
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING CLIFFSIDE HOUSE, 65 NEW ST. JOHN'S ROAD, ST. HELIER

**Presented to the States on 11th March 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 Cliffside House, 65 New St. John's Road, St. Helier.

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

STATES OF JERSEY COMPLAINTS BOARD**22nd February 2011****Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint
against the Minister for Planning and Environment
regarding Cliffside House, 65 New St. John's Road, St. Helier****1. The Review Board was composed as follows –**

Advocate R. Renouf, Chairman
Mr. T. Perchard
Mr. R. Bonney

The parties were heard in public at the States Building, Royal Square, St. Helier on 22nd February 2011.

The complainant represented himself.

The Minister for Planning and Environment was represented by Mr. R. Webster, Principal Planner – Appeals.

The parties visited the site in question after the opening of the hearing, and viewed drawings of the proposals.

2. Hearing**2.1 Summary of the complainant's case**

2.1.1 Mr. Slot, by letter dated 2nd June 2010, had outlined that he had submitted an application seeking to provide a handrail and to alter a window so that a flat-roofed area could be safely used as a balcony, which the Planning Department had initially refused under delegated authority, and which had subsequently been reconsidered by the Planning Applications Panel and refused. Mr. Slot was concerned that the Planning Department, having claimed that neighbours were liable to overlooking, had declined his offer to provide a rear screen in order to satisfy the objections raised.

2.1.2 Mr. Slot conceded that his original application sought the installation of a handrail – which he now recognised would be inappropriate – and that the suggestion regarding the possibility of installing one or more privacy screens had been a later consideration. However, Mr. Slot was concerned that at the subsequent reconsideration of the application by the Planning Applications Panel, the possibility of installing a privacy panel had not been mentioned and that refusal of his application had been maintained on the grounds of “*an unacceptable amount of overlooking and loss of privacy*”, which grounds could have been overcome by means of the installation of one or more screens. It was confirmed that the Planning Applications Panel could, on that occasion, have approved the application before it whilst requiring the

installation of suitable screening to be controlled by means of the imposition of an appropriate condition.

- 2.1.3 Mr. Webster confirmed that no formal objections to the proposals had been submitted to date, although it was recognised that whilst Mr. Slot had complied with the requirements of the Planning and Building (Jersey) Law 2002, the site notice had been placed on St. John's Road, whereas the access to at least one of the neighbouring properties (Somerset Apartments) was located on Old St. John's Road.
- 2.1.4 Mr. Slot recognised that it remained open to him to submit a revised application for a simple scheme, possibly featuring well-designed and appropriate screening which would seek to overcome the objections which had been raised by the Planning Department, such that no or minimal impact on adjacent properties would be created. It was considered that any screens to be installed would need to be between 5 feet and 6 feet in height in order to minimise the risk of overlooking to the west and to the south.

2.2 Summary of the Minister's case

- 2.2.1 The Principal Planner, by letter dated 21st July 2010, had set out a detailed summary of the case. The application, which sought to create a balcony on an existing small flat-roofed area at Cliffside House, had been submitted on 18th September 2009. Cliffside House was a three-storey property comprising 4 flats (3 x two-bedroom units and one studio unit) located on the west side of New St. John's Road, and the proposal involved replacing a uPVC window with a uPVC door to gain access to the proposed balcony, and also the construction of balustrading around the proposed balcony.
- 2.2.2 It was noted that the Planning Case Officer, following a site visit and planning assessment, had concluded that the proposed balcony, because of its height (fourth floor/roofspace level) and close proximity relative to neighbouring properties, would result in unacceptable overlooking/loss of privacy to neighbouring occupiers. On that basis, refusal of the application was recommended to the Assistant Director, Development Control. Assessment of the application plans by the Assistant Director, together with a review of the Case Officer's assessment and site photographs, had led to a decision to refuse permission under delegated powers, with a refusal notice dated 20th December 2009 specifying the following reason: *"The proposed balcony by virtue of its position and close proximity to surrounding neighbours to the south and west at such a height, results in a scheme that would cause an unacceptable amount of overlooking and loss of privacy to the adjacent neighbours, and is therefore considered contrary to Paragraph (ii) of Policy G2 of the Jersey Island Plan 2002."*
- 2.2.3 A request for reconsideration of the application was received on 12th January 2010 on the basis that Mr. Slot considered that refusal on overlooking/privacy grounds was unreasonable. The Planning Applications Panel considered the request for reconsideration on 26th February 2010, taking into consideration a further report from the Planning Case Officer dated 8th February 2010 – which recommended that the refusal of the application should be maintained – and also representations made by the applicant. The Panel had deferred

making a decision pending its undertaking a site visit. The matter had been further deferred from 18th March 2010 at the applicant's request, and the application was subsequently taken into consideration on 15th April 2010 – notwithstanding the further absence of the applicant – when the Panel, on the casting vote of the Chairman, decided to maintain the previous decision to refuse permission.

- 2.2.4 It was noted that the Planning Case Officer's report of 8th February 2011 had referred to the potential for privacy screens to be installed, although it concluded that these would not be an appropriate alternative, "*given the height of the flat-roofed area, its close relationship to adjacent property, and the impact of high screens in terms of design and the overall appearance of the property from the street.*"
- 2.2.5 Mr. Webster referred to the proposed extension at Cliffhouse, which it was recalled was the subject of an extant permit, and suggested that this scheme did not support Mr. Slot's application in relation to the proposed balcony as the approval of something which would create further overlooking would worsen an already difficult situation. It was suggested that a situation where overlooking occurred by virtue of a window in a dwelling was different (less intrusive) to overlooking which would occur from a balcony, where people would be able to peer down at a steep angle into neighbouring amenity areas.
- 2.2.6 Mr. Webster emphasized that each case fell to be determined on its relative merits and, whilst in many cases, tall opaque screening could overcome issues associated with overlooking, taking into account the small area of balcony envisaged in this case, such screening would effectively negate any perceived advantage of creating balcony amenity space. Consequently, rationale for the refusal of the application could be said to be that it was not appropriate to consider the installation of screens as the balcony (which unusually would be located on the side of the dwelling Cliffhouse, rather than at the front) should not be permitted in any event.

3. The Board's findings

- 3.1 The Board noted that the Planning Case Officer who had compiled the original report for consideration by the Assistant Director had also subsequently compiled the 'Request for Reconsideration' report for the Planning Applications Panel. The Board further noted that the issue of "screening", whilst referred to in the minutes of the Planning Applications Panel of 26th February 2010, had not been specifically referred to in the subsequent minutes of 15th April 2010. The Board also noted with interest that the Chairman of the Planning Applications Panel had been required to use his casting vote on 15th April 2010 in order to determine the application following a split vote.
- 3.2 The Board nevertheless concluded that it had been appropriate for the Planning Applications Panel to consider the application as originally submitted (i.e. envisaging the installation of a handrail on the proposed balcony). The Panel had visited the site prior to its consideration of the application and appeared to have taken into account all relevant factors, including the issues surrounding privacy screening.

3.3 The Board was accordingly of the view that the refusal of the subject application was, with reference to Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982 –

- (a) not contrary to law;
- (b) 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) not based wholly or partly on a mistake of law or fact;
- (d) made by a reasonable body of persons after proper consideration of all the facts; and
- (e) not contrary to the generally accepted principles of natural justice.

Consequently, in respect of this particular application, the Board was not minded to request the Minister for Planning and Environment to reconsider the matter.

Signed and dated by:
Advocate R. Renouf, Chairman

.....
Mr. T. Perchard

.....
Mr. R. Bonney