
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE REFUSAL OF PERMISSION TO CHANGE A SINGLE THREE-BEDROOM DWELLING INTO 2 ONE-BEDROOM UNITS

**Presented to the States on 23rd March 2010
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 as amended, the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for Planning and Environment regarding the refusal of permission to change a single three-bedroom dwelling into 2 one-bedroom units.

Connétable J. Gallichan of St. Mary,
Chairman, Privileges and Procedures Committee.

STATES OF JERSEY COMPLAINTS BOARD

4th March 2010

**Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint
by Mr. J. McLinton
against the Minister for Planning and Environment regarding the refusal of
permission to change a single three-bedroom dwelling into 2 one-bedroom units**

1. Present –

Board Members

Mrs. C. Canavan, Chairman

Mrs. M. Le Gresley

Mr. C. Beirne

Complainant

Mr. J. McLinton

Senator T.J. Le Main, Minister for Housing

On behalf of the Minister

Mr. J. Gladwin, Senior Planner (Appeals)

Mr. R. Webster, Senior Planner

Connétable P.F.M. Hanning of St Saviour

States Greffe

Mrs. L. Hart, Assistant Greffier of the States

The hearing was held in public at 9.30 a.m. on 4th March 2010 in Le Capelain Room, States Building.

2. Summary of the dispute

- 2.1 The Board was convened to hear a complaint by Mr. J. McLinton against a decision of the Minister for Planning and Environment to refuse permission to convert a three-bedroom dwelling into 2 one-bedroom units.

3. Site Visit to Amani, St. Aubin's Road, St. Helier

- 3.1 After the formal opening of the hearing in the States Building, the parties went together to visit the site, and viewed the property known as Amani, La Route de St. Aubin, St. Helier. It was noted that one of the proposed units would be accessed via a footpath off La Route de St. Aubin, with rented parking across the road, whilst the other unit would be accessed via La Rue de Trachy and a permanent parking space would be provided adjacent to Bel Air apartments.

4. Summary of the Complainant's case

- 4.1 Mr. McLinton thanked the Board for agreeing to hear his case. He advised the Board that his complaint hinged upon three main issues and he sought to address each of these individually. However before he commenced his summary he drew the Board's attention to the fact that there was no specific section on the initial planning application form for applicants to indicate whether the parking requirements associated with the application had been met. Mr. McLinton had received pre-planning advice from Mr. P. Le Gresley, Assistant Director of Development Control, which had indicated that the proposals would be acceptable and he had been disappointed by the outcome. He had also expected to be advised when the Case Officer proposed to visit the site and he expressed disquiet that the officer concerned had not contacted him to make arrangements to meet her on site, but had instead visited the site without Mr. McLinton's knowledge.
- 4.2 Parking: One of the reasons given for refusal had been that there was insufficient parking provision for the proposed 2 units of accommodation. Mr. McLinton questioned what 'insufficient' meant. The scheme offered two spaces – one was a rented space for the eastern unit leased via private arrangement, whilst a space had been confirmed for the western unit opposite the Bel Air Apartment block adjacent to property. This space had been negotiated by Mr. McLinton when the apartments were constructed in 2002. He conceded that the only weakness of this arrangement was that the parking spaces were not within the domestic curtilage of the site and that one could not be guaranteed on a permanent basis. He argued that the parking guidelines were simply set for guidance only and that a degree of flexibility was required. He had visited newly developed sites where parking provision was not within the curtilage of the units and cited one development in Clairvale Road which had not been required to provide any parking provision. He maintained that he had lived in the property for a whole year and had never experienced any parking problems.
- 4.3 Over-development: Mr. McLinton had been advised that the development would result in an 'over-intensification' of the site. He reasoned that intensity equated to density and that the main factors considered by Planning when assessing density were the number of habitable rooms in relation to the site area. Current Planning guidelines were for 65 to 75 habitable rooms per acre. The original dwelling equated to 4 habitable rooms (3 bedrooms and one lounge) and the proposed development of 2 one-bedroom/one-lounge dwellings would maintain this level of density on the site. Mr. McLinton therefore considered that the refusal on the grounds of over-development was

not valid. Admittedly the site was 'tight' but the retention of a single-storey building and maintenance of the density of habitable rooms could not be considered excessive. It was noted that amenity space issues had been conceded by Planning and were no longer considered part of the grounds for refusal.

- 4.4 Design: Mr. McLinton reminded the Board that the proposed extension was exempt from planning permission due to its size and location; and he had therefore not submitted a detailed design with his application to convert the dwelling into 2 units. He had simply shown that the proposed scheme would be sufficient to accommodate a one-bed unit. Mr. McLinton had included a basic design which had shown ferrous cement boarding. It was noted that this had now been altered to a smooth painted render which would improve the appearance of the exterior of the extension. Poor design had been one of the grounds for refusal, but Mr. McLinton had not been given any opportunity to augment or improve the design, which was normally afforded applicants as part of the application process. The design had been altered since its submission as, following the relinquishment of a right-of-way by a neighbouring property, windows had now been included on the western side of the proposed extension.
- 4.5 Mr. McLinton advised the Board that he and his wife were faced with sizable 'buy to let' mortgage payments and building costs associated with the development. They were in desperate financial circumstances and very concerned about their future. He believed that it was the Minister for Planning and Environment's job to look after the people of Jersey from a planning perspective. This site did not impact upon others – in fact only 5 people were affected, namely Mr. and Mrs. McLinton and their 3 children, whose future financial security was at stake. He considered that it was the remit of the Ministers for Planning and Environment and Housing to provide as many units of accommodation as they possibly could.
- 4.6 The Chairman sought confirmation that the case officer had accepted the size of the proposed units and was advised by Mr. McLinton that the officer analysis was that both the size and location of the extension was acceptable, but the grounds for refusal had centred on the parking requirements. A blockwork wall and fence which was visible in the case officer's photographs taken on her site visit had since been removed; and Mr. McLinton felt that the existence of this wall at the time of the visit had contributed to the notion that the site would be cramped. It was acknowledged that the extension itself did not require planning approval. The Senior Planner confirmed that it was the decision in respect of the application to convert the dwelling to 2 units which had been refused – not the extension itself (as this was exempt from planning permission). Under a General Development Order certain units were exempt from planning. The extension was a 'permitted development' under Building Bye-Laws – the issue for Planning was the creation of 2 separate dwellings, for which insufficient parking was provided. Mr. McLinton advised that his lawyer had met with Mr. Peter Le Gresley and been advised that, had he built the extension first and then applied to convert the dwelling into 2 units, the response from Planning might have been different.

- 4.7 The Board then heard from Senator T.J. Le Main, Minister for Housing. He advised the Board that Planning should always maintain ‘the best interests of the community’ when deciding applications. There was a dire shortage of ground-floor one-bedroom accommodation for the elderly or those seeking to downsize. He expressed surprise that a development which met all of the criteria in the built-up area for this kind of accommodation had been refused. The property had been on the market initially as a three-bedroom bungalow, with no parking provision, and potentially could have housed 5 occupants, all of whom might have had a car. As the property had not sold, Mr. and Mrs. McLinton had decided to convert the property into 2 one-bedroom units. The Minister for Housing considered that the properties would be ideal for the elderly or those seeking to downsize, given the proximity to shops, a regular bus route, parks and the beach. Housing currently had a requirement for 400 units for ‘downsizers’. His Department had always resisted the loss of family homes, but since 2008 there had been a noticeable change in the accommodation needs of Islanders, with less two- or three-bedroom properties required. The response from the Population Department Officer had recommended the retention of the main property as a family home. However, the Minister advised that this view had now changed and that in future he would ask that the Population Department seek the views of the Housing Department regarding the levels of demand for certain types of accommodation. The proposed units met the criteria for one-bedroom homes, particularly as they were ground-floor units, close to public facilities and had small private amenity spaces. The Minister for Housing had been surprised to learn that the application had been refused, especially on the grounds of parking. He sought clarification regarding the Minister’s involvement in the decision-making process and asked why Planning were unable to provide details of all of the new properties which had been granted planning permission where parking provision had not been required. The Minister for Housing believed that the Planning Applications Panel had been wrong to refuse the application. He argued that they had not been made fully aware of the demand for ground-floor accommodation and he urged the Planning Department to work with Housing to provide homes.

5. Summary of the Minister’s case

- 5.1 The Board noted that the application site was located within the Built-Up Area of the Green Backdrop Zone. The application had been refused on the grounds that it was contrary to Policies G2, G3 and H8 of the 2002 Island Plan. It was claimed that the scheme did not provide the necessary amount of car parking, contrary to Planning Policy Note No. 3, and failed to provide adequate standards of private external amenity space, contrary to the minimum standards set out in Planning Policy Note No. 6. It was also considered that the proposed scheme would be an unacceptable over-development of the site, contrary to Policies G2 and H8 of the Island Plan 2002. Finally, the proposed development was considered to be of poor design, contrary to Policy G3 of the Island Plan 2002.

- 5.2 The Senior Planner (Appeals) addressed each of the issues raised. In relation to insufficient parking he conceded that Policy Note No. 3 of the guidelines did allow for a degree of flexibility and the standards could be relaxed or indeed increased. However, he did not agree that Planning considerations should be relaxed in this particular case. The site was located in Area 3 – outside of the St. Helier ring-road. As a consequence, parking was a key concern as there were less public car parks in the vicinity, and the area was quite congested with only one-hour on-street parking available. The limited parking spaces along Rue de Trachy were heavily used. It was therefore important to provide on-site parking, preferably within the curtilage of the property. The existing house had no parking, having been constructed in 1933, and whilst this in itself was an unsatisfactory situation, it was important not to further compound the problem by doubling the number of units on the site. The existing two/three-bedroom house could potentially yield a requirement for 4 parking spaces, but doubling the households on the site could further exacerbate the demands for on-street parking. He also highlighted the fact that no visitor parking would be available.
- 5.3 The Board pointed out that Note 9 of the Parking Guidelines (Planning Policy Notes No. 3) stated that: ‘It will not always be practical or environmentally acceptable to implement normal parking guidelines where it is proposed to extend or redevelop certain existing properties, or sub-divide large houses into smaller units. In such cases it will be necessary to balance the need for the proposed accommodation against the environmental costs of not providing adequate on-site parking’. It was suggested that Planning had appeared to have disregarded this need to strike a balance between the 2 elements and had given no consideration to the housing need. This view was rejected by the Senior Planner (Appeals) who emphasized that parking provision standards could be lowered depending upon the location of the site, to take account of environmental, density, pedestrianisation and sustainability factors. He opined that this was of particular relevance in the town centre as some sites were not capable of providing parking. The Board sought confirmation that steps had been taken to balance the need for accommodation against the environmental costs and asked whether the Minister for Housing had been contacted to ascertain the ‘need’. The Senior Planner advised that this was automatically taken into account in the interests of ‘orderly planning’. A balanced judgement was always made. It was Planning’s view that changing the dwelling into 2 units would exacerbate the on-street parking situation in the area. The existing dwelling had no parking or vehicular access and the Senior Planner contended that the creation of 2 units would compound the existing problems with the associated activity generated by 2 households. The Board, having regard to the fact that the existing three-bedroom property could be extended to a four-bedroom unit, questioned what the difference was between a couple and 3 teenage children, all with cars living at the property and 2 couples with cars.
- 5.4 The Senior Planner (Appeals) referred to the unacceptable over-development of the site. He maintained that the site was a small, land-locked plot with limited pedestrian access. The proposal would result in a cramped over-development and was not ‘orderly planning’. The site did not lend itself to further development. He stated that the density issue was subjective and that the density ratios mentioned by Mr. McLinton during his submission were

normally relevant for larger sites rather than small plots, and therefore in this instance those density standards were not applicable. The Board was advised that the Case Officer, Assistant Director of Planning and the Planning Applications Panel had all viewed the site and the surrounding area and had concluded that the site was too cramped to accommodate 2 units.

- 5.5 On the issue of design under Policy G3, the proposed extension was considered to be of a poor quality design and not well integrated with the original building, particularly the relationship between the form and the roof. He accepted that it was not unusual for design changes to be negotiated with applicants, but in this instance this had not been appropriate as the other grounds for refusal had obviated any further consideration of the application. The Senior Planner (Appeals) stated that the sum of the reasons for refusal was greater than each reason individually.
- 5.6 The Senior Planner (Appeals) maintained that the cramped site was unsuitable for development of any sort, and that allowing the application could set a precedent for other houses in the area to convert and further exacerbate the existing on-street parking problems. An approval of this application would make it harder to resist other applications which had no off-street parking provision. It was imperative that applications were not looked at in isolation.
- 5.7 The Chairman sought clarification as to whether Planning's pivotal issue was that the proposed extension was too big, or the fact that it was proposed to convert the dwelling into 2 units. The Senior Planner (Appeals) confirmed that the extension was not under question as this did not require planning permission. It was the intensification of the site to which Planning objected. This view was supported by the Senior Planner, who reiterated that the cramped form of development was the key issue and it was considered that too much was being crowded onto the site. Connétable P.F.M. Hanning of St. Saviour, in his capacity as a member of the Planning Applications Panel, advised that had it been within the Panel's remit to determine a planning application for the proposed extension, this would have more than likely been refused on the grounds of over-development of the site.
- 5.8 Connétable Hanning wished to refute the claim, made by Mr. McLinton in his original letter of complaint to the Board, that the Planning Application Panel (PAP) had pre-judged the application before the hearing. Having visited the site, the PAP had considered that the proposal would result in an over-development of the site. The Panel always ensured that all of the evidence was considered before a decision was made. Connétable Hanning confirmed that PAP had been made aware of the one parking space which Mr. McLinton had acquired, but reminded the Board that it was still just one legal space. The other space was rented and therefore could not be guaranteed. It was PAP's duty to look at the long-term use of the site and to improve standards where possible. Modern parking standards had to be applied, particularly as this was one of the key areas of concern amongst residents. The Connétable advised that he received regular calls from his own Parishioners relating to the problems caused by insufficient parking provisions, often from residents living similar distances away from the town centre as the property in question. PAP was aware of the need for housing but this had to be put into perspective and standards had to be maintained. On many established sites parking was an

issue and had to be taken into consideration when redevelopment was proposed. It was also important to consider a balanced design and, in this instance, the design submitted had not been up to standard and this had been taken as an intrinsic element when the decision had been made. The Connétable maintained that the creation of 2 separate units would cause parking issues, not just for the residents of the units but their visitors. The site was in a zone where parking was a major consideration and could not be ignored on the basis of a need for additional housing.

- 5.9 The Board asked whether the application would have been approved had there been 2 spaces adjacent to Bel Air Apartments available for the units. Connétable Hanning replied that due to the poor access and the cramped site it was still unlikely that the application would have been approved. He opined that the access for the emergency services was not ideal and double the number of units would result in double the number of problems. Even if the parking had not been an issue, the access difficulties, design and cramped plot would remain. The Board asked whether a revised design would have altered PAP's view and was advised that, whilst an improved design would have been preferable, the over-development and parking issues would have prevailed.
- 5.10 Mr. McLinton suggested that the retention of the property as a single dwelling was just as likely to increase the parking requirements as the creation of 2 smaller units. He emphasized that within Policy H8, section 8.128, it was stated that the conversion of large residential properties into smaller units of accommodation 'makes a valuable contribution to meeting housing need'. The Minister for Housing argued that the refusal of Mr. McLinton's application was another example of why the public were disillusioned with politicians as they appeared to find any reason to say 'no'. He had every respect for the work of the Planning Officers, but considered that in this instance Planning had been wrong to refuse the application. The Minister reiterated that he had asked for information concerning developments where parking had not been required and urged PAP to seek advice from Housing in the future to ascertain the level of housing need. He advised the Board that the Island would struggle to house Islanders if Planning continued to make decisions on cases without fully assessing the housing need, and urged for decisions to be made in the best interests of the public. The Connétable of St. Saviour responded that standards should not be allowed to fall simply to create additional housing, and he questioned whether the proposed units were ideal 'lifelong homes' given the limited access.
- 5.11 The Chairman thanked both parties for attending the meeting and they then withdrew from the meeting to enable the Board to consider its findings.

6. The Board's findings

- 6.1 The Board was mindful that an extension could be built on the site without planning permission in accordance with Building Bye-Laws. This seemed to contradict the argument that the site should not be 'over-developed'.

- 6.2 The Board recognised that Mr. McLinton had made efforts to mitigate the parking issue by renting a space for the second unit; the private amenity space had been accepted as adequate by the Case Officer and he had altered the design. The Board did not consider that it was sustainable to argue that the sub-division of the property into 2 units of accommodation would exacerbate the parking situation in the area any more than an extension to the existing three-bedroom family home, which could potentially house 4 car-owners. The Board, mindful that a reference had been made by both of the Senior Planners and the Connétable of St. Saviour to the provision of insufficient visitor parking for the 2 units, noted that there had appeared to be only 2 designated visitor spaces for the whole of the Bel Air Apartment block.
- 6.3 The Board agreed that the site visit had been invaluable and had enabled its full assessment of the size and location of the proposed development site. It was not convinced, despite the passionate intervention of the Minister for Housing, that the proposed units would be ideal for elderly residents, in view of the limited access, but accepted that it was not for the Board to determine the future occupancy of the dwellings. It was noted that the size and location of the extension had been deemed acceptable by the Case Officer; and there appeared to be some incongruity between this fact and the subsequent argument that the site would be ‘over-developed’ and ‘cramped’ if this extension was then allowed to be sub-divided into 2 units of accommodation.
- 6.4 The Board acknowledged that the site was unusual in that it was essentially landlocked, but noted that it met the criteria for an extension to be built without requiring planning permission (as it had a floor area no greater than 25 square metres, a height of no more than 3.5 metres, was more than 0.6 metres away from the boundaries of the site and did not border a main road). It was therefore difficult to concede that ‘over-development’ of the site could be one of the grounds for refusal if the extension itself was permissible.
- 6.5 The Board was not convinced that the Department had followed the process in accordance with Note 9 of the Parking Guidelines (Planning Policy Notes No. 3) and made every effort to seek a balance between the need for accommodation and the environmental costs. Apart from the Senior Planner’s verbal assurances given during the hearing, there was no formal evidence to confirm that consideration had been given to the current demands for additional one-bedroom ground-floor units of accommodation against the parking requirements.
- 6.6 The Board considered that each of the grounds given for refusal could be assuaged if assessed individually. The Board agreed that there had been scope for greater dialogue between the Department and the applicant. The Department appeared to be holding onto a set of standards which were not insurmountable; indeed the Senior Planner (Appeals) had stated that the sum of the reasons for refusal was greater than each reason individually.
- 6.7 The Board, having regard to Planning’s fears that granting a consent could create a precedent for surrounding properties, considered that this would not be the case in this instance. The site was unique; an extension would be allowed in any event and the Board concurred that no house in the immediate vicinity was in a similar situation.

6.8 The Board therefore concluded, in accordance with Article 9(2)(b) and (d) of the Administrative Decisions (Review) (Jersey) Law 1982 that the decision of the Minister for Planning and Environment ‘*was unjust*’ and ‘*could not have been made by a reasonable body of persons after proper consideration of all the facts*’. In accordance with the Law the Board therefore requested the Minister to reconsider his decision and report back to the Board within one month.

Signed and dated by:
Mrs. C. Canavan, Chairman

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Mrs. M. Le Gresley

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Mr. C. Beirne