



Planning Panel
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey GY1 1FH

Appeal Decision Notice

Planning Tribunal Hearing held on 14th July 2016 at Les Cotils Christian Centre, St. Peter Port

Members: Mr. S Fell (Presiding), Mrs. S Evans, Mr. J Weir

Appeal Site: Land at Les Baissieres, St. Peter Port

Property Reference: A20961A000

Enforcement Reference: ENF/2014/00130

Date of issue of the Notice: 18th May 2015

Appeal Case Reference: PAP/015/2015

- The Appeal is made under section 70 of The Land Planning and Development (Guernsey) Law, 2005.
 - The Appeal is by Mr. Geoff Hutchins and Mr. Bryan Hutchins against a Compliance Notice made under section 48 (1) of the Land Planning and Development (Guernsey) Law, 2005 ("the Law"). This was issued by the Environment Department on 18th May 2015 and served on 21st May 2015 and relates to an alleged breach of planning control on land at Les Baissieres, St. Peter Port, identified by Cadastre Number A20961A000.
 - The appellants attended the Hearing and gave evidence and were represented by Mr. J. Le Gallez, Planning Advisor at Mourant Ozannes.
 - The Development & Planning Authority was represented by Mr. J. Rowles, Director of Planning and Mr. D. Perrio, Enforcement Officer.
 - Mr. E. G. Bebb gave evidence in his capacity as a complainant in this case, as he resides in a property that lies immediately adjacent to the appeal land.
-

Decision

1. The appeal is allowed, and the Compliance Notice is quashed.

Grounds of Appeal

2. The six grounds under which an appeal against a Compliance Notice (“the Notice”) may be brought are set out in section 70 (1) of the 2005 Law. Two grounds are cited in this case. The first is that the Notice was incorrectly served, and is accordingly brought under ground (f), *that the issue of the notice was (for any other reason) ultra vires or unreasonable*.
3. The second is under ground (c), which states *“that the notice was issued after the expiry of the period within which a compliance notice in respect of that alleged breach was required under section 48 (4) to be issued”*. Section 48 (4) (a) states that no compliance notice may be issued after the expiry of the period of 10 years beginning with the date of the alleged breach to which it relates.
4. The appellants’ central argument is that the alleged breaches of control, which have involved a change of use of the land, had commenced in the 1970s and had continued ever since, and that the Compliance Notice had accordingly been served ‘out of time’.
5. The decision was made by the former Environment Department, which has since been re-constituted as of 1st May 2016 as the Development & Planning Authority. For simplicity, in this decision it is referred to as “the Authority”.

The First Ground – Incorrect service of the Compliance Notice

6. The Notice states that the land in question is identified by Cadastre Number A20961A000 and by a red outline on a plan accompanying the Notice. The red outline includes the access strip that leads from the public highway to the north-western corner of the horticultural land.
7. At the time the Notice was served the access strip formed part of a different parcel of land and is associated with the bungalow owned by Mrs. E. A Hutchins, identified by Cadastre Number A209610000.
8. The Compliance Notice was not served on Mrs. E. A. Hutchins as required by section 48 (3) (a) of the Law and is accordingly defective. For this reason alone the appeal must succeed.

The Compliance Notice

9. The alleged breach of planning control is described in the Notice and in essence states that without planning permission numerous vehicles, vehicle parts and miscellaneous items and equipment have been dumped on the horticultural / agricultural land defined on the plan, resulting in a material change of use.
10. The Notice specifies the steps that are to be taken in order to remedy the alleged breach of control. It requires that all vehicles, vehicle parts and miscellaneous items and equipment that have been dumped on the horticultural / agricultural land are to be removed permanently. The activities that are to be stopped are the cessation permanently of the use of the horticultural / agricultural land for the dumping and/or storing of vehicles, vehicle parts and miscellaneous items and equipment. A period of

three months is allowed after the Notice takes effect within which the required measures are to be undertaken.

The Second Ground - Whether a change of use of the land has occurred that had been established for a period of more than ten years when the Notice was served

11. The land in question is a rectangular site that lies to the south of a bungalow fronting onto Les Baissieres. A track running on the west side of the bungalow provides access to the dwelling as well as to the horticultural land beyond it, the house and land being originally in the same ownership. Mr. Perrio explained that this is a common arrangement in the Island where small-scale horticultural holdings are concerned.
12. Towards the west side of the horticultural land are two glasshouses, with their ridges running north to south, which are separated by a piece of open land. These buildings are now in a state of disrepair. The northernmost of these is the smaller of the two, being approximately 14m long and 6m wide. The other glasshouse is approximately 9m wide but has been reduced in length on the northern and southern ends, and is now 12m long. To the east side of the glasshouses is an open area of land that was once used for growing.
13. To the east and west of the site are residential properties that front respectively onto Footes Lane and Les Baissieres, whilst further south are playing fields. The complainants in this case, Mr. R. T. L. Holder and Mr. E. G. Bebb, live at Roseneath, a property with a substantial garden that lies to the east of the appeal site and shares a common boundary with it.
14. Mr. Geoff Hutchins explained during the Hearing that the whole of the appeal land was actively used for horticultural purposes for many years by his father, Mr. Dennis Hutchins, but this use gradually declined and had effectively ceased by the early 1970s.
15. Mr. Dennis Hutchins had three sons, all of whom developed a keen interest in autocross racing during the 1970s, which in the case of Mr. Geoff Hutchins continued until 2006. Autocross is an activity which naturally requires space to store and work on cars, and it is apparently common practice for participants to acquire vehicles and vehicle parts to repair those which are damaged. Where disused glasshouses and associated land are available to autocross enthusiasts, as is the situation in this case, such sites provide an obvious resource to accommodate these storage needs and related activities.
16. Mr. Perrio advised the Tribunal that the practice of using horticultural land in this way has been relatively widespread around the Island, but provided that the scale of activity is modest and does not interfere unduly with residential or visual amenity, enforcement action is not usually justified. He said this pragmatic approach is validated by the fact that such activity is usually short lived, and once an individual's interest in autocross has passed, the affected sites are usually cleared of vehicles.

17. Mr. Geoff Hutchins explained that he had installed a work-bench in the southern glasshouse in the early 1970s so that his father could work on his own road cars. This became the obvious place for the brothers to use when working on their racing cars as their interest in the sport developed. He said that the northern glasshouse was less suitable for this purpose as it was smaller, and in any event it was used to store equipment related to the maintenance of the land.
18. In order to establish the nature of the use of the horticultural land, the Tribunal carefully reviewed with the parties all the available photographs and aerial views submitted in evidence, as well as letters from individuals who have known the family for many years, and a letter from Mrs. Elizabeth Hutchins. The appellants' testimony during the Hearing, supported by those photographs and letters, left little doubt that vehicles had been stored on the access track on the western edge of the site, and were both stored and worked on within the southern glasshouse, from the 1970s.
19. Messrs. Geoff and Bryan Hutchins were able to identify specific vehicles seen on the aerial photographs, the earliest of which photographs date from 1979. Although their interest revolved essentially around autocross racing, it is clear that some road cars owned by the family were also stored here, as well as agricultural vehicles and equipment. An example of the range of vehicles is an old Bedford ambulance that remains on the site which Mr. Bryan Hutchins had intended to convert to a camper-van. There is no evidence to suggest any commercial aspect to the activities. The Authority did not dispute this evidence and the Tribunal is satisfied that part of the horticultural site had indeed been used for the purpose of parking, storing and working on cars and other vehicles.
20. In response to a question from the Tribunal as to whether such activity had altered the status of the land in planning terms, Mr. Rowles referred to section 3 of the Land Planning and Development (Use Classes) Ordinance, 2007 ("the Use Classes Ordinance"), which deals with minor uses. This states:
21. The Tribunal understands this to mean that insignificant, temporary or occasional uses are regarded as falling within the underlying use class of the land, which in this case is Agricultural Use Class 44, provided that such uses do not have material effects on the four matters specified under section 13 (1), namely those relating to natural beauty or landscape, to the character or amenity of the area, to roads and other infrastructure, or to the reasonable enjoyment of neighbouring properties.
22. Having considered this matter, the Tribunal's conclusion is that when the use of the land for the storage, parking and working on cars as described by Geoff and Bryan Hutchins was carried out at a modest level and in a limited area, such that there was no deleterious effects on the four matters specified above, then it would regard the use as minor and insignificant under the terms of section 3 of the Use Classes Ordinance. There would accordingly be no change of the underlying horticultural use of the land. The Tribunal's conclusion is that when the vehicular-related uses and activities were confined to the western part of the site, i.e. the track, the space between the glasshouses, and the interior of the southern glasshouse, then the minor use status would be maintained.

23. Examination of the series of aerial photographs, coupled with the testimony of Messrs. Geoff and Bryan Hutchins and the neighbour living to the east, Mr. Bebb, indicates that the vehicular-related uses and activities were limited to the specific areas indicated above until about 2004, when the situation changed and additional parts of the appeal site began to be utilised for the storage of vehicles and other material. The aerial photographs of 2006 and 2009 clearly illustrate a progressive change in the intensity of use, as by 2009 vehicles were being stored on the southern and eastern parts of the horticultural land. The Tribunal accordingly enquired about the circumstances that led to the change in the scale of activity during this period.
24. The Tribunal determined that in 2004 the level of activity was minimal. Only four externally parked vehicles are visible on the aerial photograph taken in September of that year, two of which are on the track, and two being parked on the land between the glasshouses.
25. On the 2006 aerial photograph, taken in April, nine vehicles are visible, eight of which are parked on the track or the area between the glasshouses. Mr. Geoff Hutchins explained that just prior to this time he had the use of another piece of disused horticultural land at Les Ozouets Road, St. Peter Port, where he stored between thirty and forty further vehicles. He recalled that he was given notice to vacate and clear this site at the end of 2004 or the beginning of 2005. He then disposed of many of the vehicles, but the better vehicles were brought to Les Baissieres, which he said explained the relatively large number that can be seen on the photograph.
26. On this basis the Tribunal concludes that the increase in the numbers of stored vehicles in 2006 can be regarded as a temporary phenomenon, and that the vehicular-related use of the land remained at an insignificant level when considered in the context of section 3 of the Use Classes Ordinance. Mr. Geoff Hutchins explained that he gave up autocross racing in May 2006.
27. In the years that followed there were changes in the ownership of the appeal land. The owner, Dennis Hutchins, passed away in October 2005 and the horticultural land was subsequently divided into three equal parts between Peter Hutchins and his wife, Geoffrey Hutchins, and Bryan Hutchins, the transfer taking effect in May 2008. The bungalow and the track alongside it were retained in the ownership of Dennis Hutchins' second wife and widow, Elizabeth.
28. Mr. Geoff Hutchins explained that his brother Peter, who had lived and worked for fifteen years in Cornwall, returned to Guernsey in 2007/2008 before moving to Sark and recalled that some of Peter's vans and cars were deposited at Les Baissieres during this period. It is the Tribunal's view that this is the point at which there was a perceptible change in the character of the vehicular-related use, as the family-orientated, hobby-based autocross activity with its constant turnover of vehicles had by now ceased, and the land was being used for long term vehicle storage, seemingly without any specific objective in mind.
29. The aerial photograph taken in 2009 illustrates the condition of the land at this time, where at least a dozen vehicles can be seen. For the first time vehicles and other items are dispersed more widely around the site, and it is evident that the southern glasshouse has reached an advanced state of deterioration. Mr. Bebb, who lives in the house at Roseneath to the east of the site, gave testimony at the Hearing that it was shortly after the transfer of the land in 2008 to Peter, Geoff and Bryan Hutchins that there was a noticeable increase in the storage of vehicles and other material on the land.

30. After carefully reviewing all the evidence placed before it regarding the use of the land, including what was said by the parties who attended the Hearing, the Tribunal concludes that while the vehicular-related use of the land since the 1970s could be regarded as minor and insignificant in terms of section 3 of the Use Classes Ordinance, from around 2008 the nature of the vehicular-related use and activity changed from being insignificant to significant, particularly because of the increased area of land which it occupied. This led to a greater visibility of this use, and consequently its capacity to affect the reasonable enjoyment of neighbouring properties. The Tribunal believes that it is from this period in around 2008 that a case could be made that the use and activity had ceased to be minor, and that for the first time a change in the use of part of the land had occurred.
31. It follows from this conclusion that the case made on behalf of the appellants, that a change of use of the land has occurred which has endured for a substantially longer period than ten years, does not have a sound basis.
32. The 2013 aerial photograph indicates a further intensification in the use of the eastern part of the site for the storage of vehicles and other material, and there is no indication from this photograph that the land was being actively maintained at this time. The Tribunal saw from its own site visit that despite the fact that some clearance of the land had occurred since the Compliance Notice was served, there was little sign of constructive activity anywhere on the horticultural land, and this now has the appearance of an overgrown dump for vehicles and other abandoned material.
33. Having established its findings and conclusions regarding the evolving use of the land and the period within which the change of use can be said to have occurred, the Tribunal turned its attention to the scope of the Compliance Notice, setting aside for the moment the defect in service that was identified at the beginning of this decision.
34. The Notice requires that the whole of the site should be cleared and activities ceased, including the areas along the western track, between the glasshouses and within the southern glasshouse. In these specific parts of the site the Tribunal has concluded that vehicle-related uses have been minor and insignificant and have not amounted to a change of use. It can accordingly find no justification for the application of enforcement measures to these areas. Similarly, the track between the public road and the northern edge of the horticultural land is not solely in horticultural use, as it also served the dwelling, and logically should be considered as having a mixed horticultural and residential use. Mr. Rowles conceded this point during the Hearing.
35. For these reasons the Tribunal concludes that the measures required by the Notice, by virtue of including the whole of the horticultural land and its access, go beyond what is reasonably necessary. The appellants accordingly succeed under appeal ground (d) of section 70 (1) of the 2005 Law, which states *"that the measures required by the notice to be taken exceed what is necessary for the purposes specified in section 49 (1) (c)"*, i.e. for the purpose of remedying the breach of planning control.
36. The Tribunal has carefully considered the negotiations that that were held between the Authority and the appellants' representatives with a view to allowing the continued use of part of the site for vehicular-related activity, and the offer and counter-offer that were

made in this regard. However the Tribunal concludes that these matters have little direct bearing on the determinative factors in this appeal.

37. The Tribunal has considered all other matters raised in the written and oral submissions, and seen during the site visit, but these do not alter its decision to allow this appeal and quash the Compliance Notice.

Stuart Fell

Presiding Member

Date of Decision: 3 August 2016