

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

Appeal under Article 108 (2) (e) against a decision to modify planning permission already granted

Report to the Minister for the Environment

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

Appellant: Mrs Kal Bonner

Planning Permission Reference Number: RP/2019/0482

Decision date: 7 June 2019

Location of development: La Motte Chambers, 26 La Motte Street, Colomberie House, La Colomberie, St Helier, JE2 4SZ

Description of Development: Revised Plans to P/2018/0203 (Convert existing office buildings into 32 No. one bed, 22 No. two bed and 1 No. three bed apartments). Various external alterations to include roof.

Appeal Procedure and Date: Hearing 5 September 2019

Site Visit procedure and Date: Accompanied, 5 September 2019

Date of Report: 9 October 2019

Introduction

1. This is a third-party appeal by Mrs Kal Bonner against a decision by the Growth, Housing and Environment Department ('the Department') to grant a revision to planning permission P/2018/0203 for the conversion of an existing office building into apartments. The revisions are described as "*various external alterations to include raise roof*" and provide for relocation of a window on the west elevation within the roof slope. The revised permission was granted under delegated powers on 7 June 2019.
2. 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 proposals

3. The appeal concerns a revised application for works to a substantial building known as La Motte Chambers, which extends between La Motte Street to the north and La Colomberie to the south. The building, which was previously office accommodation, was granted consent for conversion to apartments. Since the original application was consented, there have been a number of revised applications covering different aspects of the proposals. The current appeal concerns one such revised application.

4. The appellant's residence is situated at first floor level directly to the west of the appeal site. A door from the appellant's kitchen allows access to an area to the north of the building, which has been developed as a roof terrace. The roof terrace and appeal site both extend to the mutual boundary. The appeal site extends above the height of the roof terrace and the appellant's dwelling. A number of air conditioning units and fans associated with the building that houses the appellant's apartment have been affixed to the wall of the appeal building.
5. During the Hearing I clarified the scope and detail of the proposed revisions covered by the application. These are shown most clearly on Plan 063 and 062. The principal elements include:
 - re-location of a window within the western roof elevation (removal of window shown at grid line D, and addition of window shown at grid line H);
 - an upgrade to the thermal insulation, which would require a modest increase in roof height;
 - alteration to the proposed material for cladding;
 - an alteration to the material above the roof dormers to match that on the main roof
 - An increase in the height of the privacy screen (shown at grid line L).
6. The proposed re-located window would be situated directly above the area used by the appellant as a roof terrace.
7. Following consideration of the proposals, the Department granted permission, subject to a single condition. This requires that the window should be fitted with obscure glass to a height of 1800mm from internal finished floor level and restricted in its opening mechanism to no more than 200mm, in order to safeguard the amenities and privacy of the adjoining properties.

Case for the appellant (Mrs Bonnar)

8. During the hearing, it was confirmed that the appellant was principally concerned about the proposed re-location of the window to a position directly above the area used by them as a roof terrace.
9. The appellant considers that the window would have an adverse effect on privacy and would reduce their enjoyment of the property. In addition to concerns about noise, the appellant considers that the window would be overbearing and would result in overlooking of their external amenity area with potential for overlooking into the windows to the rear of their property, including the bedroom. The appellant questions whether there are measures in place to ensure that the proposed use of obscured glass is maintained in the future.
10. The appellant also considers the window would represent a fire risk to their property as a result of cigarette ends being deposited from the window onto their terrace.
11. In relation to the location of the proposed window, the appellant notes that it would prevent future developments of their property.
12. The appellant is also concerned about effects on health and safety, principally during construction of the window. They consider that there is inadequate room around the building for safe construction and that this would necessitate them to leave their home whilst the works were completed. They also consider that the scaffolding for the proposed works would block air conditioning units and vents for extractor fans.

13. In addition, the appellant has questioned whether, in approving the revised application, the Planning Officer acted with impartiality.

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

14. Four letters of objection were received from two different addresses. The Department considers that many of the issues raised were not material planning considerations, and are dealt with by other legislation. The granting of planning permission does not supersede or over rule other legislation.
15. The window would be obscurely glazed up to 1800mm above finished floor level, and this requirement would be secured by condition.
16. In the Built-Up Area designated within the Adopted Island Plan 2011 (Revised 2014) there is a presumption in favour of development, in accordance with the Spatial Strategy (policy SP1) and policies H6 (Housing development within the Built-Up area) and GD3 (Density of development. Policy GD3 does, however, highlight the requirement to respect the amenities of residents of other properties and this is expanded upon in policy GD1.
17. The key test in policy GD1 is whether the development will “*unreasonably harm the amenities of neighbouring uses...*”. The Department’s view is that in this policy and physical context, the window would not cause unreasonable harm through overlooking, particularly given the condition attached to the permission.
18. The Department does not consider that the window would be over-bearing as it would not add to the mass of the building. Nor does the Department agree that the creation of a window to a bedroom, in a former commercial building now being converted to residential, would cause unreasonable harm through additional noise.

Case for the Applicant (Mass Investments Ltd)

19. The proposed increase in the height of the building by 140mm is required to accommodate a change to the proposed form of insulation, utilising a different roofing material. Replacement of roof coverings including a height increase of up to 15cm (150mm), is treated as Permitted Development under the Planning and Building (General Development) (Jersey) Order 2011 as amended. This is subject to a condition that the replacement roof covering must be natural slate or clay tiles, or in exactly the same materials as it is replacing. It is only because the application sought permission to utilise a different material that the proposal is not considered Permitted Development.
20. The applicant considers that the proposed change in height of the roof is minimal and if it were not accompanied by the proposed change in materials, would be treated as Permitted Development.
21. The proposal accords with the requirements of the Revised 2011 Island Plan and should therefore be approved. It accords with the tests within Policy GD1, and does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, which they might expect to enjoy.

22. Having considered the appellant's grounds of appeal, the only aspect which is material to the planning determination is the relationship between the proposed new window in the mansard roof and the appellant's roof terrace.
23. The applicant does not believe that the roof terrace benefits from planning permission and considers that the assessment of the current application should be made against the lawful planning context, rather than focusing on the protection of perceived amenities derived from an unauthorised roof terrace.
24. The applicant considers that the amenity value of the terrace is heavily prejudiced by the existing situation, including the presence of windows elsewhere in the building subject to appeal, which are in close proximity to the terrace. These windows served rooms, which were once occupied during the working day. By contrast, the proposed window would serve a bedroom, which is unlikely to be in active use to the same extent as an office window. For the same reasons it is unlikely to result in an increase in noise levels.
25. In addition, there is another consented development, to the north-west of the appellant's property, which was not subject to an appeal. This would include a substantial extension immediately adjacent to the terrace, delivering new residential units with external balconies. Any perception of effects on amenity arising from these balconies would be of a greater magnitude than those arising from the proposed window. The proposed use of the balconies means that they would be more likely to generate noise than a window serving a bedroom.
26. The proposed location of the window, within the mansard roof, is such that the applicant questions whether there would be any noticeable degree of overlooking. The design is such, that any occupier of the room would need to be standing well-within the roof (not adjacent to the face of the window) and so any perception of there being someone within the room, or risk of overlooking, is minimal.
27. Without prejudice, the applicant questions whether the condition in relation to the window is necessary as the reasons for its inclusion (to safeguard amenities and privacy in the context of GD1) are unfounded.
28. Alternatively, the applicant would be willing to offer an alternative window form comprising a "bottom-hung, inward-opening" unit. They believe that the revised window form would remove any risk of items being dropped from a bottom-opening unit and avoid any chance of an occupier getting a view out of the window.

Representations

29. In addition to the objections from the appellant and her husband, there was one other representation at the application stage. This raised similar issues to those set out by the appellant, including concern about the proximity of the proposed building and height of the building and the effects of these on the occupiers of the appellant's apartment through noise, lack of privacy and proximity to neighbours. Concerns relating to litter and increased fire hazard were also set out in the representation.

The policy framework

30. The proposal is located within the Built-Up Area identified within the Adopted Island Plan 2011 (Revised 2014), where there is a presumption in favour of development, subject to certain requirements being met. The principle of development has

already been agreed, and this appeal is concerned with a proposed revision to the consented design.

31. Policy BE6 Building Alterations sets a presumption in favour of alterations within the Built-Up Area, provided they meet certain policy tests.
32. Policy GD1 General Development Considerations sets out criteria against which all planning applications will be considered. These criteria are summarised around six main themes, including impact on neighbouring land and users. The requirements in relation to neighbouring land and users are set out in paragraph 3 of the policy:
*“(3) does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, in particular:
a. not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy;
b. not unreasonably affect the level of light to buildings and land that owners and occupiers might expect to enjoy;
c. not adversely affect the health, safety and environment of users of buildings and land by virtue of emissions to air, land, buildings and water including light, noise, vibration, dust, odour, fumes, electromagnetic fields, effluent or other emissions.”*

Inspector’s assessment and conclusions

33. The principle of conversion from office accommodation to residential use has been established through permission P/2018/0203. There are a number of elements to the proposed revisions to the application, as were outlined in paragraph 5. Based on the written representations, my site inspection and discussions at the hearing, I consider that the main issues in this appeal are the effects of the revised proposals, particularly the proposal to insert a window in the west elevation of the mansard roof, on the amenity and privacy of the neighbouring property to the west. That is, do the proposals satisfy the requirements of Policy GD1 (3) of the Adopted Island Plan 2011 (Revised 2014)?
34. There is no dispute that if the applicant did not wish to also change the fabric of the roof covering, then an increase in height of up to 150mm would be treated as Permitted Development under the Planning and Building (General Development) (Jersey) Order 2011. There is no suggestion that the proposed replacement materials are not in keeping with the area or otherwise acceptable. I consider that the proposed increase in height, when compared to what is already consented, would appear imperceptible. I therefore conclude that it would not have an adverse effect on the amenity of neighbouring properties.
35. The proposed alteration in the roof covering over the dormer windows would result in the material matching that used elsewhere on the roof, and is therefore considered acceptable. Likewise, the proposal to increase the height of the privacy screen is also deemed acceptable as it would act to increase privacy for neighbours.
36. I turn now to the main issue in this appeal, which is the proposed re-location of a window on the western elevation. In determining the acceptability of this proposal, regard must be had to Policy GD1 part 3 of the Adopted Island Plan 2011 (Revised 2014), in terms of whether the window would unreasonably harm the amenities of neighbouring uses, and in particular whether it would unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy.

37. The tests set by Policy GD1 recognise that development may result in change and that this change may affect neighbouring amenity. An assessment is required as to whether this change would result in an unreasonable effect. This assessment has to be determined on a case-by-case basis, in light of the particular characteristics of the location and the proposal.
38. The appellant's residence is located in the Built-Up area, close to the centre of St. Helier. Nevertheless, the appellant currently enjoys a relatively high degree of privacy to the rear of their accommodation. The existing windows in the office block are set back from and are at some distance from the rear face of the apartment. Thus, there is little scope for overlooking either into the rear of the property or over the area which the appellant uses as a roof terrace. By contrast, the proposed window would be significantly closer and would be located directly above the flat roof. The location, orientation and size of the proposed window would result in it being a conspicuous feature when viewed from the rear facing windows and roof terrace. Even when closed and allowing for the presence of obscure glass, this could lead to the impression of being overlooked.
39. During my site inspection I saw that the internal design of the proposed building is such that occupants would not be able to stand directly adjacent to the window owing to the depth of the window cill. Based on the orientation of the proposed window in relation to the appellant's windows, the angle of the view, the distance between the windows, and the requirement for obscure glass, I conclude that when the window is closed there would be little potential for any casual or inadvertent overlooking into the private areas of the appellant's dwelling. This is particularly the case for the appellant's bedroom window, which is located furthest away from the proposed window.
40. Likewise, I find that the height and orientation of the window, combined with the fact that occupants would not be able to stand directly adjacent to the window, would make it difficult to overlook the roof terrace when the window is closed. Any risk of casual overlooking would be removed through the use of obscure glass.
41. I accept that the proposed arrangement of the window, hinged in the middle with restricted opening at the bottom, would prevent occupants from leaning out over the roof terrace. However, as the appellant's residence and roof terrace are located directly below the window, I assess that it would be in the natural eyeline for those looking through the open section. I therefore conclude that the proposed arrangement would allow for some overlooking and a loss of privacy for the appellant.
42. I am conscious that there are other consented developments to the rear of the appellant's home, which, once built, would alter the level of privacy enjoyed by the appellant. Nevertheless, these do not detract from the requirement to assess whether the current proposal would have an unreasonable effect on the level of privacy of the occupiers of the apartment.
43. I have given careful consideration to the applicant's view that assessment of what is reasonable should be made within the lawful planning context, rather than focusing on the protection of perceived amenities derived from an unauthorised roof terrace.
44. The roof terrace is particularly valued by the appellant as it provides the only external amenity space for the apartment. The Department states that it has no record of permission having been granted to use the external area as a roof terrace

and there is no documentary evidence before me verifying when the area was first used as such. The appellant states they have used the area as a roof terrace for over 5½ years and in their view, it has been used for this purpose for in excess of 8 years.

45. Article 40 of the Planning and Building (Jersey) Law 2002 sets out that enforcement action is only permissible where there has been a breach of development controls during the previous 8 years and it is expedient that action should be taken to remedy the breach. There has been no suggestion to me that the Department intends to require the occupants to regularise the situation through either initiating enforcement action or requesting an application for retrospective planning permission. Nor has there been any indication that the Department considers the use of the area as a roof terrace to be unacceptable or should cease.
46. In any case, this appeal is not concerned with the planning status of the roof terrace, but whether the proposals would unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents.
47. Even if the external area were not used as a roof terrace, I consider that the proposed window, by virtue of its bottom opening, would act to focus views towards and across much, if not all, of the roof terrace and windows, to the detriment of privacy of the occupiers. Whilst I accept that some degree of overlooking of external amenity areas and windows is not unusual within Built-Up areas, for the reasons I set out above, I consider that the proposed arrangement would unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy.
48. The applicant has suggested that the condition relating to the opening of the window could be modified, by proposing use of a bottom-hung window, which opens inwards to the room. At the hearing, the appellant confirmed that they are not satisfied that the alternative design would address their concerns about privacy and safety. Nevertheless, I am content that a bottom-hung window, if combined with restricted opening and obscured glass, would significantly reduce the potential for any overlooking into the rear of the appellant's property and over the terrace. I consider that this arrangement, which could be secured by condition, would meet the requirements of Policy GD1.
49. I have considered the applicant's view that permission should be granted without any conditions, as in their opinion none are necessary owing to the unauthorised status of the roof terrace. However, for the reasons I set out above, I find that the proposed window, without conditions relating to its material, method of opening, and limit of opening, would unreasonably harm the amenities of neighbouring uses including the level of privacy to buildings and land that the occupiers might expect to enjoy. Hence, I consider that a condition is necessary in order for permission to be granted.
50. In relation to noise, I am not persuaded that the re-location of one window, which serves a bedroom, would lead to unacceptable generation of noise to the detriment of either the appellant's amenity or the amenity of the occupier of the bedroom. Likewise, I find that the proposed window would not add to the bulk of the building, and hence would not be over-bearing.
51. Much of the appellant's statement of case is concerned with the risks to their health and safety arising from the proposed development, particularly during the

construction period. The question whether these risks are consistent with the requirements of Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

52. Policy GD1 is primarily concerned with the long-term effects of a proposal following construction. I note the substantial body of evidence provided by the appellant of the difficulties and dangers that they have experienced to date during the implementation of the extant permission. This has included various items, some of which have been heavy or sizeable, being dropped onto their roof terrace. Such incidents, whilst highly regrettable, are not aspects that can be considered by this appeal. There is separate legislation to deal with breaches of health and safety requirements. Likewise, I note the concerns of the appellant about the location of scaffolding. Nevertheless, it is worth stating that any grant of planning permission does not bring with it any right of access to private property.
53. I have considered appellant's concerns about items being discarded through the window onto the roof terrace. I am content that the proposed revised condition relating to the opening of the window would be sufficient to reduce this risk.
54. I have considered the other points raised by the appellant in their grounds of appeal, but do not consider these other points are material to the decision. Likewise, the comments relating to the way in which the application was handled are not matters for this appeal and are best addressed by the Department.

Conclusions

55. The installation of a window into the west elevation of the mansard roof would introduce a conspicuous feature, that would lead to an impression of being overlooked and loss of privacy. The condition proposed by the Department sought to address this by requiring obscure glass to a height of 1800mm from internal finished floor level and restricted opening to no more than 200mm. For the reasons I set out above, I consider that this arrangement would not be sufficient to avoid unreasonable effects on neighbouring amenity and hence would not satisfy the requirements of policy GD1.
56. The applicant has proposed a modification to the window design. I am content that the proposed modification, involving the window to be bottom-hung, restricted opening and obscured glass, would be sufficient to avoid any overlooking of the neighbouring property or loss of privacy and hence would satisfy the requirements of Policy GD1 of the Adopted Island Plan 2011 (Amended 2014). These requirements could be secured by a modification to the permission that was granted.

Recommendations

57. For the reasons outlined above, I recommend that the appeal should be dismissed and planning permission granted, but that the condition should be modified to also require that the window be hung at the bottom. I also recommend substituting 'retained' for 'maintained' within the condition to give greater emphasis.

Sue Bell

Inspector 09/10/2019