

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005

AND SECTION 19 OF THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS) ORDINANCE, 2007

NOTIFICATION OF REFUSAL OF PLANNING PERMISSION

PROPOSALS: Install emergency door to north elevation (Retrospective)
(Revised).

LOCATION: Grandview House, Les Vardes, St. Peter Port.

APPLICANT: Tepe Limited

I refer to the application referred to below received as valid on 22/02/2022 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 07/07/2022

Drawing Nos: Jason Hobbs Architectural Services Ltd: 5821/A/3a

Application Ref: FULL/2022/0460

Property Ref: A408050000

The Development & Planning Authority has decided to refuse your application under the provisions of section 16 of the Land Planning and Development (Guernsey) Law, 2005 for the following reasons:-

1. The installation of a door located to the rear elevation of the recently approved extension (FULL/2018/1758), opening out onto the private amenity space of neighbouring properties, does not achieve a 'good' standard of design for the purposes of Policy GP8, or respects the amenities of neighbouring residents for the purposes of GP9 and GP13.

If approved, the proposal would lead to a loss of privacy to an unacceptable degree and therefore have a significant and unneighbourly effect on the amenities of neighbouring residents to the north of the application site, particularly no.5 Montville Grove, contrary to Island Development Plan Policies GP8, GP9 and GP13.

OTHER REMARKS:-**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, against a decision to refuse an application for planning permission or outline planning permission to the Planning Tribunal on the merits. 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.

Copy of representations made

In reaching this decision the Development & Planning 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 to the Authority under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

A J ROWLES

Director of Planning
Planning Service



PLANNING APPLICATION REPORT

Application No: FULL/2022/0460
Property Ref: A408050000
Valid date: 22/02/2022
Location: Grandview House Les Vardes St. Peter Port Guernsey GY1 1BG
Proposal: Install emergency door to north elevation (Retrospective)
(Revised).
Applicant: Tepe Limited

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The installation of a door located to the rear elevation of the recently approved extension (FULL/2018/1758), opening out onto the private amenity space of neighbouring properties, does not achieve a 'good' standard of design for the purposes of Policy GP8, or respects the amenities of neighbouring residents for the purposes of GP9 and GP13.

If approved, the proposal would lead to a loss of privacy to an unacceptable degree and therefore have a significant and unneighbourly effect on the amenities of neighbouring residents to the north of the application site, particularly no.5 Montville Grove, contrary to Island Development Plan Policies GP8, GP9 and GP13.

OFFICER'S REPORT

Site Description:

The application site comprises a detached dwelling-house located north of Ruelle Godfrey, St. Peter Port. The site is located in a Main Centre Outer Area as defined in the Island Development Plan.

Planning permission was granted in 2018 to erect an extension to the side (west) of the property. No door was shown on the north elevation of the extension.

In 2021, a retrospective application to install door to north elevation of the property facing onto Montville Grove was refused planning permission (FULL/2020/1548).

Relevant History:

FULL/2020/1548	Install door to north elevation (retrospective)	Granted
FULL/2018/1758	Erect extension to side of property.	Granted

Existing Use(s):

Residential.

Brief Description of Development:

Following the previous refusal (FULL/2020/1548), a revised application has been submitted for the same development with additional information to seek to justify the proposal.

The salient points and statements of the agent's letter of 17th February 2022 include:

- The door should be described as an emergency door to be placed under strict operational planning conditions.
- The former assertions in the planning officer's report are incorrect as to the purposes and function of the door.
- *"The July 2019 Agreement was entered into nearly a year before the first Unit sale and was also well known at the time of drafting the June 2020 schedule".*
- The July 2019 Agreement also covenants *"...not to build in the Restricted Zone and to plant or/and screen, along the said 1.75 metres away, planting high enough to prevent the first floor level and above windows of Units 1 to 5 overlooking the Tepe Premises."*
- *"The only issue is the function use of the Door, not how it looks, and such function is deemed poor design only due to how the Door opens and such opening being harmful on privacy to such an extent to be considered "significantly unneighbourly".*
- *"In terms of actual use, the door only 'opens' over the Restricted Zone upon notification to each owner of Units 1 to 5 and at no other times."*
- *The space to which the Door opens is not "private amenity space of neighbouring properties".*
- *"If the frequency is so low and subject to the intensions in Legality, than frequency, nuisance and privacy are not harmed."* It is for all intents and purposes that an emergency door was deemed an appropriate description.
- *Is the Door opening out ideal? Probably not.* Does its very low frequency of controlled access enough, as a standalone issue, to merit refusal.
- Suggested planning condition to be attached to the decision to remove any privacy concerns.

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

GP8 Design
GP9 Sustainable Development
GP13 Householder Development

Representations:

The Authority has received five letters of representations from five parties objecting to the proposal. Grounds for objection principally relate to the following issues:

- Loss of privacy.
- Reference to a 'Restricted Zone' in the 2019 conveyance. It is intended that the Restricted Zone was to prevent structures and trees being located immediately adjacent to the north elevation of the applicant's property to prevent any damage.
- No reference to use the door as an emergency exit, and the applicant can only access land within a 'reasonable timeframe' for limited purposes as set out in the 1998 exchange and agreement.
- No mention of a door in the 1998 agreement.
- Existing security cameras, speakers and lighting should be removed as are contrary to the agreement.
- The 2019 agreement was drawn up prior to the installation of the door in question.

Consultations:

None

Summary of Issues:

Whether the proposal would have any detrimental impacts on the amenities afforded to the occupiers of neighbouring properties.

Assessment against:

- 1 - Purposes of the law.**
- 2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.**
- 3 - General material considerations set out in the General Provisions Ordinance.**
- 4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).**

There has been no material change in circumstances with regards to the design or method of opening of the door in question, nor its relationship to neighbouring properties since the previous refusal of planning permission in 2021 (FULL/2020/1548).

As set out in the agent's letter of 17th February 2022, a number of the aspects of the proposal are separate legal matters and are not material planning considerations under Planning Law. Various points raised such as the applicant's maintenance rights, definition of a 'Restricted Zone', and giving 'reasonable notice' to access neighbouring land, for example, are not Planning related matters and therefore cannot be considered as material to the determination of this application. As previously noted as part of the refusal, any planning permission granted would be without prejudice to the normal legal rights and privileges of third parties which still stands. Consequently, the physical design of the door together with its relationship to neighbouring properties and their amenity can only be considered as part of this revised application.

The door is unchanged since the previous refusal in terms of its location, size, appearance, method of opening, and opens out directly onto neighbouring land to the north with unrestricted access. Despite the stated intentions of how the door is used, the cumulative effect of these factors creates an unneighbourly and harmful relationship to the amenities of neighbouring residents, irrespective if there are right of access obligations. As set out in the previous officer's report:

“the installation of a door in this position represents a loss of privacy to an unacceptable degree, as neighbouring residents should have a reasonable expectation to enjoy their private amenity space without unexpected disturbance of a neighbour from entering onto their land, without advance notice. In this regard, the application is considered to cause a significant adverse effect on the amenities of neighbouring properties for the purposes of GP9 and GP13.”

In light of the agent's additional information submitted, the designation as an 'emergency' door would not change matters as it would still lead to a situation of controlling the use of the door. There would be no way of controlling the use of the door for 'emergency' or 'non-emergency' situations, unless through a planning condition.

However, the management of how the door shall be used is considered to go beyond the scope of applying a planning condition to the decision. The basic notion is that a planning condition should only be applied where, without it, permission would be refused. In this regard, the principles set out in the Planning Practice Guidance represent best practice and are considered to be persuasive in the Guernsey legal context. In order for a condition to be included on a permission, it must first satisfy six tests. These tests must ensure that such condition is; necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. It is considered that in such scenario, attaching a condition would fail to meet a test of enforceability and reasonableness. In particular, such approach is likely to require constant monitoring of how the door is used, especially if complaints from neighbours were to transpire. This in turn would be unreasonable to apply such condition where the monitoring requirements are likely to be intensive and would remain in perpetuity. The term 'emergency' is also subjective and would also need to be considered.

Given that it would not be possible to attach a condition to ensure restricted use of the door (for emergency or non-emergency situations), the application must be refused.

On this basis, the proposal is considered to achieve a substandard level of design and is considered to result in an unneighbourly relationship by virtue of its orientation and relationship towards neighbouring properties. The proposal would therefore conflict with Policy GP8, GP9 and GP13.

Other matters:

Separate to Planning Law, blocking up the door would ensure that access could still be achieved at any time through the Montville Grove development, and would not require the creation of an access door on the north boundary of the application site.

In response to the agent's point that the space to which the door opens is not "private amenity space of neighbouring properties", the strip of land understood to be known as the 'Restricted Zone' appears to fall under the ownership of Units 1-5 of Montville Grove. In addition, the 'Restricted Zone' is not shown to fall under the applicant's ownership as indicated on the drawings submitted as part of the application. Whether the neighbouring properties can build or plant within this zone is a separate civil matter, but it is still regarded in planning terms as their private amenity space.

As set out previously, the potential installation of a surface mounted light on the north elevation of the extension does not comprise development and therefore no action can be taken against this aspect of development under Planning Law.

Date: 04/07/2022