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

Planning Tribunal Hearing held on 19th January 2013 at Les Cotils Christian Centre, St. Peter Port, followed by a visit to the Appeal site

Members: Mr. Jonathan King (Presiding), Miss Julia White and Mrs. Sheelagh Evans

---

Appeal Site: **Flat 1, Isis, Upper St. Jaques, St. Peter Port**

Property Reference: **A20618B001**

Planning Application Reference: **FULL/2012/2473**

Appeal Case Reference: **PAP/036/2012**

- 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 Miss E Guilbert against the decision of the Environment Department made on 4th October 2012 under Section 16 of the Law to refuse planning permission for the change of use of self-catering holiday chalet to a residential unit of accommodation.
- The appellant was represented at the Hearing by her father, Mr. Mark Guilbert.
- The Environment Department was represented by Mrs. C Miles and Ms. J Roberts.

Decision

1. The Appeal is allowed subject to the following condition:

   (a) The windows in the rear elevation shall be retained in their present configuration. In particular, they shall remain glazed with obscure glass and have only high-level opening elements, to prevent inter-visibility between the flat and the property La Mirousse.

Introduction and Background

2. The appeal property is one of two apartments occupying a single-storey, flat-roofed side extension to a bungalow known originally as *Isis*, but now named *La Mirousse*. The change of use of this extension to provide a self-catering apartment for visitors was granted permission in 1969; and, in 1973, a further permission was granted to subdivide it into the two apartments: Flat 1 and Flat 2, with the former being the subject of this appeal. A single room at the western end of the extension closest to Upper St Jacques remains as an integral part of the living space of *La Mirousse*.

3. Subsequently the individual flats were sold off to separate owners and *La Mirousse* also changed hands in 2004, having been owned from 1988 by Mr. Mark Guilbert, the appellant's father. From approximately 2003, Flat 2, the larger of the two, became permanently occupied. Information about Flat 1 is less clear, but Mr. Guilbert understands that it was let out to a series of individuals. It has not been occupied since it was inherited by Miss Guilbert in October 2011.

4. In March 2012, permission was granted on appeal (Appeal ref PAP/006/2012) for the change of use of Flat 2 from Visitor Economy Use Class 12 to a unit of residential accommodation (Residential Use Class 1). The present appeal relates to a refusal of the Department to permit a similar change of use for Flat 1. In making its decision, the Tribunal in the earlier case stated that the future of Flat 1 would have to be considered on its own merits; and that its decision should not be taken as an indication that its permanent occupation should also be approved. Distinctions between the properties identified at that time include the fact that Flat 1 is smaller; it has a different internal layout, a smaller garden and no dedicated parking provision.

5. Much of the historical evidence on behalf of the appellant relating to the occupation of Flat 1 after 2004 is partial and some is not first-hand. The Department has little or no additional evidence from its own records, and it has not undertaken independent investigations. Nonetheless, from what it has heard, the Tribunal is reasonably satisfied that Flat 1 has at various times since 2003 been used for residential purposes contrary to its lawful use as visitor accommodation. It has recently been empty for well over a year; and the residential use was not necessarily continuous prior to that time. It is also possible that some of the occupancy over the years might be characterised as "out-of-season" lets, that is to say non-visitor occupation during the winter months which, though not explicitly permissible under Use Class 12, is allowed by reason of custom and practice.

6. While acknowledging the absence of conclusive evidence, The Tribunal considers that the change of use to residential has on the balance of probabilities already taken place. Consequently, although the appeal is not expressly described as being concerned with a retrospective application, we have considered it on that basis.

Main Issues

7. 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 is:

   Having regard to the policies of the Urban Area Plan, whether the proposed permanent residential unit would provide acceptable living conditions for future occupiers with particular respect to:

   - The potential for overlooking and loss of privacy;
   - The absence of dedicated vehicle parking space; and
   - The size and amenity value of the private open space.

Policy Considerations

8. The Department refers to two policies of the Urban Area Plan (UAP) in its reason for refusal. Policy EMP15 *Rationalisation of visitor accommodation* is critical in this case because it relates directly to the change of use of visitor accommodation to other uses. However, the greater part of it concerns matters which are not at issue: briefly, whether the loss of the unit would prejudice the retention of an adequate stock of visitor accommodation across the island; and whether the premises are unsatisfactory in their present use by reason of the standard of accommodation or size, and incapable of being made satisfactory. These matters do not form part of the reason for refusal. The Commerce & Employment Department was not consulted on this proposal, but commented in relation to Flat 2 that there was no objection to the loss of that unit as tourist accommodation. The Environment Department takes a similar view with respect to Flat 1 and submitted no evidence in relation to this matter. In the absence of any opposition from the Commerce and Employment Department or dispute between the parties, the Tribunal has not sought to pursue this issue.

9. The more relevant part of the Policy states that *"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"*.

10. Policy HO4 is not strictly relevant in that it relates to proposals for conversion and subdivision of existing buildings to provide housing; and there is no conversion or subdivision in this case. Nonetheless, its objectives and requirements were considered by the Tribunal which sat on the earlier appeal. Insofar as they are applicable, the policy says (amongst other things) that to be acceptable, the resultant accommodation should achieve a satisfactory living environment and standard of accommodation, and that parking and servicing arrangements should be appropriate. At the Hearing, the Department's representatives acknowledged that, in practice, Policy HO4 adds nothing significant to the requirements of Policy EMP15.

11. Though not referred to in the Reason for Refusal, the Department's statement mentions the parking standards contained in Annex 2 of the UAP. For housing (including change of use to housing) with less than three habitable rooms in the Central Area, the amount of parking required should be assessed on its merits. Elsewhere in the Plan area, the standard is one space. The site is outside the Central Area, so the latter applies. However, the Annex states that the standards are not inflexible and that variations will be allowed depending on the individual characteristics of each site. The "criteria for assessment" include: the built environment; on street parking capacity and proximity to public car parks; access and amenity implications for other residents; highway safety; type of development proposed; accessibility to the Central Area by foot or bicycle; and level of public transport provision. The Annex cross-refers to Policies EMP15 and HO4, saying that they refer specifically to parking standards. In fact, EMP15 limits itself to requiring "satisfactory" levels of parking provision; and Policy HO4 simply says that parking arrangements should be "appropriate" with its supporting text stating that standards should be applied flexibly. There is no explicit reference to the Annex 2 standards.

12. The reason for refusal does not refer to Policy GEN1 *Sustainable Development*. This policy, while not making any specific reference to amenity or parking, nonetheless in general terms seeks to promote development that is sustainable in terms of its location. The Tribunal considers its principles to be relevant in this case.

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

Overlooking and Loss of Privacy

13. The Department's concerns under this heading are twofold: the potential for people using the footpath which runs directly alongside the main elevation of Flat 1 to look in to the windows of the bedroom and lounge /diner; and the potential for overlooking between *La Mirousse* and its garden and the rear of the flat .

14. The pathway serves Flat 2 only and would be used solely by the occupiers of that property and their visitors. The Tribunal recognises that the relationship between it and the windows is not ideal. However, it is in many ways comparable to the situation commonly found with terraced houses located directly at the back of a pavement in traditional housing layouts. They too permit passers-by to look in at close range. It is for potential occupiers to consider whether they consider this is acceptable and whether, through the use of curtains or blinds, a satisfactory level of privacy may be assured. There are differences, however. In a terraced house it may be possible to re-arrange the internal layout of the property, for example by using the back rooms for the more sensitive living areas. There are no such opportunities at Flat 2. On the other hand, the opportunity for looking into a terraced house from a street used by many members of the public would be far greater than the situation that would be experienced at the flat. Not only would the frequency of people passing by be very low, but one might hope that good neighbourliness would discourage looking in. In any event, the windows in question are fairly small and from the present path it takes barely

a pace to walk past each. The proximity severely limits the ability to obtain an oblique view. Moreover, during the daytime, the windows are highly reflective, significantly reducing the ability to distinguish the interior detail from outside even at very close range. At night it would be normal to close blinds or curtains, thereby ensuring privacy.

15. At the Hearing neither party thought that it would be possible to divert the path to take it further away from the windows. However, even if re-routing were a possibility, the Tribunal does not feel that this would make any significant difference to levels of privacy that would be enjoyed by an occupier of the flat. Indeed, moving the path a short distance further away might actually increase the potential for oblique views. The Tribunal concludes that, while the relationship of the flat to the footpath may not be ideal, it would not result in unsatisfactory living conditions for the occupier.

16. With respect to the second limb of the Department's case, although there are windows serving the kitchen and bathroom to the rear of the flat that face towards *La Mirousse*, they have been fitted with hammered glass and high-level opening windows that effectively prevent any inter-visibility between the two properties. Provided that the obscure glazing and the form of the windows is maintained, a matter which could be addressed by a planning condition, the level of privacy at the rear would be entirely satisfactory.

Vehicle Parking

17. It is not possible to provide a car parking space to serve this property, though there is room to store a bicycle or motorcycle. Owing to local parking restrictions or because of the risk of obstruction on the narrow section which is not restricted, it would not be possible to park on a long term basis in Upper St Jacques. There is some disc parking nearby, but it is limited, and would not permit a vehicle to remain on a 24-hour per day basis. Many properties in the neighbourhood lack dedicated parking. Though this is said by the Department to result in keen competition for on-street parking where it can be found, no evidence was brought to suggest that this has given rise to any traffic hazard, congestion or any other identifiable harm in planning terms. The Tribunal takes the view that the flat would be no different to these other properties. The lack of convenient parking means that it is unlikely to be attractive to someone who needs to use a car on a regular basis. However, that is not to say that the absence of parking would necessarily mean that it would provide unsatisfactory accommodation. Though outside the designated central area and not especially convenient to a bus route, it is only around 1.3 kilometres from the commercial centre of the Town, equating, we estimate, to a walk of about 15 minutes. It strikes us that this is a moderately sustainable location, having regard to the principles of sustainability which underpin Policy GEN1. Taking into account its small size and suitability for single occupancy, the flat might well prove suitable for an active younger person who may neither want nor need a car.

18. Given that the UAP parking standards are not required to be applied by reason of policy, and that they are in any case to be used flexibly, the Tribunal considers having regard to the criteria of Annex 2 that this is a circumstance that does not require a parking space to be provided in the interests of the amenity of future occupiers.

Private Open Space

19. Separated from the flat by the footpath leading to Flat 2 is a small grassy area which is available as an outdoor amenity space for an occupier. Although the Department considers the size and location of this space to be unsatisfactory, it does not seek to rely on this in the reason for refusal, but regards it as a contributory factor to add weight to the other considerations. The Tribunal disagrees. The area may be small, but it is of sufficient size for a few people to sit outside casually. The fact that the occupier would have to cross the footpath which may from time to time be used by the occupier(s) of Flat 2 seems to the Tribunal to be no more than a minor inconvenience. There is no requirement for flats to have dedicated amenity areas and the Department's officers accepted at the Hearing that many flats on the island are without such space. Rather than it being a negative factor, we agree with the appellant that the availability of the space represents an advantage to a future occupier. It adds no weight to the Department's opposition to the change of use.

20. Overall, in terms of Policy EMP15, the Tribunal concludes that flat and its occupiers would enjoy satisfactory levels of amenity, servicing and parking provision appropriate to the type of accommodation and its location

Other Matters

Adequacy of the Accommodation

21. The flat is very small. Nonetheless, the Department is satisfied that it meets Requirement G7 of the Building Regulations, which says that the layout, size and arrangements of habitable rooms must be adequate. More detailed guidance is included in the Guernsey Technical Standard G7 *Habitable rooms.* The flat meets the minimum room sizes for single-person accommodation both by reference to overall dimensions and the distribution of space between the bedroom and the other rooms. It does not provide ideal accommodation, particularly with respect to the size of the kitchen and the bathroom. But it is at least acceptable. The Tribunal is aware that the flat does not meet the space standards for two-person accommodation. Although a condition restricting the occupation of the flat to one person could in principle be applied, the Department is not suggesting that, recognising that in practice it would be very difficult to enforce. We do not propose to impose such a condition. In the event that the requirements of the Building Regulations were found to be breached in the future, it would be for the Department to consider whether action should be taken. In this, the flat would be no different to any other accommodation of a similar size.

The Fall-Back Position

22. Some considerable time was spent at the Hearing considering the "fall-back position", that is to say, the situation that would pertain in the event that the appeal were to be dismissed. Unlike in the appeal relating to Flat 2, where the evidence of continuous permanent occupation in excess of ten years was uncontested, the Tribunal is not able to conclude with full confidence that the change of use of Flat 1 took place at around the same time. The importance of this timescale is that, if ten years has elapsed then, while remaining unlawful, the use would be immune from enforcement by the Department. From what we have been told, it is a possibility that permanent occupation commenced in early 2003, about ten years ago, but it has not been possible to verify this.

23. So far as the practical fall-back position is concerned, critical to the Tribunal's consideration is the statement made at the Hearing by Mrs. Miles that, notwithstanding the degree of uncertainty, it would be unlikely that the Department would take enforcement action to secure the cessation of a residential use in the event that the appeal were to be dismissed. First, it has no independent evidence to counter the claims of the appellant that the change of use took place in the region of ten years ago; and second, any delay in taking action would only serve to increase the likelihood of the ten years having elapsed. Against this background, whatever the true position, the Tribunal can be reasonably certain that no action would be taken to prevent the flat from being occupied on a permanent basis if the appeal were to be dismissed.

24. We cannot be sure that present or future owners would wish to use the flat in that way, but it is a distinct possibility. Allowing the appeal would not give rise to any additional harmful effects, for example in terms of the amenity of an occupier. In itself, this does not lead inevitably to a conclusion that the appeal should be allowed. But since we have found the proposal acceptable by reference to the main issue, it adds weight to our earlier conclusions, as no practical benefit would be derived by withholding permission.

Conditions

25. The Department has suggested the imposition of three conditions, all of which are normally imposed on very nearly every planning permission. The first relates to the development being carried out in strict compliance with the plans. But in this case where no building works are involved, this is unnecessary. The second concerns the standard three year timescale for commencement. However, this too is unnecessary, as the Tribunal has already concluded that the change of use has already taken place. Lastly, a condition relating to compliance with the Building Regulations has been suggested. Again, as no building works would be authorized by the permission, there is little purpose in imposing it. In the event that any work requiring Building Regulations approval may unexpectedly result from the grant of planning permission, the requirements of Section 17(2) of the 2005 Law requires that development must be carried out in compliance with all requirements of the Building Regulations. This would still apply, irrespective of whether there was a planning condition. UK Circular 11/95

The Use of Conditions in Planning Permissions, which is generally followed in Guernsey in the absence of any comparable policy or advice, lists necessity as one of the principal tests of acceptability of conditions. As none of these are necessary, the Tribunal has decided not to impose them.

26. Nonetheless, for the reasons set out in paragraph 16, we consider it necessary to require that the windows in the rear elevation should be retained in their present configuration.

Overall Conclusion

27. For the reasons given above, the Tribunal concludes that the appeal should be allowed.

28. 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 Section 69 of the Land Planning and Development (Guernsey) Law, 2005 that the Appeal is allowed, subject to the condition set out in the formal decision.

Jonathan G King BA(Hons) DipTP MRTPI
Presiding Member

Date: 28th January 2013