



# PLANNING APPEAL DECISION NOTICE

Planning Tribunal Hearing held on 19<sup>th</sup> November 2019 at The Cotils Centre, St Peter Port,  
followed by a visit to the Appeal site

Members: Mr Jonathan King (Presiding), Mr John Weir and Mr George Jennings

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**Appeal Site:** **18 Hauteville, St Peter Port**

**Property Reference:** **A406980000**

**Planning Application Reference:** **FULL/2018/ 0926**

**Appeal Case Reference:** **PAP/013/2019**

- The Appeal is made under the provisions of Part VI and Section 68 of the Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is by Mr T Letten against the decision of the Development and Planning Authority made on 15th February 2019 under Section 16 of the Law to refuse planning permission for development described on the decision notice as: *"Create vehicular access from the Strand, install timber sliding gate and create parking area. (Protected Building)"*.
- Mr T Letten was represented by his son, Mr Tony Letten, assisted by his surveyor, Mr D Torode.
- The Development and Planning Authority ("the Authority") was represented by Ms J Roberts, Development Control Manager and Mr C Crew, the case officer.
- Mr C W Maides, a resident of The Strand who had submitted a third party representation, also attended the Hearing and the site visit, and assisted the Tribunal at its request.

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## Decision

1. The Appeal is dismissed.

## **Description of the Development**

2. No 18 Hauteville is a Protected Building within the St. Peter Port Conservation Area. It is a large house situated in an elevated position on the eastern side of the road. Together with associated buildings it has been converted into apartments. To the rear, its garden falls eastwards to The Strand in a series of terraces. The lowest of these is triangular in shape; and is largely overgrown with a number of mature trees and shrubs. The boundary with The Strand is marked by a tall granite wall, part of a much longer structure that runs along most of this side of the street. The sole existing access to the site from The Strand is by means of a single pedestrian gate.
3. The proposal comprises the laying out of the lower terrace with 9 vehicle parking spaces to serve the occupiers of No 18, together with a manoeuvring area and 6 bicycle racks. Of the trees, one large evergreen oak, covered by a Tree Protection Order, would be retained; and some new low-level planting would be undertaken. The roots of the oak would be protected from compaction from pedestrian traffic by means of a proprietary scheme known as "Protectaweb". A new vehicular entrance from The Strand, 5 metres in width and some 3 metres high, would be pierced through the wall. This would have a slightly curved stone lintel and be secured by means of an electrically-controlled sliding gate in hardwood. It is proposed that users would control the gate by means of a "key fob" system.
4. The plans of the proposed development have been revised since first having been drawn up. It was confirmed at the Hearing that the relevant plan is Drawing No. 5006-13 Revision B (December 2018).

## **The Main Issues**

5. The main issues in this case are:

The effect of the proposed development on:

- (a) The character and appearance of the locality, in particular on the St Peter Port Conservation Area and the setting of the Protected Building No 18 Hauteville;
  - (b) The safety of highway users (including pedestrians) and the free flow of traffic on The Strand;
  - (c) The residential amenities of occupiers of properties fronting The Strand; and
  - (d) The protected tree.
6. Of these, only (a) figured in the reason for refusal.

## The Tribunal's Assessment of the Evidence and the Site Visit

### *Issue (a) The character and appearance of the locality*

7. Although the site of the proposed development is within the curtilage of 18 Hauteville, it is not within the area protected by the designation. In the Tribunal's assessment, the proposed car parking would not have any significant impact on the setting of the building, since it would be unlikely to be readily visible from public views. We conclude that it would not be in breach of Island Development Plan (IDP) Policy GP5 *Protected Buildings* or the provisions of Section 34 of the Law. Our concern, and that of the Authority, relates principally to the effect of the proposed development on the character and appearance of the St. Peter Port Conservation Area.
8. Paragraph 19.5.5 of the IDP, which supports Policy GP4, gives examples of special and individual features which may determine the special architectural and historic qualities of a particular Conservation Area. These include distinctive features such as the presence of particular boundary treatments; the age and historic interest of buildings; the spaces between the buildings and how the spaces and buildings relate to each other; and the form and position of development and materials used.
9. A Character Appraisal for the St. Peter Port Conservation Area is in the course of production by the Authority, but has not yet been published. However, Annex VII of the IDP referred to in Policy GP4 *Conservation Areas* summarises its "special interest". This is somewhat general in character and is of limited assistance in considering the specifics of individual proposals, as the Area is extensive and not all parts of it share the same key characteristics. However, the following extracts are of particular relevance to the present case: "... *the survival of high quality streets and buildings make this Conservation Area of high architectural and historic interest in Guernsey* (para VII.4); and: *the use of stone ... in walls ... lends a unique character to the historic core* (para VII.9).
10. At the Hearing it was argued on behalf of the appellant that, when assessing the effect of the proposed development on the Conservation Area, consideration should be given to the character of a broad area of the Town around the appeal site. Although the Tribunal agrees that The Strand includes characteristics of that wider area - such as the extensive use of granite as a building material - we are of the opinion that we should consider the impact of the proposed development primarily by reference to the character of the immediate surroundings.
11. The Strand is a narrow two-way street, approximately 300 metres in length, linking Cliff Street to the north and Havelet to the south. It is in the region of 2.8 metres wide outside the proposed access, and frequently narrower. It lacks pedestrian footways and there are no opportunities for vehicles to pass each other apart from utilising the few private parking places that exist. The street has been designated as a "Prohibited Street" under the provisions of the Prohibited and

One Way Streets Ordinance, 1989. Vehicular access is limited to those with a permit; and it is covered by a “no waiting” order and a vehicle weight limit of 2 tonnes. Few of the dwellings on the street have access to parking from it.

12. The key physical characteristics of The Strand are the long, high, massive and mostly continuous granite wall along the western side, and its narrowness, which combine to create a strong sense of enclosure. From the information supplied by the Conservation and Design section of the Authority there appears to be some uncertainty over the precise age of the wall, but there is no doubt that a wall of some kind has been on the same alignment for a considerable period of time. In the Tribunal’s view it makes a significant contribution to the broader historic character and interest of the Town by reference to the “special interest” of the Conservation Area identified in Annex VII of the IDP and the examples of “special and individual features” given in paragraph 19.5.5, including boundary treatments, spaces and use of materials. It is a defining feature of The Strand.
13. As there are frontage properties on only one side of the street, and its use by motor vehicles is severely constrained by its restricted width and legal limitations, a further important aspect of its character is its sense of calm and quietness, in contrast to the activity in much of the Town.
14. The proposed vehicular gateway and sliding wooden door would represent a clear visual break in the otherwise largely unbroken mass of the granite wall; and the replacement of the heavy masonry by timber – a comparatively lightweight material - would detract from its present character. Along its length there are only two other breaches of comparable size – one serving No 16 Hauteville, close by, and another some considerable distance to the south. Gateways of the kind proposed are clearly not common in the street, nor do they contribute positively to its character. There are several other pedestrian gateways, similar to that serving No 18, but these are much smaller and do not have the same degree of visual impact. In the Tribunal’s opinion, although the sense of enclosure in the street would be maintained, the appearance of the wall in the vicinity of the proposed gateway, and its character, would be considerably altered by the proposed development. By reference to the first test of Policy GP4, we believe that the gateway would fail to conserve the special character, architectural or historic interest and appearance of the Conservation Area.
15. Moreover, by reference to the second test of the policy, we consider that the replacement of the affected length of wall by a timber gate would not make an equal or enhanced contribution to the character of the Conservation Area. The Tribunal does not find the design of the gateway and door unattractive in itself – they would be constructed of quality materials, for example. But we nonetheless take the view that it would appear incongruous or out of place, and not reflect the character of the street. For the same reasons, the development would also be in breach of Policy GP8 *Design*, which requires development to respect the character of the local built environment; GP9 *Sustainable Development*, which states that development should not have an adverse effect on the special interest of Conservation Areas; and Policy IP9 *Highway Safety, Accessibility and Capacity*, which says that, in considering proposals for enhancement to access of

developments, the Authority will seek to ensure, wherever possible, that it will not result in adverse impacts on the special interest or character or appearance of a Conservation Area.

16. These policies all reflect the duty of the Authority under Section 38(1) of the Law, with respect to any buildings or other land in a Conservation Area, to pay special attention to the desirability of preserving and enhancing the character and appearance of that area. Section 13 of the Land and Development (General Provisions) Ordinance, 2007 also includes as general material considerations to be taken into account when determining planning applications: (b) the character and quality of the ... built environment which is likely to be created by the development; (c) the appropriateness of the development in relation to its surroundings in terms of its design, layout, scale, siting and the materials to be used; and (d) the likely effect of the development on the character ... of the locality in question. In reaching its conclusions under this issue, the Tribunal has taken all of these matters into account.
17. We have also had regard to the fact that development is presently taking place at No 16 Hauteville, also with access being taken from The Strand (FULL/2016/1815 refers). However, that may be differentiated from the appeal proposal by the fact that a double garage already occupied the site. From the Authority's application report it is clear that the development was regarded as providing a positive visual improvement, including by reference to enhancing the sense of enclosure.
18. The appellant has brought to the Tribunal's attention a number of vehicular accesses pierced into walls elsewhere in the Conservation Area. We accept that they display many of the characteristics of the presently proposed development. We make no observations about the acceptability of these other gateways by reference to their surroundings and planning policy. We do not know the precise circumstances in which they were permitted. All we can say is that we have considered the current case on its individual merits in its particular context. The fact that other similar developments have been carried out elsewhere does not set any kind of firm precedent for this or any future proposals.
19. The appellant also asserts that the affected part of the wall may require demolition and repair, but there was little evidence on site to suggest that this was necessary. But even if the wall were to become unstable, that would not justify the proposed works, but only its repair.
20. The Tribunal has noted that the Authority has chosen not to follow the advice of the Conservation and Design section with respect to the effect of the proposed development on the Conservation Area. It was entirely at liberty to have taken its own view, not least because the Conservation and Design section, in concluding that the partial demolition of the wall to create the entrance "wouldn't particularly damage its contribution to the wider Conservation Area", failed to apply the appropriate policy tests correctly.

*Issue (b) The safety of highway users*

21. Policy IP7 *Private and Communal Car Parking* states that in considering proposals for development, the Authority will take into account the provision of appropriate levels of private and communal car parking in accordance with the guidance set out in Supplementary Planning Guidance: *Parking Standards and Traffic Impact Assessment*. At the Hearing, the Authority confirmed that the provision of nine spaces, together with the bicycle spaces, would meet the appropriate standards for the accommodation it is intended to serve.
22. At the application stage, the Authority consulted with Traffic and Highway Services ("THS"). The response confirmed the lightness of traffic flow, though no count appears to have been carried out. Of the five elements of the advice given by THS, the development would breach three: visibility for a driver emerging (estimated as 3.5 metres in one direction and 5 metres in the other) would not meet the 20 metres advised; the visibility splays – such as would be obtainable – would be obstructed; and any vehicle emerging could not avoid crossing the path of approaching traffic. It would not be feasible to make changes in order to achieve the recommended sightline standard. Those which would be achievable are described as important, given the narrowness of the road. THS strongly suggest that, if permission is granted, two mirrors should be mounted within the access archway as "possibly the only method of (sic) an egressing driver to establish whether vehicles, or more realistically pedestrians are in the vicinity of the access before the driver egresses". Overall, THS concluded that there are road safety grounds for opposing the application, but did not do so owing to the scale of the application and the light traffic flows in the area, which it is said would to a degree be mitigated by the latter. The Authority accepted these views, though not the suggestion concerning mirrors.
23. The Tribunal disagrees with this assessment. The THS consultation response did not seek to apply Policy IP9 *Highway Safety, Accessibility and Capacity*, which states amongst other things that: *In considering proposals for development the Authority will take into account: (a) the existing public road network's ability to cope with any increased demand as a result of the development*. Although the Authority's report concluded by reference to that policy, it did no more than accept the THS view. Equally, while reference was made in the report to the relevant general material consideration included in Section 13 to Part IV of the Land Planning (General Provisions) Ordinance, 2007: *(e) the likely effect of the development on roads ... traffic ...*, no independent assessment was made of these effects.
24. We take the view that, principally owing to its narrowness and lack of footpaths and passing places, The Strand is fundamentally unsuitable for motor traffic. Moreover, its junction with Cliff Street is very difficult to negotiate with a motor vehicle without encroaching on the pavement. For these reasons, development such as that proposed which would give rise to additional traffic should not be encouraged. As a number of properties already take vehicular access from the street, such traffic cannot be wholly prohibited from it. Nonetheless, its unsuitability is demonstrated by its designation as a Prohibited Street and the

need to impose the existing access restrictions. The proposed development would add periodic movements from up to nine additional vehicles. That is not a large number in absolute terms, but we consider it to be significant relative to the acknowledged inadequacies of the street.

25. The Tribunal also disagrees with THS that the road safety concerns normally associated with sub-standard sightlines would in some way be mitigated by the light traffic movements. This seems to misunderstand the concept of mitigation. Although the potential for traffic conflict or vehicular / pedestrian conflict may be lower on The Strand than on a more heavily trafficked highway, the mere fact that that present traffic flows are light would do nothing to lessen the increased risk that would be brought about by the proposed development. Of particular concern is the safety of pedestrians and cyclists who would not be as readily visible to the drivers of cars emerging from the proposed gateway. It may be possible to erect mirrors in order to improve visibility, as suggested by THS, but we agree with the Authority that they would be likely to be ineffective, or visually intrusive, or both.
26. Moreover, we are of the opinion that the introduction of additional traffic, combined with the resultant inevitable increase in reversing and other manoeuvres would further harm the quiet character of this street and its attractiveness for pedestrians and cyclists. This adds to the weight that may be accorded to our conclusions on the first issue.
27. In reaching these conclusions, we recognise that many streets and roads on the Island are narrow and have poor visibility and facilities for pedestrians. We understand that it may not always be possible to achieve ideal standards of road design; and that compromises will frequently have to be made, even where this may impact on matters of safety for road users. However, the fact that Guernsey drivers may commonly be obliged to drive on pavements, for example, is not a good reason to allow new development that would inevitably give rise to such highly undesirable practices.

#### *Issue (c) Residential amenity*

28. A number of residents have opposed the proposed development on the grounds that it would lead to a reduction in their quality of life. This is a material consideration by virtue of Section 13 to Part IV of the Land Planning (General Provisions) Ordinance 2007, which includes in the list of General Material Considerations *(i) the likely effect of the development on the reasonable enjoyment of neighbouring properties*. The dwellings located on the eastern side of The Strand directly front the street, and their occupiers would naturally be aware of vehicles passing in close proximity. As discussed above, the proposed development would give rise to additional vehicle movement. However, while the Tribunal takes the view that this could impact on road safety and the character of the road, we do not consider that the number of vehicles or the frequency of movement would be so great as to cause a serious reduction in residential amenity generally. However, for those people who would live close to the proposed gateway, the movement of vehicles in and out of the parking area, the manoeuvring within it and the opening and closing of the sliding door could give

rise to some additional noise and disturbance in what is presently a very quiet street. The Tribunal considers that, alone, such loss of amenity would not justify dismissing the appeal. However, it adds additional weight to our conclusions under the first two issues that it would be highly undesirable to introduce additional traffic into The Strand.

*Issue (d) The protected tree*

29. Part of the site is occupied by trees, one of which, an evergreen oak, is formally Protected under an Order confirmed in October 2018. The passage of pedestrians within the site in the vicinity of this tree has the potential to compact the soil and to damage its root system. Following discussions with the Authority, the appellant has put forward a method of protection for the roots. The proposed technique is acceptable to the Authority and, in the event that the appeal were to be allowed, could be required by means of imposing a suitable condition. The Tribunal has no reason to believe that the method would be ineffective, and concludes that, subject to it being employed, the proposed development would cause no significant harm to the tree.
30. Although other trees on the site are partially visible from public viewpoints and make a positive contribution to the character of the Conservation Area, they are not protected. As such, they could lawfully be removed at any time. They would be lost as a result of the proposed development. Replacement planting is planned, but this would be limited and small scale. Insofar as it would provide some green landscaping to the proposed car parking, it would be acceptable, though it would be unlikely to make any significant contribution to the wider area.

**Other Matters**

31. The Tribunal is conscious of the lack of dedicated parking space at No 18 Hauteville and the difficulty that residents may experience in seeking to park their vehicles close to their homes in this densely developed urban area. But these considerations do not outweigh the harm which we have identified by reference to the issues raised by this case. We are conscious that, in the interests of sustainability, the Spatial Policy of the IDP concentrates development in the Main and Local Centres, thereby consolidating the majority of activity in the areas that have the best access to public transport and services and reducing the need to travel by car. The residents of No 18 Hauteville live very close to such services, including the bus station. Consequently, the need for a private car and the associated need for parking is not pressing.
32. We acknowledge that the site is presently an overgrown, shaded and unused part of the garden to No 18 Hauteville and that the proposed development would doubtless put it to some beneficial use. But to accept such an argument as a reason to permit development would effectively encourage landowners to neglect their property as a means of gaining permission. We do not intend to do so.
33. In the written material submitted on behalf of the appellant it is asserted that the Authority's decision was unreasonable, but we have no direct evidence of this.



Reference was also made to a number of matters relating amongst other things to the payment of fees, the display of site notices and the timescale for determination. But these are aspects of administration that have no bearing on the merits of the case. The Tribunal does not seek to comment on them.

### **Overall Conclusion**

34. For the reasons given above, the Tribunal concludes that the appeal should be dismissed.
35. 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 dismissed.

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

**Date of issue of decision: 9<sup>th</sup> December 2019**