".
7. From the available evidence, it appears that no agreement in writing was obtained from the applicant to the planning authority's alterations to the descriptions of the proposed developments. Indeed in connection with application reference 1406, the applicant's agent wrote to the then Planning and Environment Department on 28 September 2015, stating:

"We would like to clarify that this application does not include or request permission for any balcony. This has been included in a separate planning application. This application is for the ground floor extension only."

8. The planning officer's report on application reference 1406 stated:

"This application has run in parallel with P/2015/1327 for the balustrades to be placed on the flat roof of this retrospective application, which will form an extended balcony. The issue of the formation of an extended balcony has therefore been addressed in both applications".
9. The officer's report then went on to assess the development as a whole, that is to say the extension with balcony above, and among other things the report discusses the view from the extended balcony.
10. At some stage during the processing of this case, the reference number 1406A has been introduced, and this reference number evidently appeared on the site notice and related certificate of compliance. I do not know who did this or why, since as far as I can tell, no application has that reference number. It also seems that only one fee was paid for one appeal. All those involved with this case including the planning authority and the administrators in the Judicial Greffe have apparently treated it as one appeal against one grant of planning permission. For example, the statement submitted by the Department of Environment starts by stating:

"This appeal is against the retrospective approval of planning permission for a ground floor extension to the South West Elevation with a balcony over, to the existing property Parasol".
11. I tried to clarify this matter at the site inspection. What appears to have happened is that the planning authority told the applicant's agent that the application reference 1406 would be treated as an application for a ground floor extension with balcony over, and that the fee for development of that description should be paid. The applicant's agent apparently accepted this and paid the fee required, but there is no evidence that this amendment of the application was agreed in writing - I have asked in writing for any such evidence to be supplied and none has been submitted. At the inspection, the applicant's agent confirmed to me (in the presence of representatives of the Department of Environment and of the appellant) that he agreed with the Department that the application now subject to appeal should be treated as seeking planning permission for the ground floor extension with balcony over.
12. The appellant states that he has found it difficult to understand what has been permitted or not permitted at the appeal property, and this is not surprising, in view of what I have noted above. Moreover, some of the submitted plans appear to be wrongly labelled. In particular, drawings labelled "proposed" - such as the "Proposed First Floor Plan" dated August 2015, appear to depict what was at that date *existing* (bearing in mind that the application sought retrospective permission).

Site and Surroundings

13. The appeal property is one of a group of houses at Tabor Heights. Many of the houses are laid out so as to take advantage of the south-westerly view towards the coast. The house at Parasol has been extended in various ways, including flat-roofed ground floor extensions at the front and side. The front of the house faces approximately south-west. The disputed extension is at the front of the house. From a first-floor bedroom it is possible to step through an opening with

glazed sliding doors on to the flat roof of the extension. When standing on the roof there are angled views down into parts of the front garden of the neighbouring house (Shanzu). There are also side views down towards the side of Shanzu, where there is a passageway between the house and the plot boundary wall.

14. From the front garden of Shanzu there are reverse views as illustrated in the photographs submitted by the appellant. There is a patio or sitting-out area outside the front of Shanzu where there was a table and chairs at the time of my inspection. The table was weathered and appeared to have been there for some time, that is to say, not placed there shortly before my visit. The angled distance (allowing for the height difference) between the outer part of the flat roof at Parasol and the patio area at Shanzu is around 6.5-7 metres as shown in the appellant's photograph. The horizontal distance as scaled on the submitted site plan is less than that, about 5-6 metres. Part of Shanzu's plot is at the east side of the house (away from Parasol) where there is a swimming pool.

Case for Appellant

15. Mr Binnington is the occupier of the house known as Shanzu. The basis of his case is that the development has an unacceptable impact on the privacy of his property, because of overlooking from the balcony. This causes intrusion into private amenity space at Shanzu. The balcony is not in keeping with the character of the area and contrary to policy GD1 of the Island Plan.
16. The extension was built without planning permission in breach of planning rules and balustrade fittings were put in place. The planning officer who dealt with the proposal told Mr Binnington that the proposed balcony would not be accepted. The sudden approval came as a shock.
17. Mr Binnington had previously objected to a balcony over a different extension which he considers was illegal. Mr Binnington also objects to other development at Parasol including a two-storey extension, an outbuilding and a wall which has been built up to between 1.75 and 2.1 metres high next to the turning circle at Tabor Heights, apparently without planning permission. The outbuilding causes drainage problems as water flows off its roof into Mr Binnington's property.

Case for Planning Authority

18. Part of the planning authority's statement sets out the history of applications for proposed developments at the site, including an application (reference 0723) for glazed balustrades which was withdrawn. During a site inspection in October 2015, a planning officer was concerned that the development caused unacceptable overlooking of the garden of Shanzu and implied that permission was likely to be refused. The officer later tried to find a solution mutually acceptable to both parties but the applicant did not agree to the balcony staying in its original set-back position under the existing roof overhang. A further inspection with a team manager was carried out and after further consideration the development was deemed acceptable, on the grounds that it did not cause unreasonable harm, which was the test set out in policy GD1 of the Island Plan.

Case for Applicant

19. A letter sent in September 2015 on behalf of the applicant, Mr Gary Brown, to the then Planning and Environment Department made various comments about the history of developments at Parasol. The letter stated that the two-storey extension to the house and the outbuilding were constructed some time before Mr

Brown purchased the property in 2003. The letter also stated that that there were gutters on the outbuilding.

Assessment and Conclusions

20. The central issue in this case is the effect of the development on the privacy of the property at Shanzu. There appears to be no dispute about the ground floor extension. There also appears to be general agreement that a small balcony outside the main bedroom of Parasol but under the house roof would be acceptable. This balcony would be set between side walls, which would create a partly "blinkering" effect. I return to this matter in paragraph 26 below.
21. Policy GD1 of the Island Plan provides that development proposals should not "unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, [and] in particular not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy". The use of the word "unreasonably" in this policy means that judgment has to be applied.
22. I judge that because of the height and closeness to Shanzu of the flat-roofed extension at Parasol, the use of its roof as a balcony would cause an unreasonable loss of privacy at Shanzu. The balcony might only be used as such intermittently, but its frequency of use could not in practice be controlled by a planning condition, and its presence would go beyond what I consider to be normal good neighbourly development. Some overlooking between these properties has to be accepted, and the garden of Shanzu can be overlooked from places other than the roof of the disputed extension, but a balcony on this roof would increase the sense of lost privacy and make the situation even worse.
23. I conclude that although the ground floor extension is acceptable, the balcony is not.
24. This creates a rather complicated legal situation. One of the reasons why I tried, both in writing and at the site inspection, to establish whether the applicant had agreed to the planning authority's actions in amending the application was because if the application was indeed seeking permission for the ground floor extension and balcony, it would not be possible to grant a normal conditional planning permission permitting only the ground floor extension, since a condition which has the effect of materially changing a development from what was applied for cannot be validly imposed. I remain concerned that the applicant has stated in writing that the application does not include or request permission for a balcony, yet apparently agreed to pay a fee for development including the balcony without agreeing in writing to the amendment made by the Department and without rescinding, in writing, the letter of 28 September 2015.
25. However, these problems could be overcome by issuing a "split decision", using the powers available to you under Article 116(2)(d) of the 2002 Law to reverse or vary any part of the decision-maker's decision. The split decision would be intended to refuse permission for the balcony but permit the ground floor extension, with appropriate conditions aimed at preventing any future abuse.
26. Mr Binnington states: "We are not opposed to a balcony such as was there prior to the construction of the flat-roofed extension". I consider that a shallow balcony under the main house roof, within the recess created by the side walls which project on either side of the main bedroom window, would not be objectionable, provided that a railing or similar permanent barrier is installed to prevent the main part of the extension roof being used as a balcony. On the

basis of a split decision, permission for the ground floor extension could be subject to a condition preventing use of the roof as a balcony and requiring the installation of a barrier. Bearing in mind the applicant's apparent preparedness to carry out unauthorised development, it would be appropriate to impose a further condition requiring the extension to be demolished if the requirement to erect a barrier is not met.

27. I note the appellant's statements about other developments, such as the apparently unauthorised high wall in front of Parasol and extensions to the north-west and south-east, but as these developments are not subject to this appeal it would not be appropriate for me to comment on them.

Recommendation

28. I recommend that a split decision be issued as follows. I recommend that the appeal be allowed and that planning permission be refused insofar as the application subject to this appeal related to permission for a balcony over the ground floor extension at Parasol, Tabor Heights, St Brelade.
29. I recommend that the appeal be dismissed insofar as it relates to the construction of the ground floor extension at Parasol, Tabor Heights, St Brelade, and that planning permission be granted for the construction of this extension, in accordance with the drawings which accompanied planning application number P/2015/1406, except for any references to a balcony on those drawings or elsewhere in documents relating to the application. This is a retrospective permission for the extension as constructed, which extends from the main living room of the house. It is granted subject to the following conditions.
- (i) The roof of the extension shall not be used at any time as a balcony; that is to say it shall not be used by any person standing, moving, sitting or lying down, other than for the purposes of maintenance or repair which shall be subject to Condition (ii) below.
 - (ii) Before any person goes onto the roof of the extension for the purpose of carrying out maintenance or repair, not less than 24 hours notice shall be given in writing to the current occupier(s) of the neighbouring property, Shanzu. The notice shall describe the nature of the work it is proposed to carry out and the intended period of time needed for it.
 - (iii) No balustrade, railing or other such erection shall be placed on the roof of the extension hereby permitted.
 - (iv) Within 3 months of the date of this permission, railings or similar permanent barrier not less than 1 metre in height shall be installed between the side supporting walls outside the main bedroom window at the appeal property. The barrier shall be a permanent fixture designed to prevent access through it to the roof of the extension hereby permitted, with no hinged, sliding, removable or other such opening. The barrier shall be positioned so that the area it encloses next to the bedroom does not extend beyond the area covered by the main house roof.
 - (v) In the event that any part of Condition (iv) above is not complied with during the 3 month period specified, the extension hereby retrospectively permitted shall be demolished within 1 month of the failure to comply and all resulting materials and rubble shall be removed from the site.

G F Self

Inspector
14 April 2016