



PLANNING APPEAL DECISION NOTICE

Planning Tribunal Hearing held on 28th June 2019 at Les Cotils Christian Centre, St Peter Port, preceded by a visit to the appeal site

Members: Mr J King (Presiding), Mr J Weir and Mr M Dunster

Appeal Site: 7 Berthelot Street, St Peter Port

Property Reference: A200370000

Planning Application: FULL/2018/2060

Appeal Reference: PAP/001/2019

- The appeal is made under the provisions of Part VI and Section 68 of the Land Planning and Development (Guernsey) Law, 2005 (“the 2005 Law”).
- The Appeal is by Stone House Properties Ltd. against the decision of the Development and Planning Authority (“the Authority”) made on 5th December 2018 under Section 16 of the 2005 Law to refuse planning permission for development described on the decision notice as: *“To extend and alter building and change of use from office accommodation to two residential units with roof terrace / garden. Alterations to building include new parapet construction, first floor extension, glazed balustrades and apply external render system (Revised)”*.
- Stone House Properties Ltd. was represented by Mr. A Ozanne, assisted by Ms. S Bougard. Ms S. Hook, for the company, also attended.
- The Authority was represented by Ms. J Roberts Development Control Manager, Mr. A White, Conservation and Design Officer, and Mr. C Holden, the case officer.

Decision

1. The appeal is allowed, subject to the conditions set out in the Annex attached to this decision.

Description of the Development

2. Berthelot Street is a steep and narrow roadway, forming part of the mediaeval layout of St Peter Port, and characterised by a densely-developed mixture of commercial and residential properties at a variety of scales. Number 7 is a 2-storey building dating probably from the early part of the nineteenth century, sited on a narrow, rising plot, directly fronting the street and largely hemmed in by other buildings on the remaining sides. It is understood to have lain empty for several years but has in the past been used as offices. The front part of the building on both floors is presently being modified to enable that use to resume.
3. The appeal proposal is convert the rear of the premises to a single-bedroom flat on the first floor and a 2-bedroom flat on the ground floor. Access to both would be by way of an open passageway to the side of the building, with an external stairway serving the former. The proposed alterations include removing a number of internal walls and a stairway, and modifying several windows. The ground floor flat is intended to have direct access to two small enclosed courtyards which act as light-wells and will provide external amenity space. The upper flat would have access to a small private roof terrace at the same level. A further communal roof terrace would also be provided, with the occupiers of the ground floor accommodation gaining access to it by means of the external stairway. A number of minor alterations to the building are also proposed.
4. Although the Authority chose to alter the description of the development in its decision, there is little practical difference compared to that submitted. The application is a revision of an earlier one which was refused in early 2018 (FULL/2017/2162).

Planning Policy

5. Two Policies of the Island Development Plan (“the IDP”) are referenced in the decision.
6. Policy MC2 *Housing in Main Centres and Main Centre Outer Areas* gives support to residential development subject to a number of criteria, of which only (a) requiring compliance with other policies, is relevant. The supporting text says that residential development in the Main Centres will be expected to make the most effective and efficient use of land; and higher density development proposals will be expected in appropriate locations and circumstances. This approach is broadly repeated in the preamble to Policy GP8 *Design*.
7. Policy GP8 *Design*, amongst other things, expects proposals for new development to: (d) consider the health and well-being of the occupiers and neighbours of the development by means of providing adequate daylight, sunlight and private / communal open space. The supporting text to Policy GP8 also refers to IDP Annex 1 *Amenities* (“the Annex”). This has the same status and weight as the remainder of the IDP and provides useful assistance for assessing the acceptability of residential amenities. Amenities are defined in the IDP as,

“... the desirable or useful features or facilities of a building, property or place which support the health and well-being of occupiers and users and which contribute to the enjoyment of the building, property or place.

8. The Annex identifies a number of amenity matters, some of which are not included in Policy GP8. They are: internal space standards; privacy; aspect / outlook; access to external open space; and daylight / sunlight. It is plain from the text of the Annex that when considering these various matters it may be possible for superior provision in one to compensate for or balance a lower level of provision in another, albeit that poor or inadequate standards of amenity will not be acceptable.
9. The Annex refers to the Building (Guernsey) Regulations 2012 and the practical guidance in the associated Guernsey Technical Standards, but says that they are primarily aimed at ensuring that a safe and healthy environment is provided for people in and around buildings. That includes some aspects of well-being such as minimum standards of accommodation with regard to the layout, size and arrangement of habitable rooms. It states explicitly that it does not repeat the requirements of the Regulations or Technical standards and is therefore aimed at those aspects of amenities associated with health, well-being and enjoyment that are not provided for by them. The intention is to ensure that new developments are planned and built to support the health and well-being of occupants and users and maintains appropriate amenities for those of neighbouring property.
10. Within that context, the Annex does not set rigid standards or figures for amenities provision, because each site and use will have its own particular amenities considerations and requirements which could be achieved in a number of ways. Moreover, the type of development and its location will have a significant bearing. An example of particular relevance to the present case is given: that a flat in town is unlikely to be able to provide the same extent of amenities as a detached house Outside of the Centres, and a conversion or change of use may have to work with the existing form that can restrict the way amenities are provided in a way that is not usually restricted when designing a purpose-built building.
11. Having regard to Policy MC2, the Annex adds that building at higher densities brings challenges with respect to ensuring reasonable amenities are provided. In considering development proposals, the Authority will require the most effective and efficient use of land but will balance this with the requirement to ensure that proposed living and working conditions are acceptable and that the higher density Main Centres, in particular, remain attractive places to live and work.
12. It is clear that consideration of amenity when dealing with development proposals is, firstly, largely a matter of subjective judgment rather than the application of objective standards; and secondly, when applying that judgment, it will be necessary to exercise balance, not only between the different aspects of amenity, but also between the aspirations of the IDP for amenity and other planning aims, such as the sustainable use of land. It is necessary to reach conclusions on these matters on a case-by-case basis.

Other Guidance

13. The appellants have referred to a number of technical documents, particularly with respect to the matters of internal space standards and daylight. None have been formally adopted for use in Guernsey, though they are agreed to be informative.

The Main Issue

14. The main issue in this case is:

Whether the proposed development would provide satisfactory living conditions in terms of health and well-being for future occupiers, contrary to the provisions of the policies of the Island Development Plan.

15. There is no dispute between the parties that this is the main – indeed, the only issue. 3 other issues were identified in the Authority’s report, but do not figure in the reason for refusal.

The Tribunal’s Assessment of the Evidence and the Site Visit

The principle of development

16. There is no dispute between the parties that, in principle, residential development is acceptable within the main centre of St Peter Port and that the loss of the small amount of former office space is acceptable under IDP Policy MC4(A)(b). Further, it is accepted by both that the IDP encourages higher density development in the urban area subject to the commentary in the Annex.

The main elements of residential amenity

17. At the Hearing the various elements of residential amenity, as identified in the Annex, were considered in turn: first, those which the Authority broadly considers would be acceptable in the proposed development: internal space standards, privacy and daylight; and second, those that were considered not to be acceptable: sunlight, access to external open space, and aspect / outlook. These are addressed individually below, in the same order.

Internal space standards

18. The Annex draws attention to the fact that the Guernsey Technical Standard G7 (“the G7 Standards”) relating to space in residential accommodation represents minimum provision, and the Authority would normally expect this to be substantially exceeded in new development. The Authority’s appeal statement concludes that for both proposed flats the space provided would “*only meet minimum standards*” but nonetheless would be adequate. The appellant company has compared the proposed internal space against the G7 Standards, on the basis of the ground floor unit, with 2 bedrooms, accommodating up to 4 people; and

the first floor unit with 1 bedroom, accommodating 1 person. However, the latter is shown as having a bedroom clearly large enough for a double bed, so it would be reasonable to consider it as a 2 person unit.

19. The ground floor flat would meet the minimum standard for sleeping accommodation (28.7 m² compared to 24 m²), but not meet it for the kitchen / living / dining and bathing areas (23.2 m² compared to 27 m²). By way of comparison, the latter would be closer to the standard for a 3-person dwelling (24 m²). However, the standard for the total area would be slightly exceeded (54.2 m² compared to 53 m²). For the first floor flat, all of the standards would be met, even if 2 people were in occupation.
20. Reference was also made at the Hearing to the English (Department for Communities and Local Government) *Technical Housing Standards – Nationally Described Space Standard* (2015). The States' website includes a link to this document, but states that they do not apply specifically to Guernsey, but represent current best practice in England and should therefore be considered when developing new housing in Guernsey under the policies of the IDP. They were not applied to the appeal proposals as the website link had not been made at the time the application was submitted. The English standards set out the minimum gross floor areas for different sizes of accommodation by reference to whether they are located in 1, 2, or 3-storey buildings. This is to take account of the extra circulation space needed for stairs to upper floors. But in the present case the stairs would be external, so it would be appropriate to apply the standards for a single-storey building for both flats.
21. The English standard (gross, including storage) for a 2 bedroom, 4 person dwelling would be 72m². This compares to the intended provision of 71m². The ground floor flat would therefore very nearly comply. For a 1 bedroom, 2 person dwelling, the gross standard would be 51.5m². This compares to the intended provision of 40m². The first floor flat would therefore fall significantly short of this, though it would meet the standard if it were to be occupied by one person, as the appellant intends. However, the standard indicates that relating internal space to the number of bed-spaces is a means of classification for assessment purposes only when designing new homes and seeking planning approval (if a local authority has adopted the space standard). It does not imply actual occupancy, or define the minimum for any room in a dwelling to be used for a specific purpose other than complying with the standard. The Tribunal takes this to mean that it should not be applied in a mechanistic manner. It was agreed between the parties at the Hearing that it would not be appropriate to seek to restrict occupancy of the flat by way of a condition, not least because it would be unenforceable.
22. The Tribunal notes that while the English standards may represent current best practice in that jurisdiction, they have not been adopted in Guernsey. We take the view that it would not be appropriate to penalise the appellant on the basis of a failure to comply with them. By reference to the G7 Standards, we are satisfied that the first floor flat would provide small but nonetheless adequate and acceptable accommodation for a couple. The ground floor flat would also be

small, especially in the communal areas. However, we agree with the Authority's original assessment that it would be adequate. In so saying, we would emphasise that the standards have been drawn up for use principally in the context of the building regulations. The appellant company is aware that building regulations approval would have to be sought separately and that an acceptance of a design at planning stage does not convey or imply any acceptance for the purposes of applying those regulations.

Privacy

23. There are no adopted standards relating to this matter. The Annex states that development will be expected to be designed with windows an adequate distance apart and / or suitably oriented to ensure that the level of privacy that could reasonably be expected to be enjoyed by an occupier is not adversely affected. The Authority's statement does not object to the proposed development under this heading, describing levels of privacy as adequate. However, at the Hearing, concern was raised about the potential for overlooking. In consequence, the appellant company has agreed to the deletion of 2 Juliet balconies from windows to the upper floor flat and to a number of additional conditions being imposed requiring certain windows to be obscure glazed and, in some instances, restricted in the manner of their opening. With these amendments, the Tribunal takes the view that the level of privacy enjoyed by occupiers would satisfy the expectations of the Annex.
24. The Annex says that the use of obscure glazing alone to achieve privacy will not, normally, be considered acceptable. We acknowledge that it would to some degree reduce the enjoyment of being in the accommodation, for example by creating a sense of enclosure or restricting outlook. But, having regard to the constraints imposed by the configuration of the building and the densely developed urban location, we consider that it would represent a reasonable compromise.

Daylight

25. The Annex says that the ability of daylight to enter a building will not, of itself, be a determining factor when considering development proposals, provided that the other amenities objectives are adequately and appropriately addressed. The Authority encourages all new developments to provide adequate levels of daylight to all rooms. The appellant's technical assessment confirms the Authority's subjective conclusion that daylight provision would be adequate. From the experience of our site visit, undertaken in mid-morning on a partly overcast day at around the time of the spring equinox, the Tribunal agrees.
26. The submitted plans include an image of a small enclosed courtyard similar to those at the appeal property, showing an example of how a "living wall" could be incorporated. The Authority expressed concern that if one were to be put in place it could unacceptably reduce the amount of daylight entering the rooms with facing windows, owing to the change in reflectivity of the wall(s) compared to painted masonry. Though common sense would suggest a reduction in reflected

light, no evidence was put forward to show whether the effect would be critical to the amenity of the occupiers. In order to avoid further dispute, at the hearing it was stated on behalf of the appellant that, insofar as a living wall formed part of the proposals, it was withdrawn. A condition is proposed to cover the matter.

Sunlight

27. The Annex considers sunlight alongside daylight. Equally, its ability to enter a building will not, of itself, be a determining factor when considering development proposals, providing that other amenities objectives are appropriately addressed. Further, whereas the Authority encourages all new development to provide adequate levels of daylight and sunlight to all rooms, or at least principal rooms, gardens, balconies or communal external open spaces, these aspirations are qualified for sunlight by “where possible”. This reflects the constraints imposed by aspect relative to the movement of the sun, shading by existing development, and, in the case of converting existing buildings, its physical constraints.
28. Even in the absence of any technical assessment, it is clear that there would be little opportunity for direct sunlight to enter the proposed flats, especially that on the ground floor, or to the floors of its small private open spaces. But the roof terraces would benefit from some at certain times of day. It would not be an ideal situation, but one which may be unavoidable in densely developed urban areas.

Access to external open space

29. The Annex states that the value of external open space becomes increasingly important in higher density development; and the Authority expects all development should have safe and convenient access to it. However, this does not necessarily need to take the form of a defined, private garden area: balconies, roof terraces, communal garden areas and off-site public open spaces within a reasonable walking or cycling distance may also be taken into account.
30. The proposed flats would each be provided with private outdoor space: the ground floor flat would have 2 small courtyards in what are effectively light-wells, while the upper flat would have its own small roof terrace. In addition, a larger communal roof terrace would be provided. In terms of space alone, the Authority is satisfied that both flats would be adequately provided for. However, it remains concerned that the quality of the 2 small enclosed courtyards on the ground floor would not be satisfactory, owing to the very limited amount of direct sunlight that would reach them. The Tribunal accepts that they would be improved if they benefitted from sunshine, but nonetheless they have the potential to provide useful outdoor space for sitting out or drying washing. With care and imagination they could be made reasonably attractive. The communal terrace would be largely screened by obscure glazed panels, providing a private, light outdoor space for relaxation.
31. With respect to the contribution which off-site public open space provision can make to amenity, the property is located in the centre of the Town, only a few minutes’ walk from the harbour front and an area known locally as the “Sunken

Garden". A little further away, but still within easy walking or cycling distance, are the Candie Gardens and the attractions of the coast, including the Havelet Bay and the La Vallette bathing pools. The property would be very well located with respect to these facilities for casual relaxation, interest and exercise, easily making up for any perceived shortcomings in some of the on-site provision. Overall, the Tribunal disagrees with the Authority's opinion that access to open space would be poor or very poor.

Aspect / outlook

32. The Annex says that the acceptable extent and type of outlook requirement will differ from site to site, but may help to compensate for other amenities provision in other areas. Outlook and aspect should be maximised and incorporated into the design of buildings. In the present case, views obtainable from the ground floor flat would be restricted to the small courtyards, while from the upper floor there would also be short-range views over the entrance passageway and towards the private terrace. There would be no opportunity to benefit from the kind of interesting or attractive outlook within the urban centre which the Annex identifies: for example views over urban open spaces, public parks, landscape features or longer vistas over the townscape. Even taking into account the fact that outlook would be unavoidably limited by the density and height of surrounding development, the Tribunal concludes that its quality would be poor, not assisted by the proposed obscure glazing.

Overall conclusion on the main issue

33. The proposed accommodation would provide adequate levels of privacy and daylight, and good access to external open space. The internal space standards, while falling a little short of the local Guidance, would not be so sub-standard as to provide unacceptable living conditions for future occupiers. On the other hand, the outlook would be poor and the rooms would not benefit from significant sunlight. However, the latter is acknowledged in the Annex as not being a determining factor. When considered in the round, and taking into account the need for balance both between the different aspects of amenity, and between amenity and the objective of seeking the maximisation of urban densities, the Tribunal is of the opinion that the upstairs unit would provide reasonable living conditions, while that on the ground floor could be described as adequate. Owing to their location and the absence of vehicle parking or gardens, the flats are unlikely to be attractive to families, but more likely to be suitable for younger, urban workers for whom the identified shortcomings are less likely to be critical.
34. Overall, and on balance, and taking account of the particular constraints of the building, the Tribunal finds that the proposed development would provide acceptable living conditions for future occupiers by reference to Policy GP8 and Annex 1 of the IDP.

Conditions

35. At the Hearing the subject of conditions that may be imposed in the event that the

appeal is allowed were discussed on a without prejudice basis. The Authority provided a schedule of suggested conditions and others were proposed during the Hearing in response to matters raised. These are set out, in a slightly modified form in the attached Annex.

36. Conditions 1, 2 & 3 are “standard” conditions applied to most planning permissions. Condition 1 has been modified slightly to refer to material “submitted with the application” rather than “referred to above” in order to reflect the appeal context. Condition 2 has been modified by the substitution of the wording set out in Section 18(1) of the 2005 Law, in order to avoid any perceived inconsistency. Condition 3, relating to the need for building regulations approval, is consistent with the 2005 Law.
37. Condition 4 requires the submission of details of cycle storage, as this was omitted from the application. Conditions 5 and 6 confirm for the avoidance of doubt that neither the Juliet balconies nor any “living wall” are authorised by the permission. Condition 7 requires a number of windows and a roof-light to be obscure glazed, and 2 windows to be fitted with bottom-hinged, inward tilting units, all in the interests of maintaining privacy.

Overall Conclusion

38. For the reasons given above, the Tribunal concludes that the appeal should be allowed, subject to the conditions set out in the attached Annex.
39. We have considered all other matters raised in the written submissions and during the hearing. We have also considered all matters pointed out at the site visit and our own observations. However, these do not affect our conclusion under the provisions of Part VI and Section 69 of the Land Planning and Development (Guernsey) Law, 2005 that the appeal should be allowed.

**Jonathan G King BA(Hons) DipTP MRTPI
Professional Member**

Date of issue of decision: 9th April 2019



**ANNEX TO
PLANNING APPEAL
PAP/001/2019**

PROPOSAL: To extend and alter building and change of use from office accommodation to two residential units with roof terrace / garden. Alterations to building include new parapet construction, first floor extension, glazed balustrades and apply external render system (Revised)

LOCATION: 7 Berthelot Street, St Peter Port

APPLICANT: Stone House Properties Ltd

This planning permission is granted under the terms of Sections 68 and 69 of the land Planning and Development (Guernsey) Law, 2005 and subject to the planning conditions set out below.

This permission refers solely to the proposal referred to above and as described in the planning application validated by the Development & Planning Authority on 7th August 2018.

Planning Conditions

1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings submitted with it. No variations to such development may be made without the permission of the Authority under the 2005 Law.
2. The development hereby permitted shall be commenced within a period of three years immediately following the date of grant of this permission.
3. The development hereby permitted and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of the Building (Guernsey) Regulations, 2012 as are applicable to them, and no operation to which such a requirement applies may be commenced or continued unless (i) plans relating to that operation have been approved by the Authority and (ii) it is commenced or, as the case may be, continued in accordance with that requirement and any further requirements imposed by the Authority when approving these plans, for the purpose of securing the building regulations are complied with.

4. No development, including site works, shall begin until a scheme showing the provision to be made for the parking of cycles, under cover and secure, has been submitted to and approved in writing by the Authority, and no part of the building or development hereby permitted shall be used or occupied until the agreed scheme has been fully implemented. The provision for cycles shall not be used for any other purpose.
5. Notwithstanding the details submitted, the Juliet balconies at first floor level in the south and east elevations are not approved by this decision.
6. Notwithstanding the reference in the submitted application material to the installation of living wall(s) as part of the development hereby permitted, this decision does not grant or imply authority for the installation of any such living wall in any of the enclosed private courtyards serving the ground floor accommodation.
7. Notwithstanding the details of windows submitted with the application, prior to the first occupation of the relevant unit, the following windows shall be glazed in the following ways, and shall thereafter shall be retained as such at all times:
 - (a) In the ground floor unit, the rooflight serving the kitchen shall be fitted with obscure glass.
 - (b) In the first floor unit, the western half of the first floor window in the south elevation serving the living / dining area shall be fitted with obscure glass.
 - (c) In the first floor unit, both bedroom windows shall be fitted with a bottom-hinged inward-tilting opening mechanism. That facing the larger open area shall be fitted with obscure glass.
 - (d) In the first floor unit, the bathroom window shall be fitted with obscure glass.

All obscure glass fitted shall conform to a minimum of level 3 on the Pilkington scale (or equivalent).