PLANNING APPEALS PANEL

Planning Appeals Panel
Sir Charles Frossard House
PO Box 43, La Charroterie
St Peter Port, GUERNSEY
GY1 1FH
Telephone +44 (0) 1481 717000

Appeal Decision Notice

Accompanied Planning Tribunal Site Visit held on 27th March 2012

Members: Mr. Stuart Fell (Presiding), Mrs. Sheelagh Evans, and Ms. Julia White

---

Appeal Site:	**Flat 2, Isis, Upper St. Jacques, St Peter Port.**
Property Reference:	**A20618B002-P01**
Planning Application Reference:	**FULL/2011/3655**
Planning Application Valid Date:	**22nd November 2011**
Appeal Case Reference:	**PAP/006/2012**

- 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. S G Dumaresq against the decision the Environment Department made on 16th January 2012 under Section 16 of the Law to refuse planning permission on a retrospective application for the change of use of a self-catering holiday chalet (Visitor Economy Use Class 12) to a unit of residential accommodation (Residential Use Class 1) at Flat 2, Isis, Upper St. Jacques, St Peter Port.

- The Site Visit was attended by the appellant, Mr. S G Dumaresq, and by Ms. J Roberts, Planning Officer. The joint owner of the adjacent dwelling at La Mirousse, Mr. J P Mackey, was also present and he invited the Tribunal members to inspect his property. The Tribunal was grateful for this opportunity and accordingly undertook internal inspections of both properties, as well as making an external appraisal of Flat 1.

Decision

1. The Appeal is allowed.

Background

2. The apartment in question forms part of a single-storey, flat-roofed extension that was built on the south flank of a pre-existing bungalow, known originally as Isis and now as La Mirousse. The extension projects beyond the rear face of the bungalow by some 14.5m, occupying much of the original rear garden of the bungalow. The change of use of this extension to provide a self-catering apartment for visitors was granted planning permission in 1969. In 1973, a further permission was granted to subdivide the extension into two self-catering apartments; now described as Isis Flat 1 and Flat 2, the latter dwelling being the subject of this appeal. A single room at the western end of the extension facing Upper St. Jacques remained as an integral part of the living space within La Mirousse.

3. It is these early planning permissions that have evidently given rise to the present 'L' shaped configuration of the principal dwelling and its later addition, whereby the remaining rear (east) garden of La Mirousse is overlooked by the north-facing windows of the two apartments. This situation has therefore existed for over 40 years. The potential for overlooking is exacerbated by the presence of a conservatory attached to the rear wall of La Mirousse, which projects 4.5m into the garden and has windows facing east and south.

4. At some subsequent stage the individual flats were sold off to separate owners and La Mirousse also changed hands, having being bought by the present owner, Mr. Mackey, about 8 years ago.

5. The Tribunal saw that Flat 1 has a single bedroom and a predominantly southerly aspect over a small garden to the south, and appears to be vacant.

6. Flat 2, which was recently inherited by the appellant, Mr. Dumaresq, has windows facing north, east, and south and it benefits from a substantial garden to the east, having an area of over 330m^2, and also has a smaller garden to the south. A single parking space is allocated to this flat on the shared driveway on the west side of the property. Mr. Dumaresq has recently made a substantial investment in repairs and improvements to Flat 2.

7. The flat has apparently been occupied on a permanent basis for at least 8 years, and it was only when Mr. Dumaresq inherited the property from his recently deceased partner that he became aware that the occupation of the property on a permanent basis is unauthorised, the approved use being as visitor accommodation. The Department's summary of the planning history indicates that an application for the change of use of Flats 1 and 2 to form permanent residential accommodation had been refused in 2003.

8. Mr. Dumaresq sought to regularise the situation by applying for the change of use of the flat to permanent residential accommodation. The application was subsequently refused by the Department, resulting in this appeal.

Main Issue

9. From its assessment of the papers submitted by the appellant, the Department, and the neighbouring owner, and from what was seen and noted during the site visit, the Tribunal considers that the main issue in this case is whether Flat 2 can be regarded as providing satisfactory living accommodation and a living environment of a standard suitable for permanent occupation, given the size and layout of the apartment and its close physical relationship to the adjoining dwelling at La Mirousse.

Policy Considerations

10. The Department relies on two policies in the approved Urban Area Plan in support of its refusal of the application. The first of these is Policy EMP15, as amended, which deals with the rationalisation of visitor accommodation. The preamble to this Policy acknowledges a reduction for a number of years in the quality of serviced and self-catering accommodation, which is attributed to falling occupancy levels and a lack of investment. The Policy envisages that in appropriate circumstances permission for the change of use of visitor accommodation may be granted, provided it can be demonstrated that the establishment is deficient, by reason of unsatisfactory standards of accommodation, or because of the non-viability of continued use, perhaps because of issues relating to location, surroundings, or size. The preamble states that the views of the Commerce and Employment Department will be sought on the question of viability.

11. The wording of the relevant parts of Policy EMP15 is as follows:

> *"The change of use or redevelopment of visitor accommodation to other uses will only be permitted where it would not prejudice the retention of an adequate stock of visitor accommodation across the island and where:*
>
> *a) The existing premises provide an unsatisfactory standard of accommodation and facilities and are incapable of being upgraded or otherwise adapted to a satisfactory standard or, changed to an alternative visitor accommodation use at reasonable expense, having regard to the location, immediate surroundings and size of the establishment; or,*
>
> *b) The premises are currently of an inappropriate size for a modern, viable operation and are not readily capable of being suitably adapted or resized.*
>
> *Where a residential use is proposed, a satisfactory living environment and standard of accommodation must be provided including satisfactory levels of amenity, servicing and parking provision appropriate to the type of accommodation being created and its location".*

12. In commenting on the planning application in this case, the Commerce and Employment Department raised no objection to the proposal, forming the view that:

> *"….due to its location, the nature of the accommodation and the unusual configuration of the site, the unit that is the subject of this application is of very limited benefit to the tourism sector. In addition, such single units can only generally be successful through the careful and efficient management of the unit by proprietors resident on the same, or immediately adjacent site, which is not the case for this unit. These factors, combined with the fact that the unit has not been operative within the visitor industry for some 8 years means that its loss could not be said to prejudice the retention of an adequate stock of visitor accommodation across the Island"*.

13. The Department seems to accept this assessment insofar as the loss of this visitor unit is concerned, but opposes the development solely on the basis that the accommodation would not provide a satisfactory living environment or standard of living accommodation and amenity, and its permanent occupation would have a detrimental effect on the amenities of the adjoining residential occupiers. It would therefore run contrary to objectives of the final paragraph of Policy EMP15 quoted in paragraph 11 above.

14. The other policy relied on by the Department is Policy HO4, which deals with the conversion and subdivision of existing buildings. This states:

> "*Proposals for the conversion and subdivision of existing buildings to provide housing will only be acceptable where:*
>
> *a) the building is worthy of retention and capable of conversion:*
> b) *the building is no longer required or suitable for its original purpose;*
> c) *a satisfactory living environment and standard of accommodation can be achieved;*
> d) *parking and servicing arrangements are appropriate;*
> e) *neighbouring uses are compatible with housing; and*
> f) *the development does not conflict with Policy DBE8 and other relevant policies of the Plan.*

15. The Department's objection to the appeal proposal evidently arises from requirements of part c) of the above policy, which deals with the standard of accommodation and the quality of the living environment that might result from the conversion or subdivision of an existing building. The Tribunal notes that the scope of this Policy relates to the conversion or subdivision of existing buildings, whereas the appeal development involves only a change of use from one use class to another, where no physical works are involved. Nevertheless, the Tribunal considers that the objectives of Policy HO4 represent reasonable requirements for the creation of any permanent living accommodation, and these requirements can be properly applied in its assessment of this case.

16. The Department does not publish any standards or guidelines relating to the design or layout of dwellings, or to the size and proportion of rooms or external amenity areas, or to the physical relationships between adjoining dwellings. In the case of a previous appeal where the size and layout of a dwelling was an important factor, the Department indicated that it did not consider that its role should be to prescribe minimum floor areas for residential property, and that such matters could best be determined by market forces. The Tribunal members accordingly relied on their own judgment in considering such matters. From its own inspection, the Tribunal formed the view that the interior layout of Flat 2 is conveniently arranged around a central corridor, and that all the four principal rooms are of an acceptable size for a modest dwelling. The w.c. and shower accommodation were seen to be rather compact, though not unacceptably cramped. The garden area is very generous for a dwelling of this size, and is relatively private. The Tribunal concluded that in terms of its intrinsic layout, room sizes, facilities and outdoor amenity space, the flat could provide satisfactory accommodation for permanent occupation. The Department had raised no specific criticism in respect of the features described above.

17. The obvious shortcoming arising from this proposal, which appears to be the main focus of the Department's concern, is that the north-facing windows of Flat 2, which serve the kitchen/dining area and a bedroom, directly overlook the rear garden of La Mirousse, as well as its conservatory windows, thus compromising the living environment of that dwelling. Conversely, from the aforementioned conservatory, occupiers can look directly into the north-facing windows of Flat 2. A further concern of the Department is that from the garden of Flat 2, direct overlooking of the rear windows of La Mirousse is possible.

18. The Tribunal acknowledges the Department's concerns on this matter, and agrees that in normal circumstances it is vital that every dwelling should be provided with reasonable standards of privacy and amenity. However, the Tribunal considers that an important factor in this case is that the respective owners of Flat 2 and La Mirousse have both argued that whilst these arrangements are not ideal, this situation has existed for over 8 years and both parties find the arrangements acceptable. Moreover, the Tribunal notes that the fundamental point of concern, which relates to mutual overlooking between the properties, could readily be resolved by the judicial arrangement of screen-planting within the rear garden of La Mirousse, which could be achieved without materially compromising the living environment or daylight enjoyed within Flat 2. A more permanent solution, should it ever be thought desirable or worthwhile, would be to move the bedroom window in Flat 2, which currently faces north, to the eastern flank of the property, where it would be provided with an outlook over the flat's private garden. Modifications such as this would substantially reduce the potential for overlooking between the two dwellings.

19. An additional factor weighed by the Tribunal is that no practical benefit would be derived by withholding permission for this development, as the permanent occupation of Flat 2 would continue unabated, given that the opportunity for enforcement action by the Department with a view to terminating the use has long passed. Finally, the Tribunal can empathise with the point made by Mr. Mackey in his letter of representation that he would find the continuation of the present arrangements far preferable to the occupation of Flat 2 by a succession of different holiday occupiers.

20. Having considered these matters, the Tribunal's conclusion is that the formalising of the present living arrangement by granting planning permission is most likely to create conditions conducive to the long-term resolution of any overlooking issues, should these ever become problematic. It is the Tribunal's view that the refusal of permission, with the degree of uncertainty that it would perpetuate, would serve to discourage the optimum physical relationship ever being contrived between these two properties. For these reasons the Tribunal is prepared to support this appeal.

21. The Tribunal considers it necessary to state that its support in this case cannot be taken as an indication that the occupation of Flat 1 on a permanent basis should also be approved should permission ever be sought. A survey plan dated 2003 provided by the Department shows that Flat 1 is significantly smaller than the appeal apartment, and has a different internal layout. This flat also has a smaller garden, and no dedicated parking provision. The future of Flat 1 would therefore have to be considered on its own individual merits should a change of use ever be proposed.

Conclusion

22. The Tribunal has considered all other matters raised in the written submissions, and seen at its site visit, but these do not affect its conclusion under the provisions of Part V1 Section 69 of The Land Planning and Development (Guernsey) Law, 2005, that the Appeal is upheld.

23. The Tribunal has considered the conditions suggested by the Department in the event that the appeal be allowed. These are considered appropriate and have been imposed. Planning permission is accordingly granted on the following terms:

PROPOSALS: **Retrospective application for the change of use of a self-catering holiday chalet (Visitor Economy Use Class 12) to a unit of residential accommodation (Residential use Class 1)**

LOCATION: **Flat 2, Isis, Upper St. Jacques, St Peter Port**

APPLICANT: **Mr. S G Dumaresq**

This permission is granted under the terms of Sections 68 and 69 of the land Planning and Development (Guernsey) Law, 2005.

This permission refers solely to the proposals referred to above and as described in the planning application validated by the Department on 22nd November 2011.

This permission is subject to the following conditions:

1. The development hereby permitted must be carried out entirely in accordance with the application referred to above.

Reason – To ensure that the development is undertaken in the form that has been applied for and permitted.

2. The development hereby permitted shall be begun within 3 years from the date of this permission.

Reason – This condition reflects the provision of Section 18(1) of the land Planning and Development (Guernsey) Law, 2005.

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 Regulations, 1992, (as amended) 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 Environment Department and (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Environment Department when approving those plans, for the purpose of securing that the Building Regulations are complied with.

Reason – Any planning permission granted under the Law is subject to this condition as stated in section 17(2) of the Land Planning and Development (Guernsey) Law, 2005.

Stuart Fell DipArch RIBA IHBC
Presiding Member

Date: 11th April 2012