
STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS
BOARD: FINDINGS –
COMPLAINT AGAINST A DECISION OF
THE MINISTER FOR PLANNING AND
ENVIRONMENT
RELATING TO THE PROPERTY
KNOWN AS SAVAL, LA ROUTE DES
CÔTES DU NORD, TRINITY (REMOVAL
OF PART OF NEW FENCING)**

**Presented to the States on 28th April 2009
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 property known as Saval, La Route des Côtes du Nord, Trinity (removal of part of new fencing).

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

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by Mrs. H. Wilde and her son, Mr. S. Blampied, against the Minister for Planning and Environment regarding the property known as Saval, La Route des Côtes du Nord, Trinity (removal of part of new fencing)

1. The Review Board was composed as follows –

Mrs. C. Canavan (Chairman)
Miss C. Vibert
Mr. J.G. Davies

- 1.1 The parties were heard in public at Trinity Parish Hall on 6th April 2009.
- 1.2 The complainants, Mrs. H. Wilde and her son, Mr. S. Blampied, who lives at Saval, were represented by Deputy F.J. Hill of St. Martin.
- 1.3 The Minister for Planning and Environment was represented by Connétable P.F.M. Hanning of St. Saviour and Mr. R. Webster, Principal Planner (Appeals), Planning and Environment Department.
- 1.4 The Chairman declared that she had previously known Mrs. Wilde as a former neighbour and that Mr. Webster was currently her neighbour.
- 1.5 Deputy Hill indicated that representatives of the media, including Channel Television, were likely to be following the hearing's activities, with the latter wishing to film during the forthcoming site visit. Deputy Hill also relayed a request from 2 individuals who also wished to record on video film – for later uploading to their respective 'blog' websites for general public information – some of the proceedings. The Board decided that it was not content for filming to take place within the Parish Hall during the proceedings, but that filming outside was acceptable provided it did not interfere with the Board's enquiries and it was not intrusive.
- 1.6 Deputy Hill also indicated his intention to ask the Connétable of St. Saviour for his comments regarding the participation of Deputy A.E. Pryke of Trinity, Assistant Minister for Planning and Environment, in the decision relating to the subject application in her role as Chairman of the Planning Applications Panel.

2. The parties visited the site in question after the opening of the hearing and considered the following significant points amongst their enquiries –

- 1 The extent of fencing which the Planning Applications Panel required to be removed; and
- 2 What, if any, alternative solutions might be acceptable to the Planning Department and which might be granted permission?

3. Hearing

3.1 Summary of the complainant's case

- 3.1.1 The Board had received a full written summary of the complainant's case before the hearing and had taken note of the submissions made on her behalf.
- 3.1.2 Deputy Hill outlined the circumstances of the complainant's appeal, emphasising that the comments of the Highways Section (dated as being sent to the Planning Applications Panel on 9th December 2008) had clearly not been received prior to the date of the determination of the retrospective application (Planning Applications Panel Minutes 20th November 2008). It was highlighted that no report on the application had been received from The National Trust for Jersey and that the Historic Built Environment Team had relied upon "*the information submitted and the information in the department's database relating to registered buildings*" and had not visited the site in relation to the application. Further, Deputy Hill suggested that the important feature of Saval was the frontage of the property as viewed from the private lane and not the view that could be seen from the adjacent road (public realm).
- 3.1.3 Addressing the "General Development Considerations" under Policy G2 of the Island Plan 2002, Deputy Hill questioned under (i) whether the fencing "*unreasonably*" affected the character of the area given that the house had previously been shielded from view by a high hedge, now replaced by a fence. In relation to (ii) it was emphasised that none of the neighbours had complained about the fence and that therefore it could be accepted that the impact on neighbouring uses and the local environment by reason of visual intrusion was reasonable. Under (viii) no unacceptable problems in relation to "*safety*" had arisen from the erection of the fence because the present arrangement was no different to the previous situation. With regard to (xiv) the fencing was an attempt to "*design out crime and to facilitate personal safety and security*" by safeguarding the family's oil tank and water treatment system located in the front garden.
- 3.1.4 In relation to Policy G13 – "Buildings and places of architectural and historic interest" – Deputy Hill emphasised that "fences" were not specifically referred to.
- 3.1.5 As Policy G5 – "Green Zone" – related to alterations to "*property*" and/or to "*the curtilage of a property*", it was apparent that in the present application the fence made no difference to either.
- 3.1.6 Moving on to address the "Planning comments/response to complaint" under various headings, Deputy Hill questioned whether the applicant's and occupant's human rights had been taken into consideration. Although it was acknowledged that in certain limited circumstances a public administration could override human rights considerations, this could only be done where proportionality applied. It was suggested that the "public interest" in this case was the view from the public realm of the frontage of the property Saval and not the sides or rear of the premises. It was contended that insufficient explanation had been provided by the planning authority regarding the

overriding of human rights in this case. It was suggested that safety certainly was a consideration and that there was clearly some inconsistency in approach on the part of Planning as regards the desirability of safeguarding the oil tank and water treatment plant.

3.1.7 It was emphasised that no recommendation had been forthcoming from the Planning Applications Panel or the Planning Department as to possible alternative solutions. As regards the height of the hedge bordering the adjacent field to the north, it was contended that this was immaterial to consideration affecting the other parts of the fencing. Overall, it was suggested that it was unreasonable to require the removal of the south-western, western and north-western parts of the fence as demanded by Planning.

3.2 Summary of the Minister's case

3.2.1 The Board had received a full written summary of the Minister's case before the hearing and had taken note of the submissions made on his behalf.

3.2.2 Mr. Webster confirmed that the retrospective application had been through all the normal processes and that the Planning Applications Panel had indeed visited the site. Consequently, there were no procedural issues arising from the present consideration of the matter, simply the "reasonableness" of the decision.

3.2.3 It was emphasised that the decision of the Planning Applications Panel had been a compromise solution as the type of fencing used was generally considered to harm the historical context of that type of building and would not normally be allowed. The other matter of concern had been the hazard which arose from traffic passing along the road.

3.2.4 Addressing the main issues raised by the Complainant in her representative's letter, dated 15th December 2008, Mr. Webster commented that in relation to the assertion that the Applicant had been unaware and had not been notified that Saval was a Building of Local Interest (BLI), even if the owner of the property had not been notified at the time of registration in 1992, notification had been given by letter dated 10th July 2003 following a comprehensive reappraisal of the Historic Buildings Register which had been undertaken in 2002–2003. Further, following refusal on 24th January 2006 of a planning application received from Mrs. Wilde, the reason for the refusal notified to the Applicant was that: "*1. The proposed works would harm the architectural and historical character and integrity of Saval Cottage which is included in the Minister for Planning and Environment's 'Register of Buildings and Sites of Architectural, Archaeological and Historical Importance in Jersey' as a Building of Local Interest. Therefore, this development fails to satisfy the requirements of Policy G13 of the Jersey Island Plan, 2002 together with Interim Policy HB7, 1998.*" Mr. Webster confirmed that the buildings had been included on the register because of their historical interest and the contribution which they made towards the Island's heritage. Considerable expert opinion was always taken by the Department when determining registration. Special care was taken not only of registered buildings, but also

of the setting of those buildings. In the case of Saval, the boundary was relatively close-up to the building, which was a small cottage.

- 3.2.5 As regards the Applicant's contention that she had been unaware that consent was required for the fence, nor had she been told by the fencing company that permission was required, Mr. Webster suggested that because Mrs. Wilde had been apprised of Saval's designation as a Building of Local Interest (BLI) it was considered reasonable that she should have known that consent was required. In the event that there had been any uncertainty, a telephone call or letter to the Planning Department would have confirmed that consent was indeed necessary. However, it was accepted by the Planning Department that the failure to submit an application prior to the work being undertaken had been a genuine misunderstanding on the part of the property owner.
- 3.2.6 It was recalled that the Applicant had also contended that the removal of the fence would cause unfair problems for the occupant in terms of human rights issues and privacy. Whereas it was stated that the fence was needed in order to enclose the oil tank in the front garden for safety reasons, it was emphasised that this was not a material planning consideration. In any event there already existed a one metre high front wall and it was explained that it was not necessarily a requirement to have a high fence to enclose the oil tank. As regards the issue of privacy, the planting of shrubs, hedging or trees did not require planning permission, all of which might offer some privacy to the owner if desired. However, the construction of a fence did require planning permission and it was noted that the proposal was considered unacceptable in terms of impact on the historic building, the surrounding area and on highways visibility. Mr. Webster commented that it might be that the construction of a granite wall (or similar) to a location and height to be agreed by the Planning Department might be acceptable subject to highways visibility issues and Historic Buildings comments, with the erection of a wall of any height requiring planning permission due to the building's BLI status. Consequently, other options were open to the Applicant to enclose the garden, as it was the fence that was considered to be unacceptable in visual terms, etc. It was considered that no special circumstances existed such as to override the harm caused to the BLI and the surrounding area, as well as highways visibility. Mr. Webster confirmed that all material considerations, including the Island Plan and any representations made during the course of the application had been fully considered. It was contended that the decision arrived at was not unreasonable and that the Applicant's human rights had not been abused. The comment was made that human rights were not generally raised in connection with planning matters. Deputy Hill suggested that whereas it might be early in terms of the Human Rights (Jersey) Law 2000 for such considerations to be taken into account in planning matters, perhaps it was now time that human rights were given more prominence in this area.
- 3.2.7 Whereas the Applicant had questioned the need for a planning application and fee (including as to whether the fence was within the domestic curtilage of the dwelling), Mr. Webster confirmed that the retrospective planning application had been required as the development which had already been undertaken required planning permission. It was noted that wherever possible the Planning Department requested a planning application to be submitted prior to any possible enforcement action being taken against any unlawful

development, so as to give an Applicant and others the chance to make representations for or against the application and for the Planning Department to review the application taking into account all material planning considerations. It was confirmed that the Planning Department considered that the fence was certainly within the domestic curtilage of Saval. Deputy Hill maintained the view that it was unfair for a fee to be charged on applications relating to a BLI, and especially a double fee in the case of retrospective applications.

- 3.2.8 It was further noted that although the Complainant considered that the Department's objection to the fence obscuring visibility was unreasonable, the view of the Department had been endorsed by the Highways Authority's comments, received on 9th December 2008, in the following terms: "*...the fence reduces nearside visibility to zero. The presence of any previous vegetation along this boundary line is not relevant as vegetation is not a permanent structure.*" It was suggested that these comments had been forthcoming from experts in Highways matters and demonstrated that the view of the Planning Department was not unreasonable and demonstrably correct. Whilst there might exist in highways terms some scope for a higher wall than that existing, provided it was set back further into the site and did not impinge on the visibility requirements, Mr. Webster emphasised that it was clear that the current fence did not meet the Highways criteria and that it had an adverse impact on highways safety by making an already poor situation marginally worse. It was suggested that a planted hedge, which did not require planning permission, might have been preferable as property owners would usually trim back any overgrowing foliage to maintain reasonable visibility: something which could not be done to a permanent solid structure. It was accepted that the subsequent addition of mirrors opposite the entrance to the private lane assisted drivers exiting onto the road, although it was of minimal assistance to motorists approaching the site from along the road. A mirror was better than nothing but a proper visibility splay was the preferred solution as mirrors were susceptible to 'misting', could easily be damaged and/or come out of alignment.
- 3.2.9 As regards the contention of the Complainant that the requirement to remove the western part of the fence was unreasonable particularly taking into account that the eastern fence – which was to remain – had a similar impact on the dwelling, it was reiterated that the permission to retain the eastern part of the fencing as constructed had been a compromise by the Planning Applications Panel, whereas the view of the Historic Buildings Section had been that the extent of the fence should be reduced as well as the top removed, leaving a flat top. Further, it was recognised that the Planning Officer had endorsed the views of the Historic Buildings Section and had recommended alterations to the fence in order to improve its appearance, despite which recommendations, the Planning Applications Panel had accepted a compromise position by retaining the fence as constructed to the east of the house. It was considered by the Planning Department that the western part of the fence had a particularly adverse impact on the surrounding area and Saval, due to its prominent location fronting right onto the public road and its being visible from the public realm. Further, the western part of the fence dominated this modestly-sized registered cottage due to its height, extent, design and siting and adversely affected the character, appearance and setting of this BLI. It was

confirmed that the Complainant's contention that had the property not been a BLI the fence could have been erected without permission was incorrect, as under the Planning and Building (General Development) (Jersey) Order 2008 – as well as the preceding Order – a fence abutting on or within 2 metres of a road could not be higher than 90 centimetres, or in any other case could not be higher than 2 metres.

- 3.2.10 In conclusion, Mr. Webster outlined that Saval was a Building of Local Interest (BLI) and that, consequently, planning permission was required for the fencing. Further, it was emphasised that the Planning Department and the Assistant Minister for Planning and Environment had considered that no special circumstances existed to permit the full extent of the fencing around the site. For its part the Planning Applications Panel had considered that the full extent of the fencing would have an adverse impact on the BLI and the character of the surrounding area, and this decision was supported by the Planning Officer, the Assistant Director of Planning and the Historic Buildings Section. It was considered that the decision taken to permit the eastern part of the fencing, to seek the removal of the south-western, western and north-western parts of the fencing and the taking of enforcement action was reasonable taking into account the approved Island Plan and all the circumstances of the case.
- 3.2.11 The Connétable of St. Saviour offered apologies for the absence from the hearing of Deputy A.E. Pryke of Trinity, Assistant Minister for Planning and Environment and indicated that the Deputy had confirmed that she did not consider that she had in any way been conflicted with regard to her participation in the deliberations on the Saval application. The Connétable outlined the longstanding policy of the Planning Applications Panel generally to avoid situations where a political representative from a particular Parish was involved in determining an application from one of their parishioners, although there were occasions where this might be overridden by the need to ensure that the meeting of the Panel was quorate. Deputy Hill indicated that he was aware that Deputy Pryke had withdrawn from other applications relating to sites in Trinity whereas she had not withdrawn from the subject Saval application. The Connétable suggested that this clearly indicated that the Deputy was able to give appropriate consideration as to whether she might be conflicted in respect of a particular application. Mr. Blampied confirmed that he had previously met Deputy Pryke at one of the Deputy's 'clinics' for her constituents where the matter of the earlier application relating to Saval had been raised but not discussed in detail.
- 3.2.12 The Connétable emphasised that consideration of "character" encompassed not only any building but also the surrounding area. As regards human rights considerations, the Connétable confirmed that the Panel was aware of such rights. However, it was clear that "privacy" was a subjective matter and in the case of Saval, the Panel was aware that a large area was available at the rear of the property where the occupants could be assured of privacy, if required. At the front of the property it was perfectly feasible for a hedge to be planted for security purposes. The role of the Panel was only to consider each application placed before it, not generally to suggest alternatives. If necessary, limited advice could be sought from Planning Officers at the Department prior to the submission of an application. The Connétable suggested that, in the event that

the present compromise offered by the Panel were to be prevented, the likelihood would be that – in future – applications would be determined strictly in accordance with the Law. In response to a question posed by the Chairman as to whether, had the application not been retrospective, there would have been more opportunity for discussion with Planning Officers prior to its consideration by the Panel, the Connétable opined that the Panel would most likely have rejected it in totality. The Connétable indicated that he could not remember viewing the fence from inside the curtilage, but that in any event it was predominantly the view from the outside which was of interest to the Panel. Mr. Blampied confirmed that the mirrors now positioned opposite the vehicular entrance/egress to Saval had not been in place at the time of the Panel's site visit.

- 3.2.13 As regards the absence of an oral submission from the Applicant at the Panel meeting at which the application was determined, it was noted that Mr. Blampied had attended for that item but that because the Panel was running late it had been delayed and Mr. Blampied had had to return to work. The first that Mr. Blampied had known about any problem regarding the fence had been a letter from the Enforcement Officer between 6 and 8 weeks following its installation. Upon contacting the Department, a Planning Officer had indicated that whilst a retrospective application was necessary, it was considered likely that it would be refused.

4. The Board's findings

- 4.1 The Board noted that this hearing had been the first occasion when it had been asked to consider whether to allow the filming of its proceedings by persons not affiliated to the recognised media. In the Board's view such permission should have been sought well in advance of the hearing rather than requiring it to make an 'instant' decision on the matter which also affected the accredited press. The Chairman suggested that this was a matter on which all members of the Complaints Board should be able to express their views and decided to raise this matter for discussion at its next general meeting.
- 4.2 The Board recognised that the failure on the part of the Applicant in not recognising that Saval was a BLI or ascertaining whether or not an application had been necessary had been accepted by the Planning Department as a genuine oversight, and the Board concurred. However, the Board expressed some surprise that the fencing contractor involved had not discussed with the Applicant the status of the site and the possibility that a planning application might have been necessary.
- 4.3 The Board did not consider that the fence was needed to enclose the oil tank and the water treatment equipment in the front garden as this could have been achieved through other means. It was considered that the privacy of the occupant would not be adversely affected by having a lower structure along the western edge of the property as it was already considerably overlooked by the neighbouring house directly opposite across the road at a higher level.
- 4.4 The Board did not consider itself to be competent to determine any human rights issues which might be involved and considered that, in any event, if

human rights aspects were to be raised by a Complainant, relevant precedents should be presented by the Complainant or his/her representative.

- 4.5 The question of planning fees the Board considered to be entirely a matter for the Planning and Environment Department and the Minister.
- 4.6 The Board recognised that the fence has been erected within the domestic curtilage of the property and that it did not appear that it had resulted in the road safety situation being any worse than previously, certainly not any significant difference that the Board could determine. At the western side of the property, leading to the road, it was considered that the installation of mirrors represented a pragmatic improvement to the visibility of oncoming vehicles for drivers exiting from the private lane.
- 4.7 The Board recognised the unfortunate situation which had arisen whereby works considered by the Planning Department to “*harm the architectural and historical character and integrity of Saval Cottage*” had been undertaken by the Complainant without, through a genuine oversight, initially seeking planning approval, and where such an application for the fencing in its entirety would most likely have been refused. The Board recognised the significant spirit of compromise which had already been applied to the application by the Planning Applications Panel, and that such consideration would mitigate significant cost to the Complainant. The Board, mindful of this and the submissions made to it, does not believe that the decision of the Planning Applications Panel is contrary to Articles 9(b), (d) and (e) of the Administrative Decisions (Review) (Jersey) Law 1982, but believes that the spirit of compromise could be extended to a further minimal degree by allowing the western end of the fence on the northern side (along the edge of the adjacent field) to remain (as this appeared not to make any material difference either to the view of Saval from the road or to impinge upon visibility for traffic). With regard to the removal of the fencing from the western and southern sides, the Board further suggests that consideration be given to the possibility of retaining the existing low granite wall, with planting behind it and in front of a much lower fence up to the edge of the elegant frontage of the property, which would then be more visible to the casual observer. In conclusion, the Board urged the parties to discuss the foregoing possibilities towards a satisfactory solution.

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

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Miss C. Vibert

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Mr. J.G. Davies