



Appeal Decision Notice

Planning Tribunal Hearing held on 6th September 2012 at Les Cotils Christian Centre,
St Peter Port, followed by a visit to the Appeal site

Members: Mr. Stuart Fell (Presiding), Mr. Patrick Russell, Mrs. Sheelagh Evans

Appeal Site: 1 and 2 Petite Fontaine, Les Petites Fontaines,
St. Peter Port

Property Reference: A30650A000-P03

Planning Application Reference: FULL/2012/1394

Planning Application Valid Date: 30th April 2012

Appeal Case Reference: PAP/026/2012

- The Appeal is made under the provisions of Part VI Section 68 of The Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is by Octopus Limited against the decision of the Environment Department made on 22nd June 2012 under Section 16 of the Law to refuse planning permission on a retrospective application to create a pedestrian access on the east elevation at 1 and 2 Petite Fontaine, Les Petites Fontaines, St. Peter Port.
- Mr. R. Wilkes-Green was present on behalf of the appellant company together with his architect Mr. P. Falla, and they both gave evidence.
- The Environment Department was represented by Mr. J. Pentland, Planning Officer, and Mr. J. Rowles, Director of Planning Control Services.

Decision

1. The Appeal is dismissed.

Preliminary Matter

2. At the end of August 2012, Mr. Falla had submitted a bundle of photographs showing examples of historic walls and gateways in the vicinity of the appeal site, requesting that these be admitted in evidence. The Department raised no objection to this, on the basis that these features were there to be seen by the Tribunal, and this material was accordingly admitted.

Background

3. The appeal site lies on an area of formerly open land to the south and west of a sharp bend at the upper end of Les Petites Fontaines. The site is located at the point where the lane turns westward, and also connects with Mont Hermon, leading eastwards from the junction towards Victoria Road. The site once formed part of the garden of a large house, Petite Fontaine, which was built in 1939 and has been recently demolished to make way for development.
4. The appeal site occupies part of a larger development area for which a Development Brief was issued by the Department in August 2006. The Brief provides detailed guidance on the form that residential development might take. The Brief goes to some lengths to describe the character of the area, and draws particular attention to the roadside walls in Les Petites Fontaines that enclose the northern and eastern edges of the site. The condition of these walls is discussed in the Brief and attention is drawn to the need for repair work. Planning permissions for the development of a number of houses have been subsequently granted.
5. One of these permissions, granted to the appellant company, was for a single house to be built directly adjacent to the retaining roadside wall on the east side of Les Petites Fontaines, at the upper end. Although this house was to be elevated some 3 metres above Les Petites Fontaines, it incorporated basement accommodation with a floor at approximately the same level as the roadway. An enquiry was subsequently made by the appellant as to whether a doorway might be permitted through the roadside boundary wall so as to give direct access from the new property into the lane. This suggestion was firmly discouraged by the Department, on the basis that such a feature would be harmful to the character of the area.
6. A subsequent planning application to construct two houses on this site rather than one was subsequently approved by the Department. This scheme incorporated a doorway leading from the basement room into Les Petites Fontaines, and this aspect of the scheme was specifically excluded from the grant of planning permission by means of a planning condition.

7. Part of the roadside boundary wall directly adjacent to the new house was subsequently rebuilt because of inherent structural instability and the proximity of the new dwelling, and a doorway opening was incorporated into this new construction. Following an exchange of views between the appellant company and the Department on this matter, an application was subsequently submitted to retain the opening in the roadside wall, the refusal of which has led to this appeal.
8. The Tribunal notes that the roadside boundary wall in question through which the opening has been formed defines part of the edge of the Conservation Area that includes much of the historic centre of St. Peter Port.

Main Issue

9. From its assessment of the papers submitted by the appellant and the Department, and from what was given in evidence during the Hearing and seen and noted during the site visit, the Tribunal considers that the main issue in this case is whether the retention of the doorway opening in question would cause unacceptable harm to the character and appearance of the surroundings, bearing in mind the relevant policy provisions of the adopted Urban Area Plan.

Policy Considerations

10. In its refusal of the planning application in this case, the Department relied on parts c) and d) of Policy DBE1 of the adopted Urban Area Plan, 2005, which states:

“In general, the IDC will require new development to:

- c) Avoid the introduction of elements that would appear obtrusive or discordant in the street scene; and*
- d) Retain existing features that contribute to the character of the area.”*

11. The Department also relied on Policy GEN6, which states:

“In considering proposals for Development the Committee will take into account locally distinctive features and characteristics of the environment.”

12. Finally the Department asserts that the new doorway is in conflict with one of the underlying aims of the Development Brief for the site, which draws attention to the contribution that the enclosing walls make to the character of the area, and asks that these features be retained as far as is practicable.

The Status of the Conservation Area

13. The Department confirmed during the Hearing that the roadside wall in question marks the outer, south-western edge of the Conservation Area in this part of St. Peter Port. When asked by the Tribunal why the Department had placed no reliance on Conservation Area Policy DBE7 when formulating its reasons for refusal, the Department admitted to some uncertainty about the application of that Policy to this proposal. As the Conservation Area boundary on the Town Map appears to be drawn along the line of the wall in question, and bearing in mind that the map is of small scale, the Department was undecided as to whether the wall should be treated as lying within the Conservation Area or beyond it. In any event, it was implied that the two Urban Area Plan policies that had been relied on by the Department were sufficient to provide a robust justification for the refusal of the application.
14. The Tribunal takes the view that a written character appraisal of the Conservation Area would be of direct assistance in resolving uncertainties such as this. The absence of such an appraisal is considered by the Tribunal to be regrettable, and this would be likely to lead to continuing difficulties for both planning officers and applicants in assessing and preparing Conservation Area applications.
15. Nevertheless, having considered this matter, the Tribunal takes the view that the Conservation Area boundary has been deliberately drawn along the eastern edge of Les Petites Fontaines so as to protect the character of the lane, and as that character is dictated to a considerable extent by the roadside wall in question, which is undoubtedly a dominant and enclosing feature, then the wall should be regarded as falling within the Conservation Area. Development affecting this wall should accordingly be subject to the relevant provisions of the Land Planning and Development (Guernsey) Law, 2005, as well as the relevant policies of the Urban Area Plan.
16. The Tribunal is aware that Section 38 of the Law imposes a duty on decision-makers that in the exercise of any powers under the Law within a Conservation Area, special attention shall be paid to the desirability of preserving and enhancing the character and appearance of that area.
17. The statutory obligation set out in the Law is amplified in Policy DBE7 of the Urban Area Plan 2002, which states that development within, or affecting the setting of, a Conservation Area will only be permitted if it conserves or enhances the character and appearance of the area, in terms of size, form, position, scale, materials, design and detailing. The preamble to Policy DBE7 states that the intention is not to prevent development. It is, however, intended to respect architectural details and other features, such as walls and railings, street furniture and trees, where these contribute to the special character of the area.

The impact of the new doorway on the surroundings

18. The Department's position was that the new doorway would introduce an inappropriate and discordant feature within the continuous length of this prominent and unbroken stretch of wall, and this would erode the locally distinctive features and characteristics of the environment. The planning permission for residential development on this site had successfully maintained the unbroken character of the wall, and subsequent suggestions by the appellant to incorporate a doorway had been firmly resisted.
19. Mr. Falla drew attention to a suggestion within the Development Brief regarding the potential for a pedestrian access through the development site, with a view to connecting the western and south-eastern ends of the land. This would necessarily have involved the creation of a new opening in the roadside wall on the east side of Les Petites Fontaines, an intervention that the Department now found unacceptable. This in his view represented a significant inconsistency in the Department's position.
20. Mr. Pentland explained that the impact of any new opening in the roadside wall as suggested in the Development Brief would have been judged in the context of the public benefit that would have arisen from the creation of a footpath through the site. In contrast, the opening currently proposed in the appeal development, which serves only a single private dwelling, would provide no such public benefit.
21. The Tribunal's opinion on this matter is that there is indeed a degree of inconsistency in the Department's stance, but it nevertheless recognises that the public benefit arising from the suggested footpath might have had the potential to outweigh any harm caused to heritage interests. This balancing of potentially conflicting interests is not, however, made explicit in the Development Brief. The Tribunal concludes, however, that this apparent inconsistency is not decisive in this case, and notes that if a character appraisal had been available for this part of the Conservation Area, then such ambivalence in the Department's position would possibly have been avoided.
22. Mr. Falla and Mr. Wilkes-Green went on to explain during the Hearing that they had taken care to safeguard the character of the roadside wall, and had ensured that parts of the wall that were structurally unsound were carefully rebuilt. They pointed out that doorways and openings of various types and designs were characteristic of the boundary walls in the historic suburbs of St. Peter Port, and were commonplace. Several photographs were submitted to illustrate these points. They argued that the proposed doorway would be a visually beneficial and complementary feature in this section of wall, which due to its height created a slightly oppressive feel in the upper section of the lane.

23. In seeking a better understanding of the history of the area, the Tribunal canvassed the views of the parties on the likely age of the wall in question, the early history of development within the appeal site, and the likely date of the residential and other properties in Victoria Road which back onto Les Petites Fontaines. Little information was forthcoming.
24. The Tribunal accordingly sought assistance in C.E.B. Brett's *Buildings in the Town and Parish of St Peter Port*, published by the National Trust for Guernsey in 1975. This is generally regarded a standard reference work for those interested in the architectural development of the town and is no doubt available to the Department and the appellant company. It is clear from this publication, and the maps it contains, that by the end of the eighteenth century, Les Petites Fontaines was already an established route connecting the town centre with destinations to the west. As the open land to the west of the wall lies at a substantially higher level than the roadway, and the wall in question retains that land, it follows that the wall was likely to have been constructed when Les Petites Fontaines was created. On this evidence, it is therefore probable that the wall was built by the end of the late eighteenth century at the latest. The Tribunal saw during its site visit that this notion was confirmed by the form and character of the granite masonry.
25. On the east side of the lane, the enclosing roadside wall marks the boundary of the rear gardens of predominantly residential properties in Victoria Road, which, according to C. E. B. Brett were developed from the 1830s.
26. The Tribunal saw that when walking uphill along Les Petites Fontaines, the character of the surroundings changes markedly as one approaches the appeal site. Initially, at the lower part of the hill, the view to the west is relatively open, as the granite boundary wall that encloses the meadow has been recently rebuilt and is only a metre or so high. Here the eye is drawn to an open vista up the rising contours of the meadow that extends almost to Queens Road. The wall on the other side of the lane is comprised of rear garden walls of the Victoria Road properties, which lie to the north. These walls have been regularly breached in order to provide vehicular and pedestrian accesses to rear parking areas and gardens.
27. A little further up the lane, beyond a field gate, the granite wall to the west increases in height to around 3m, and continues at about this height up to the junction with Mont Hermon. It is unbroken for its entire length, and its function as a retaining and enclosing wall for the open land to the west is evident. In contrast, the character of the wall on the east side of the lane is variable in appearance and fragmented in form, as it is broken by a variety of doorways and openings, many of which are formed in brick, and it continues in this fashion until it reaches the junction with Mont Hermon. Many parts of these roadside walls have been rendered and painted. The distinctive

character of the upper stretch of the lane is therefore defined by the tall, featureless granite wall to the west, and the fragmented and altered wall to the east, where the openings provide glimpses of parking and service areas, rear gardens, and the densely built terrace of the urban houses beyond.

28. Having assessed this physical context, the Tribunal's conclusion is that the distinctive characteristics that set apart the western roadside wall from the wall to the east, and most other walls in the vicinity, are that it is uniformly tall, at around 3m high; it is a land-retaining and enclosing wall rather than a boundary wall to residential property, and is therefore free of openings; it is older than most other walls in the area, and most fundamentally, it is continuous and unbroken for a length of approximately 110m.
29. The Tribunal's view is that the introduction of a new doorway in this unbroken stretch of wall would undermine its distinctive character, and would accordingly fail to preserve or enhance the character and appearance of the Conservation Area, contrary to the aims of Policy DBE7. It would also be in conflict with part c) of Policy DBE1, which seeks to avoid the introduction of elements that would appear obtrusive or discordant in the street scene. For these reasons the Tribunal is unable to support this appeal.

Conclusion

30. The Tribunal has considered all other matters raised in the written submissions, during the Hearing and 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 this appeal is not upheld.

**Stuart Fell DipArch RIBA IHBC
Presiding Member**

Date: 2nd October 2012