



Appeal Decision Notice

Planning Tribunal Hearing and Site Visit held on 21st January 2013 at Les Cotils Christian Centre, St Peter Port, followed by a visit to the Appeal site

Members: Mr. Stuart Fell (Presiding), Mrs. Sheelagh Evans, Mr. John Weir

Appeal Site: Oatlands Village, Les Gigands , St. Sampson.

Property Reference: B1008000

Enforcement Reference: ENF/2102/00082

Planning Application Valid Date: 12th September 2012

Appeal Case Reference: PAP/042/2012 and PAP/043/2012

- This Appeal is made under the provisions of Part VI and Section 70 of The Land Planning and Development (Guernsey) Law, 2005.
- The Appeal is by Oatlands Holdings Limited and Mr P. Kaufman-Kent against the issue by the Environment Department of a Compliance Notice under Section 48(1) of the Law in respect of an apparent breach of planning control, namely the continued stationing of a Spiegel tent without the benefit of planning permission on land at Oatlands Village, Les Gigands, St. Sampson. The Compliance Notice was issued on 31st October 2012 and was served on 5th November 2012.
- The appellant company and Mr. Kaufman-Kent were represented by Advocate P. T. R. Ferbrache of the law firm Mourant Ozannes. He called Mr. P. Kaufman-Kent, owner and director of the appellant company, and Mr. A. J. Male, architect at the practice of Lovell Ozanne, Chartered Architects.
- The Environment Department was represented by Mr. A. J. Rowles, Director of Planning, Mr. D. Perrio, Enforcement Officer, and Mrs. C Miles, Senior Planning Officer.

Decision

1. The appeal is dismissed, and the Compliance Notice upheld, subject to the modifications described in paragraph 17 below.

Background

2. This appeal was heard in conjunction with an associated appeal made under Section 68 of the Law. That appeal was against a decision of the Environment Department to refuse permission for the Spiegel Tent to be retained on land at Oatlands Village until 31st January 2013. The appeal was dismissed and the decision issued on 31st January 2013. The decision on that case forms the background to this appeal.
3. The basis of the Compliance Notice is that as an earlier planning permission for the erection of the Spiegel Tent had expired on 30th September 2012, the continued presence of the tent after that time constituted a breach of planning control, as development under Section 13(1)(a) had occurred without the necessary permission. This matter was not disputed by or on behalf of the appellants. Mr. Ferbrache, speaking for the appellants, acknowledged that the use of the tent would have to cease on 31st January 2013.
4. The Compliance Notice specified the measures to be taken in order to remedy the admitted breach of planning control, requiring the complete dismantling of the tent and its removal from the land, and the complete removal of the concrete base on which it stands. In this context, the term 'land' encompasses the entire visitor centre, as defined on a plan attached to the Notice. During the Hearing, the Department sought to vary these requirements in two respects under the authority provided in Section 48(6) of the Law.
5. The first of these variations is in respect of the requirement to remove the tent from the land, given that a planning application had been recently made for the erection of the tent on an alternative site at Oatlands Village. In these circumstances, the Department was satisfied that once the tent had been dismantled, there would be no objection to it being stored within Oatlands Village pending a decision on its possible re-erection.
6. The second variation sought to delete from the Compliance Notice any reference to the removal of the concrete base, as it had become evident to the Department that the tent was supported on a number of steel plates resting directly on a gravel surface, rather than on concrete.
7. No objection was raised to these variations by Mr. Ferbrache or Mr. Kaufman-Kent, and the Tribunal considered these proposed changes to be entirely reasonable and appropriate.
8. In respect of the period within which the specified measures were to be completed, the Notice allowed a compliance period of no longer than 7 days following the date on which the Notice took effect, which was 3rd December 2012. The final date was thus 10th December 2012, effectively providing a period of thirty-five days, or five weeks, for the organisation of the work leading up to and including the actual dismantling of

the tent, following the service of the Notice on 5th November 2012. It is in relation to this aspect of the Notice that Mr. Kaufman-Kent raised objections.

9. Section 70(1) of the Law sets out six possible grounds on which an appeal against a Compliance Notice may be appealed to the Planning Tribunal. The single ground of appeal in this case invokes Section 70(1)(f) of the Law, which is that

“... the issue of the notice is (for any other reason) ultra vires or unreasonable.”

The implication of this is that the five other grounds of appeal, being items (a) to (e) set out in Section 70(1), have no relevance. However, when Mr. Kaufman-Kent was asked to elaborate on his objection to the Notice, his underlying argument was that the period specified was unreasonably short. This argument relates directly to ground (e) of Section 70(1) of the Law.

10. As the Department raised no objection to the appellants’ case being argued on this alternative basis, the Tribunal treated the appeal as if it had been made both under Section 70(1)(e) and Section (1)(f) of the Law.
11. There were three basic elements to Mr. Kaufman-Kent’s case. The first was that as the tent could only be dismantled by specialist operatives in the employ of the Spiegel Tent company, some lead-in time would be needed to bring the staff to Guernsey from their base in Belgium, bearing in mind also that the staff in question might be committed to projects elsewhere. Coupled with this, it was said that for safety reasons, the tent could only be dismantled in calm and stable weather conditions. In such conditions, the Tribunal understands that the dismantling process would take two or three days.
12. A second element of Mr. Kaufman-Kent’s case was that time would be needed to arrange for the dismantling of the mechanical organ, which is a delicate and specialist process. This work would need to be done before the dismantling of the tent could be commenced, and the contractor would not be available until the second week in February 2013.
13. An overall period of six weeks was suggested by Mr. Kaufman-Kent as being a reasonable time frame to put in hand and undertake the dismantling works described above. The Department raised no cogent arguments in opposition to this suggestion, and the Tribunal could see no reason not to accept Mr. Kaufman-Kent’s estimation of the time needed, given his familiarity with the processes involved.
14. The third element of the appellants’ case relates to a suggestion made by Mr. Ferbrache in written submissions to the Tribunal dated 16th January 2013, in the context of a possible deferral of the Hearing. The suggestion was made that as a new planning application had been lodged for the relocation of the Spiegel Tent to an alternative site at Oatlands Village, the most economical and practical solution for Mr.

Kaufman-Kent would be to combine the dismantling of the tent on its existing site with its re-erection on the proposed site, so as to form a continuous process.

15. Given that neither the determination date nor the outcome of the recently-made planning application can be predicted, the Tribunal did not consider this matter to be a determining factor in deciding the period within which the measures prescribed in the Compliance Notice should be undertaken.
16. The Tribunal has considered all the other matters raised in the written submissions and during the Hearing, and seen during the site visit, including the proposal to erect a Maritime Museum in the vicinity of the appeal site. These do not affect its conclusions under the provisions of Part V1 Section 71 of The Land Planning and Development (Guernsey) Law, 2005, that the Appeal is dismissed, and the Compliance Notice upheld, subject to the modifications described in paragraph 17 below.
17. The date of service of the Compliance Notice is the date of this decision, which is 31st January 2013. The Notice takes effect on 28th February 2013. In that part of the Notice specifying the steps to be taken, the steps specified in the original Notice are to be entirely deleted and the following words substituted *"The Spiegel Tent must be completely dismantled and removed from the area of land which it occupies"*. In that part of the Notice specifying the period within which the above measures are to be taken, the phrase *"7 days"* is to be deleted and replaced with the phrase *"14 days"*, and the phrase *"10th December 2012"* is to be deleted and replaced with the phrase *"14th March 2013"*.
18. The modified dates set out in Paragraph 17 provide an overall period of six weeks from the date of this decision within which the prescribed measures can be programmed, commissioned, set in motion and executed.

**Stuart Fell DipArch RIBA IHBC
Presiding Member**

Date: 31st January 2012