

## PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (a) against a decision to grant planning permission

### Report to the Minister for the Environment

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,  
An Inspector appointed under Article 107

**Appellant:** Mr & Mrs Benest

**Planning Permission Reference Number:** P/2019/0494

**Decision notice date:** 19 June 2019

**Location:** Koala, La Grande Route de la Côte, St. Clement, JE2 6SF

**Description of Development:** Create roof terrace to west elevation

**Appeal Procedure and Date:** Hearing 5 September 2019

**Site Visit procedure and Date:** Accompanied, 4 September 2019

**Date of Report:** 8 October 2019

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### Introduction

1. This is a third-party appeal by Mr & Mrs Benest against a decision to grant planning permission for the creation of a roof terrace to the west elevation of the property known as Koala.
2. Permission was granted by the Growth, Housing and Environment Department ('the Department') under delegated powers on 19<sup>th</sup> June 2019.
3. A summary of the cases presented by the appellant, the applicant, and the Department during the application and the appeal are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

### The appeal site and surroundings

4. The appeal site is a dormered bungalow located on the north side of La Grande Route de la Cote. External amenity space includes a courtyard in front of the property, which provides space for parking and a narrow garden area to the north.
5. There is a garage to the west of the property, which has a flat roof. The occupants wish to turn part of this roof into an external roof terrace to provide somewhere for them to sit outside and enjoy the sun. It would be accessed at first floor level, via a bedroom.
6. The property is bordered to the rear (north) by two-storey properties, which lie roughly perpendicular to the appeal property. The closest of these properties has a well-established garden, which can be overlooked from the flat roof of the garage.

## **The proposed development**

7. The scheme that was granted permission is as shown on drawing 2019-16\_PL02. It would allow the southern part of the garage roof to be converted to a terrace. A fixed privacy screen 1800mm high, constructed of obscured glass would form the northern boundary of the terrace. This northern boundary would be set back 1500mm from the rear face of the property. Access to the terrace would be through a door from the main bedroom.
8. The consented scheme occupies a smaller area than the original proposal, which was modified following comments from neighbouring properties and the advice of the Department.

## **Case for the appellants**

9. The appellants' main concerns relate to the potential for overlooking from the terrace and the consequent loss of privacy, which they consider would be unreasonable. In particular, they are concerned that the height and the design of the proposed privacy screen, which would have gaps between glass panels, would not be sufficient to prevent overlooking. They consider that the proposed height would be insufficient to 'future-proof' privacy, given the trend of an increase in average height. They have suggested that a height of 1.9m or even 2m would be more suitable. They are also concerned that a door could be inserted in the screen.
10. The Conditions to the permission require details of the screen to be approved with the Department, which means that the appellants would not have an opportunity to comment on them.
11. In the written documentation the appellants also raised concerns about the potential for the floor level of the terrace to be raised. However, at the hearing they confirmed that their concerns about this had been satisfied following correspondence with the Department.

## **Case for the Growth, Housing and Environment Department (the Department)**

12. The Department considers that the current scheme, which moved the proposed location of the northern boundary southwards, would reduce the potential for overlooking of the neighbouring properties and result in a more attractive development.
13. The height of privacy screens required by the Department is usually 1.7m or 1.8m and it considers that this would be sufficient to prevent overlooking at the proposed location. However, at the hearing, the Department indicated that it would not be averse to a modest increase in height to 1.9m in this instance and has provided a revised draft condition that would allow for this.
14. In relation to the design of the proposed screen, Condition 1 to the permission requires that samples of materials be submitted to the Department, prior to their first use on site. This is to ensure that what is created would be a screen and not a means of enclosure that includes gaps or a door. The appellants would not have an opportunity for involvement in consideration of the details required by Condition 1, but that is standard for all applications.

## **Case for the Applicant**

15. The applicant is seeking to create a private space in which to enjoy the sunshine. They have no desire to over-look neighbours. They have modified the design in the light of discussions with the Department. They would be content to increase the height of the screen to 1.9m or 2m. However, they have reservations, from an aesthetic perspective, about the option discussed at the hearing, to fill the gaps between the glass panels using a silicon bead.

## **Representations**

16. In addition to the objection from the appellants, there were two other representations (objections) at the application stage. These also raised concerns about over-looking of private amenity space.

## **The policy framework**

17. The main policy consideration relating to this application is Policy GD1 General development considerations of the Jersey Island Plan, 2011 (Revised 2014). This policy sets out the criteria that all developments are required to meet. These criteria include contributing towards a more sustainable form and pattern of development; avoiding serious harm to the Island's natural and historic environment; avoiding unreasonable harm to the amenities of neighbours; contributing to or avoiding detraction from the maintenance and diversification of the Island's economy; contributing to reducing dependence on the car; and being of a high quality of design.
18. Part 3 of Policy GD1 requires that development does not harm the amenities of neighbouring uses, including the living conditions for nearby residents. In particular, it requires that development does not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy.
19. In this appeal, the extent to which the proposed development meets the criteria in respect of impacts on neighbours, particularly in relation to effects on privacy to land, is in dispute and is considered further below.

## **Inspector's assessment and conclusions**

20. There is currently a high degree of mutual inter-visibility between the proposed roof terrace and the external amenity areas of the property to the north of Koala. Based on my observations, I find that the proposed position and height of the privacy screen (set-back from the edge of the garage and extending to a height of 1.8m) would be effective in substantially removing this inter-visibility. The set-back position of the screen, when coupled with its height and the presence of the projecting edge of the garage would make it very difficult for a user of the proposed roof terrace to inadvertently over-look the garden to the rear. Likewise, although users of the rear garden may be aware of when people are on the roof terrace, the visibility would be very limited.
21. The test set by Policy GD1 is that development must not cause unreasonable harm to the level of amenity, including privacy, that the owner or occupier of a property might expect to enjoy. This test recognises that some change may occur to these amenities as a result of development, but that the degree of change should not be unreasonable.

22. As I noted above, I consider that the set-back position of the screen, when considered in combination with the projecting edge of the garage would act to substantially remove the potential for casual over-looking of the rear amenity areas of the property to the north. I observed that it would be possible to accommodate a screen of 1.9m or 2m in the proposed location, whilst retaining the structure below the eaves of the roof. However, I can see no compelling reasons for doing so. I find that the proposed height of 1.8m strikes an appropriate balance between a height that would reduce casual over-looking, whilst avoiding creation of a dominant and over-bearing structure. Some degree of over-looking is common between gardens, particularly within built-up areas. Whilst a height of 1.8m would not eliminate any or all possibility of being over-looked, I do not consider that any residual casual over-looking would result in an unreasonable effect on neighbouring amenity including privacy.
23. The proposed gaps between the screen panels are small - in the order of 8mm, and when considered in combination with their location and the projection of the garage roof, I consider that any potential for over-looking and effects on privacy would be minimal and not unreasonable within a built-up area. I do not therefore see a need to require these gaps to be filled with a silicon bead. I am satisfied that the size of gaps between the panels would be considered as part of the approval of design details by the Department, and could be secured by condition.
24. It is clear from the written submissions and discussion at the hearing that the appealed development already represents a compromise to the scheme that was originally submitted for approval. Whilst it would be possible to modify the conditions to achieve a design that would be fully acceptable to the appellants, I am conscious that this is likely to result in a consented scheme that is so altered from what the applicant originally sought, that they no longer wish to implement it.
25. As I do not consider that the proposed scheme would have an unreasonable effect on the level of privacy that the occupiers of the property to the north could expect to enjoy, I do not find that the proposed amended conditions in relation to the height and design of the privacy screen are necessary. I am content that Condition 1 to the existing permission would be adequate to enable the Department to ensure that a continuous screen, without doors, is constructed and to control the size of the gaps between the screen panels. Any subsequent unauthorised introduction of a door could be subject to enforcement action.

## **Conclusions**

26. For the reasons set out above, I conclude that the proposed development would not have an unreasonable impact on the amenities of neighbouring properties, particularly the privacy to buildings and land that the occupier might expect to enjoy and hence satisfies the requirements of Policy GD1 of the Jersey Island Plan, 2011 (Revised 2014).

## **Recommendations**

27. I recommend that the appeal should be dismissed and that the original Planning Permission be confirmed, subject to the two Conditions set out on the existing Decision Notice. The list of approved drawings refers to PL02A, which shows the screen closer to the northern boundary. Thus, the list of approved drawings should be corrected to refer to drawing PL02B.

28. The Minister may disagree with my recommendation to confirm the original permission. In which case, there are two alternative courses of action: to allow the appeal and refuse the application for a roof terrace; or to partially allow the appeal, but modify Condition 1 to increase the height of the proposed screen and require a design which eliminates any gaps between panels of the screen. In the event that the Minister chooses the latter option, I have appended a replacement Condition 1, which sets out these revised requirements. The existing Condition 2 should also be applied. The list of approved plans should also be amended as set out in the paragraph above.

*Sue Bell*

Inspector 08/09/2019

**Replacement Condition 1 in the event that the Minister decides to partially allow the appeal by modifying the required height, design, and materials of the proposed privacy screen.**

1. The area indicated as a roof terrace on drawing 2019-16-PL02B shall not be used until a privacy screen has been fitted on the north side of the terrace in the position shown. Notwithstanding the details submitted, the balcony screen shall be 1.9m in height above the level of the terrace, and shall comprise obscurely glazed glass panels between metal uprights. Any gaps shall be filled in with a mastic filler to match the colour of the glass panels, so that a complete screen is formed with no gaps. Once installed the screen shall be retained thereafter and no alterations, including the creation of a door or any gaps, shall be undertaken.

Reasons: As on the existing Decision Notice for Conditions 1 and 2.