
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE PROPERTY KNOWN AS ‘TRANSVAAL’, LA RUE DE FAUVIC, GROUVILLE

**Presented to the States on 13th September 2011
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, 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 'Transvaal', La Rue de Fauvic, Grouville.

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

STATES OF JERSEY COMPLAINTS BOARD

18th August 2011

**Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint
by Mr. and Mrs. D.J. Murphy
against the Minister for Planning and Environment regarding
the property known as 'Transvaal', La Rue de Fauvic, Grouville**

1. The Review Board was composed as follows –

Advocate R. Renouf, Chairman
Ms. C. Vibert
Mr. R. Bonney

The parties were heard in public at Grouville Parish Hall on 18th August 2011.

The complainant, Mr. D.J. Murphy, was present and was represented by Mr. M. Smith of J. Design Limited.

The Minister for Planning and Environment was represented by Connétable P.F.M. Hanning of St. Saviour (a member of the Planning Applications Panel) and Messrs. J. Gladwin (Senior Planner – Appeals, Planning and Environment Department) and R. Fearnley (Assistant Engineer, Highways and Infrastructure Section, Transport and Technical Services Department).

The parties visited the site in question after the opening of the hearing, and viewed drawings of the proposals. Additionally, the sites nearby which the complainant had cited as comparable examples were also visited.

2. Hearing

2.1 Summary of the complainant's case

2.1.1 A planning permit for the conversion of the existing first- and second-floor lodging house at 'Transvaal' to 3 self-contained units of accommodation was granted on 20th November 2008, Condition No. 4 of which required that the residents of the development approved were to have free and unrestricted access to the external amenity space at the rear (south-east) of the property as shown on Drawing D. The removal of this condition was requested in June 2010 on the basis that –

- (a) the existing amenity space was in fact the private garden of the existing ground floor dwelling which was not being altered or converted as part of the current proposal to convert the first- and second-floor accommodation;
- (b) the property 'Transvaal' was within easy walking distance of the beach via a private right of way, such that ample amenity space would thus be provided; and

- (c) the existing accommodation – consisting of 6 lodging house rooms – had no access to the amenity space located at the rear of ‘Transvaal.’
- 2.1.2 The application requesting the removal of Condition No.4 was initially considered by the Planning Applications Panel on 19th August 2010, when it was deferred in order to allow the submission of a revised proposal which was duly made in September 2010. Thereafter, negotiations with the Planning Case Officer continued, leading to the amendment of the revised proposal and subsequent re-submission, ultimately being considered by the Panel on 24th March 2011 resulting in a Notice of Refusal on the basis that: “The proposal would be deficient in relation to amenity space provision standards and presents an unacceptable parking arrangement, to the detriment of highway safety, so being contrary to Policies TT26, H8(i), H8(v), G2(vii) and G2(viii) of the Jersey Island Plan 2002.”.
- 2.1.3 Mr. Smith indicated that J. Design Limited and Mr. and Mrs. Murphy were concerned that the application had not been dealt with in a manner which took due account of ‘normal’ planning criteria as applied to other developments, nor the representations which had been made in connection with the proposal. It was understood that the Planning Department’s policy required the provision of a minimum of 20 square metres of amenity space per unit which, for Mr. and Mrs. Murphy’s proposal, resulted in a total requirement for amenity space of 60 square metres. It was emphasized that due to the confines of the site and the area in which the amenity space was to be located – which area was shared with the parking area for the property – the revised proposal represented the provision of an area of 56.8 square metres (subsequently re-measured by Mr. Smith as approximately 52 square metres).
- 2.1.4 It was contended that the Planning Department regularly and routinely relaxed the 20 square metre requirement for amenity space, particularly in cases where a property was being converted, as in the case of ‘Transvaal.’ Mr. Smith emphasized that J. Design Limited had reiterated to the Planning Case Officer the situation whereby the client owned an adjacent private path to the beach for the use of the residents of ‘Transvaal’, and the contention that such facility could be considered to provide the amenity required. Concern was expressed that, whilst the private path to the beach was considered to be a relevant consideration to the application, it appeared that neither the Planning Case Officer nor the Planning Applications Panel had adequately taken this factor into consideration.
- 2.1.5 Mr. Smith was aware that the Planning Case Officer had also expressed concern regarding the privacy of the amenity space proposed for the use of the residents on the basis that it was located at the corner of the site, bounded only by a low granite wall, and subject to overlooking by road users and pedestrians. However, it had been emphasized to the Planning Case Officer that there were other instances in the Island where planning approval had been given for balconies for flats so as to provide the necessary amenity space, and it was contended that the amenity space proposed by Mr. and Mrs. Murphy could not possibly be any less private than such balconies. In the light of these points, it was reiterated that it appeared that due consideration had not been given to the precedent so created.

2.1.6 Mr. Murphy confirmed that although it was recognised that the 3 self-contained units to be created could be sold separately, this was not the intention for the foreseeable future. Mr. Murphy was concerned at the length of time it was taking to resolve his planning application, and also at the perception that 'dual standards' were being applied by Planning and inconsistent advice proffered.

2.2 Summary of the Minister's case

2.2.1 The Senior Planner, Appeals outlined the background to the applications which had been considered in respect of 'Transvaal.' The recommendation of the Department to refuse the removal of Condition No. 4 on the Notice of Approval issued on 20th November 2008 was on the basis that for any residential development, certain parking and amenity standards were required to be met. In the case of 'Transvaal', Condition No. 4 had been necessary so as to provide sufficient garden space for each of the 4 apartments in the form of a communal garden as originally applied for (Application No. P/2008/1212 referred).

2.2.2 Whereas the applicant had sought to remove Condition No. 4 so as to provide all the garden space available to the rear as a garden for the ground floor apartment, and to provide new garden space for the other 3 apartments in part of the existing car parking area, this would have resulted in the newly created garden being unacceptable as amenity space. It was emphasized that the need for amenity space in new residential units was a basic planning requirement. No mention that the garden would not be available had been included in the original proposal, with the converse situation having been set out in the drawings submitted which showed "External Amenity Space" as being 193 square metres. It was noted that on the revised application, the area was described as "Private Amenity Space for Ground Floor Apartment."

2.2.3 It was noted that in the report, dated 4th August 2010, of the Planning Department to the Planning Applications Panel, it had been suggested that, in seeking to advise the Panel regarding a potential solution, and given the scale of the existing garden and the context of a 20 square metres requirement for each flat (Policy PPN6 referred), the Department might be amenable to reconfiguration of the space so as to provide an element for the use of the ground floor apartment, distinct from the other flats, although it was indicated that this consideration could not feature as part of the then present determination. In the event, that compromise (to split the use of rear garden between the existing ground floor apartment and the other apartments, thereby providing sufficient amenity space whilst also retaining the existing parking area largely unaltered) had not subsequently been accepted by the applicant and the application was then determined by the Panel on the basis of the outcome of negotiations at that stage.

2.2.4 It was emphasized that the concern of the Department was that the area in the existing car park proposed by the applicant to be converted to amenity space would result in a sub-standard area, insufficient in size and one which in no way could be considered to be private. The Department had to be cognisant of the requirements of the Minister for Planning and Environment who, from the

outset of his first term of office, had stated publicly that he was seeking to raise the standards for planning throughout the Island in all spheres of activity. Consequently, sub-standard proposals were generally not considered to be acceptable. It was conceded that, on rare occasions, there might be circumstances where on particular sites all the Minister's requirements could not be met and, in which cases, it might be necessary to allow less than perfect solutions to proceed. Such had been the case at one of the 2 nearby sites which the applicant had cited as comparable examples, and at least at one of these (which had involved the conversion of a hotel to lodging accommodation) the legislation in force at the time had not required planning permission. However, it was reiterated that in all cases where the required amount of amenity space could be provided (such as at 'Transvaal'), it was expected that such requirements would be met.

- 2.2.5 Additionally, the Planning Department considered that the remainder of the parking area proposed would be reduced in size from that presently available, such that it would not provide enough space in which to safely manoeuvre a car, to which proposal the Transport and Technical Services Department (TTS) had objected in relation to the proposed parking and turning arrangement. The Assistant Engineer confirmed that TTS adhered closely to its technical guide for the preparation of planning applications ("Roads Serving Small Housing Developments"). Whereas the various ranges of numbers of units involved might attract different requirements, variations would normally only receive the approval of TTS where the existing public safety situation would be significantly improved by the proposals sought to be implemented. It was recognised that at 'Transvaal', whereas there might be a reduction in the number of vehicles accessing the site, the smaller area available would not provide sufficient manoeuvring space. It was further noted that a condition relating to the permanent restriction in height to 900 mm from road level of everything within the required visibility sight-lines had been accepted by the applicant, with agreement having been reached regarding the removal of the existing pointed granite coping stones from the existing wall.
- 2.2.6 The Connétable of St. Saviour summarised the submission of the Planning Department by emphasizing that as the required area of amenity space was able to be provided at 'Transvaal', it was expected that it would indeed be implemented. The Connétable contended that the advice offered by officers of the Planning Department had been consistent and appropriate, and it was confirmed that the Planning Applications Panel had, on 19th August 2010, deferred the application in order to allow the applicant to submit revised plans based on his agent's suggestion that part of the existing car park could be given over to amenity space. As regards the applicant's contention that the private access to the beach 140/150 metres away should have been taken into account to a greater extent by the Panel, the Connétable confirmed that due regard had been given to this factor, as evidenced by references to it in the Panel's Minutes of both 19th August 2010 and 24th March 2011. It was suggested that the Department's concerns regarding traffic and vehicle manoeuvring had been adequately explained by the Assistant Engineer, TTS. The Connétable reiterated that the Panel's approval of the application on 24th March 2011 had been on the basis that adequate amenity space would be provided by means of the communal rear garden arrangements envisaged,

with the proposal to create a small area of amenity space in the car park considered to be inadequate in terms of size and privacy.

3. The Board's findings

- 3.1 The Board wishes to emphasize that its consideration of such appeals is constrained by the provisions of Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982.
- 3.2 The Board was of the view that the refusal of the subject application –
- (a) was not contrary to law;
 - (b) was not unjust, oppressive or improperly discriminatory, nor was it in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
 - (c) was not based wholly or partly on a mistake of law or fact;
 - (d) could have been made by a reasonable body of persons after proper consideration of all the facts; and
 - (e) was not contrary to the generally accepted principles of natural justice.

Consequently, the Board does not uphold the complaint.

- 3.3 The Board noted that, whilst the Planning Applications Panel had originally approved the application for the proposed conversion by Planning Permit dated 20th November 2008, an application seeking the removal of Condition No. 4 (requiring “residents to have free and unrestricted access to amenity space” to be provided in the rear garden) had not been submitted until 25th June 2010. It appeared to the Board that from the outset the applicant must have been aware that amenity space was required because he had included a measurement of the rear garden marked as “External Amenity Space” on his plan, and it was therefore considered reasonable for the Planning Department to have assumed that the applicant would be content with the shared use of that area with the 3 lodging units being created in order to meet the planning guidelines, on the basis that the necessary amenity space could not be provided elsewhere on site.
- 3.4 The Board considered that it had been reasonable for the Panel to defer (in August 2010) consideration of the application then before it, so as to afford the applicant an opportunity to develop his agent’s suggestion during the public meeting that it might be possible for an area in the car park to be given over to amenity space. However, the Board accepted that it had also been reasonable for the Planning Department subsequently (in March 2011) not to give favourable consideration to the proposal which had by then been developed by the applicant involving the use of a small part of the existing car park – immediately adjacent to a busy main road and junction – as “private” amenity space, given the degree of overlooking from the public realm and also

having taken into consideration its inadequate size for the purpose, which would have rendered it sub-standard.

- 3.5 The Board further agreed that it was also reasonable for the Planning Department not to have given credence to the contention that the use elsewhere of balconies towards achieving the total area required as amenity space should be a significant factor in support of the revised application relating to ‘Transvaal.’ Similarly, the Board accepted that the Panel had given due consideration (as evidenced in its Minutes) to the applicant’s suggestion that the availability across the adjacent main road of a 140/50 metre private path to the beach (which ‘facility’ was inevitably subject to variations in respect of tidal conditions) should be given significant weight in its deliberations. The Board recognised, nevertheless, that the availability of such an access to the beach could be considered to represent a ‘bonus’ in terms of the facilities available to the residents of the lodging units at ‘Transvaal’, although it could not be considered a substitute for amenity space of good quality nearer to the units.
- 3.6 Whereas it was noted that the Planning authorities may, hitherto, have taken a rather more relaxed view of the requirement for adequate amenity space to be provided at certain sites, the Board accepted that this had only been in situations where there had been little or no scope to provide any or any adequate amenity space. It was recognised that the alternative to pragmatically allowing such sites to be developed would have been to prevent their redevelopment, conversion or refurbishment, such that they could ultimately have become derelict and potentially unusable to the detriment of the owner and the Island overall. The Board considered that it was reasonable for the Planning Department to require that, in situations where the required amenity space could physically be provided, it should be so provided – even though the applicant might prefer to pursue some alternative route.
- 3.7 With regard to the highways considerations of the application, the Board agreed that Planning had had proper regard to the relevant TTS guidelines, with due consideration having been given to the real possibility that some vehicles might reverse along or onto the main road, from which it was evident that the necessary conditions had not been met.
- 3.8 Accordingly, the Board does not uphold the submissions of the Complainant.

Signed and dated by:
Advocate R. Renouf, Chairman

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Ms. C. Vibert

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Mr. R. Bonney