



Appeal Decision Notice

Planning Tribunal Hearing held on 13th November 2012 at the Beau Sejour Leisure Centre, St. Peter Port, Guernsey, followed by a visit to the Appeal site

Members: Mr. Jonathan King (Presiding), Mr. Patrick Russell and Mrs. Sheelagh Evans

Appeal Site:	69 Mount Durand, St. Peter Port
Property Reference:	A306150000
Planning Application Reference:	FULL/2012/0241
Appeal Case Reference:	PAP/034/2012

- 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 Ms. T Grover against the decision of the Environment Department made on 29th March 2012 under section 16 of the Law to refuse planning permission on an application for proposed parking.
 - The appellant was represented at the Hearing by Mr. W Lockwood. Ms. Grover also contributed to the discussion.
 - The Environment Department was represented by Mr. J Pentland, Planning Officer, and the Case Officer, Miss J Roberts
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Decision

1. The planning appeal is dismissed.

Main Issues

2. 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 issues in this case relating to the planning appeal are:
 - (a) *The effect of the proposed development on the character and appearance of the conservation area.*
 - (b) *The effect of the proposed development on road safety.*

Planning Policy

3. The site lies in a conservation area. Section 38(1) of the 2005 Law states that: “In the exercise, with respect to any buildings or other land in a conservation area, of [any functions] under this Law or any other enactment, special attention shall be paid to the desirability of preserving and enhancing the character and appearance of that area”. This requirement is broadly repeated in Policy DBE7 of the Urban Area Plan (UAP), which was the only policy referenced in the decision notice. It is arguable that Policies DBE9 *Demolition of buildings and features* and Gen6 *Character and amenity* also apply, but though some demolition would be involved in the development, these do not raise any additional planning considerations beyond those in Policy DBE7. It is worth recording that the Urban Area Plan describes conservation areas as an “... *irreplaceable cultural and economic resource that contribute to the distinctive character and unique quality of Guernsey*”.

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

Introduction

4. The appeal property is a semi-detached house situated on the northern side of Mount Durand, a fairly narrow residential street which slopes eastwards. The house and its neighbour, No. 67, dating from around 1840, sit above street level behind modest, mostly lawned gardens. A low wall, topped by unusual and attractive railings and pierced by a centrally-located, shared pedestrian entrance, separates the gardens from the street. There is no pavement on this side of the road. On the other side, there is a pavement and on-street “disc” parking is permitted.
5. In the decision notice the description of the development was altered from that on the application form (as given above) to “... *demolish section of wall at front to create vehicular access, erect new pillars at entrance, walls at roadside and along driveway and install steps to pathway*”. This is an attempt at a more detailed description but omits the most important original element of the development which is the creation of a parking area. This was not the subject of dispute or discussion at the Hearing but, for the avoidance of any doubt, the Tribunal considers the appeal on the basis of

the works shown on the submitted plan: 1124 02.01. This shows most of the present front garden to the appeal property excavated to a lower level and paved to provide sufficient space for the parking of two cars with access directly from the street. This would require the removal of the majority of the low roadside wall and railings. The new opening would be flanked by rendered blockwork pillars similar in form to those at the existing pedestrian access; and a new wall would be constructed on the short remaining enclosed part of the frontage, utilising the present railings. Steps would lead up to terrace directly in front of the house at existing levels, while to either side, low retaining walls would separate the parking area from planters. Pedestrian access would be maintained from the existing shared entrance.

The Effect on the Conservation Area

6. No formal description exists of the conservation area, nor has any character assessment been prepared. The Tribunal finds this regrettable, since it is only by reference to identified characteristics of the area that it is possible to assess the effect of proposed development on it in terms of the legal requirement and policy. In that context, it is also regrettable to note that the Department's officers appeared not to have made any structured analysis of the character of the area for the purposes of the appeal. In the absence of any such analysis, the Tribunal has had to rely principally on its own observations.
7. The conservation area is large; and at the Hearing there was broad agreement between the parties that, taken as a whole, it possesses no single defining character or set of defining characteristics. Rather, different streets and localities have their own character, and some streets may subtly alter along their length. The Tribunal takes the view that in these circumstances, the correct approach is to assess the effect of development on the character and appearance of the immediate locality.
8. For our purposes, we broadly take as the locality the section of Mount Durand from the boundary of the conservation area on the north side of the road down to its eastern junction with Valnord Road, but particularly the straight section which includes the appeal site towards its eastern end. It has a number of characteristics. It is residential, but with some variety in age, scale and layout. Mostly the houses appear to date from the early part of the nineteenth century – late Georgian, but some, including the appeal property and its neighbour, are somewhat later, from the early Victorian period. Most are set within terraces, either close to the roadside or set back to some degree. The majority are two-storey, often with dormers in the roof, but there are examples of three-storey and one which has just one storey, albeit with dormers. Within the terraces there are variations in plot width and in detailed design. Nos. 69 and 67 are unusual – possibly unique – in being semi-detached. However, they are not a matched pair. In form, they have the appearance of being a single dwelling, served by their common, centrally-located pedestrian access. It is only the difference in the colour of the render and the recently-planted dividing hedge that shows them to be to be two houses.

9. The degree of set-back of the buildings from the road also varies. Towards the eastern end, they are located at, or very close to the frontage on both sides, providing a heightened sense of enclosure. This is also true of a section at the western end. But even in the remainder where is greater separation, the straight road, with its narrowness emphasised by on-street parking, and with many of the houses on the northern side being elevated, still feels enclosed. Again, Nos. 69 and 67 are not typical. The degree of set-back is broadly comparable to that of the terrace (Nos. 77-91) further west, but they are flanked by houses with their facades almost at the frontage.
10. Most of the houses have frontage walls, varying in height and detailed design, often topped by railings and with square pillars marking the entrances. However, there are numerous examples, especially within the terrace formed by Nos. 77-91 where the walls have been broken through to create vehicular accesses serving parking areas on what had been front gardens. The present proposal seeks something very similar.
11. With only a few exceptions, which include Nos. 69 and 67, the houses in this part of Mount Durand are designated as Protected Buildings. The Tribunal has been urged to conclude that the appeal property is thereby of lesser value or interest compared to the others. On the face of it, that might be a reasonable conclusion. However, we know from our experience elsewhere that the process of identification of protected buildings on the island was somewhat opaque, and the characteristics of the buildings which caused them to be listed have not been recorded. The relative importance of buildings to the character of an area cannot therefore automatically be assumed. The appeal property and its neighbour may be a little more recent than most others in the street, and may be different in a number of other ways, but in our judgment they still make a positive contribution to the character and appearance of this part of the conservation area. They are integral to it and add to the variety in age, scale and layout of the buildings which comprise it. The fact that they are not protected does not diminish their value or imply that the provisions of Policy DBE7 or the legal duty should be applied less rigorously.
12. Mr. Lockwood, for the appellant, argued principally by reference to the fact that several other houses in Mount Durand have already created front garden parking areas with broad accesses. Some have been permitted recently. Consistency in decision making shows fairness and provides a degree of certainty and confidence for prospective developers. The Tribunal does not seek to minimise its importance. However, it is also important that planning decisions should be taken in accordance with the provisions of the development plan having regard to the evidence presented in each case. The simple fact that something similar may have gained permission elsewhere does not bind the decision maker, whether the Department or an appeal tribunal. Such cases cannot be regarded as “precedent” in any more than a general sense. A tribunal must approach its task with an open mind.
13. We acknowledge the existence of other examples of this type of development in Mount Durand. From the information provided it seems that the parking areas at

Nos. 81 and 79, respectively permitted in 2005 and 2006, were considered acceptable because the frontages were in poor condition. Notably the former may have had part of its frontage wall removed previously; and the latter appeared to have had its railings replaced by ugly modern pierced concrete blockwork. The development at No. 77 was permitted in 2011 on the basis that precedent had been set by the adjacent properties (Nos. 79 and 81), notwithstanding that the officer report accepts that such proposals are normally resisted. The permission at No. 91, granted this year, involved an alteration to a parking area which already had a vehicular access rather than the creation of a completely new area and access.

14. Despite the similarities, the Tribunal accepts the Department's argument that certain distinctions can be drawn between these earlier cases and the present proposal. However, there is some evidence to suggest that the Department may not in the past have always correctly applied the appropriate policy test concerning the desirability of preserving or enhancing the character and appearance of the conservation area. If decisions have been taken on an inappropriate basis, then it would appear that the provisions of the policy and the duty under the law have not been correctly applied. Any such decisions, however, cannot be regarded as providing any kind of precedent.
15. Moreover, even though "front garden parking" has been allowed to become reasonably commonplace in Mount Durand and other similar streets, it does not follow that this form of development should thereby be regarded as making a positive contribution to the character and appearance of the conservation area. We have to accept that it forms part of the present character. Equally it does not follow that it is desirable in the interests of preserving or enhancing that character that yet more should be permitted. That would only lead to the progressive loss of the traditional aspects of the street scene, including the low roadside walls and railings which contribute to its special character, contrary to the clear intention of policy and the Law.
16. Although Nos. 69 and 67 are not symmetrical, the building as a whole is attractive and has a unity, appearing superficially as a single dwelling, an impression emphasised by the shared central pedestrian access and the common frontage treatment. This unity has been largely retained despite the difference in coloured render and the new hedge. The proposed development would radically affect that impression. There would be a difference in levels introduced between the two properties, together with the introduction of hard surfacing to replace the grass. And some five metres, or around two-thirds of the boundary walling and railings to the front of No. 69 would be removed, opening up the frontage and thereby contributing to the progressive loss of these positive features.
17. The Tribunal concludes that the proposed development would fail to preserve or enhance the character and appearance of the conservation area in that it would remove characteristic features and adversely affect the visual unity of Nos. 69 and 67, which presently makes a positive contribution to the locality.

The Effect on Road Safety

18. The submitted layout shows a parking area capable of accommodating two cars parallel “en echelon” at an angle to the main orientation of the space. However, no swept path analysis has been submitted to demonstrate how the vehicles would enter or leave the area, nor has any quantitative assessment of visibility been undertaken by either party. This is regrettable in view of the importance of these matters to the second reason for refusal and their importance to the Tribunal’s decision. In short, we have been presented with little more than assertion. It is also surprising given reliance in the decision on the effect on road safety that no consultation was carried out by the Department on the subject. The following assessment is therefore based almost entirely on our impression of the conditions at and in the vicinity of the site taken from the submitted plan and our visit.
19. The first car (that shown closest to the house on the plan) would be able to enter either forwards or in reverse and park where shown leaving sufficient space for the second. However, despite Mr. Lockwood’s argument to the contrary, it is highly questionable whether it would be practicable to turn within the available space, just 6.09 metres wide, between the raised beds. It would take numerous turns, so that, even if technically possible, drivers would almost certainly choose not to attempt such a time-consuming and arduous manoeuvre. If the car entered forwards, this would mean that it would most likely have to emerge in reverse.
20. A second car could enter either forwards or in reverse, but it would not be possible for it to turn within the space; and it would also prevent the first car turning. Unless it was considerably shorter and/or narrower than that shown (measured from the plan at approximately 4.2 x 1.6 metres, excluding wing mirrors) it would also most likely prevent the first car from emerging either forwards or backwards. Consequently, in order to allow the first car to exit, the second would have to be moved into the street.
21. Though not illustrated on the plan, it would be possible for two cars to be parked side by side perpendicular to the street. Again, no turning in the space would be practicable; and in order for the car furthest east to enter or exit, the other car would have to be parked close to the steps which would lead up to the terrace. That could be a hazard for pedestrians. The Tribunal acknowledges that the manoeuvres described could be easier if the vehicles were smaller than those shown. But equally, they would be more difficult if they were larger. In order to put this into perspective, an average medium-sized vehicle, measuring some 4.35 x 1.85 metres, excluding wing mirrors would exceed in both dimensions the size of the car used to illustrate the submitted layout. This serves to emphasise the lack of manoeuvring space that would be available. The Tribunal is mindful that once planning permission is granted there would be no statutory control over the size or type of car used.

22. From the foregoing, it appears to the Tribunal that although the parking area could satisfactorily accommodate two cars, the restricted size of the area combined with the width of the entrance would mean that it would be very likely in normal use for one or both cars to have to reverse out of the entrance into the street. Only if both cars entered in reverse could this be avoided. But manoeuvring in the street, with parked cars on the other side of the road – leaving a width estimated as just 3.2 metres – would not be simple and would have the potential to impede traffic flow. We are sure that the occupiers of the property would, in time, manage to enter in reverse satisfactorily. But it would be unreasonable to expect visitors to do the same. In any event, though it would in principle be possible to require drivers to emerge in forward gear, this is not something that it would be practical to enforce.
23. Visibility along the street to the east for drivers emerging in forward gear is satisfactory. But to the west, views would be obscured by a pillar and a wall which separates No. 69 from the neighbouring house, No. 71. It is proposed to reconfigure the pillar and to reduce the height of the wall to 900mm in order to permit drivers to see over. Although the wall is outside the ownership or direct control of the appellant, the neighbour has confirmed their agreement to these works, which could be ensured by a negatively worded condition. But from observations on site, the Tribunal considers that visibility, though improved, would still be obscured to a large extent by obstacles further along the street. No visibility distances were submitted by either party, but we are in no doubt that it would be significantly less than the 33 metres (from a position 2.4 metres behind the kerb) which is the standard for this type of road set out in the *Traffic Engineering Guidelines for Guernsey*.
24. We recognise that it is not appropriate to apply highway standards in an unthinking way: the consequences of meeting standards in order to ensure road safety must always be balanced against other considerations, including the particular circumstances of the case and the desirability of preserving or enhancing the character or appearance of the conservation area. We also acknowledge that the urban speed limit is 25 mph and that, given the limited width of Mount Durand and the presence of parked cars, it is unlikely that this would be commonly exceeded. At the time of our visit, in the middle of the day, the street was not heavily trafficked, though, notwithstanding the count undertaken by the appellant, we would expect it to be considerably busier at peak periods. Certainly representations from a number of local residents suggest so. In these circumstances, the Tribunal considers that visibility should be at least adequate, even if the Guideline distance is not met.
25. The limited visibility would require emerging drivers to place the front of the vehicle into the roadway before committing to the manoeuvre. Drivers of oncoming vehicles would have little distance or time in which to slow. Taking all of the factors into account, we believe that the visibility to the west would be insufficient to ensure a reasonably safe form of access, even for vehicles emerging forwards. Any attempt to reverse out into the street we would regard as positively hazardous.

26. The Tribunal is of course aware that similar considerations apply with respect to some of the other frontage parking areas that have been laid out further along Mount Durand and which have been brought to our attention (particularly at Nos. 77, 79, 81 and 91. But as with the present case, there is no evidence to suggest that any consultation with respect to road safety matters was undertaken for them. We note that parking is not in every case permitted opposite these accesses, thereby easing the turning manoeuvres in and out; and that in more than one instance the occupiers had found it necessary to install mirrors at the entrance, even though – at least on the day in question - the vehicles would emerge going forwards. That suggests the inadequacy of visibility along the street. Once again, we do not feel bound by the “precedent” set by these developments by reference to road safety. The fact that inadequate accesses may have been allowed elsewhere without consultation on road safety issues is no reason to compound the harm by allowing yet more.

Overall Conclusions

27. For the reasons given above, the Tribunal concludes that the proposed development is unacceptable by reference to both of the main issues.
28. The Tribunal has considered all other matters raised in the written submissions and during the Hearing. It has also considered all matters pointed out at the site visit and its own observations. We note that some care has been taken in the design to incorporate planting and the re-use of some of the existing railings. It has to be acknowledged that the provision of off-street parking may ease pressure for parking on the street to a limited extent. However neither these nor any other matters affect its conclusion under the provisions of Part VI Section 69 of the Land Planning and Development (Guernsey) Law, 2005 that the Appeal should be dismissed.

Jonathan G King BA(Hons) DipTP MRTPI
Presiding Member

Date: 3rd December 2012