

**THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005**  
**AND THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS)**  
**ORDINANCE, 2007**

## **NOTIFICATION OF GRANT OF PLANNING PERMISSION**

**PROPOSALS:** Change of use of kitchen in dwelling-house (residential use class 1) to takeaway service (residential use class 5), (retrospective).

**LOCATION:** Sihanouk, Clos Des Isles, Les Banques, St. Sampson.

**APPLICANT:** Ms C Whitty

This permission is granted under the terms of Sections 15 and 16 of the Land Planning and Development (Guernsey) Law, 2005 (the 'Law').

**Date of Grant of Permission:** 12/04/2022

This notification of grant of permission refers solely to the proposals referred to above as described in your application received as valid on 03/02/2022 and the drawings referred to below. This grant of permission is subject to the following conditions:-

**Drawing Nos:** Block Plan (1:200), Floor plans (1:50) and letter from the applicant, Charnai Whitty dated 16/12/2021

**Application Ref:** FULL/2022/0131

**Property Ref:** B00010D022

**Conditions and reasons:-**

1.All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Authority under the Law.

Reason - To ensure that it is clear that permission is only granted for the development to which the application relates.

2.The development hereby permitted and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of The Building (Guernsey) Regulations, 2012 as are applicable to

them, and no operation to which such a requirement applies may be commenced or continued unless (i) plans relating to that operation have been approved by the Authority and (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Authority when approving those plans, for the purpose of securing that the building regulations are complied with.

Reason - Any planning permission granted under the Law is subject to this condition as stated in section 17(2) of the Land Planning and Development (Guernsey) Law, 2005.

3.The business use hereby permitted shall be operated in accordance with the letter from Charnai Whitty dated 16/12/2021.

Reason - Permission has been granted on the basis that the use will be limited to that outlined above. Any other use or change to operating arrangements is likely to raise different planning policy considerations.

4.The use of the site shall revert to the previous use and the dwelling shall revert to a single dwellinghouse, as defined in Residential Use Class 1 of the Land Planning and Development (Use Class) Ordinance, 2017 or in any provision equivalent to that Use Class in any Ordinance revoking or re-enacting that Ordinance when the premises is no longer occupied by the named applicant in this case, Charnai Whitty.

Reason - To manage the possible future impact of the home based employment on residential amenity should the operator of the business change.

**Expiry Date: This permission will cease to have effect on 11/04/2025 unless development is commenced by that date.**

**ADVICE AND OTHER REMARKS:-**

This permission is given under the Land Planning and Development (Guernsey) Law, 2005. This decision does not override or prejudice any legal rights or constraints which exist in relation to the application site.

Please note that the decision to grant planning permission is based on the information contained in your letter dated 16/12/2021. This indicates that your proposal involves home working and thus falls within Residential Use Class 5 of the Land Planning and Development (Use Classes) Ordinance, 2017. This is defined as:

'Use of any dwelling principally as a permanent residence for one household but also, by a member of that household, for professional or business purposes or retail trade or business and carried on in not more than two rooms but which does not involve -

- (a) storage of hazardous or odorous materials,
- (b) a use falling within use classes 26 or 27 or for any general, or special industrial purpose, or
- (c) any other use which could not be carried on without material detrimental effects on a neighbouring property.'

Any significant change in the way in which the business is run from that described in the above letter may mean that the use no longer falls within Residential Use Class 5, thus resulting in the need for a separate grant of planning permission. Please contact the Planning Service prior to making any changes to the takeaway operation at Sihanouk.

### **Effect of planning permission:**

Section 18 of the Land Planning and Development (Guernsey) Law, 2005 ('the Law') defines the effect of the planning permission hereby granted, namely:

- (1) Planning permission ceases to have effect unless the development permitted by it is commenced within a period of three years immediately following the date on which it is granted (or such shorter period as may be specified in the permission).
- (2) Planning permission enures for the benefit of the land concerned and of every person for the time being having an interest in it.
- (3) Any conditions subject to which planning permission is issued are enforceable in accordance with the provisions of Part V of the Law.
- (4) Planning permission for the erection of a building is only permission to use it for the purpose specified in the permission or, subject to any restriction so specified, for any other purpose for which it is designed.
- (5) Planning permission is only permission to carry out the development specified in it (subject to any conditions so specified), and does not imply the giving of any other approval or consent required under this Law or any other enactment or under any rule of law.

### **Right of appeal against planning decisions:**

Your attention is drawn to the provisions of Section 68(1) of the Land Planning and Development (Guernsey) Law 2005, which provides a right of appeal, on the merits against a decision to grant planning permission subject to conditions (except a building condition), to the Planning Tribunal, which is independent of the States of Guernsey. An appeal to the Planning Tribunal under section 68 of the Law against

this decision must be made before the expiry of the period of six months beginning with the date on which the Authority made this decision. The official Appeal Notice Forms are available on the States of Guernsey website at [www.gov.gg/planningpanel](http://www.gov.gg/planningpanel) and must be completed with all enclosures in multiples as requested and received within the six months deadline.

**Copy of representations made:**

In reaching this decision the Authority took into account any written consultations made under Section 11(1) of the Land Planning and Development (General Provisions) Ordinance, 2007 ('the Ordinance'). A copy of any consultation responses made under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

**Other Remarks:**

Please note that any work which abuts or affects the public highway requires prior approval by Traffic and Highway Services. Please contact Traffic & Highway Services ([highways@gov.gg](mailto:highways@gov.gg)) for further advice. You must also ensure that any access/es to the development are constructed to meet the existing road/footway levels in accordance with their requirements.

**This document is not a Building Licence and confers no approval under the Building Regulations.**

**A separate Building Control Licence may be required and it is the responsibility of the developer to ensure that ALL necessary consents are obtained and that any pre-commencement conditions are discharged prior to development being commenced.**

**A J ROWLES**

Director of Planning  
Planning Service





**PLANNING APPLICATION REPORT**

**Application No:** FULL/2022/0131  
**Property Ref:** B00010D022  
**Valid date:** 03/02/2022  
**Location:** Sihanouk Clos Des Isles Les Banques St. Sampson Guernsey  
GY2 4AP  
**Proposal:** Change of use of kitchen in dwelling-house (residential use class 1) to takeaway service (residential use class 5), (retrospective).  
**Applicant:** Ms C Whitty

**RECOMMENDATION** - Grant: Planning Permission with Conditions:

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1. All development authorised by this permission must be carried out and must be completed in every detail in accordance with the written application, plans and drawings referred to above. No variations to such development amounting to development may be made without the permission of the Authority under the Law.

Reason - To ensure that it is clear that permission is only granted for the development to which the application relates.

2. The development hereby permitted and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of The Building (Guernsey) Regulations, 2012 as are applicable to them, and no operation to which such a requirement applies may be commenced or continued unless (i) plans relating to that operation have been approved by the Authority and (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Authority when approving those plans, for the purpose of securing that the building regulations are complied with.

Reason - Any planning permission granted under the Law is subject to this condition as stated in section 17(2) of the Land Planning and Development (Guernsey) Law, 2005.

3. The business use hereby permitted shall be operated in accordance with the letter from Charnai Whitty dated 16/12/2021.

Reason - Permission has been granted on the basis that the use will be limited to that outlined above. Any other use or change to operating arrangements is likely to raise different planning policy considerations.

4. The use of the site shall revert to the previous use and the dwelling shall revert to a single dwellinghouse, as defined in Residential Use Class 1 of the Land Planning and

Development (Use Class) Ordinance, 2017 or in any provision equivalent to that Use Class in any Ordinance revoking or re-enacting that Ordinance when the premises is no longer occupied by the named applicant in this case, Charnai Whitty.

Reason - To manage the possible future impact of the home based employment on residential amenity should the operator of the business change.

## **INFORMATIVES**

This permission is given under the Land Planning and Development (Guernsey) Law, 2005. This decision does not override or prejudice any legal rights or constraints which exist in relation to the application site.

Please note that the decision to grant planning permission is based on the information contained in your letter dated 16/12/2021. This indicates that your proposal involves home working and thus falls within Residential Use Class 5 of the Land Planning and Development (Use Classes) Ordinance, 2017. This is defined as:

'Use of any dwelling principally as a permanent residence for one household but also, by a member of that household, for professional or business purposes or retail trade or business and carried on in not more than two rooms but which does not involve -

(a) storage of hazardous or odorous materials,

(b) a use falling within use classes 26 or 27 or for any general, or special industrial purpose, or

(c) any other use which could not be carried on without material detrimental effects on a neighbouring property.'

Any significant change in the way in which the business is run from that described in the above letter may mean that the use no longer falls within Residential Use Class 5, thus resulting in the need for a separate grant of planning permission. Please contact the Planning Service prior to making any changes to the takeaway operation at Sihanouk.

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## **OFFICER'S REPORT**

### **Site Description:**

Sihanouk is a semi-detached dwelling situated to the south of Clos Des Isles. The property is a two-storey dwelling with render exterior and tiled roof. Many

properties in the Clos are of the same design and appearance. The frontage of the property has been hardsurfaced and provides two off-road parking spaces. Close Des Isles is a private clos where matters relating to parking would be managed by way of Terre à l'amende signs.

The site is located Outside of the Centres as designated in the Island Development Plan.

**Relevant History:**

Pre-application advice was sought in this case.

**Existing Use(s):**

01 dwellinghouse

**Brief Description of Development:**

The application seeks retrospective planning permission for the change of use of part of the dwelling (the kitchen) to home based business offering hot food to takeaway. The application submission sets out that no changes are required to the property as the existing kitchen is sufficient to prepare Asian food to order. No additional staff are employed in connection with the business operation and the business operates between 5pm and 7pm on Fridays and Saturdays only with an average of 4 customers each evening. One parking space at the property is kept clear for customers.

**Relevant Policies of any Plan, Subject Plan or Local Planning Brief:**

Island Development Plan policies:

GP14: Home Based Employment

GP8: Design

GP9: Sustainable Development

IP9: Highway Safety, Accessibility and Capacity

**Representations:**

14 letters of representation have been submitted, objecting to the application and raising the following points:

- The proposal is not in keeping with the residential area – a family Clos with children often walking, riding bikes etc in the Clos. It shows no consideration for other property owners and there is a risk of injury
- The applicant should find more suitable premises from which to operate a takeaway
- There are numerous takeaways close by

- Concerns exist that the property would be sold and the business would become busier with longer opening hours
- They underestimate the number of takeaways they will be doing – over time this could significantly increase during a two-hour period or the business could operate for longer
- Facebook shows the business as “always open” with numerous opening hours, inviting people to attend during the day and evenings, to collect any time/day
- The clos is particularly quiet during the evenings and customers driving into the clos and stopping to collect an order with the engine running would cause nuisance
- The change of use will affect the number of cars going into the Clos, every day and late into the evenings, there are already a lot of cars, without adding more which will generate noise pollution
- Each of the 48 domestic properties has a minimum of two vehicles which means that at least 96 residents cars regularly use the Clos
- The road is not suitable for a takeaway use, the junction is onto a busy road
- Children play in the Clos and an increase in traffic will impact on their safety
- Parked cars would block the access to and from the rear of the Clos
- There is nowhere for customers to park, parking is already an issue in the Clos, cars speed in the close, park and block driveways or use private driveways when visiting properties in the Clos
- There is a high risk of damage to residents cars
- The property deeds state that no pavement parking is permitted
- Cars are not permitted to pull up outside the house due to the road narrowing and the area is on a tight blind corner making pickups dangerous (for pedestrians and other road users)
- Odours from the cooking causes nuisance to adjoining residents both inside and when using their garden – this will worsen as the business expands
- The use should be required to cease until the outcome of the planning application
- People using the side path to collect their takeaway will result in the neighbours dog barking
- Additional refuse connected with the use and impact on drainage is a concern – two food waste bins per week
- There are Estate legal agreements in which there are financial responsibility for use and liability for the roads and services (including drains) and were formed on the basis of private ownership, not business use – business use should pay a greater share of the Clos costs
- There is a serious rat infestation behind properties in the Clos
- The site notice has not been displayed (at the time of writing)
- The proposed use will devalue properties
- Would the grant of permission for this development set a precedent for other businesses to operate in the Clos, e.g. vehicle servicing from a garage?

### **Consultations:**

Office of Environmental Health and Pollution Regulation – raise no objections to the application.

OEHPR also advised that the food business has been inspected and currently OEHPR would not expect the business to change their extraction system or waste arrangements given the low level of food being produced commercially. However, as a commercial food business this would not make them exempt of being investigated should an odour nuisance complaint be received to OEHPR. Should the business expand and more food be produced commercially OEHPR may expect the business to upgrade their extraction system and waste arrangements to suit.

Traffic and Highway Services – The Clos des Isles is a private estate, and therefore Traffic and Highway Services are limited in respect of the comments that can be made in relation to vehicle movements within the estate. This said, THS can confirm that the sightlines of a driver egressing from the estate onto Les Banques meet the recommended sightline for the Inter-Harbour Route.

Although the sightline standard is met, THS concerns around this application would be centred on the ability of such an application to be conditioned or granted in such a manner as to not result in such an intensification of use, which then manifests itself into a material impact on the traffic flows past the estate. Given the location of the dwelling within the estate, THS consider that the likelihood of this occurring is minimal based on the information contained within the application, but that without strict conditioning or enforcement, that a noticeable intensification of vehicle movements in and out of the estate would result.

Possibly more pertinent to the application, are the parking arrangements within Clos des Isles itself. As a private estate, there is no public parking provision, and therefore if THS were considering this application in terms of a public estate, concerns would be cited from both a road safety and traffic management perspective, given that the traffic movements associated with such a take-away service which is dependent on patrons either collecting food, or delivery drivers delivering food to patrons. In either event, I struggle to see how these vehicles would be accommodated given that all parking is owned by individual property owners. Having carried out two site visits (on Friday evening after we spoke about this site, and then the following Tuesday evening) to observe parking, traffic movements and vehicle egress onto Les Banques, I consider it reasonable that THS object to the application on the basis that the likely increase in traffic movements within the estate, coupled with lack of parking that could be used by patrons, will lead to an increase in road safety and traffic management concerns should the application proceed.

### **Summary of Issues:**

The issues in this case relate to the principle of the proposed use, the impact of the development on residential amenity, highway safety and parking.

## **Assessment against:**

### **1 - Purposes of the law.**

The objectives set out in Section 1(2) of The Land Planning and Development (Guernsey) Law, 2005, 'the Law', have been considered and this report forms part of the assessment, with policy issues set out in Section 2 below.

### **2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.**

#### **Principle of home-based business**

The Island Development Plan outlines that working from home can allow people, with low numbers of employees, to start up a low intensity business at their home with very little initial outlay in premises costs, provides flexibility for workers and lessens the need to travel to the principal workplace and represents a good example of sustainable development. Policy GP14 offers support for home based business where it will not have an adverse impact on neighbouring residents or the surrounding area as a result of increased activity and disturbance. The IDP also sets out that in order to protect the amenities of nearby residents, conditions may be attached to any planning permission for home based employment limiting the hours of work and the types of activities that can be carried out and restricting the business to the occupier of the dwelling. Such conditions may help alleviate some concerns raised regarding the future expansion of the business operation because any deviation from the approved days/hours would be the subject of a further planning application and could represent a business operation that goes beyond the realms of Policy GP14.

The application relates to a small-scale hot food takeaway operation undertaken by one person in a residential dwelling and operated for two early evenings per week, with a total of 4 hours a week associated with customers visiting the Clos to collect food. The primary use of Sihanouk clearly remains as a unit of residential accommodation used by the occupier in line with the aims of Policy GP14.

The impact on residential amenity must also be assessed in relation to GP14 and other policies in the Plan and is considered in more detail elsewhere in this report.

#### **Impact on residential amenity**

Concerns have been raised through the public consultation process regarding odours associated with the style of food offered from the premises however, the Office of Environmental Health and Pollution Regulation raise no objections to the proposals. Given the limited scale of the use, just two nights a week, there is no evidence to suggest that odours associated with Asian cooking is any worse than if the occupiers of any house in the Clos prepared such meals for their own consumption (just

because the volumes are greater does not mean that the smells associated with it will also be more).

The potential for visitors to cause nuisance and disturbance to neighbouring residents (and dogs) is also considered to remain within acceptable limits given that on average 4 collections are made on each of the two days (approximately 8 per week). Whilst it is noted that collection from the rear of the property may generate some additional activity along the shared path between the site and neighbouring property, the properties to the east are staggered, set at an angle to the road to Sihanouk and with a garage between the two properties. The increased use of the side access associated with the limited business operation as set out in this submission is not considered sufficient to justify the refusal of planning permission.

In these respects, the scheme meets the aims of Policies GP8, GP9 and GP14 of the Island Development Plan.

#### Parking and road safety

Key concerns raised in this case relate to traffic generation, the speed of vehicles using the Clos and the impact this activity has on road safety in a Clos that is already heavily parked as evidenced by a number of 'No Parking/Private Parking' signs on display. Matters raised relating to illegal parking, parking on private property and property deeds would ultimately be private civil matters that cannot influence the determination of a planning application and may require the involvement of the Police. The private nature of the Clos takes the management of parking beyond the control of Traffic and Highway Services and the comments received from THS assess the Clos as though it were a public highway within their control, which it is not.

The applicant sets out that one off-road parking space is made available on Friday and Saturday evenings for collections, although this may displace parking associated with the property onto the Clos road albeit for a limited period. In this case, there would be no means through the grant of planning permission to manage or stagger collection times to avoid multiple vehicles arriving at the same time when only one space is available for use. Whilst in some home-based business cases the arrival of customers/clients is staggered to avoid congestion this is generally due to a different business operation where clients are seen on a one-to-one basis. The nature of the takeaway operation is such that it would be unreasonable and unenforceable for the Planning Service to control the matter by way of a planning condition.

Although there may be some congestion in the Clos if more than one vehicle arrives at the premises at the same time, this would not represent such a significant change to the vehicle movements associated with this large Clos, with the comings and goings associated with any of the properties and where multiple vehicles may access or exit the Clos at the same time or in a short period of time (e.g. in the morning/at the end of the working day).

During the evening the number of people at home will increase and therefore residents using their own off-road parking and utilising the road for overflow parking will increase. As a result, the likelihood of customers parking on private property will be less likely, blocking the turning point at the end of the private clos will be infrequent and appears to be permitted (where there is a 'short stay' parking sign in place). Furthermore, vehicles paused in the Clos road for the duration of a takeaway collection will be brief and will not unacceptably impede the flow of traffic in the Clos.

There are therefore, insufficient grounds to demonstrate that the low level of takeaway operating from this premises would result in an unacceptable increase in vehicle movements in the Clos nor that approximately 4 vehicles per Friday and Saturday night would have an unacceptable impact on parking in the private Clos. The scheme therefore accords with the aims of the IDP in this respect.

### Conclusions

It is acknowledged that an intensification of the use (days of the week/hours of operation/number of customers or introduction of delivery service from the address) could have a greater impact on the Clos parking and Clos residents. It would be reasonable therefore to impose a planning condition to limit the takeaway use in order that it operates only in accordance with the details contained in this application relating to days/hours of operation, parking provision and customer levels. Any deviation from such a planning condition would represent a breach of planning control that may be the subject of a Planning Enforcement investigation and may require the submission of a further planning application.

In view of the above, it is recommended planning permission is granted for the proposed change of use.

### **3 - General material considerations set out in the General Provisions Ordinance.**

In addition to the consideration of policy issues, Section 13 of the Land Planning and Development (General Provisions) Ordinance, 2007 identifies other material planning considerations which could be relevant. These include; the appropriateness of the development in relation to its surroundings in terms of design, layout, scale, siting and materials; the likely effect on the character and amenity of the locality; any possible fall-back position by way of extant planning permissions or exempt development; the likely effect on the reasonable enjoyment of neighbouring properties. These issues where relevant are considered above.

### **4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).**

The proposal would have no adverse impact on protected trees, buildings or sites.

Date: 01 April 2022

