

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: Variations to plans previously approved for Change of Use from House of Multiple Occupancy (Use Class 6) to 3 Residential Dwellings (Use Class 1) - Excavate, create raised terrace, alter steps and erect retaining walls (Protected Trees).

LOCATION: Chateau De La Montagne, La Charroterie, St. Peter Port.

APPLICANT: Mr Gilliland & Mr Smith

I refer to the application referred to below received as valid on 04/05/2023 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 22/11/2023

Drawing Nos: DRP Architecture: 3126/WD-01B.

Application Ref: FULL/2023/0704

Property Ref: A405890000

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 excavation of the cliff face has resulted in harm to the roots of the protected trees which is likely to result in harm to and loss of some of the trees which are subject to the Area Tree Protection Order. The proposal is therefore contrary to Policy GP1 of the Island Development Plan as it results in the loss of a specific distinctive feature which contributes to the wider landscape character and local distinctiveness of the area. In addition, the harm to the roots and loss of the trees in this location will have a significantly detrimental impact on the special character of the Conservation Area and is also contrary to Policy GP4.

2. The proposed raised terraces will result in significant harm to the amenity of future occupants of the units due to the level of overlooking which will be possible at close distances from the raised terraces into the private amenity spaces and dwellings. The height of the retaining wall and dividing walls between the terraces and amenity garden will also appear visually and physically overbearing due to the height and proximity of the development. The steps restrict the future flexibility and adaptability

of Unit 1, limiting the use for all ages and abilities. The retrospective proposal therefore conflicts with Policy GP8a, f and g, Annexe I: Amenities and the general material considerations including the likely effect of the development on the reasonable enjoyment of neighbouring properties.

OTHER REMARKS:-

For the avoidance of doubt, this decision relates only to the excavation and creation of the raised terrace, alteration of the steps and erection of retaining walls as indicated on the plans, and no other works whatsoever.

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/2023/0704
Property Ref: A405890000
Valid date: 04/05/2023
Location: Chateau De La Montagne La Charroterie St. Peter Port
Guernsey GY1 1EJ
Proposal: Variations to plans previously approved for Change of Use from
House of Multiple Occupancy (Use Class 6) to 3 Residential
Dwellings (Use Class 1) - Excavate, create raised terrace, alter
steps and erect retaining walls (Protected Trees).
Applicant: Mr Gilliland & Mr Smith

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. The excavation of the cliff face has resulted in harm to the roots of the protected trees which is likely to result in harm to and loss of some of the trees which are subject to the Area Tree Protection Order. The proposal is therefore contrary to Policy GP1 of the Island Development Plan as it results in the loss of a specific distinctive feature which contributes to the wider landscape character and local distinctiveness of the area. In addition, the harm to the roots and loss of the trees in this location will have a significantly detrimental impact on the special character of the Conservation Area and is also contrary to Policy GP4.

2. The proposed raised terraces will result in significant harm to the amenity of future occupants of the units due to the level of overlooking which will be possible at close distances from the raised terraces into the private amenity spaces and dwellings. The height of the retaining wall and dividing walls between the terraces and amenity garden will also appear visually and physically overbearing due to the height and proximity of the development. The steps restrict the future flexibility and adaptability of Unit 1, limiting the use for all ages and abilities. The retrospective proposal therefore conflicts with Policy GP8a, f and g, Annexe I: Amenities and the general material considerations including the likely effect of the development on the reasonable enjoyment of neighbouring properties.

INFORMATIVES

For the avoidance of doubt, this decision relates only to the excavation and creation of the raised terrace, alteration of the steps and erection of retaining walls as indicated on the plans, and no other works whatsoever.

OFFICER'S REPORT

The site comprises of a double width 3 storey building with a two-storey extension to the southwest. The building has limited parking to the southwest and garden area to the southeast. The rear of the site faces onto the cliff face. The property had been previously subdivided into 6 bedsits.

The application site is within the Main Centre and within a Conservation Area. The building is also Protected. There is an area Tree Protection Order to the rear of the site which covers the area of raised land to the south of the dwelling. This area immediately to the rear of the site is also designated as Important Open Land and Area of Biodiversity Importance, as designated in the Island Development Plan.

Relevant History:

FULL/2022/0946 Change of use from House of Multiple Occupancy (Use Class 6) to 3 Residential Dwellings (Use Class 1), erect extension to south-east (rear) elevation, rebuild dormer windows to south-east (rear) elevation, raise ridge height of extension to north-west (front) elevation, extend to south-east elevation (1.5 storey) and internal works (Protected Building). Approved 04/10/2022

FULL/2022/1769 Variation to previously approved plans for Change of Use from House of Multiple Occupancy (Use Class 6) to 3 residential dwellings (use class 1) - Erect single storey extension to rear of Unit 2. Approved 1/10/2022

FULL/2023/0699 Variation to previously approved plans for Change of Use from House of Multiple Occupancy to 3 residential dwellings (Protected Building) - extend at first and second floor levels to rear of unit 1. Refused 05/07/2023

FULL/2023/1341 Variation to previously approved plans for Change of Use from House of Multiple Occupancy to 3 residential dwellings (Protected Building) - demolish and rebuild and alter Unit 3. Under consideration

FULL/2023/1414 Variation to previously approved plans for Change of Use from House of Multiple Occupancy to 3 residential (Protected Building)- extend at first and second floor levels to rear of unit 1 (revised scheme). Under consideration

Existing Use(s):

06 Residential – House of Multiple Occupancy

Brief Description of Development:

The application proposes a variation to the previous approval FULL/2022/0946 which approved the change of use of the building from HMO to 3 dwelling houses, along with other extensions and alterations to the property.

The variation proposes the excavation of part of the rear of the site, into the existing rock face, to allow for the introduction of an additional raised amenity area for Unit 1, alterations to the steps and erection of retaining walls.

During the consideration of the application, it was noted that works had commenced on site and an additional fee was paid. Amended plans were also submitted to accurately reflect the development which had already been built on site, and so this application is retrospective.

The plans have been revised to clearly indicate precisely what aspect is under consideration in this application, as the plans showed other works which are currently under consideration in separate applications. An informative note has been added to reinforce this.

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

GP1: Landscape Character
GP4: Conservation Areas
GP5: Protected Buildings
GP8: Design
GP9: Sustainable Development

Representations:

None

Consultations:

The Agriculture, Countryside and Land Management Service (ACLMS) were consulted on the impact of the proposal on the protected trees to the rear of the site. Their comments are as follows:

I'm aware development is now continuing on site with the construction of a reinforced retaining structure. It is my opinion that harm would have been done to the trees as a consequence of the excavation. The key - and difficult to answer- question is to what extent have any trees been harmed and what does this mean for the life expectancy of the trees and any detrimental impact, that might have occurred as a result, to amenity e.g. reduced growth, dieback, increased incidence of disease etc.

To gain a clearer picture a full survey of at least the adjacent trees would need to be done which provides distance of trees from the excavated and their diameters at 1.5m above ground. This would give an indication of the proportion of root that might have been lost. However even without any detailed survey one can surmise with a high degree of certainty, from studying the photos you provided, that exposed roots can be seen hanging over the edge of the newly exposed cliff edge. It would be expected that the highest proportion of tree roots are found in the upper layer of the soil profile - typically we know that around 80% of the volume of roots is found in the top 600-800mm of soil and will spread outward from the stem to a distance at least equivalent to

the height of the tree and typically more. From this one can conclude that the roots seen in the photos are very likely tree roots, in the main, with a smaller proportion being understorey vegetation.

In conclusion tree roots have been damaged and lost and the trees will have been harmed. Assessing the impact of this loss is less straightforward because trees are, in general, adaptable to their environment. However the stress caused is cumulative so for example where construction injury to roots is followed by a drought, such as we had in 2022, this can lead to strain on the tree's ability to function. Strain in tree physiology is regarded as irreversible i.e. it leads to decline from which the tree never recovers and this can be expressed in various symptoms which can take up to several years to show visibly.

As you know certain operations in relation to protected trees constitute development under section 5 of the Ordinance:

5. The following operations shall constitute development, irrespective of whether or not they also constitute development in accordance with section 13(1) to (3) of the Law, where they are carried out in relation to a protected tree - (including)

(d) cutting of roots,

(f) any operation likely to change significantly the level of the ground within the root area

Of course where permission has been granted for development within the tree protection area, as defined in BS5837, which necessitates the removal of roots an offence is unlikely to be committed. In terms of mitigation it would be helpful to apply planning conditions (is this now too late?) but options are limited given the nature of the site. It would usually involve applying suitable mulch and/or irrigation. Another option would be to simply monitor the site over time - say five years. Where trees are lost or their amenity is compromised, and this can reasonably be attributed to construction injury, then a condition could be applied requiring the planting and establishment of replacement trees which should leave open the option of planting on another site as a form of offset.

Summary of Issues:

- Impact on amenity
- Impact on the Protected Trees
- Impact on the Protected Building & Conservation Area
- Other considerations

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).**

The principle of the development is acceptable with the change of use of the buildings from HMO to three separate dwellings established by the FULL/2022/0946 application. The application is for a variation to the previously approved plans to introduce raised terraces to the rear of the previously approved dwellings. The works include the excavation of part of the cliff face to the south (rear) of the site, by approx. 4m to allow for the introduction of two raised terraces and three new sets of steps.

Impact on amenity

Under the original consent the three units each had a small rear amenity space enclosed by fencing with an access gate to the communal parking area and the existing steps up the cliff face to the land above.

The revision proposes an extended amenity area for Unit 2, accessed by new steps and introduces an approx. 3.3m by 5m raised terrace. The terrace is approx. 2.3m above the ground level amenity area for Unit 2. It also introduces a raised access and additional amenity area for Unit 1 immediately to the rear of the amenity space for Unit 2. This terrace area is also raised approx. 2.3m above the ground floor level, and links via two new sets of steps from the shared parking area, across the rear of the building and gardens and also provides the only access to Unit 1.

Retaining walls are proposed along the front of the newly excavated cliff face, to a maximum height of approx. 5.2m above the ground level amenity spaces. Walls and fences are also proposed dividing the amenity areas and accesses. A 2m high fence and wall runs along the boundary between the amenity spaces of Unit 2 and access to Unit 1.

The division between the access path to the steps for Unit 2 and the terrace of Unit 2 is an approx. 2.5m high wall from the adjacent ground level. This wall is approx. 1.1m high when measured from the raised terrace of Unit 2, and therefore provides little privacy from direct views from the terrace to ground floor amenity spaces and vice versa. The wall between the ground floor level garden of unit 1 and raised terrace of unit 1 is similar, appearing approx. 3m in height when measured from the adjacent ground floor garden but only 1.1m from the raised terrace allowing for significant views across into the ground floor garden of Unit 2 and into the dwelling itself given the separation distance of only approx 6m from terrace edge to dwelling.

As a result of the location of the proposed terrace areas, immediately adjacent to the ground floor amenity space for each Unit, and the elevated nature of the development, it is considered that proposed terrace areas will significantly compromise the privacy enjoyed by future occupants of all three units.

It would be reasonable to condition a higher wall or combined wall and fence boundary of 1.8-2m along the entire length of the raised terraced and all three sets of stairs to prevent the overlooking concerns but it is not considered that it would be visually acceptable to condition additional walls/fencing/privacy screens in combination with the retaining walls, as this would result in an approx. 4m high enclosure when viewed

from the small ground floor amenity spaces of Units 1 -3, appearing visually and physically enclosing, oppressive and overbearing for future occupants.

In addition, given the location of the only access steps for Unit 1, adjacent to Unit 3, the use of additional wall/fencing would not prevent direct and harmful views into the dwelling and small amenity space of Unit 3.

The stepped access to Unit 1, comprising of two sets of steps each of 9 steps or more, replaces the previously approved largely level access with only two steps. This prevents Unit 1 from being accessible for people of all ages and abilities and limits the flexibility/adaptability of the accommodation. It may also generate problems at the Building Regulations stage as the distance and steps are unlikely to be acceptable with regard to bins.

The proposal therefore conflicts with Policy GP8a, f and g, Annexe I: Amenities and the general material considerations including the likely effect of the development on the reasonable enjoyment of neighbouring properties.

Impact on Trees subject to Tree Protection Order (TPO)

The land to the rear and elevated above the cliff is subject to an area TPO (PT78), and the excavation works to create the terraces and retaining wall have cut back approx. 3-4m into the previously existing cliff face. ACLMS were consulted on this aspect of the application and have advised that tree roots will have been damaged and the resultant stress will lead to strain on the tree's ability to function and this is irreversible and likely to result in the loss of trees. They have concluded that the protected trees will have been harmed by the works. For this reason, the application is contrary to Policy GP1 as it harms the character of the local area through the damage and loss of protected trees.

The trees make a major positive contribution to the landscape character and local distinctiveness of the area. The loss of these trees will have an unacceptable impact on the landscape character and amenity of the locality.

The proposal therefore conflicts with Policy GP1 (Landscape Character and Open Land) of the Island Development Plan, general material considerations and additional material considerations in relation to protected trees of the Land Planning and Development (General Provisions) Ordinance, 2007 and the statutory protection afforded to protected trees by the Land Planning and Development (Guernsey) Law, 2005.

These protected trees also contribute to the character and appearance of the Conservation Area and this assessment is undertaken below.

Impact on Protected Building and Conservation Area

The proposed excavation and works to the cliff face along with the erection of additional steps and retaining walls, is considered to have a slight harmful impact on the setting of the protected building. It is considered that this slight harm would be outweighed by the reasonable aspirations of the property owner, which ensures compliance with Policy GP5.

With respect to the assessment against Policy GP4, the site is situated within the southern part of the St Peter Port Conservation Area, as designated in the IDP. Located within La Charroterie Valley Character Area which leads down the valley from Guernsey's higher plateau to the south and west to the south part of the Old Town and Harbour, the area is characterised by cliff faces and sharp changes in levels providing enclosure and a contrast between the shaded build environment and hillside greenery. The site backs onto an area subject to a TPO providing dense tree cover which is an important edge-of-town informal space elevated above the busy valley. The Conservation Area Appraisal notes the contributions made by natural exposed rock faces, mature vegetation and trees, the strengths of the area including the contrast between the shaded valley bottom and wooded valley sides along with the harm to the character caused by the incremental felling of non-protected trees.

The proposal has resulted in harm to the protected trees, and this therefore will also have a harmful impact on the trees and mature vegetation of the hillside greenery which contributes to the character of the Conservation Area. The proposal is therefore considered to have a negative impact on the Conservation Area.

Other considerations:

The proposed terrace and retaining wall require a large area of excavation cutting back approx. 4m into the existing cliff face to create the upper terrace area. The terrace areas appear to remain outside of the Important Open Land and Area of Biodiversity Importance and so the policy requirements for these areas of designation are not engaged.

The proposal results in high retaining walls being highly visible in the street scene due to the vacant site adjacent (former CI Tyres site). However, this, on balance is considered acceptable due to its set back from the road reducing the prominence and any redevelopment of the adjacent site is highly likely to screen the walls and terraces from external views, reducing the visual impact of the development further. On this basis, despite having some recognised visual impact, it is not considered sufficiently harmful to warrant the refusal of the application.

Summary:

In summary, the retrospective proposal is considered to have resulted in harm to the roots of the protected trees and this is likely to result in the loss of some of the trees which are subject to the TPO. The proposal therefore harms the landscape character and is contrary to Policy GP1. This harm to the trees will also have a significant impact on the character of Conservation Area and is therefore contrary to Policy GP4.

In addition, the proposal will result in significant harm to the amenity of future occupants due to the level of overlooking which will be possible at close distances from the raised terraces into the private amenity spaces and dwellings. The height of the retaining wall and dividing walls between the terraces and amenity garden will also appear visually and physically overbearing due to the height and proximity of the development. The retrospective proposal therefore conflicts with Policy GP8a, f and g,

Annexe I: Amenities and the general material considerations including the likely effect of the development on the reasonable enjoyment of neighbouring properties.

All material considerations as set out in the Land Planning and Development (Guernsey) Law, 2005 and the Land Planning and Development (General Provisions) Ordinance, 2007 have been considered in the assessment of this application.

Date: 21/11/2023