

[REDACTED]
Review Board Chairman
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey GY1 1FH

**Bonamy House
St. James Street
St. Peter Port
Guernsey, GY1 2NZ**

[REDACTED]
[REDACTED]

9th November 2023 (by email)

Dear [REDACTED]

In the matter of a complaint by James Collings Against the Development and Planning Authority of the States of Guernsey

I refer to the Board's Findings from 25/08/2023 and the investigation subsequently commissioned by Mrs Falla, the Director of Strategic Projects and Employee Relations for the States of Guernsey. Mrs Falla appointed an investigator who was the [REDACTED] of Police when many of the issues I raised in paragraphs 18 to 21 of my 30/12/2021 letter to the Chairman of the Complaints Panel¹ were under investigation by a Detective Sergeant from the Financial Intelligence Unit.

The Board's Findings were notably clear and incisive. Regrettably, the subsequent investigation² deviated from the terms of reference specified in paragraph 5 of the Board's report. In particular, the investigation focuses on the 'Initial complaint' and how that was handled through the reviewers' interpretation of that and does not follow the Board's stipulation in 5.ii³ presumably because to do so would guarantee a very different outcome.

The primary pathway through which a Certificate of Lawful Use (CLU) could be obtained was that the property for which the CLU was sought was an office **before** section V of the 2005 planning law came into force. This was known to the Director of Planning from the outset. That path was not followed. It is as simple as that.

The law.

Should there be any confusion, I urge the Board to review the two key legislative texts in question to understand the flawed application in this case and how the investigation bypassed the 'primary pathway' to reach unsound conclusions.

[The Land Planning and Development \(Guernsey\) Law, 2005](#), (the Law) Part V, Section 48 (4) and Part III, Section 22 (3, ii)

¹ [Complaint no: 2020/01. regarding actions of the Director of Planning - Appeal](#)

² [\[REDACTED\] memorandum, P&R cover letter & Review Board Findings](#)

³ "5.ii: the investigation will consider all relevant matters directly relating to the decision of the DPA regarding the issue of the CLU to Mr Collings in the period of 28 November 2019 to 11 February 2020, whether raised in the original complaint, or subsequently presented in correspondence or at the Review Board's sitting on 15 August 2023."

and

[The Land Planning and Development \(Certificates of Lawful Use\) Ordinance, 2019](#) (the Ordinance)

A certificate of lawful use is issued to confirm that 'an existing use is lawful at any time' if it satisfies either one of two specific conditions:

i. The time for issuing a compliance notice has expired

or

ii. The unlawful material change of use occurred before the date of commencement of Part V of the Law (6/03/2009).

In this context, I maintain that 'existing use' can mean either:

- Current: The use is ongoing and has been continuously lawful due to the expiration of the time limit for enforcement (point i).
- Existing at a Prior Time: The use was in existence before the commencement of Part V of the Law and therefore is considered lawful regardless of whether it would be unlawful under the current law (point ii).

Even if 'existing use' is interpreted as 'current use' for both pathways, a vacant property's last occupation defines its current use. If it were otherwise, every single rental property, commercial or not, would be subject to a change of use whenever it was being relet.

As for 'abandonment': applying for a CLU indicates an intention to continue the lawful use, as does the presence of a prospective tenant⁴ (the investigator incorrectly states that the first time this was known to the Development & Planning Authority (DPA) was 20/01/2020).

The evidence.

The annexed Cadastral record, taken 6/11/2023, shows that

- a) The Office was registered as '**Office - Vacant - Basement**' and
- b) The last update was made on **17/12/2019**, coincidentally the date that the DPA registered my application for the CLU. This Cadastre record is included as Annexure 1.

If a straightforward, legally compliant method for issuing a certificate exists and is pointed out to the DPA, they must follow that path, in line with the civil service's obligations of efficiency, of not ignoring inconvenient facts and must take decisions on the merits of the case, as dictated by the [Civil Service Code of Conduct](#).

An electronically accessible Cadastral record, managed by the Government and explicitly describing the property's use at the time of the certificate application, should be regarded as evidence exceeding the 51% threshold to establish a fact in civil cases. It cannot be argued

⁴ See email [26/11/2019 ABT to Director of Planning](#). '..Our client has a new tenant for the office and we should be grateful if you could provide us with written confirmation of the use class of the basement floor..' Next day [the DPA replied](#).

that Cadastral records were inadequate as they were what the DPA relied upon to determine the 'existing use' at the time of issuing the certificate.

This Cadastral information was available as part of Governmental records to the DPA at all relevant times. The Director also acknowledged receipt of the Cadastre Manager's email of 28/11/2019, where the Manager writes to the Director of Planning: '*..but as far as Cadastre records are concerned it does appear that commercial offices have existed in the building since at least 2004...the assessment transaction history on the Cadastre record does indicate that offices have been in the building since before 1998..*'. The Director was therefore under **Actual, Confirmed Notice** ('notice with acknowledgement') of the office use before Section V came into force, despite stating that he had not replied in his email of 13/06/2022 08:49⁵. This was separate from the data breach reported by the ODP.

Although not submitted as evidence at the time, the relationships between the parties are illustrated in my planning appeal⁶ from 2012, paragraph 6. It is difficult to imagine that they could forget their involvement, and it is easy to see how personal animosity could play a role in the current matter. In the 13 years that have passed, Guernsey's Civil Service have yet to give a credible explanation for this conduct, even though I have demanded one on multiple occasions. The best I have had were dishonest 'reviews' that entirely circumvent the fundamental maladministration that occurred. I am therefore intimately familiar with the mechanisms that are used to avoid the truth in Guernsey.

The process.

The investigator's report acknowledged the Director's awareness of the Cadastre History⁷ and even noted that it was this email from the Cadastre Manager that was listed as item (# 5) in the CLU Report that accompanied the Certificate. The investigator stated that the Director of Planning was aware of this email. In any event, on 29/11/2019, the Director emailed me to say: '*..or the office use, which appears from Cadastre records to have existed in the building since at least 2004..*' Why did he not follow the legislation from that point?

The investigator conspicuously ignored the 'pre-Part V' pivotal point as the mechanism by which the Certificate had to be issued from the outset. Indeed, both the previous two reviewers also ignored this fundamental point, but the investigator mentioned that they were aware of the Cadastral email⁸ of 28/11/2019.

Why did they omit this email and the pathway that it obligated and concentrate on the excusatory, time-wasting method that was followed?

The Director of Planning, or his delegated officer, ignored the primary (pre-Section V) pathway from the outset even though (or because) he knew (from 26/11/2019) that I had a tenant waiting. Had he followed this pathway he, or his officer, had simply to check the Cadastral information put before him by logging into the system. Then his obligation to issue the certificate under the Law, section 22.3.b.ii '*as soon as reasonably possible*' (Ordinance

⁵ [Internal email regarding confirmed notice.](#)

⁶ [Planning appeal](#) 2012

⁷ [Pg 4, Investigator's report:](#) 'That same day, Rowles also received an email from the manager of the Cadastre, advising him of Mr. Collings' enquiry, confirming the information provided to Mr. Collings.'

⁸ [Cadastre email 28/11/2019](#)

4(1)) would have been activated. But they chose not to, and that is so even after my 20/01/2020 email where I specifically told the Director of it (so that he could not ignore it) and when he was expressly re-involved in the case (if he was ever not). At that date, I provided further evidence of the office being in use at the time that Part V of the Law came into force (6/03/2009) with an email⁹ from the Director of the Company leasing the office from me. That email included a TRP bill dated 2/03/2009, with the entry '*Bonamy House, St. James Street - Commercial Offices (Lockton) - Basement*'. (CCV bought Lockton's Guernsey division in 2008, keeping offices, staff and clients). The reference to this bill is notably absent from the CLU report.

The investigator says in paragraph 5 of page 8 of his Memorandum '*..it remained necessary for him to provide evidence of a continuing use beyond the 4 year period and up to the date of the CLU application, thus enabling Planners to confirm that the now lawful use had not changed in the interim period.*' This contradicts the [CLU report](#), last page¹⁰.

1. Should 'existing use' be interpreted as 'previously existing' in the context of the primary 'pre-2009' pathway, implying historic usage, further verification became unnecessary from the time the application was made.
2. But if 'existing use' in the Ordinance refers to 'current use' of the primary pathway, then Cadastral records, recognised and accepted by the DPA, validated this usage from the outset.
3. Even if there was a genuine belief that it was necessary to prove the 'continued use' of the office for the entire period in question, the Cadastre records also did that from the outset.

Given all of the above, it appears the only option left for the reviewer / investigator was to willfully overlook the facts in order to protect the officers involved.

Conduct: Necessary to Intentional.

The differences between actions that are necessary, accidental, negligent, intentional, reckless or systemic are significant. The findings have been steered to point towards the first, despite clear evidence indicating intentional misconduct, at a minimum. That is made worse by the obvious attempts to cover the matter up. The belief that this is acceptable behaviour that they could get away with indicates cultural, systemic issues.

Here are the possibilities, as I see them:

1. Necessary: Actions are mandated by legal, regulatory, or operational requirements.
2. Accidental: Mistakes made without foresight or intent, often due to chance events.
3. Negligent: A failure to exercise expected care, resulting in avoidable mistakes or harm.
4. Intentional: Deliberate actions taken with the knowledge that they may cause harm or are wrongful.
5. Reckless: Conscious disregard for a known risk of harm in the conduct of activities.

⁹ [1/04/2009 email showing office in use at that date & prior, submitted to DPA 20/01/2020](#)

¹⁰ [CLU Report](#): '*Furthermore, legal advice has been obtained which confirms that where an applicant has demonstrated that the relevant 10 or 4 year immunity period has been achieved, it is not necessary for the use to be in operation on the date that a CLU application is submitted, provided that the use has not subsequently been changed or abandoned or reverted to its previously lawful use at any point thereafter.*'

6. Systemic/Institutional: Flaws are not isolated incidents but stem from widespread issues within the organization's processes, policies, or culture.

Appropriate course of action.

The appropriate course of action would have been for the DPA to confirm my initial submissions and the information given to them (at my instigation) by the Cadastre Manager, by reviewing the electronic Cadastral record. And, based on the information contained therein, follow the primary (pre-2009) pathway and issue the Certificate directly. The analysis of the 10-year or 4-year rule periods, as well as any subsequent time frames, was irrelevant in this context. Furthermore, there was no requirement to consult UK case law, especially as the provisions relating to the primary 'pre-2009' pathway do not exist within UK legislation; hence there would be no applicable case law to reference had the proper pathway been followed. The DPA may have felt a need to seek legal advice about their understanding of the Ordinance generally, but there was no need to do so in this case, given the existing clear pathway.

And, had that correct procedure been followed, the Certificate should have been issued within days of the application being filed, which would have prevented the loss of my prospective tenant, and the chain of events that has and is now unfolding.

Instead, the process was delayed and complicated unnecessarily, with irrelevant justifications that obscured how the matter was handled and it took over two months to issue the CLU after I had paid for it.

The reviews and subsequent investigation.

The reviews failed to highlight the shortcomings in how the matter was managed. Similarly, the investigation not only overlooked these deficiencies but also failed to acknowledge the inadequacies of the two reviews themselves.

My [marked-up version of the investigator's memorandum](#) reveals many of the numerous inaccuracies, contradictions, and indications of bias it contains. I will not list them here to maintain brevity, as this letter is long enough and anyway you may refer directly to that annotated memorandum. This letter is long because I have to counter this defective and wrong review in a definitive manner - for that, I apologise.

Contrary to what the investigator says on page 7 of his report, I believe that it would be of great interest to see the legal advice given to the DPA, how the questions were framed, what information was supplied to the Crown Advocates and when. It is time for the Civil Service to overflow with candour.

It should now be clear why I did not accept the States Chief Operating Officer's offer to have the matter investigated as '*the last stage of our complaints process*', without the oversight of the Board. I have been there before; I know the game.

Cultural environment.

If such conduct is indeed prevalent within Guernsey's Civil Service - a notion that is becoming increasingly apparent - it represents a significant concern from a public interest

perspective. Directly addressing these problems could dramatically improve public service delivery and reduce costs. Private discussions have unearthed a disturbing trend: initial mistakes are often born of incompetence, but what follows is a direct and deliberate cover-up. The motive behind these cover-ups appears linked to a chain of accountability that reaches the upper echelons, where senior officers, intent on retaining their positions, play a pivotal role. Guernsey needs to implement robust, properly independent oversight for investigating complaints about its civil service.

Solution.

Therefore, I invite the Review Board to exercise its power under section 7(5) of the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended, to refer the case to the States of Deliberation, and to recommend to the States that this case be submitted for independent arbitration. The arbitrator should have the authority to award damages and should be appointed at the expense of the States. A suitable candidate for this role would be [REDACTED] KC, given his extensive experience as the [REDACTED] [REDACTED] I understand he has recently retired.

Yours sincerely,

A black rectangular redaction box covers the signature of James Collings.

James Collings

Cc: C A Falla, Director, Strategic Projects and Employee Relations - P&R Cttee.



Cadastre Information

Cadastre Address

Cadastre Number : A201080000

Cadastre Address : Bonamy House, St James Street, St Peter Port, GY1 2NZ

UPRN : 5324

Owners

Account Number : X5072786

Account Address : Bonamy House, St James Street, St Peter Port, GY1 2NZ

Owner : Mr James Bonamy D'Auvergne-Collings

Owner Address :

Property Details

Category	Description	m ²	TRP Units	2023 Rate	£ Value
L1.10 Office and ancillary accommodation (regulated finance industries)	A201080000: Land - Business Premises	956 x 0.02	19	1.81	34.39

B6.2 Office and ancillary accommodation (other than regulated finance industries, legal services, accountancy services and NRFSB)	Commercial Usage - Office - Vacant - Basement	233 x 1	233	43.9	10,228.70
B1.1.4 Domestic (whole unit) Local Market with a plan area of 400 and over up to (and including) 499 assessable units	Domestic Usage - Ground Floor	233 x 1	233	3.24	754.92
B1.1.4 Domestic (whole unit) Local Market with a plan area of 400 and over up to (and including) 499 assessable units	Domestic Usage- First Floor	233 x 1	233	3.24	754.92
B1.1.4 Domestic (whole unit) Local Market with a plan area of 400 and over up to (and including) 499 assessable units	Domestic Usage - Second Floor	66 x 0,5	33	3,24	106,92
			Total: 751	Total TRP Value:	£11,879.85

Total land area = 956 sq.m (0 Vergee and 23.33 Perch) *

Transaction History

Transaction Date	Vendor / Purchaser
12 Jun 2008	From Mr Geoffrey Stephen D'Auvergne Collings To Mr James Bonamy D'Auvergne Collings (his son) TSheet - <u>2008/659</u> Deed - <u>2008/B698</u>
13 Dec 2007	From Mr Geoffrey Stephen D'Auvergne-Collings (Part) To New Coach House Limited TSheet - <u>2007/2070</u> Deed - <u>2007/B1905</u> Plan - <u>16609</u>

30 Sep 2004 From Mr Geoffrey Stephen D'Auvergne Collings
To Lower Garden Holdings Limited
TSheet - **2004/1972**
Deed - **2004/B1357**
Plan - **15879**

10 Dec 1998 From Mr G S D'Auvergne-Collings (Part) To Foncier Ltd
TSheet - **1998/1392**
Deed - **1998/B1504**
Plan - **14086A**
Plan - **14086B**

17 Jan 1990 From The Estate of Miss Mary Gertrude Bonamy Collings
To Mr Geoffrey Stephen D'Auvergne Collings (devisee)
TSheet - **1990/1832**

13 Jun 1989 From Miss Mary Gertrude Bonamy Collings
To The Estate of Miss Mary Gertrude Bonamy Collings
TSheet - **1989/1559**

05 Apr 1950 From Mrs Louise D'Auvergne Bonamy Dimmock (nee Collings)
To Miss Mary Gertrude Bonamy Collings
TSheet - **1950/229**
Deed - **1950/B249**

01 Jan 1947 1946-1987 register record
TSheet - **1947/901595**

01 Jan 1924 1924-1946 register record
TSheet - **1924/901243**

Assessment History

Reference	Assessment Date	Details of Change
T/S/1998/1148	14 May 1998	REASSESSMENT
T/S/1998/1720	01 Feb 1999	GARAGE & A SMALL AREA OF LAND SOLD & TRANSFERRED TO A2/108/A
T/S/2008/323	22 May 2008	Area of land 85 sq metres sold on 13th December 2007 to New Coach House Limited & transferred to cadastre number A20108A000.
T/S/2008/395	04 Jul 2008	Area of land (Total 865 sq metres) sold by Mr G S D'Auvergne Collings on 30th September 2004 to Lower Garden Holdings Limited and transferred to cadastre number A20108B000.
T/S/2010/363	12 Mar 2010	Regulated company moved out during 2009, amended category of office from B6.1 regulated to B6.2 Non Regulated for 2010.
T/S/2012/213	31 Jan 2012	correction to land areas following instruction from owner and confirmation of deeds.
T/S/2014/1523	26 Nov 2014	Change of Category for 2015 following notification that Alltiter Financial Limited are now licensed under the GFSC as a regulated company.
T/S/2017/769	29 Jun 2017	Informed by Owner on 17th March 2017 that Alltiter Financial Ltd are no longer a regulated entity and therefore Property Reference amended to B6.2.
T/S/2017/1270	18 Dec 2017	Change of use of property area(s)
T/S/2019/5234	17 Dec 2019	Domestic units of 400 and over up to (and including) 499. Category code updated.

Caution:

* Land area remains based on the original Cadastre records and not on the States of Guernsey digital mapping measurements. The TRP data is subject to continual change and validation.

Information:

The .5 factor for domestic properties relates to occupied roof space. Any queries should be sent to the Cadastre initially at cadastre@gov.gg Tax on Real property (TRP) includes a formal appeals procedure.