Planning Tribunal

Planning Panel
Sir Charles Frossard House
La Charroterie
S. Peter Port
Guernsey GY1 1FH

Appeal Decision Notice

Hearing held on Friday 10th March 2017 in Reading Room, Les Cotils Centre, St. Peter Port including a visit to the appeal site at the end of the hearing

Members: Mrs. L Wride (Presiding), Mrs. S Evans, Mr. D Harry

Appeal Site:	**2 Courtil des Vents, Rue de la Fallaise, St Martin**
Property Reference:	**J008620000**
Compliance Notice Reference:	**ENF/2015/00135**
Compliance Notice due to take effect:	**20th January 2017**
Appeal Case Reference:	**PAP/001/2017**

- The Appeal is made under the provisions of Part VI and section 70 of The Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is made by Mr. N Ozanne against the decision of the Planning and Development Authority to issue on 20th December 2016 a Compliance Notice made under section 48 (1) of the 2005 Law requiring the requiring the permanent removal from land at the appeal site a moveable structure, that being a scrap Kia Sportage vehicle, identified in photographs attached to the Notice.
- Mr. Ozanne represented himself.
- The Development and Planning Authority was represented by Mr. A J Rowles, Director of Planning and Mr. D Perrio, Enforcement Officer.
- Advocate R Gist attended at the invitation of the Tribunal in his capacity as a legal advisor to the States of Guernsey to advise and answer questions on the legal status of a Clameur de Haro raised by Mr. Ozanne in December 2016.

Decision

1. The appeals on both grounds are dismissed and the Compliance Notice is upheld.

Background

2. In August 2015, the Development & Planning Authority ("the Authority") (which at that time was the Environment Department), received a telephone complaint concerning an abandoned vehicle at the appeal site. Following a visit by the Enforcement Officer, in September 2015, the appellant was asked by letter to remove the vehicle - a Kia Sportage. The vehicle was still on the land when the appeal site was revisited in November 2015.

3. The failure to voluntarily remove the Kia resulted in the issue of a Compliance Notice in December 2015. An appeal lodged against the Notice was dismissed in April 2016 (PAP/034/2015) and the Notice was upheld, with amendments.

4. When the appellant failed to take the steps set out in the amended Notice by the date specified (18th June 2016), the Authority put Mr. Ozanne on notice in August 2016 that it was the Authority's intention to remove the vehicle. The appellant was subsequently informed that the vehicle would be removed on 14th December 2016, along with a motorcycle which had been chained to it, unless that had been removed in the meantime.

5. When the Authority attended the site on 14th December 2016 with the intention of removing the vehicle, Mr. Ozanne raised a Clameur de Haro and no action was taken. The Kia Sportage was still on the land at the time of the Hearing.

6. Advocate Gist advised the Tribunal that the amended Compliance Notice issued in April 2016 was defective insofar as it referred to an incorrect section of Land Planning and Development (Guernsey) Law, 2005 ("the 2005 Law"). This defect in the first Compliance Notice combined with the fact that Mr. Ozanne had followed the correct procedure in raising the Clameur de Haro meant that the Clameur de Haro was registered at the Royal Court within 24 hours of being raised.

7. In simple terms, the effect of the Clameur de Haro is to stop third parties (in this case the Planning & Development Authority) entering the appeal site to remove the Kia Sportage in default of action by the owner.

8. We were advised that Mr. Ozanne now has a year and a day from the date the Clameur de Haro was registered to commence action before the Royal Court. At the time of the Hearing, no such action had been commenced. If court proceedings commence within the prescribed period, the Clameur de Haro will remain in place until those proceedings are finished. If no action commences in the Royal Court within that period, the Clameur de Haro will fall away.

9. Advocate Gist explained that the Clameur de Haro did not prevent the Planning Authority from issuing a revised Compliance Notice with the defect on the earlier Notice corrected. Nor did it prevent Mr. Ozanne appealing against the second Notice, or the Tribunal determining that appeal. On that basis, and without dispute from either party, the Compliance Notice Appeal Hearing proceeded.

10. Advocate Gist also explained that if the appeal is dismissed and the Compliance Notice upheld, the Planning Authority could return to the Royal Court to request that the Clameur de Haro be de-registered/lifted. If the Royal Court agreed, this would enable the Authority to enter the appeal land and take direct action to remedy the breach of planning control, if the Kia Sportage is not removed voluntarily by the appellant in the meantime.

Procedural Matters

11. In opening the Hearing, Mrs. Wride referred to a modification of section 48(4) of the 2005 Law (which came into effect in April 2009) whereby a Compliance Notice which relates to operational development - as in this appeal - must be issued within a period of four years beginning with the date of the alleged breach to which it relates. As a result, the Tribunal would be looking back four years from the date of the Compliance Notice rather than 10 years, when assessing whether the Notice had been served within the period specified in 2005 Law.

12. In the course of the Hearing, Mr. Ozanne tabled several documents:

- a hand written copy of the Clameur registered at the Royal Court;
- a copy of the Registration Certificate relating to a replacement Kia Sportage vehicle which he had bought shortly after the road traffic accident in which the Kia Sportage which is the subject of this appeal was damaged and driven on to the appeal land; and
- an undated letter from an officer in States Driver and Vehicle Licensing Department referring to the definition of a vehicle under the Motor Taxation and Licensing (Guernsey) Law, 1987.

13. Following the Hearing, at the Tribunal's request, the Planning Authority provided a copy of a letter dated 5th May 1993 from Advocates Ozanne Van Leuvan Perrot and Evans to the then Island Development Committee. This letter refers the then owners of 2 Courtil des Vents being granted a "right of way" to provide access between the property and the public highway over land owned by a third party. It sought (and was subsequently granted) permission to make an opening in the existing hedge for a vehicular access.

14. A plan attached to the letter shows the right of way/proposed vehicular access (12ft wide). The adjoining land which is the subject of the current Compliance Notice is shown to be in the ownership of the "Grantor", a Professor Ivo Carré, who at that time owned a strip of land between 2 Courtils des Vents and the public highway.

15. Mr. Ozanne stated that he owns the appeal land, and this statement was not

challenged by the Authority. However, the letter and plan referred to above raised doubts in our minds about the extent of Mr. Ozanne's ownership, and whether any other person owns or has an interest in the appeal land. Further documentation provided by Mr. Ozanne after the Hearing at the Tribunal's request did not clarify the matter of ownership/third party interest in the appeal land.

16. Section 48(7) of the 2005 Law makes it clear that failure to serve a Compliance Notice on every person who owns, occupies or has an interest in the land which is materially affected by the Notice does not invalidate the Notice in relation to any person on whom it has been served. The Tribunal is satisfied that Mr. Ozanne is "occupying" the appeal land and has an interest in the land which is materially affected by the Compliance Notice requirements. We therefore consider the service of the Notice on Mr. Ozanne to be lawful and have proceeded to determine the appeal accordingly.

The Compliance Notice and Grounds of Appeal

17. The alleged breach of planning control is that "*Without planning permission a moveable structure, that being a scrap Kia Sportage vehicle, has been placed on the land. In breach of section 14 of the 2005 Law, development of land has taken place without planning permission and said breach continues*".

18. The Notice requires the moveable structure, that being a Kia Sportage vehicle identified in a photograph enclosed with the Notice, to be removed permanently from the land shown hatched in yellow on a plan accompanying the Compliance Notice. The period for compliance is no later than one month from the date the Notice takes effect i.e. on or before 20th February 2017.

19. The Notice was issued on 20th December 2016, served on 23rd December 2016 and was due to take effect on 20th January 2017. An appeal against the Notice was lodged on 11th January 2017.

20. Section 70(1) of the Land Planning and Development Law 2005 sets out six grounds (*a-f*) on which an appeal against a Compliance Notice may be made. This appeal is on two grounds:

    (i) That the breach of control alleged in the Notice has not taken place (*ground a*); and
    (ii) That the Notice was issued after the expiry period set out in Section 48(4) of the 2005 Law (*ground c*).

The Legislative Context

21. Section 71(1) of the 2005 Law prescribes the action to be taken by the Planning Tribunal in determining an appeal against a Compliance Notice made under Section 70. Under the provisions of Section 71(1)(a), if the appellant satisfies the Tribunal of a ground mentioned in Section 70 (a) or (c) then the Tribunal must quash the Notice.

Main Issues

22. From its assessment of the papers submitted by the appellant and the Planning Authority, and from the evidence heard during the hearing and seen during the site visit, the Tribunal considers there are two main issues in this case:

23. Firstly, whether the Kia Sportage can be considered as a "moveable structure" in the context of section 13(2)(e) of the 2005 Law which states that "the placing on land of a moveable structure (for example a caravan or portacabin)" is included within the meaning of operational development.

24. Secondly, whether the Compliance Notice was issued within four years of the Kia Sportage being "placed" on the land.

The First Issue – Is the Kia Sportage a "moveable structure" under section 13(2)(e) of the 2005 Law?

25. Mr. Ozanne advised the Tribunal that he driven the Kia Sportage vehicle onto the appeal land after it had been damaged in a road traffic accident. He was unable to say exactly when this event happened. However, he had replaced the damaged car with another vehicle of the same make/model in August 2010.

26. A copy of the Registration Certificate for the replacement Kia Sportage was tabled at the hearing. This Certificate was issued on 20th August 2010. Mr. Ozanne advised the Tribunal that the damaged Kia Sportage would not have been driven on to the land any later than that date, but probably arrived a short time before. The Tribunal accepts the logic of this argument.

27. Furthermore, we have no reason to doubt Mr. Ozanne's claim that he had driven the damaged vehicle on to the land at some time around August 2010, rather than it being towed or transported there by another vehicle. In this context, we acknowledge that in August 2010, the damaged Kia Sportage could still be considered as a "vehicle" rather than a moveable structure.

28. From the discussion at the hearing, it seems that the Kia Sportage has remained on the appeal land since that time without moving (other than "maybe a couple of feet" as mentioned by Mr. Ozanne). However, with the passage of time and some interventions by the appellant and third parties, the condition of the Kia has deteriorated significantly.

29. When Mr. Perrio had visited the appeal site on 25th November 2015 as a follow up to the original enforcement complaint, he found that a wheel had been removed from the vehicle and the windows had been painted black.

30. At the Hearing, Mr. Ozanne explained that at the time of Mr. Perrio's visit, he had removed the wheel temporarily and was waiting for rain to stop before replacing it. In addition, an unknown third party had shot at the vehicle, making a hole in the window.

For public safety reasons, he had painted the window with a black rubberized paint to hold the remaining glass in place. He argued that with the wheel replaced and the black paint scraped off, at that time he could have driven the vehicle away had he wished to – it was still a vehicle capable of self-propulsion.

31. This Tribunal has no way of testing the appellant's argument some 16 months after the event; we have therefore looked at what has happened since November 2015.

32. When the Tribunal which dealt with the previous Compliance Notice appeal visited the site on 18th March 2016, it noted that a broken tailgate window had been repaired with a timber sheet and the remaining glazing was still painted in a black bituminous-type material; the vehicle had been vandalised with spray paint and vegetation had started growing through it. In addition, the appeal decision notes that Mr. Ozanne had advised the Tribunal that various parts had been removed and that he might remove others as spares to maintain his other vehicle of the same type.

33. At the time its decision was issued in April 2016[1], the Tribunal which dealt with the earlier appeal reached the view that "*if it is a vehicle, then in our opinion, it may best be described as a former vehicle or as a scrap vehicle*".

34. Given the length of time it had been on the land without moving, its condition which rendered it practically incapable of being used for the purpose of transportation and its use for long term storage prior to that date, the Tribunal took the view in that appeal, that "*notwithstanding its original purpose and outward appearance, it has effectively ceased to be a motor vehicle*" and should be regarded as a "*movable structure*".

35. We were advised by Mr. Ozanne at the hearing, that shortly after receiving the earlier appeal decision in April 2016, he had used an angle grinder to cut through parts of the roof and sides of the Kia so that it could not be used for storage.

36. These works to the Kia carried out by Mr. Ozanne in April 2016 were noted by Mr. Perrio when he visited the appeal site on 13th May 2016, and by the Tribunal when we visited the appeal site at the end of the hearing.

37. At the site visit, Mr. Ozanne also told us that the Kia had been jacked up and the fuel tank removed so that it didn't leak petrol. The battery had also been removed, as had the registration plates.

38. When questioned during the hearing, Mr. Ozanne accepted that the vehicle had not been roadworthy since he had carried out work on the Kia Sportage in April 2016. The Kia Sportage had not been capable of being driven since that time. He did not have the third party insurance necessary to use the Kia Sportage on the public highway. Mr. Ozanne also confirmed that the Kia Sportage was not permanently anchored to the ground and could be moved. For example, it could be lifted by a crane, towed or carried away by another vehicle.

[1] Appeal decision PAP/034/2015 dated 18th April 2016

39. Had there been any doubt in the Tribunal's mind as to whether the Kia Sportage could still be reasonably considered to be a "vehicle" up until spring 2016, those doubts were completely dispelled by the works to the Kia Sportage carried out by the appellant soon after receiving the previous appeal decision in April 2016. By his own admission, the Kia is no longer roadworthy and is not capable of being driven away under its own power, although it could be moved by another vehicle. These considerations lead the Tribunal to the view that the Kia Sportage can no longer be considered as a vehicle for the purposes of planning control.

40. Although parts of the Kia have been deliberately damaged by the appellant, the chassis, rear bumper, bonnet and some of the side sections appear to be structurally sound, albeit in poor condition cosmetically. Furthermore, as noted above, Mr. Ozanne did not dispute that the Kia Sportage could be moved by another vehicle or piece of machinery.

41. Taking all these matters into account, the Tribunal considers that for planning purposes, the Kia Sportage can be regarded as a "moveable structure". Regardless of how it arrived on the appeal site, there is no dispute that since April 2016 the Kia Sportage has been incapable of moving by self-propulsion. We therefore consider the Kia Sportage as being placed on the land since that time, if not before. The placing of a moveable structure on land is operational development as defined in the 2005 Law. As planning permission has not been granted for this operational development, we conclude that a breach of planning control has taken place. The appeal on this ground therefore fails.

42. In reaching this conclusion, the Tribunal has had regard to the undated letter from an officer in States Driver and Vehicle Licensing Department concerning the "1987 Law". The Motor Taxation and Licensing (Guernsey) Law 1987 controls the registration, taxation and licensing of motor vehicles and the licensing of drivers. Section 26(1) states that for the purposes of the 1987 Law, a "motor vehicle" means a mechanically propelled vehicle intended or adapted for use on a public highway and includes a trailer drawn thereby; and the expression "vehicle" shall be construed accordingly.

43. The wording makes it clear that that the definition set out above relates specifically to the 1987 Licensing Law. It cannot therefore be treated as a legal definition of a motor vehicle under another other Laws which serve a completely different purpose.

44. The "policy" referred to in the letter relates specifically to the process by which the owner of a vehicle must satisfy the authority that the vehicle has been properly disposed of before it can be officially be removed from the records and the license number reissued to another vehicle. It does not follow that because a vehicle has not been scrapped in accordance with the licensing authority's policy it should be still be considered as a motor vehicle for purposes other than licensing and registration.

45. For these reasons, whilst noting the letter, the Tribunal does not consider it to be material to our consideration of the Compliance Notice appeal. We have given the term "motor vehicle" its ordinary, dictionary meaning; a mechanically self-propelled vehicle intended or adapted for use on the public highway. For the reasons stated, we

do not consider that the Kia Sportage on the appeal site can be thus described, having regard to its condition at the time the Compliance Notice was issued.

46. There was also some discussion at the Hearing about the use of the term "placing" in respect of the Kia Sportage. Mr. Ozanne argued that driving the vehicle on to the appeal site in 2010 did not amount to "placing" it on the land – the wording used in section 13(2)(e) of the 2005 Law. The planning authority argued that the vehicle had arrived on the land, and was still there years later. It had been placed there. The method by which it had arrived at the appeal site was irrelevant.

47. The Tribunal takes a common sense view and, in the absence of any definition of the term "placing" under the 2005 Law, the word must be given its ordinary meaning. "Placing" implies movement, in our opinion. Put in simple terms, an object which had been in one location is moved and arrives at a different location. The term "placing" also suggests to us that the object being placed will remain in the same location for more than a relatively short period of time e.g. placing a portacabin on a construction site to provide temporary site offices for the duration of building works, as opposed to parking a car in a supermarket car park for a short period whilst shopping. In everyday parlance, the word "placing" is often interchangeable with the word "putting", for example, people talk about "putting the car in the garage" even though this act is (usually) carried out by driving the vehicle into the building.

48. In the context of this language discussion, the Tribunal does not find the appellant's argument (that a vehicle is not placed on land if it has been driven there) to be compelling. Even had we reached a different view, the fact that the Kia Sportage has not been drivable (i.e. not self-propelled or roadworthy) since April 2016 would lead us to conclude that it was "placed" on the land when the Compliance Notice was issued in December 2016. The outcome of the appeal on this ground would be unchanged.

49. At the hearing, there was also some discussion as to whether the Kia could be described as a "structure". As above, the Tribunal takes a common sense view. In the absence of any definition of the term "structure" under the 2005 Law, the word must be given its ordinary meaning. Amongst other things, the definition of "structure" in the Concise Oxford English Dictionary includes "*the arrangement and relations between parts of something complex*" and "*a building or other object constructed from several parts*". Having regard to these definitions and the ordinary meaning of the word we are satisfied that the Kia Sportage can be described as a "structure".

The Second Issue – Was the Compliance Notice issued within the time period specified in the 2005 Law?

50. As noted above, placing a moveable structure on land constitutes operational development for planning purposes. The time limit for issuing a Compliance Notice in respect of operational development is a period of four years beginning with the date of the alleged breach to which it relates.

51. In this case, the appellant has argued that the vehicle was drivable, or capable of being

made drivable, up to the point in April 2016 when he knowingly and deliberately damaged parts of the superstructure with his angle grinder. At that point, he accepts that it was no longer drivable or roadworthy.

52. The Tribunal does not know whether or not the Kia Sportage could have been moved off the land under its own power of propulsion before April 2016, subject to vehicle parts being replaced and repaired. However, there is no dispute between the parties that the Kia Sportage has not been drivable since late April 2016, and the Tribunal is satisfied that by that point, the Kia Sportage had - without doubt - effectively ceased being a motor vehicle and should be regarded as a moveable structure. We have therefore taken this point in time as being the start of the alleged breach of planning control.

53. Bearing in mind that the Compliance Notice which is the subject of this appeal was issued in December 2016, the Tribunal is satisfied that it was issued within the four years of the alleged breach of planning control, as specified in the 2005 Law. The appeal on this ground therefore fails.

Other Matters

54. There was discussion at the Hearing as to whether the appeal land should be treated as part of the residential curtilage of 2 Courtil des Vents. In this scenario, the use of the appeal land for domestic storage of vehicles and building materials ancillary to the enjoyment of the occupiers of the dwelling at 2, Courtil des Vents would not constitute development for planning purposes, and there would be no breach of planning control.

55. The related argument on this point was whether intermittent the use of the appeal land for the storage of building materials, equipment and vehicles by Mr. Ozanne constituted a material change of use in the land which had taken place for more than 10 years and was therefore immune from enforcement action.

56. This part of the discussion arose in relation to the previous appeal against the Compliance Notice issued in December 2015 where the alleged breach of planning control involved the use of land for residential domestic purposes as well as the use of the Kia for storage rather than transport purposes.

57. The Tribunal is mindful that the Compliance Notice which is the subject of the appeal before us does NOT relate to the use of land for residential domestic purposes, and there is no reference to the use of the Kia Sportage for storage purposes in the alleged breach of planning control.

58. We have therefore confined our consideration in this appeal to issues relating to the alleged breach of planning control; that is to say, operational development in the form of a moveable structure being placed on the land without planning permission, rather than straying into territory which is not the subject of the Compliance Notice before us.

Conclusion

59. The Tribunal has considered all other matters raised in written submissions and oral evidence given at the Hearing. None of these considerations affect the Tribunal's conclusions under the provisions of Part VI section 71 of the Land Planning and Development (Guernsey) Law 2005, that the appeals on all grounds be dismissed. The Compliance Notice is therefore upheld without modification.

Linda Wride Dip TP MRTPI
Presiding Member

Date of Decision: 31st March 2017