

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

Appeal under Article 108 against a decision made under Article 19 to grant a planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Nicholas Socrates

Planning permission reference number and date:

P/2020/0857 dated 15 October 2020

Applicant for planning permission:

Mr B Cooke

Site address:

La Rousse, La Route de la Baie, St Brelade JE3 8EF

Description of development:

"Construct 1 no. 5 bed residential unit with associated parking and amenity space. Create new vehicular access onto La Route de la Baie. Construct swimming pool to West of site."

Inspector's site visit date:

12 April 2021

Hearing date:

16 April 2021

Introduction

1. This is a third-party appeal against the grant by the Planning Committee of planning permission P/2020/0857 on 15 October 2020 for the development described above. The application was recommended for approval.
2. The permission was granted subject to the standard conditions relating to the commencement of the development and the carrying out of the development in accordance with the approved details, and to four additional conditions. The four additional conditions relate to external materials, visibility splays,

ecological assessment and landscaping. The landscaping condition is as follows: -

"4. No part of the development hereby approved shall be occupied until all hard and soft landscape works, as indicated on the approved plan, have been carried out in full. Notwithstanding the approved details, prior to being planted, the specification of the new trees to be planted along the western boundary of the site, shall be submitted to, and agreed in writing by, the Regulation section of Infrastructure, Housing, and Environment. The new trees shall be of a salt-tolerant variety, and should be semi-mature at the time of planting. Following completion of the landscaping, the landscaped areas shall be thereafter maintained as such."

The reason given for the landscaping condition is as follows: -

"4. To ensure that the benefits of the approved landscaping scheme are carried out and completed, making a positive contribution to the amenities of the site in accordance with Policies GD 1, GD 7, NE 1, NE 2 and NE 4 of the adopted Island Plan 2011 (revised 2014)."

Description of the site and its surroundings and the approved development

3. The site is vacant land adjoining the promenade at St Brelade, with L'Horizon Hotel to the east and El Cobre, a two-storey building containing five apartments, to the west. A public footpath between the promenade and La Route de la Baie runs between the site and the Hotel; this is not affected by the development.
4. The site is in the Built-up Area and within the Shoreline Zone, as defined in the Island Plan. The dwelling La Rousse on the site was demolished with planning permission more than two years ago.
5. The appellant occupies one of El Cobre's apartments and he also represents the other residents. El Cobre's shared outdoor amenity area is between the southern elevation of the apartments and the promenade. This elevation and the amenity area are both open to view from the promenade. The eastern boundary of the amenity area is next to the western boundary of the site.
6. The development includes a two-storey residential unit, which will be built on the part of the site nearest to the Hotel. The Hotel is three storeys high and has windows and balconies on the upper floors of its western elevation, which face the site and El Cobre. The unit will have balconies and extensive glazing in its southern gable facing the sea and these features will wrap around onto its western elevation and face across the site towards El Cobre's outdoor amenity area.

Island Plan Policies

7. Policy H6 indicates that proposals for new dwellings, extensions or alterations to existing dwellings or changes of use to residential will be permitted within the Built-up Area provided that they are in accordance with the required standards for housing as established and adopted by the Minister through supplementary planning guidance.

8. Policy GD3 deals with the density of development. It states that to contribute towards a more sustainable approach to the development and redevelopment of land in accord with the Strategic Policies SP1 'Spatial strategy' and SP2 'Efficient use of resources', the Minister will require that the highest reasonable density is achieved for all developments, commensurate with good design and adequate amenity space and without unreasonable impact on adjoining properties. Policy SP1 states that development will be concentrated within the Built-up Area. Map 2.2 shows the appeal site as being within a Secondary Urban Settlement.
9. Policy GD7 states that where the design of development does not adequately address and appropriately respond to certain criteria, it will not be permitted. These criteria include its scale, form and siting, inward and outward views, its relationship to existing buildings, settlement form and character, and the degree to which its design details reflect or complement the style and traditions of local buildings.
10. Policy BE4 states: -

"Within the Shoreline Zone the following types of development proposals will not be approved;
 1. new buildings, new structures or extensions to existing buildings, where such development will obstruct significant public views to the foreshore and sea;
 2. development involving the loss of open spaces that are considered important for the preservation of public views to the foreshore and sea;
 3. development which adversely affects public access to and along the coastline and seafront.

Within the Shoreline Zone for St. Brelade's Bay, the following forms of development will not normally be approved:

4. the redevelopment of a building, involving demolition and replacement, where the proposal would be larger in terms of any gross floorspace, building footprint or visual impact than the building being replaced."
11. Policy GD1 states that development proposals will not be permitted unless certain criteria are met. One of these is that the development will not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, and in particular will not unreasonably affect the level of privacy that owners and occupiers might expect to enjoy.

The case for the appellant

12. The appellant maintains that the residents of El Cobre will suffer unreasonable harm to their privacy, contrary to Policy GD1.
13. The appellant objects to the windows and balconies at first-floor level that will face across the site towards El Cobre's amenity area. These he states will result in a complete loss of privacy in the amenity area, which is the only outdoor amenity area available to the occupiers of El Cobre and is used regularly for a variety of domestic and recreational activities. He advises that improvements are underway to enhance its standard of amenity. He adds that there will be a constant "impression of overlooking", a notion which he states

has been recognised in the UK as being capable of being a material planning consideration because mere apprehensiveness about overlooking can inhibit the enjoyment of private amenity areas.

14. The appellant is aware of the planning permission P/2017/1370 that authorises the construction of tourist accommodation with windows and balconies in the same position. He states that this approval must have been an oversight and maintains that the change of use of the unit from tourist accommodation with low occupancy rates to continuous residential occupation throughout the year will result in a significant intensification in the amount of overlooking.
15. The appellant maintains that the development will set an undesirable precedent because seafront properties usually face outwards towards the sea with only minor secondary windows affording views to the side. He states that this will be the only property in the Bay with full-height glazing facing sideways.
16. The appellant claims that the planting scheme will not be effective in maintaining the privacy of the amenity area, because trees of the height shown will not grow in this highly-exposed location and will be affected by seawater during storms and high tides.

Other representations

17. The other representations support the case put forward by the appellant and also maintain that the approved development is contrary to Policy BE4.

The case for the applicant

18. The applicant states that there is an extant planning permission P/2017/1370 for a unit in the same form and with the same windows and balconies; this permission authorised the demolition of La Rousse and the construction of a five-bedroom unit of serviced tourist accommodation. He maintains that this is a lawful fall-back position if this appeal is allowed. He indicates that he had to submit the new planning application solely because he now intends to use the unit for private residential accommodation.
19. The applicant points out that El Cobre's amenity area is already open to view from the promenade that passes next to it. He maintains that the landscaping proposals on the western boundary of the site will be effective, but that they are not necessary for privacy reasons in any event since the facing windows and balconies in the unit will be sufficiently far away. In his opinion, there will be no breach of any Island Plan Policies.

The case for the Infrastructure, Housing and Environment Department

20. The Department state that the unit will be an attractive and well-designed contemporary new building. They consider that it will comply with the Island Plan Policies referred to in paragraphs 7 to 11 above and that, in particular, it will not unreasonably affect the level of privacy that occupiers of El Cobre might expect to enjoy. They point out that the layout of the development will leave a large part of the site open and that there will be a substantial distance between the unit and El Cobre.

21. The Department confirm the applicant's statement about the extant planning permission P/2017/1370. They point out that when the Planning Committee approved this application, the Committee decided that the design and layout of the development was acceptable and that the development was in accordance with Island Plan Policies, including the Shoreline Zone Policy. Since this development can still be built and the change of use of the unit from tourist accommodation to private residential accommodation does not raise any new planning issues, the Department state that it would have been unreasonable to refuse planning permission for the application under appeal.

Inspector's assessments and conclusions

22. The development will be within the Built-up Area, where Policy SP1 states that development will be concentrated and Policy H6 states that new dwellings will be permitted provided they are in accordance with the required housing standards, which this unit will be. The development will not be in conflict with criteria 1, 2 or 3 of the Shoreline Policy BE4, because it will not obstruct significant public views to the foreshore or sea, or involve the loss of open spaces that are considered important for the preservation of public views to the foreshore or sea, or affect public access to or along the coastline or the seafront. Criterion 4 of Policy BE4 is not engaged since the site is vacant land.
23. There will be no conflict with Policies GD3 or GD7. There is a wide variety of different kinds of development in this location and there is no style or tradition that the development needs to respond to. The appellant's assertion about an undesirable precedent being set (see paragraph 15 above) is unsustainable, since L'Horizon Hotel has a range of principal windows on its western side. I agree with the Department that the unit will be attractive and well designed. The Department are correct to point out that the layout of the development will leave a large part of the site open and that there will be a substantial distance between the unit and El Cobre.
24. The main issue in the appeal is therefore whether the unit will be contrary to Policy GD1 because of a harmful effect on the level of privacy that the occupiers of El Cobre might expect to enjoy in their external amenity area. For the reasons set out in paragraphs 25 to 29 below, I have concluded that there will be no conflict with Policy GD1.
25. The level of privacy enjoyed in the amenity area at present is severely constrained by the direct views of the area that anyone walking past on the promenade can obtain from an extremely short distance away. I note that improvements are underway to enhance the standard of amenity, but it is unlikely that these will screen the view of the amenity area from the promenade because that would also screen the view of the Bay from the amenity area and from ground-floor windows in El Cobre.
26. The notion that an "impression of overlooking" can be a material planning consideration has occasionally featured in UK planning appeals, but it has not as far as I am aware gained any ground in Jersey. Here reliance is usually placed on the Royal Court decisions in *Metropole* and *Winchester*, which recognize that in the Built-up Area expectations as to privacy are relative to the built environment in question and a potential loss of privacy from new development has generally to be accepted.

27. Even in the UK the notion has been confined to cases where the impact on a private area would be particularly intrusive because of a window's height and proximity. This is not the case in this appeal. The balconies and windows facing across the site towards El Cobre's amenity area are sufficiently far away to conform to the approach in *Metropole* and *Winchester*. I do not consider that the change of occupation of the unit from the previously approved tourist accommodation to the private residential accommodation now approved could intensify the use of the balconies and windows so as to harm the enjoyment of El Cobre's amenity area.
28. There is some force in the appellant's claims about the planting proposals (see paragraph 16 above), although the applicant's evidence indicates otherwise. However, it is not essential that any scheme should be effective in preventing the amenity area from being seen from the balconies and windows, since they will be sufficiently far away to exclude a requirement for screening.
29. I am satisfied that permission P/2017/1370 constitutes a valid fallback position that the applicant would be likely to proceed with if this appeal were allowed. That development would have the same design and layout and impact on El Cobre as the one approved in this appeal.

Inspector's recommendation

30. For the above reasons, I recommend that the appeal is dismissed.

Dated 11 May 2021

D.A.Hainsworth

Inspector