



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

## Appeal Decision Notice

Hearing held on Thursday 9<sup>th</sup> March 2017 in The Founders' Room, St James Concert Hall and Assembly Rooms, St. Peter Port including a visit to the appeal site at the end of the hearing

Members: Mrs. L Wride (Presiding), Mrs. S Evans, Mr. D Harry

---

<b>Appeal Site:</b>	<b>Amazing Cakes, 34 Mill Street, St. Peter Port</b>
<b>Property Reference:</b>	<b>A400530000</b>
<b>Planning Application Reference:</b>	<b>FULL/2016/0029</b>
<b>Planning Application Valid Date:</b>	<b>23<sup>rd</sup> February 2016</b>
<b>Appeal Case Reference:</b>	<b>PAP/023/2015</b>

- The appeal is made under the provisions of Part VI and section 68 of The Land Planning and Development (Guernsey) Law, 2005 ("the 2005 Law").
- The appeal is made by Ms. C Harris against the decision of the Development & Planning Authority made on 27<sup>th</sup> May 2016 under section 16 of the 2005 Law to refuse planning permission to convert the existing shop to form a window display and dwelling house and install windows (rear elevation).
- The appellant, Mrs. Harris, represented herself
- The Development & Planning Authority was represented by Ms. E Hare, Development Control Manager, Development & Planning Authority

---

### Decision

1. The Appeal is dismissed.

## **Procedural and Clarification Matters**

2. At the time the application was determined, the Development Plan for the area comprised the Urban Area Plan ("the UAP"). Although this Plan has now been superseded by the Island Development Plan, the Tribunal has decided the appeal based on the Development Plan, i.e. the UAP, in operation at the time the decision was made.
3. The appeal proposal involves the change of use of a self-contained shop unit to a residential unit on two levels accessed from the lower level at the rear, whilst retaining the existing shop window and door on the Mill Street frontage. A full height, full width partition would be constructed about a metre behind the shop window and door to permanently separate the residential accommodation from the Mill Street frontage. The shop window would be used for display/advertising purposes relating to the appellant's Amazing Cakes business which would operate elsewhere. No retail trading would take place from the appeal site.

## **The Development Plan**

4. The appeal property has a frontage on to Mill Street, in the area of St. Peter Port referred to as The Old Quarter, and pedestrian rear access via an alley at the rear, accessed off La Ruelle Marie Gibaut, a set of steps connecting Le Bordage and Mill Street. The site is located within the Central Area and St. Peter Port Conservation Area as shown on the Urban Area Plan Proposals Map.
5. Policy CEN3 supports a mix of uses (including housing) in the Central Area. At the Hearing, the Tribunal was advised that, in the context of this policy, proposals for residential development above commercial units are usually supported, allowing beneficial use of otherwise vacant/underused premises.
6. Policy CEN4 relates specifically to changes of use or redevelopment of retail units at ground floor level in the Central Area. Non-retail uses are only supported where the overall retail function and vitality of the frontage would not be adversely affected and the proposed use is compatible with other Development Plan Policies. The text supporting Policy CEN4 sets out matters to be considered when assessing proposals to change the use of ground floor retail units in this area. These matters are considered in more detail below.
7. Policy CEN5 encourages a variety of shop units in Central Areas. The supporting text identifies Mill Street (amongst other roads) as an area where shop sizes are smaller and rentals are lower, consequently attracting niche retail and specialist services outside the main stream of large retail chains.
8. Policy HO4 sets out the criteria against which proposals for the conversion of existing buildings to provide housing will be assessed. These criteria are considered in more detail under Issue 2, together with the requirement for safe and convenient access embodied in general Policy GEN8.

9. The Tribunal also has a statutory duty to consider whether the proposal would conserve or enhance the character and appearance of the Conservation Area.

## **Main Issues**

10. The Tribunal has identified two main issues in this appeal:
  - (i) The effect of the development on the retail function, character and vitality of the Town Central Area, having particular regard to the loss of the shop unit and the retention of the existing shopfront for display purposes; and
  - (ii) Whether the development would provide satisfactory living conditions for the occupier of the proposed residential unit having particular regard to outlook, daylight and sunlight, and means of access.

## **Issue 1 – Retail Considerations**

11. In general terms, vitality is a measure of how busy a centre is. It is usually assessed using pedestrian flows (footfall) at different times of day, in different locations and over a period of time. Vitality can contribute to viability (for example, increased footfall can support increased turnover and rents).
12. In assessing the effect of the appeal development on the overall retail function and vitality of the Mill Street frontage, the Tribunal has considered the criteria set out in Policy CEN4 and the aim underpinning Policy CEN5.
13. Having regard to the coming and goings of shoppers and window browsers, the Tribunal considers that a successful retail business is likely to generate more activity during trading hours than a small, single person residential unit, where the level of activity is likely to be confined to the journey to and from place of employment at the start and finish of the working day, plus occasional shopping trips and social outings/visitors in the evenings and at weekends.
14. Although the existing shop front would be retained and the shop window used for advertising/display purposes, the front part of the premises would not be used for active retail trading. Whilst the retention of a shop window display is likely to provide some visual interest in the street scene, in our opinion, it is unlikely to generate activity *per se*.
15. Rather than being accessed directly from Mill Street, the residential unit would be accessed from the rear alley with an option to turn left on to Mill Street or right on to Le Bordage at the steps. This arrangement would be likely to further reduce the level of activity in Mill Street compared to an active shop unit accessed directly off the street.
16. Given the characteristics of residential use, evening activity in the area might be enhanced by the appeal scheme. However, in our opinion, the overall level of activity and footfall in Mill Street during trading hours is likely to decrease for the reasons stated, to the detriment of the area's vitality.

17. Mill Street and its seamless continuation, Mansell Street, effectively form one long, narrow, meandering pedestrianised shopping street linking Market Street and Le Petit Carrefour at its lower, eastern end and Contrée Mansell and Trinity Square at the higher western end. The appeal site is located about half way along the overall frontage, beyond a second bend in the road when walking uphill towards Trinity Square.
18. Based on our observations walking in the area, the appeal site is at a pivotal point along the Mill Street/Mansell Street frontage between the relatively stable lower end of the street and the upper end of the street where there is a noticeable decrease in active trading generally, and retail use in particular.
19. Beyond the appeal site traveling west, the number of shops actively trading in Mill Street/Mansell Street is relatively small. Many of the retail units are vacant, even though some have been refurbished and/or have permission for other uses in place to attract a wider range of potential occupiers. Most of the units currently trading in this part of the street fall into non-retail use classes, including hot food takeaways, restaurant and cafés, and businesses (such as estate agents, hairdressers, barbers, beauty and massage therapists) which offer professional or financial services to visiting members of the public.
20. The picture is different on the lower part of the street, to the east of the appeal site. Whilst there are a few vacant premises, most of the units are actively trading with the majority in retail use, plus a mix of cafés/restaurants, and businesses offering services to visiting members of the public.
21. Using the appeal premises for residential purposes would further tip the balance away from retail use at the upper end of Mill Street/Mansell Street. The consequent reduction in footfall and activity during trading hours could, in our view, undermine efforts to bring empty shop units in this part of the street back into active use. It might also result in pressure for long term empty units to be converted to residential use, the cumulative impact of which would further reduce activity, resulting in the long term loss of trade in this area. Such considerations weigh against the appeal proposal.
22. Whilst there is already a high proportion of non-retail uses in Mill Street/Mansell Street, most of those currently trading offer financial or professional services to visiting members of the public, or provide food for consumption on or off the premises, in keeping with the “niche market” and “specialist services” which Policy CEN5 encourages in this area. Residential development at the appeal site would not contribute to, or enhance, the range of niche market retailers or specialist services available in the area.

### **Conclusion on Issue 1**

23. Taking all these matters into account, Tribunal concludes that the appeal proposal would adversely affect the niche retail market and specialist service function of Mill

Street/Mansell Street and harm vitality in this area, in conflict with the UAP Policies CEN4 and CEN5. The retention of the existing shop front with a small depth display area is insufficient in our view to outweigh this harm.

24. In reaching this conclusion, we have sympathy with the appellant's difficult financial circumstances. We accept that should the shop be vacated, this would reduce footfall in the street (although based on the current level of trading from the premises, this loss would not appear to be significant).
25. We also acknowledge the desirability of finding a suitable occupier should Amazing Cakes cease trading completely from these premises. In this regard, the Tribunal was made aware at the hearing that a vacant shop unit near the appeal site has permission for Class 21 use (offering financial and professional services to visiting members of the public) to broaden its appeal to a wider range of potential occupiers. However, it does not appear that this possibility has been actively considered or pursued in respect of the appeal premises, notwithstanding the lack of interest from potential retail occupiers.
26. There is no evidence before us to show how the current level of vacancies or proportion of retail to non-retail uses in Mill Street/Mansell Street has changed over time, or demonstrate unequivocally an unmet demand for, or surplus supply of, small retail units in the area. We are therefore unable to reach an informed view on whether the existing level of vacant units is a long term problem or a short term blip, such as occurs when a number of leases fall to be renewed at the same time or owners await the adoption of a new Development Plan before reviewing the development potential of their portfolio. Whilst there is no dispute that the marketing of the premises has been adequate over the last two years, we do not know whether the rental sought (which we were advised has been fixed at a level sufficient to cover mortgage repayments) is reasonable for a unit of this size. We have therefore given limited weight to such considerations in reaching our conclusion.
27. When questioned at the Hearing, Ms. Hare advised that under the Island Development Plan (which has been adopted since the appeal application was determined) the appeal site is no longer in the "Core Area" and that the current policy context offers more flexibility in terms of alternative uses. The Tribunal notes this position. However, it is not for us to express a view on any alternative uses as part of this appeal decision. To do so would fetter the response of the Development & Planning Authority in relation to any subsequent pre-application discussions and/or future applications.

## **Issue 2: Living Conditions Considerations**

28. The proposed residential unit would comprise a kitchenette and shower room on the lower floor, with access on to the alleyway at the rear, and a bedsitting room on the upper floor (ground level on the Mill Street frontage) partitioned off from the shop window display area and shop door on to Mill Street. The unit would be single aspect, using existing windows on the lower floor, with a large new window being installed at the upper level where there is external evidence of a smaller window having been

infilled at some point in the past.

29. The appeal building is located at a pinch point in the rear alley, directly opposite the blank façade of a four storey structure which appears to be part of Le Cour du Moulin apartments, which front Le Bordage but have an emergency means of escape on to the alley at the rear. This four storey structure (plus roof) is set at an angle some 2.15m to 3.00m from the rear wall of 35 Mill Street where the existing and proposed new windows serving the proposed new residential unit are, or would be, located.
30. The windows serving the proposed residential unit would face south, so (in theory) should benefit from direct sunlight. However, given the overall height and proximity of the façade of the four storey structure sited immediately opposite the south facing elevation of the appeal building, the Tribunal considers it unlikely that any direct sunlight would reach these windows at ground and first floor levels. For the same reason, daylight levels within the residential unit (which, in simple terms, relate to the amount of sky visible through a window) would also be unacceptably compromised.
31. Furthermore, given its height, unrelieved façade and proximity to windows on the south side of the appeal building, the Tribunal considers that the four storey structure would dominate views from the windows serving the proposed residential unit, and result in an oppressive and somewhat claustrophobic outlook for the occupier(s), to the detriment of their living conditions. The fact that these are the only windows serving the single aspect dwelling reinforces our concern.
32. The alley which would provide the sole means of access to the proposed residential unit is narrow and has an irregular shape, with odd corners largely hidden from the type of active surveillance normally found on a residential street as the height, relationship and proximity of surrounding buildings restrict views from windows facing into this area. Whilst the low level lighting at Le Cour du Moulin apartments' emergency exit may be adequate for a means of escape in an emergency, the Tribunal has concerns about its suitability for regular, daily use, given the alley's uneven surface of and irregular shape. We were unable to assess this matter during our daytime visit. However, it adds weight to our main concerns relating to daylight, sunlight and outlook from the windows serving the proposed residential unit.
33. There are some other residential units accessed off this alley. However, some of these units do not appear to benefit from planning permission while others were granted permission under a different Development Plan and in a different planning policy context. Consequently, whilst noting the presence of these units, it has not influenced our decision on this appeal.

## **Conclusion on Issue 2**

34. For the reasons set out above, the Tribunal concludes that the proposed residential unit would not provide a satisfactory living environment having particular regard to daylight, sunlight, outlook and access, in conflict with the requirements of Policies HO4 and GEN8.

35. In reaching this conclusion, the Tribunal notes that the UAP does not specify rigid guidelines in respect of residential amenity. However, Annex 3 to the UAP makes it clear that the lack of specified standards does not mean that development which will result in overshadowing or loss of outlook (amongst other things) will be tolerated. One of the amenity objectives is to ensure that all habitable rooms receive adequate daylight and at least one main window in a principal room should receive direct sunlight, if at all possible. The appeal scheme fails to achieve this objective for the reasons stated.
36. Our conclusion on this issue is consistent with the general thrust of appeal decision PAP/013/2012 (The Wing, St. Julian's Cottage) drawn to our attention by the Development & Planning Authority. However, the urban context of the apartments at Victoria Road drawn to our attention by the appellant, is very different to the alley at the rear of Mill Street and, in our view, is not comparable to the proposal before us.
37. At the Hearing, the appellant suggested other options to improve daylight and sunlight reaching the windows of the proposed residential unit. However, these options are not before us in this appeal and we have not taken them into account in reaching our decision.

#### **Conservation Area Considerations**

38. Bearing in mind that no change is proposed to the Mill Street frontage and having regard to the small size of the unit, we do not consider that the appeal proposal would harm, and would thereby conserve that character and appearance of St. Peter Port Conservation Area.

#### **Overall Conclusion**

39. The Tribunal has considered all other matters raised in written submissions, discussed at the Hearing and seen during its site visit. None of these matters affect the Tribunal's conclusion under the provisions of Part VI section 69 of the Land Planning and Development (Guernsey) Law, 2005, that the Planning & Development Authority's decision to withhold planning permission in this case was justified, and that the appeal should be dismissed.

**Linda Wride Dip TP MRTPI  
Presiding Member**

**Date of Decision: 19<sup>th</sup> March 2017**