

Appeal of a Decision

Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended)

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## **REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT**

Site visit made on 7<sup>th</sup> December 2021. Public Hearing held on 8<sup>th</sup> December 2021.

**by N McGurk BSc (Hons) MCD MBA MRTPI**

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**Reference: RP/2021/0746**

**8 Gorey Pier, St Martin, JE3 6EW**

- The appeal is made under Article 108 and 110 of Planning and Building (Jersey) Law 2002 (as amended) against the granting of permission to develop land.
  - The appeal is made by James Lynch against the decision of the States of Jersey. The appellant lives within 50 metres of the appeal site.
  - The application Ref RP/2021/0746 by Michael James, dated 27 May 2021, was approved by notice dated 23 September 2021.
  - The application granted permission is "Revised Plans to P/2020/0209 (Construct two storey extension and install 1 No. dormer window to East elevation. Construct first floor balcony and replace 1 No. window with a door to West elevation. Various internal and external alterations). Form second floor terrace to East elevation with associated glass balustrade, privacy screen and covered access."
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### **Recommendation**

1. I recommend that the appeal be dismissed and that the original planning permission be upheld, subject to conditions.

### **Introduction and Procedural Matters**

2. The description of the proposed development in the decision notice is the same as that set out above, but with the addition "*Amended plans received.*" This refers to revised plans which were submitted following the application but prior to the Department's decision.
3. The application referred to in the description of the proposed development (P/2020/0209) was approved in April 2020. The application the subject of this appeal seeks to add a terrace at second floor level to the rear of the appeal property. The appellant objects to this terrace and its associated features.
4. The development approved in April 2020 is a material consideration. The permission allows for a sizeable extension to the rear of Number 8 Gorey Pier.
5. In addition to relevant planning matters, the statements of case raise a number of non-planning matters. I confirm that I have considered all of the information before me and that this Report focuses upon relevant planning matters only.

### **Case for the Appellant**

6. The appeal is made on four main grounds, the main points of which can be summarised as below.
  7. *Ground one, loss of privacy.* Whilst the proposed obscure glazed privacy screens would reduce the impact on privacy, the roof terrace would look directly into the
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primary living area on the second floor of Number 7 Gorey Pier. This would require the drawing of blinds in order to protect privacy.

8. *Ground two, loss of daylight.* The height of the proposed terrace, combined with that of the proposed privacy screens would block out a significant amount of natural light. This would increase shading to No 7's outside space.
9. In addition, the amount of natural light reaching the ground floor kitchen – which is already limited – would be reduced; and the amount of daylight reaching the rear-facing bedrooms would be reduced. The loss in natural light would be dramatic.
10. *Ground three, overbearing presence.* The rear of No 7 provides its only outside amenity space. Objections were made to the previous application for a roof terrace on the grounds of its impacts on privacy, outlook and daylight. This previous application was refused.
11. The proposed roof terrace, at more than 3 metres above the floor level of No 7's outside space, would loom above it. The addition of the privacy screens would add a further 2 metres of height, exacerbating the impact of this, effectively creating a 5 metre barrier – higher than a double decker bus - alongside No 7's outside living space.
12. This would result in an overbearing presence, the impact of which would be increased as a result of it being a living/socialising area – bringing the prospect of there being social gatherings at a highly elevated level adjacent to No 7's outside space.
13. It cannot be that simply adding screens to provide for privacy means that unrestricted upward development is allowed, whatever the impact.
14. *Ground four, impact on local character.* The proposal would result in the substantial intensification of development on a Listed Building and this would not be in keeping with the historic character of the surrounding area.
15. The concerns previously raised, at application stage, by the Historic Environment Team and by St Martin's Conservation Trust, are reiterated and supported. The proposal would have a negative impact on the setting of No 8, as well as that of its neighbours to either side and that of Mount Orgueil Castle; the proposed clear glass balustrades are visually unsympathetic and would not sit well in their surroundings; the proposals, including a new higher staircase, are a step too far, impacting on the setting of a simple duo pitch range of Listed Buildings.

### **Case for the Planning Authority**

16. The Department refers to the Application Assessment Sheet, which sets out the key issues, comments and the Department's assessment of the application the subject of this appeal; and highlights points made in its Statement of Case.
17. The appeal site is within the Built-Up Area. The Department refers to the Island Plan's presumption in favour of achieving new development within the Built-up Areas and its recognition that "*new relationships between properties will be unavoidable*" as part of the "*highest reasonable density of development*" being achieved.

18. The Department points to Island Plan Policy GD3 – “*A more sustainable approach to development and redevelopment of land requires the application and delivery of higher densities and, in particular, greater housing yields than have generally been achieved in Jersey.*”
19. In setting this out, the Department highlights that Policy GD1 of the Island Plan seeks to prevent development from having an *unreasonable* impact on residential amenities. Having regard to the aims and provisions of the Island Plan, it is the Department’s view that, in this case, the proposed development would “*not have an unreasonable impact upon the adjoining property.*”
20. The reason for the previous refusal<sup>1</sup> was that the terrace proposed would overlook No 7. The current proposal overcomes this by reducing the size of the proposed terrace – which would be set back from the site’s northern boundary by around 1.7 metres – and through the provision of privacy screens, serving to prevent overlooking into No 7.
21. Many properties along Gorey Pier have been extended and/or have terraces on the rear elevations. For example, permission has been granted for a terrace to the rear of Number 9 Gorey Pier<sup>2</sup>.
22. The proposed privacy screens would be lightweight in appearance and would prevent views into No 7. As such, the proposal adequately addresses the previous reason for refusal.
23. The lightweight structure of the terrace enclosures and the set-back from the northern boundary would prevent the proposed development from having an overbearing presence.
24. The proposal would improve the quality of accommodation on the appeal site without an unreasonable impact on No 7.
25. The Application Assessment Sheet acknowledges that the Historic Environment Team (HET) “*cannot support this further iteration and intensification of the eastern terrace...*” However, it is the Department’s view that the effects of proposed terrace on the Listed Building and neighbouring Listed Buildings would be minimal due to the location of the terrace, set away from the rear elevation of the appeal property. Consequently, the proposal is not likely to have any detrimental impact upon the wider setting of the site or the character of the area.

### **Case for the Applicant**

26. The roof terrace itself does not add height, as the first floor rear extension has planning permission. Reference to the terrace being 3 metres above No 7’s floor area is misleading. The only increase in elevation is the proposed privacy screen. The proposed privacy screens will be 1.8 metres high and there will be a c.1.2 metre glass box to provide access. These elements do not represent a substantial increase in height.
27. The nearest proposed privacy screen would be set back 1.7 metres from the boundary with No 7 and would be made from opaque glass. These factors would

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<sup>1</sup> Ref: RP/2020/1130.

<sup>2</sup> Ref: RP/2019/1659.

mitigate any potential loss of light to No 7. The proposal will not block out a significant amount of natural light, nor plunge No 7's outside area into shade. There will be no detrimental impact in respect of the light received by the ground floor kitchen.

28. The opaque proposed privacy screens would obscure views from the roof terrace towards No 7. Users of the roof terrace would mostly be seated and would be shorter than the height of the proposed privacy screens.
29. There are already views into No 7's top floor room from the appeal property's garden area below the castle bank. Similarly, there are views from No 7's second floor terrace area towards the rear of No 8.
30. The proposed terrace "*mirrors closely*" the terraces at Nos 9 and 10. The setting back of the proposed privacy screens from the boundary wall with No 7 means that it will not loom over properties to the west.
31. Opaque glass privacy screening and a small sky box roof access are not representative of intensive development. The proposed roof terrace would replace the current amenity area at first floor level that will be lost when the rear extension is completed. The sky roof box access would not be visible to the appellant due to the proposed privacy screens.
32. The historic character of properties along Gorey Pier is derived from the picturesque streetscape of multi-coloured buildings viewed from the south, with the castle in the background. The area to the rear of these properties is, on the whole, unsightly, unremarkable and detrimentally impacts the view south towards the castle.
33. The proposed development would not block out the sky or daylight from Ms Barnicoat's property. The nearest proposed privacy screen would be around 9 metres away from Ms Barnicoat's boundary wall and the privacy screen would let light through. Mr Clapham's property cannot be seen from the rear of the appeal property.
34. A number of properties along Gorey Pier have terraces to the rear at second floor level, including No 7.
35. The proposed development is located within a row of terraced properties in the Built-Up Area where a degree of mutual overlooking should be expected. Mutual overlooking already exists in this location. The proposal provides for residential amenity and does not represent unreasonable harm to the amenities of neighbours.

### **Representations by Other Parties**

36. *St Martin's Conservation Trust*. Notes that the Historic Environment Team objected to the proposal.
37. The approved extension extends only to the height of the eaves of No 8, whereas the proposed terrace would effectively create a development above the height of the eaves. This is significant, as the roofscape of Nos 8, 9 and 10 Gorey Pier is similar and by rising above eaves height, the terrace would appear as an irregular feature.

38. The proposed glazed privacy screens would introduce a new material to the area to the rear of the terrace. Whilst it is accepted that the area to the rear of the terrace has a “higgledy-piggledy character,” the palette of materials is generally limited to timber and render, with occasional other materials. The proposed privacy screens together with the glass box at the top of the stairwell would introduce a new modern material to the area.
39. Glazing is often referred to as being lightweight or even invisible. In this case, the proposed screens and the glass box would be neither but would introduce a reflective material that would draw the eye and would stand out as a machine-made modern material, out of character with its surroundings. This would combine with the height of the proposal to result in a harmful impact on the setting of the Listed Building and on the area to the rear of the terrace.
40. The proposed glazed features would be visible from the Castle.
41. *Robert Clapham*. The proposed development represents a substantial increase in height, which would have the effect of looming above neighbouring properties to the detriment of local character.
42. *Maria Barnicoat*. The proposed development is too high and it would block out the sky and daylight from the outlook to the rear of my home. The proposal would also be out of keeping with local character.

### **Main Issues**

43. The main issues in this case are the effect of the proposed development on the living conditions of the occupiers of No 7 Gorey Pier, with regards to privacy, daylight and outlook; and its effect on local character.

### **Reasons**

44. The appeal property, No 8 Gorey Pier, is a mid-terrace dwelling located within the Built-up Area. It is a Grade 4 Listed Building and its front elevation forms part of the Gorey Pier residential terrace which forms part of the iconic view across Gorey Harbour to Mount Orgueil.
45. As noted above, the development the subject of this appeal relates to a proposed outside terrace located to the rear of the appeal property. The proposal would not be visible as part of and would have no impact upon, the aforementioned view.
46. The appeal property already benefits from permission to develop a two storey rear extension. As noted above, the proposal the subject of this appeal relates to adding a terrace above part of that extension.
47. The proposed terrace would be located towards the rear of the extension and would be set 1.7 metres back from the shared rear boundary with No 7 Gorey Terrace.
48. In the interests of the privacy of terrace-users and that of neighbours, 1.8 metre high obscure glazed privacy screens are proposed. The terrace would be reached from below, requiring the introduction of a 1.2m high glass box to provide access at roof level.

49. Like a number of other properties in the terrace, the appeal property and No 7 have tiered rear garden areas. These fill a relatively small gap between the rear elevation of the dwellings and the steep escarpment from which Mount Orgueil rises. During my site visit, I observed that, as a consequence of the tiered nature of the gardens, the proposal would have different impacts on the occupiers of No 7, subject to where on their property the occupiers might be.
50. In general terms, I also noted during my site visit that there is already a degree of inter-visibility between the rear gardens and the rear elevations of neighbouring dwellings. This varies from property to property, but in respect of the relationship between Nos 7 and 8 Gorey Pier, it would be possible to stand towards the rear of the garden of either dwelling and look back towards and/or be seen from rear facing neighbouring windows.
51. However, neither of the two properties has a formal terraced area. The proposed development would introduce such a formal area.
52. The appellant is concerned with the proposal's effects on privacy, daylight and outlook. I consider each of these in turn below with specific reference to the Island Plan's clear and stated aim of achieving higher densities within the Built-up Area and its recognition that "*new relationships between properties will be unavoidable*" in order for the "*highest reasonable density of development*" to be achieved.
53. Taking the above into account, within the Built-up Area, the Island Plan makes an explicit presumption in favour of sustainable development and in the light of this, the relevant test when considering the effect of development proposals on the living conditions of neighbouring occupiers is whether the proposed development would result in *unreasonable* harm.
54. Essentially, the Island Plan recognises that a policy of achieving higher densities within the Built-up Area means that a degree of harm in respect of the living conditions of neighbouring occupiers should be expected and accepted. The policy test is whether any such harm is so great as to be unreasonable.
55. At a height of 1.8 metres, the proposed privacy screens would combine with a set back from the shared boundary between the two dwellings to provide for a very high degree of privacy. I note earlier in this Report that a degree of inter-visibility already exists between the two dwellings. Thus, whilst the proposed development would allow some scope for inter-visibility between No 7's top floor rear window and the terrace, especially when occupiers of the terrace are standing up, I find that this would not be significantly greater than might be expected as normal inter-visibility between neighbouring properties to the rear of Gorey Pier, taking account of the height of both second floor windows and the highest parts of rear gardens.
56. Taking all of the above into account, I am satisfied that the proposed development would not result in unreasonable harm to the privacy of the occupiers of No 7 Gorey Pier.
57. The tiered nature of the gardens to the rear of Gorey Pier combined with their "valley-like" location, between rear elevations and the Mount Orgueil escarpment, mean that considerably reduced levels of daylight reaching lower rear windows might be expected relative to say, a more open location.

58. I am also mindful that, whilst solid structures could block-out daylight, the proposed privacy screens would comprise opaque glazing that would not act as a significant barrier to, but would have only a negligible impact upon, levels of daylight. I find that this, together with the setting back of the terrace from the shared boundary, would mean that there would be minimal, if any, notable impacts in respect of the amount of natural light received by the occupiers of No 7 and there is no substantive evidence before me to the contrary.
59. Taking account of this, I am satisfied that the proposed development would not result in unreasonable harm in respect of the amount of daylight received by the occupiers of No 7.
60. The outlook to the rear of No 7 Gorey Pier is largely dominated by the property's tiered garden area and when looking out of windows at ground and first floor level, by the gardens and to a lesser degree, by boundary walls with adjoining properties. At second floor level, there is a more open outlook, as might be anticipated from a higher level.
61. As noted above, the proposed development would be set away from the shared boundary with No 7. This would mean that the terrace would be largely invisible from No 7's ground floor kitchen window and from the ground and first tier garden areas. The proposed development would not result in any discernible harmful impact on outlook from these locations.
62. The tall privacy screens would be visible from No 7's first floor rear-facing windows and from the upper garden levels. However, whilst this would result in a change in outlook from those locations, the set-back of the terrace from the shared boundary would mean that it would not appear unduly intrusive, whilst to a very considerable degree, the privacy screens would serve their purpose of providing for privacy.
63. The most significant impact on outlook would arise in respect of the outlook from the rear facing window on the second floor of No 7 and to a lesser degree, in respect of the outlook from the upper-most part of the rear garden. In respect of the latter, this uppermost area is so high as to provide for airy views across gardens to the rear of the residential terrace and the proposed development would not reduce these to any significant degree, whilst the proposed screens would provide for some privacy.
64. I find that some harm would arise in respect of the outlook from No 7's rear-facing second floor window. This window would provide for a clear view of the privacy screens and much of the proposed terrace. Further, the eye would be drawn to the glazing associated with the proposed terrace, not least due to it comprising a unique material across this rear garden area.
65. I fully recognise that the change in outlook would mean that the level of harm would be significant to the occupiers of No 7, to whom the terrace would initially be likely to appear as an alien feature, not least due to the use of modern materials and the introduction of a potentially more active use than previously experienced.
66. However, the outlook from the top floor of No 7 is relatively expansive and over time, it appears to me that the terrace would simply become a feature not especially out of place within a garden setting. Consequently, in this regard, I

find that some harm would arise as a result of increased scope for inter-visibility between the proposed development and No 7, but that this harm would not be so significant as to be unreasonable.

67. Taking all of the above into account, I find that the proposed development would not result in unreasonable harm to the living conditions of the occupiers of No 7 Gorey Pier, with regards to privacy, daylight and outlook. The proposal accords with Island Plan Policies GD1 and GD3, which amongst other things, provide for sustainable development whilst protecting residential amenity.

*Character and appearance*

68. Whilst the front elevation of the appeal property forms part of an iconic Jersey view, its rear sits within an area described during the appeal hearing as “higgledy-piggledy.” During my site visit, I observed that many dwellings have been substantially altered to the rear, with examples of significant alterations and extensions from ground floor through to roof level.

69. This results in a significant variance in the appearance of dwellings to the rear, a variance that also extends to their garden areas, where there are examples of different forms of tiers, terraces and outside areas, along with a range of boundary features, steps and outbuildings. The proposed terrace would itself sit alongside and appear in keeping with, an existing terrace to the rear of No 9 Gorey Pier.

70. Whilst I note and agree with St Martins Conservation Trust’s observation that the proposal would introduce a new material to this rear garden area, I consider that glazed features, whether modern or traditional, would not appear out of place in a garden setting already characterised by a broad range of material types, as well as by an equally broad range of features, including terraces, steps and outbuildings.

71. Further to this, neither the privacy screen nor the glass box would comprise, or draw the eye as, substantial buildings. Rather, they would form the kind of relatively small structures and boundary-type features commonly associated with garden areas.

72. Similarly, whilst again I note and agree with St Martins Conservation Trust’s observation that the introduction of glazed features should not be taken lightly, or simply be regarded as “lightweight” or necessarily inconsequential additions, I find that the proposed glazed features would appear no more intrusive or discordant than existing features characteristic of this rear garden area.

73. Also, whilst the terrace and its glazed features would stand taller than the eaves height of the appeal property and that of neighbouring dwellings, it would be separated and set well-away from the eaves by a large area of the roof of the permitted extension and it would also be located below the highest extremities of the appeal property’s rear garden. Given this and all of the above, I consider that the proposal would appear in keeping with its surroundings and there is nothing that leads me to conclude that the proposal would fail to conserve, or result in harm to local heritage; or that it would detract from the character of the area.



74. Consequently, I find that the proposal would not harm the character and appearance of the area, having regard to the Island Plan, including Policies HE1 and GD1, which together amongst other things, presume in favour of the preservation of the architecture, character and integrity of Listed Buildings and their settings and serve to protect local character.

### **Conditions**

75. In granting planning permission, the Department imposed two planning conditions. The first of these, set out below, simply references the fact that the proposal revises a previous permission and no change is recommended.

*A. The permission solely relates to the revisions described herein.*

76. The second condition, set out below, relates directly to the provision of the privacy screens. As noted above, these serve the purpose of providing for privacy and no change is recommended.

*Prior to first use of the terrace hereby approved on the Eastern elevation at second floor level, the walls of the terrace shall be fitted with obscure privacy screens along the length of the Northern and Western sides of the terrace and along the North-Eastern wall to the boundary, to a height of 1800mm from the finished floor level of the terrace, as detailed on drawing PG591-3-11 P2. The screens shall be retained as such thereafter.*

*Reason: To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).*

### **Conclusion**

77. For the reasons set out above, I recommend to the Minister that the appeal be dismissed.

*N McGurk*

INSPECTOR