



Appeal Decision Notice

Planning Tribunal Hearing and Site Visit held on 10th December 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, Mr. David Harry

Appeal Site:	Land at Bonamy House, North Clifton, St Peter Port
Property Reference:	A20108B000-P01
Enforcement Reference:	ENF/2011/00119
Planning Application Valid Date:	12 th September 2012
Appeal Case Reference:	PAP/010/2012

- 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 Lower Garden Holdings Limited 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 surfacing of an area of land and its use as a commercial car park without the benefit of planning permission on land at at Bonamy House, St James Street, St Peter Port. The Compliance Notice was issued on 26th January 2012 and was served on 31st January 2012.
- The appellant company was represented by Mr. J. D. Collings, who is a director of the company.
- The Environment Department was represented by Mr. A. J. Rowles, Director of Planning; Mr. D. Perrio, Enforcement Officer, and Mr. J. Pentland, Planning Officer.

Decision

1. The appeal is upheld, and the Compliance Notice is quashed.

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 planning permission on a retrospective application to create a temporary car parking area for 20 cars (Ref FULL/2011/3038). The appeal was dismissed and the decision was issued on 25th February 2013. The decision on that case provides the background to this appeal.
3. The basis of the Compliance Notice is that a material change of use in the land had occurred in that the land had been cleared, levelled and covered with a hard surface and was being used as a commercial car park. This amounted to development as defined in Section 14 of the Law for which no planning permission had been obtained. A retrospective application was made to regularise the situation but this had been rejected on 19th December 2011. A Compliance Notice was seen by the Department as the most effective way to deal with the unauthorised works and use of the land, and this was duly issued on 26th January 2012.
4. The Compliance Notice specified the steps to be taken in order to remedy the breach of planning control. This required the permanent removal of all vehicles parked or stored on the land, as well as the complete removal of all the hard-standing, followed by the breaking up of the compacted soil with the intention that the land should return to its previous condition as a garden area.
5. In relation to the activities to be stopped, the Notice required the use of the land as a car park/parking area, on a private, commercial or other basis, to permanently cease. A period of one month was allowed in which the specified steps were to be taken and the activities ceased.
6. The written Appeal Notice submitted by Mr. Collings on behalf of the appellant company specified four grounds of appeal. The first was that the Notice issued by the Department under part (f) of section 70 (1) was ultra vires or otherwise unreasonable. The second ground was that under part (e) the period specified in the Notice for the completion of the steps to be taken was unreasonably short. The third ground considered by the Tribunal was the submission on behalf of the appellant company that the Notice was not issued within the period specified in section 48 (4) of the Law. A fourth ground was considered by the Tribunal to be outside its powers of deliberation and did not come within section 70, and was therefore disregarded.
7. When considering the first ground of appeal and the provisions of part (f) of section 70 (1), in response to questions raised by the Tribunal, Mr. Rowles acknowledged that during the Hearing of the earlier section 68 appeal, he had agreed that up to six cars directly associated with the authorised residential uses of Bonamy House might be parked on the appeal land. This was on the basis that the land was held to form an integral part of the curtilage of Bonamy House, within which a reasonable level of

parking related to the use of the building would be regarded as a legitimate activity. Mr. Rowles conceded that the Compliance Notice had taken no account of this matter. In seeking the permanent removal of all the vehicles from the site, the Tribunal regarded this requirement of the Notice to therefore be unreasonable, and is accordingly satisfied in respect of the ground mentioned in part (f) of section 70 (1) of the Law.

8. The grounds of appeal submitted on behalf of the appellant company also maintained that under part (f) the issue of the Notice was ultra vires. Mr. Collings explained that this submission was on the basis that the appellants were compelled to appeal against the issue of the Notice before the expiry of the time permitted to appeal against the refusal of the Department to give a grant of planning permission. The Tribunal can find no validity in this argument. The time periods are set down by Law and the Department cannot be acting ultra vires by complying with the requirements of legislation. In any event there is provision for an appellant to maintain under section 70 (1), (a) and (b) that the breach of planning control alleged has not taken place and that the matters alleged to not constitute a breach of planning control. The Tribunal heard no evidence to support the submission that the Department acted ultra vires in respect of the issuing of the Notice and this ground of appeal is rejected.
9. The second ground of appeal was that under section 70 (1) (e) the period specified in the notice for taking any such measure was unreasonably short. However, during his evidence Mr. Collings accepted that the measures to be taken could just about be completed within the time specified of one month. Having visited the site and having heard all the evidence in relation to the work that would have to be completed the Tribunal does not consider there are any grounds to support a submission that the time specified is unreasonably short.
10. The third ground of appeal was brought under section 70 (1) (c). In relation to the removal of all areas of hard-standing, the Tribunal sought to clarify in what way the Department could be certain that none of the area of hard-standing which they sought to remove had been in place for more than four years prior to the issue of the Notice, that is on 26th January 2008, bearing in mind that Collas Day had commenced their commercial use of the land for the parking of up to sixteen vehicles in April 2007. Any areas of hard-standing that had been established at that time would self-evidently be more than four years old at the time the Compliance Notice was issued, and would accordingly be beyond the scope of enforcement action under the provisions of section 48(4)(b) of the Law, as modified by the Land Planning and Development (Enforcement) Ordinance, 2009.
11. The Department was unable to satisfy the Tribunal that none of areas of hard-standing could have been in place at a time four years before the Notice was issued. In view of the uncertainty on this matter, the Tribunal reached the view that the steps specified in the Notice relating to the removal of all areas of hard-standing

were excessive and it is accordingly satisfied in respect of the ground mentioned in part (d) of section 70 (1)(c).

Conclusion

12. Given the Tribunal's conclusion that it is satisfied in respect of the grounds mentioned in part (d) and (f) of Section 70 (1) of the Law, and in the light of the directions contained in Section 71 of the Law relating to the determination by Planning Tribunal of appeals under Section 70, the Tribunal has no option but to quash the Compliance Notice and allow the appeal. The Tribunal has considered all other matters raised in the written submissions, during the Hearing, and at its site visit, but none of these matters affect this conclusion.

**Stuart Fell DipArch RIBA IHBC
Presiding Member**

Date: 25th February 2013