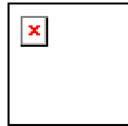
ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL REGARDING COMPLAINTS RECEIVED BETWEEN 1st JANUARY AND 31st DECEMBER 1998

Presented to the States on 7th September 1999 by the Special Committee to consider the relationship between Committees and the States

---



STATES OF JERSEY

STATES GREFFE

140 1999 R.C.31

Price code: E

ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL REGARDING COMPLAINTS RECEIVED BETWEEN 1ST JANUARY AND 31ST DECEMBER 1998

Foreword by Chairman of the Administrative Appeals Panel

Dear Mr. President,

I am pleased to send herewith a copy of the Report of the Panels convened under the Law relating to Administrative Appeals.

You will see from the report that 29 complaints were received by the Greffier of the States, and of that number only nine went to a full Hearing. Of the nine Hearings, the appropriate Board upheld the Committee's decision on three occasions but requested a reconsideration on six others.

You may ask why 20 others did not become the subject of an Appeal Hearing. An analysis of these shows that in several cases the Committee revisited the application after hearing from the Greffier that an Appeal had been requested, and as a result changed its decision. In several other cases the Greffier decided, in consultation with the Panel Chairman, that for various reasons the applicant did not have an arguable case and refused the application.

I am very impressed with the great interest shown by all members of the Panel who bring a commonsense approach and wide

experience to the Hearings. It is of the essence of these complaints, especially with regard to Planning, that they are of a difficult character in relation to decision-making.

I believe that the existence of the administrative appeals facility is of great use to the public at large, more particularly as the time between applying to the Greffier and the hearing is quite speedy, and certainly far speedier than a Court case, and of course need not cost the applicant anything at all.

I would like to thank the Greffier, Deputy Greffier and Committee Clerks for all their valued assistance over the past year, and also the several members who have formed the panels during the year. I welcomed the decision of the States to appoint Mrs. L. Jean King, M.B.E., as a member of the Panel in place of Jurat Sally Le Brocq.

Sadly, the President of the Special Committee concerned with this Law, Senator Vernon Tomes, died towards the end of the year. I pay tribute to his interest and kindness to me since my appointment.

R.R. JEUNE

The following is a summary of the complaints received during 1997, which were not resolved during that year, and those received in 1998 -

Harbours and Airport Committee

(a) Statement of complaint received on 30th July 1997, about matters relating to Jersey Airport.
Hearing held on 28th May 1998 and the Board found that the two complaints were well-founded and were within the scope of Article 9(2) of the Law. The Board regretted that it was unable to request the Committee to reconsider the matter in the particular circumstances of this case, as the complaints referred to acts that had taken place, and did not consist of decisions that were capable of reversal.
Copy of findings **attached at Appendix 1**

Housing Committee

(b) Statement of complaint received on 11th December 1997, about refusal of Committee to grant consent under Regulation 1(1)(g) of the Housing Regulations.
The Committee reconsidered and granted consent.

(c) Statement of complaint received on 15th May 1998, about refusal of Committee to grant consent under Regulation 1(1)(g) of the Housing Regulations.
The Committee reconsidered and granted consent.

(d) Statement of complaint received on 22nd October 1998, about refusal of consent for manageress to live in Guest House (a-h) accommodation.
Under investigation at the end of 1998.

Planning and Environment Committee

(e) Statement of complaint received on 1st April 1997, about rejection of application for housing on land to the rear of La Preference Farm, St. Martin.
Hearing held on 24th February 1998, and the Committee decision upheld.
Copy of findings **attached at Appendix 2**

(f) Statement of complaint received 27th May 1997, about aspects of administration by Committee and officers.
Under consideration at the end of 1998.

(g) Statement of complaint received on 2nd July 1997, about rejection of application to construct residential development on Field 1514, St. Helier.
Hearing held on 16th February 1998, and complaint upheld.
The Committee subsequently granted consent.
Copy of findings **attached at Appendix 3**

(h) Complaint received on 4th August 1997, about rejection of an application to demolish a warehouse at 18, Esplanade, St. Helier and to construct commercial floorspace. Statement of complaint received on 8th December 1997.
Hearing held on 25th and 26th February 1998. Committee decision upheld on the procedure and the facts, but the

Board suggested a reference to the Court on the legal issue.
Copy of findings **attached at Appendix 4**

(i) Statement of complaint received on 4th August 1997 about development by Housing Committee on land in Grouville.
This complaint relates to matters that have also been considered by the States, and means are still being sought, in consultation with the complainants, to resolve the matter.

(j) Statement of complaint received on 27th August 1997, about decision of Committee to grant development permission for the construction of a new dairy unit in St. Ouen.
Application refused.

(k) Statement of complaint received on 15th October 1997, about rejection of application for construction of a conservatory at Cloverley, St. Martin.
Hearing held on 4th February 1998, and complaint upheld. The Committee subsequently granted permission.
Copy of findings **attached at Appendix 5**

(l) Statement of complaint received 13th January 1998, about decision to reject an application for the development of glasshouses on Fields 774, 777 and 778, St. Lawrence and St. Mary.
Hearing held on 27th July 1998. Committee decision upheld.
Copy of findings **attached at Appendix 6**

(m) Statement of complaint received on 2nd April 1998, about rejection of development consent and cancellation of planning permit which had no cessation date.
Application refused, but under reconsideration in light of further evidence received.

(n) Statement of complaint received on 15th April 1998, about a condition imposed on a development permit on property in Grouville.
Application refused.

(o) Statement of complaint received on 11th November 1997, about refusal of permission to construct house on family-owned property.
Application refused.

(p) Statement of complaint received on 20th January 1998, about rejection of application to construct a dwelling in garden in St. Helier.
Application refused.

(q) Statement of complaint received on 27th January 1998, about refusal of planning permission to demolish dwellings and outbuildings and to construct five detached dwellings with double garages.
Application withdrawn as Committee granted consent.

(r) Statement of complaint received on 19th February 1998, about conditions attached to permit for the construction of a conservatory.
Application withdrawn as the Committee granted consent.

(s) Statement of complaint received on 20th February 1998, about various planning applications granted for development.
Application refused.

(t) Statement of complaint received on 25th February 1998, about refusal to construct inside toilet and shower facility in property in St. Ouen.
Application refused.

(u) Statement of complaint received on 25th February 1998, about refusal of planning permission for the construction of a dwelling on site occupied by disused greenhouses on land adjoining La Biarderie, Trinity.
Hearing held on 16th October 1998. Complaint upheld and Committee requested to reconsider within three months.
Copy of findings **attached at Appendix 7**

(v) Statement of complaint received on 4th March 1998, about noise problem from property in St. Helier.
Application refused.

(w) Statement of complaint received on 16th March 1998, about conditions imposed on development in St. John.
Application refused.

(x) Statement of complaint received on 7th April 1998, about rejection of application for the construction of dwellings on open land in St. Helier.
Application withdrawn as the Committee granted consent.

(y) Statement of complaint received on 15th May 1998, about refusal of consent for change of use of a garage to commercial showroom in St. Saviour.
Application refused.

(z) Statement of complaint received on 16th June 1998, about rejection of application to construct three bungalows on Field 248A, St. Brelade.
Hearing held on 25th November 1998. Complaint upheld and Committee requested to reconsider and to seek a States decision on the rezoning of the land before 31st March 1999.
Copy of findings **attached at Appendix 8**

(aa) Statement of complaint received on 14th July 1998, about the rejection of application to construct two dwellings on Field 588, St. Ouen.
Hearing held on 30th November 1998. Committee requested to reconsider within three months.
Copy of findings **attached at Appendix 9**

(ab) Complaint received on 1st September 1998, about development at Beauvoir, Trinity. Further information requested. This application was not progressed as the matter was referred to the States and a Committee of Inquiry established.

(ac) Statement of complaint received on 30th October 1998, about the permission granted for the construction of flats at Grouville Bay Hotel.
Application suspended as matter was referred to the States.

(ad) Statement of complaint received on 7th December 1998, about rejection of retrospective application.
Under investigation at the end of 1998.

APPENDIX 1

Findings of the Review Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 as amended to consider a complaint by Mr. C.H. Egré against decisions of the Harbours and Airport Committee

1. The Board was composed as follows -

Mr. R.R. Jeune, C.B.E., Chairman
Mrs. C.M. Rumboll
Mr. G.C. Allo.

The parties were heard in public in the Old Library, States' Building, on Thursday, 28th May 1998.

The complainant, Mr. C.H. Egré was present and represented himself.

The Committee was represented by the President, Deputy J.T. Johns, and Mr. M. Lanyon Airport Director. Mr. Such, Airport Security Manager, was in attendance.

The complaint concerned the following decisions -

(a) the decision of the Airport Director to release a media statement on the evening of 11th October 1996 regarding fire-fighting facilities at Jersey Airport, and the factual accuracy of the detail in the statement;

(b) the decision of the President of the Harbours and Airport Committee to authorise the issue of photographs of Mr. Dominic Egré (Mr. C. Egré's son) and Mr. Colin Egré in order that their movements could be monitored by Airport staff while they were in the terminal building.

The Board noted that a complaint against two other decisions was not to be determined as the former, relating to termination of employment, had been withdrawn by the complainant, and the latter, relating to the content of a letter to States members, was a matter which was not appropriate for consideration by a Board of Administrative Appeal. Papers circulated separately by Mr. Egré were deemed to relate mainly to the issues not being considered, and it was accordingly disallowed with the exception of two sheets.

2. Hearing

The Board heard the arguments presented by Mr. C. Egré and by Deputy J.T. Johns, President of the Harbours and Airport Committee, and Mr. M.R. Lanyon, Airport Director, and considered the written evidence presented.

3. The Board's findings

Firstly with regard to the media statement -

The Board was not impressed with the informal manner in which this important statement was drafted. The Director said it was the work of the then President and his only Committee contact thereon was a telephone call to the then Vice-President. The other members were not contacted or involved. The Director told the Board that the Fire Chief was involved in the statement, and the Director said he recalled the Fire Chief making some alteration. In view of the fact that Mr. Egré said that the Fire Chief denied this, the Board requested the Fire Chief to elucidate. His reply is quite clear. In his letter dated 12th June 1998 he states "he has no record of the media release on his file and also no recollection of being asked to comment on its factual accuracy". The Board understands the wish of the Airport Authorities to allay fears and make a media statement at that time and is not in a position to comment on its accuracy. Nevertheless it believes that the language used in relation to Mr. Egré was excessive and in the Board's view unjustified and unacceptable issuing from a States of Jersey Department, especially as Mr. Egré had recently been employed by the Airport under Contract to look at certain sectors of the operation.

Secondly with regard to the photograph.

The Board considered that the issue of photographs of Mr. Egré and his son was an improper way of proceeding. The Board was informed that this procedure had never before been used. The Board was also informed that the Airport Authority did not thereby put the Egrés under surveillance but it is difficult to envisage that they could have been issued for any other purpose. If the Airport Authorities believed the Egrés were infringing any rule, then the Police Authority surely should have been used.

The Board considers the action of the Airport Authority was excessive and an infringement of the rights of the Egrés. The Board accordingly finds that the two complaints of Mr. Egré are well-founded and are within the scope of Article 9(2) of the Law in that they were unjust, oppressive and improperly discriminatory.

The Board regrets that it is unable to request the Committee to reconsider the matter in the particular circumstances of this case, as the complaints refer to acts that have taken place, and do not consist of decisions that are capable of reversal.

Signed and dated by -

....
R.R. Jeune Esq., C.B.E., Chairman

....
Mrs. C.M. Rumboll.

....
G.C. Allo Esq.

APPENDIX 2

Administrative Decisions (Review) (Jersey) Law 1982

Review Board: Mr. L. Strong in respect of land to the rear of La Préference Farm, La Grande Route des St. Martin, St. Martin

Public Hearing held on 24th February 1998 in St. Martin's Public Hall, St. Martin

Members present -

R.R. Jeune, C.B.E., (Chairman)
Mrs. C.E. Canavan
D.J. Watkins
J.M.E. Harris, Committee Clerk

P.T. Grainger, of Grainger PDC Ltd., representing Mr. L. Strong - complainant
Senator C. Stein, President, Housing Committee - complainant

Deputy R. Duhamel, Planning and Environment Committee
G.D. Smith, Assistant Director - Development Control, Planning and Building Services
P. Thorne, Director, Planning and Building Services

1. The Hearing had been convened to consider a complaint against a decision of the Planning and Environment Committee to reject an application by Mr. L. Strong to demolish existing commercial buildings and construct nine two-storey residential units, associated garages, parking areas, landscaped areas and access roadway on land to the rear of La Préference Farm, La Grande Route de St. Martin, St. Martin.

2. The Chairman, having convened the hearing, adjourned the meeting to conduct a visit to the site. The Board noted that the site comprised a group of former chicken houses, together with surrounding land, that were being used by four businesses for light industrial purposes.

3. **Summary of the complainant's case**

3.1 The application to develop the site was considered by the Planning and Environment Committee as previously constituted on 31st October 1996, and was refused permission on the following grounds -

(i) "the proposal is contrary to the approved Island Plan policy for the Sensitive Landscape Area of the Agricultural Priority Zone in which there is a presumption against any non-agricultural development;

(ii) the proposal is contrary to the approved Island Plan policy for the Agricultural Priority Zone in which there is a presumption against new non-agricultural development;

(iii) the proposal would result in the unacceptable loss of existing temporary storage and temporary light industrial floor space, not serving the best interest of the community."

3.2 On 19th February 1997 the newly constituted Planning and Environment Committee reconsidered the application, and decided to maintain refusal. There was subsequently an exchange of correspondence between Mr. Grainger, on behalf of the applicant, and Senator N.L. Quérée, President, Planning and Environment Committee.

3.3 Mr. Grainger stated that none of the three reasons for rejection were accepted by the applicant. With regard to the first reason for rejection, the only portion of the development which would lie within the Sensitive Landscape Area of the Agricultural Priority Zone was the proposed access road. The complainant did not consider this to be reasonable, but regarded the second and third reasons for rejection as being more significant.

3.4 The second reason for rejection referred to the approved Island Plan Policy for the Agricultural Priority Zone, in which there was a presumption against new non-agricultural development. In the complainant's view, the Committee's starting point in assessing this matter was that the application was contrary to Island Plan policy. This should not have been the basis for assessment, and the starting point should have been the Island Planning (Jersey) Law 1964, as amended. The Island Planning Law imposed certain obligations upon the Planning and Environment Committee when assessing applications made under that Law, including a provision that the Committee should "ensure that land is used in a manner serving the best interests of the community". It was contended that the

Committee, in rejecting the application, had not acted in a manner serving the best interests of the community.

3.5 Article 3 of the Planning Law provided for the Committee to prepare development plans for the Island, and the Island Plan, approved by the States in November 1987, was the current development plan. The Island Plan was therefore an important and relevant document for the Committee to take into account when considering applications under the Planning Law but, in the view of the complainant, this had not been done in the present case. In the foreword to the Island Plan it was stated that -

> "The Plan is not, and cannot be, an inflexible laying down of future development in detail. It is the foundation and the guide for future development, and will demand constant attention and revision as circumstances change. The need for flexibility in all ways including day to day control of building cannot be over-stressed".

3.6 The Committee was therefore entitled to take a flexible approach when dealing with applications for development in the countryside, and indeed it had taken a flexible approach in the past. Since the adoption of the Island Plan in 1987, the Committee had approved applications in the Green Zone and the Agricultural Priority Zone. In the present case, the development of nine houses would help to meet immediate housing needs. There was a great demand for new housing, and the development of the site under consideration for housing purposes would help to avoid using a similar area of agricultural land in the open countryside in the future.

3.7 The third reason for rejection was that "the proposal would result in the unacceptable loss of temporary storage and temporary light industrial floor space, not serving the best interests of the community". In the present case, it was contended that the Committee had acted against its own policy in rejecting the application. A clear statement on the policy governing commercial uses in the countryside was given in paragraph 7.70 of the Island Plan -

> "There are a number of industrial activities carried on at locations outside the built-up area which are of concern to the Committee. At present all are unsatisfactory because of the lack of proper services and amenities for employees and because temporary planning status prevents improvements being made and proper site management being adopted. A more positive view will now be taken so that a limited but permanent future is assured for some of the existing premises while the use of others is extinguished".

3.8 The Committee had actioned the first part of its policy by approving a number of commercial developments in the countryside but, in the complainant's view, it had failed to action the second part of this policy by extinguishing the use of other light industrial sites, such as the site presently under consideration. Having made inquiries of three estate agents in the week ending 20th February 1998, Mr. Grainger had established that there was approximately 41,000 square feet of storage/warehousing and/or light industrial floor space available within the Island, whilst a further 60,000 square feet would be made available on the new reclamation site under development at La Collette. In view of this situation, it was suggested that the decision of the Committee was unreasonable, and was therefore contrary to Article 9(d) of the Administrative Decisions (Review) (Jersey) Law 1982.

3.9 Senator C. Stein then spoke on behalf of the complainant and stated that in her opinion the site was ideal for family housing. The nine homes would provide accommodation for approximately 35 to 40 people and would be priced in the region of £180,000 to £200,000. This would provide affordable housing to local people, and the development was not opposed by the Agriculture and Fisheries Committee. As indicated by Mr. Grainger, there was a great demand in the Island for new housing, with an estimated requirement for an additional 1,000 dwellings in the next five years. Although there was a need for light industrial sites in the Island, the buildings at La Préference Farm had only been made available on a temporary basis. In addition, the buildings were unattractive and in a poor state of repair, and they offered a mediocre working environment.

3.10 Senator Stein expressed surprise that the Committee had not visited the site, because in her opinion this would have assisted the Committee in its deliberations. In conclusion, Senator Stein stated that a residential development would mean that the land would be used in the best interests of the community.

4. Summary of the Planning and Environment Committee's case

4.1 The Planning and Environment Committee considered that the decision to refuse consent for this development was reasonable and had been made after proper consideration of all the facts. It was contended that the Committee had had proper regard for States and Island Plan policies, as well as the Island Planning Law, in considering the application.

4.2 In terms of States policies, it was recalled that in 1995 the States, in adopting the Strategic Policy Review and

Action Plan "2000 and Beyond", had agreed as a key environmental objective that it should "discourage development in the rural environment". As a means of reaching this objective, the Planning and Environment Committee was requested -

"to reflect in its planning decisions the need to concentrate residential and commercial development as far as is possible within the existing urban area" (Environmental Policies - Section 6).

La Préference Farm was not situated within an urban area.

4.3 In adopting the 1995 Review and Action Plan, the States had also agreed that it should "encourage light industry/service activities to provide for the diversification of the economy", and had asked the Trade and Industry Sub-Committee to bring to the States in 1996 -

"a report identifying in conjunction with the Planning and Environment Committee, the opportunity for increasing the area of commercial floor space within the Island suitable for manufacturing/service activities consistent with the environmental policy objectives".

4.4 The report of the Trade and Industry Sub-Committee was presented to the States on 3rd December 1996 (R.C.36/96), and it contained a request that the Planning and Environment Committee should -

"examine the application of its planning policies with a view to maximising the use of all sites and buildings suitable for industrial/commercial purposes".

Had the Planning and Environment Committee approved the proposed development of nine houses, this would have resulted in the loss of the site for light industrial use.

4.5 In considering the application, it was contended that the Committee had followed its policies as set out in the Island Plan. The purpose of Policy C06 in the Island Plan was to prevent gradual encroachment of residential development into the countryside, and this policy had been observed in the present case. There was a presumption against development in the Agricultural Priority Zone, and the Planning and Environment Committee was not satisfied that in the present case there had been sufficient justification to override this presumption.

4.6 It had been argued that the Committee had not taken proper account of the current housing shortage, but it was emphasised that the application had been considered by the Planning and Environment Committee in October 1996, at a time when the perception of the housing situation was rather different than at the present time. In October 1996 there had been no evidence of the level of housing needs that were now apparent. For example, in a report on residential land availability, prepared by the Planning and Environment Committee and presented to the States on 26th March 1996, it had been stated that -

"at this particular time, there is no evidence of any significant change in the overall housing demand picture and the trend in house prices is supportive of this view".

4.7 The application had been reconsidered by the Planning and Environment Committee in February 1997, and at that time there was no evidence before the Committee of a significant change in the housing situation. A further report on residential land availability, presented to the States by the Planning and Environment Committee in October 1997, concluded that there **was** a significant increase in the need for new dwellings for first-time buyers and the social rental sector. The Planning and Environment Committee had taken due note of this report and was currently seeking to meet the demand for new dwellings. In the first instance, the Committee was in the process of identifying potential housing sites within the built-up areas, i.e. in accordance with the States policy approved in 1995.

4.8 The Committee's view was that it had had proper regard to the housing situation, and that this situation had altered since the application had first been considered in October 1996. Even if there had been a high demand for new housing at the time of the application, this did not mean the need for housing would have been the determining factor in its decision. The Planning and Environment Committee was charged with ensuring that land was used in the best interests of the community, and it had acted reasonably by continuing to allow the site at La Préference Farm to be used for light industrial purposes.

4.9 Deputy R. Duhamel said that he felt that he was well-qualified to speak on the application because he was a member of both the present and previous Planning and Environment Committees, and was also a member of the Trade and Industry Sub-Committee. In his opinion, the Planning and Environment Committee had given proper consideration to all the relevant factors associated with the application. These included the strategic aim of the States

to provide for the diversification of the economy. In this context, it was essential that small start-up units should be made available for small businesses at reasonable cost, and this was precisely the kind of facility that was provided by the light industrial site at La Préference Farm. It was not sufficient merely to state that industrial floor space was available elsewhere in the Island: this floor space should also be appropriate to local needs. The modest nature of the accommodation at La Préference Farm meant that it could be leased to local businesses at an affordable price.

The parties then withdrew from the hearing.

5. The Board's findings

5.1 The Committee, in rejecting an application for a residential development in the Agricultural Priority Zone, had had proper regard for its Policy CO6 as defined in the Island Plan, in which 'there will be a presumption against any new non-agricultural development' in the Agricultural Priority Zone. The Committee had pursued a policy of identifying sites and encouraging developments within the built-up areas of the Island, in accordance with a policy approved by the States in the 1987 Island Plan, and the 1995 Strategic Policy Review and Action Plan "2000 and Beyond''. It could therefore be regarded as having acted properly in this respect.

5.2 The Board was of the opinion that the Planning and Environment Committee had acted reasonably in maintaining the use of the site for light industrial purposes. This was an existing use, and the site provided temporary accommodation of a modest standard which was well-suited to a particular sector of the market.

5.3 The Board, in considering the circumstances of the application, agreed that the Planning and Environment Committee had had proper regard to the housing situation when it considered the application in October 1996, and again in February 1997. The Committee should be expected to take into account the circumstances that exist at the time of application, and it would not be reasonable to expect the Committee to have foreseen the present housing shortage.

5.4 In considering the need for new housing, the policy of the Planning and Environment has been to adopt the following order of priorities for new sites -

(1) sites in the built-up areas;

(2) sites on the edge of built-up areas; and

(3) key village/settlement extensions.

This policy is in accordance with States' strategic policies, including the Island Plan, and there is a presumption against new villages/settlements in the countryside; against the infill/completion of small dispersed building groups in the countryside; and against isolated developments in the countryside.

In rejecting the application for La Préference Farm, the Planning and Environment Committee was acting in accordance with these policies.

5.5 The Board accordingly decided that the Planning and Environment Committee had acted reasonably in refusing to grant planning permission to the proposed development at La Préference Farm. It therefore decided to make no recommendation to the Planning and Environment Committee.

Signed by -

....
R.R. Jeune, Esq., C.B.E., Chai

....
Mrs. C.E. Can

....
Mr. D.J. Wa

Dated ....

APPENDIX 3

Administrative Decisions (Review) (Jersey) Law 1982

REVIEW BOARD: Sunhaven Limited in respect of Field No. 1514, Le Vieux Mont Cochon, St. Helier

Public Hearing held on 16th February 1998
in the New Committee Room, States Building, Royal Square,
St. Helier

Members present -

Mr. R.R. Jeune, C.B.E. (Chairman)
Mrs. C.M. Rumboll
Miss C. Vibert
Mr. P. Monamy, Committee Clerk

Mr. P.T. Grainger, of Grainger P.D.C. Limited, representing Sunhaven Limited - complainant
Senator C. Stein, President, Housing Committee - complainant

Deputy A.S. Crowcroft, Planning and Environment Committee
Mr. G.D. Smith, Assistant Director - Development Control, Planning and Building Services
Mr. P. Le Gresley, Senior Planner, Planning and Building Services
M.M. Le Mottée, Senior Plant/Produce Inspector, Department of Agriculture and Fisheries.

1. The Hearing had been convened to consider a complaint against a decision of the Planning and Environment Committee to reject an application by Sunhaven Limited to construct residential development comprising seven two-storey and two one-and-a half storey dwellings and associated garages, parking areas and landscaping and access roadway at Field No. 1514, Le Vieux Mont Cochon, St. Helier.

2. The Chairman, having convened the Hearing, adjourned the meeting to conduct site visits to view the site. It noted the proposed layout of the development which was the subject of the application under reference, together with the proximity of the existing adjacent properties and the condition of the field.

3. Summary of the complainant's case

3.1 The Board heard that two previous applications to develop the site had been refused planning permission, by notices dated 13th June 1994 and 17th February 1995 respectively. The current application had been refused by a notice dated 24th April 1997. It was noted that the Planning and Environment Committee had rejected the application on two grounds. Firstly, that in its opinion it would involve the loss of agricultural land; and secondly that the scheme would prejudice adjacent residents.

3.2 The two policies which the Planning and Environment Committee had taken into account were policy C05 - where development would normally be permitted, and policy C025 - which sought to protect agricultural land. However, the Planning and Environment Committee had suggested that there was some conflict between these two policies and that its decision had represented the striking of a 'balance' based on the particular circumstances of the application. The complainant maintained that there was no such contradiction as, in fact, policy C025 did not apply to Field No. 1514, as it was not agricultural land. Further, it was suggested that even if that policy were to apply, the decision to insist that it remained in agricultural use, rather than allowing its use for family housing was also unreasonable, insofar as the Committee had not had sufficient regard to all the material considerations relating to the site.

3.3 The Board noted that, in relation to the second reason for rejection, the complainant maintained that the Committee's explanation that the proposal would lead to a loss of privacy and would have an overbearing effect on the neighbouring dwellings to the west and north of the site was not the case and that its decision was also, therefore, untenable.

3.4 Mr. Grainger outlined the background to the development of the Island Plan and its adoption by the States in November 1987. It was recalled that Volume 1 of the Plan (entitled "Survey and Issues") had identified approximately 37,000 vergées of agricultural land in the Island, out of a total land area of approximately

65,000 vergées (approximately 58 per cent). The States had; (A) endorsed the aim of the then Island Development Committe to avoid, as far as possible, the use of agricultural land for housing development, notwithstanding that such policy would cost more than the development of greenfield sites and; (B) agreed that, as a first priority, the requirement for housing should be met by the maximum exploitation of sites that were available for residential development in the existing built-up areas.

3.5 In order to fulfil the first objective, the Island Development and Agriculture and Fisheries Committees had prepared a schedule which identified all the land (some 37,000 vergées) which was to be preserved for agricultural use. Those areas were embodied in the Island Map. Some areas were covered by the Green Zone and were protected and preserved because of that zoning. The remainder of that agricultural land was shown on the Island Plan as either Agricultural Priority Zone (light brown) or Sensitive Landscape Area of the Agricultural Priority Zone (dark brown). This schedule had resulted from a comprehensive survey of the whole Island. Any land which had not been identified for agricultural use was therefore categorised for some other purpose.

3.6 Mr. Grainger emphasised that some of the abovementioned 37,000 vergées of land was within the built-up area, with those areas which were identified for preservation for agricultural use being clearly shown within the Island Plan. Consequently, it was apparent to the complainant that, in the event that either Committee had then considered that Field No. 1514 worthy of preservation for agricultural purposes, they would have zoned the field accordingly. This had not happened, and Field No. 1514 was presently included within the built-up area, in common with a number of other fields which were also not identified as agricultural land. It was evident that the distinction between agricultural land and the built-up area had then been acknowledged and accepted within the Island Plan document and subsequently approved by the States.

3.7 The complainant considered that the Planning and Environment Committee had divorced its policies from the Island Plan and had relied upon policy CO25 without cross-referencing it. Whereas policy CO25 carried a presumption against the permanent loss of agricultural land for development for other purposes and policy CO26 required that full account be taken of the agricultural land affected and its impact on the economics and viability of individual farm holdings, policy CO5 envisaged that new development would normally be permitted in certain areas within the main parts of the Island (designated as ‘Green Backdrop Zone’). It was suggested that, in support of the site being in the built-up area and, therefore, subject to the policies applicable to that area (i.e. that development would normally be permitted), regard should be had to one of the two complementary strategies referred to in the Island Plan - namely the reassessment of “every nook and cranny within the ‘built-up areas’ to see where new development, and particularly new housing, might be stitched into the urban fabric without causing serious inconvenience to existing residents.” Similarly, further support was afforded by policy HO5 which stated that “opportunities for the construction of Category B housing can generally be found on sites within the ‘built-up’ area”; and by policy HO6, whereby “new residential development will be directed to the existing ‘built-up area.’ In all cases designs for housing schemes will have to demonstrate economy in the use of land.”

3.8 The complainant went on to detail its reasoning against the second ground for the rejection by the Planning and Environment Committee of the application (i.e. that the scheme would prejudice adjacent residents), and highlighted six material matters to which it was felt the Committee should have had regard.

3.9 Of particular relevance was the requirement of the Island Planning (Jersey) Law 1964, as amended, that the Committee must have regard to the best interests of the community. Senator Stein apprised the Board of the urgent need for first-time buyer homes and her attempts over a long period of time to emphasise to the Planning and Environment Committee the requirement to secure additional land for development. It was noted that there had been a marked downturn in the number of dwellings which had been provided in recent years, with a consequent rise in house prices estimated to be in the region of 30 per cent. The Housing waiting list continued to increase, with the need for 1,000 additional dwelling units for purchase and/or rental having been identified. To date, significant quantities of land for development had not been identified.

3.10 Mr. Grainger suggested that the interests of the community would best be served by allowing Field No. 1514 to be used to provide much-needed housing for families, rather than preserving an isolated field for agricultural purposes.

4. Summary of the Planning and Environment Committee’s case

4.1 The Planning and Environment Committee considered that the decision to refuse consent for this development was reasonable and had been made after proper consideration of all the facts. It was recognised that the site (Field No. 1514, St. Helier) was something of an anomaly, as it was located within a built-up area and more than one policy applied to it. However, it was contended that the Committee was able to apply its policies in respect of agricultural land to any field at any time.

4.2 The Board noted that the application had been considered under three separate policies under the Island Plan -

- CO5 - which stated that new development would normally be permitted in the Green Backdrop Zone of the Built-Up Area;

- CO25 - which stated that there would be a presumption against the permanent loss of agricultural land for development or other purposes; and

- CO26 - which stated that in considering development proposals, full account would be taken of the agricultural land affected.

4.3 The Committee had examined the matter on two previous occasions and had then refused planning permission. The first application (for 14 dwellings) had been refused on the grounds that -

"1. The proposal is contrary to the approved Island Plan Policy for agricultural land which includes a presumption against its permanent loss for development or other purposes.

2. The proposal would result in the over-development of the site, in a manner detrimental to the amenities of the area.

3. The proposal is for a form of development which is prejudicial to the amenities of the neighbouring properties."

The second application (for nine dwellings) had been refused on the grounds that -

"1. The proposal is contrary to the approved Island Plan Policy for agricultural land which includes a presumption against its permanent loss for development or other purposes.

2. The proposal is for a form of development which is prejudicial to the amenities of the neighbouring properties."

4.4 Mr. Smith explained that, on balance, the Planning and Environment Committee, having considered all the relevant factors surrounding the application, had decided in favour of the agricultural policies, particularly as the agricultural quality of Field No. 1514 was such that it had outweighed the other policy. The Committee had been informed by the Agriculture and Fisheries Committee that that latter Committee, by Act dated 12th March 1997, had endorsed an earlier decision to oppose the development of Field No. 1514, St. Helier, and remained insistent that the land should be retained for agriculture. The Planning and Environment Committee's case was supported by a statement of witness, dated 5th November 1997, from the President of the Agriculture and Fisheries Committee. Whilst it confirmed that it was not a requirement of the Island Planning (Jersey) Law 1964, as amended, for the Planning and Environment Committee to consult either the Agriculture and Fisheries and Housing Committees in the case of applications involving the development of agricultural land for housing, Mr. Le Gresley indicated that it was established practice for the Committee not to consult those Committees if what was proposed was clearly in accordance with their respective policies.

4.5 Mr. Le Mottée outlined the attributes of the field which rendered it 'early' land, ideal for the production of Jersey Royal potatoes. Records at the Department of Agriculture and Fisheries indicated that Field No. 1514 had been in agricultural use from 1964 until 1996, at which point the tenant farmer had been asked to vacate the land.

4.6 Since the date of the Planning and Environment Committee's initial consideration of the application, it was recognised that an increased need for housing had arisen. Whereas it was believed that the recession of the early 1990s had depressed demand for houses, demand for such accommodation was now steadily increasing. The Planning and Environment Committee was currently reviewing the Island Plan and potential sites for housing development were being investigated in conjunction with other Committees of the States. At present, a statement of need was being prepared and a review of all available sites in the Island would follow. It was suggested that to allow housing on Field No. 1514 in the interim would be to prejudice the outcome of the review being undertaken.

4.7 Mr. Le Gresley indicated that, notwithstanding the unacceptability of the principle of the proposal to develop houses at Field No. 1514, the Planning and Environment Committee was also of the view that the development proposed would prejudice the amenities of neighbouring properties, through a loss of privacy and the overbearing effect it would have on the dwellings to the west and north. The Committee had received a total of 22 letters of

objection in relation to the proposal. However, it was recognised that, in the event that the principle of the development had been accepted, some amendments to the proposal could have been incorporated into the design in order to satisfy the detailed objections.

4.8 The representatives of the Planning and Environment Committee outlined the reasons as to why the other sites which the complainant had raised as examples of circumstances similar to those in respect of Field No. 1514 coulc not be considered as precedents. With regard to Field No. 640, St. Peter (where permission had been granted fo three dwellings on the site in December 1993, whereas the Committee had previously refused a scheme for four units), it was indicated that the Committee had visited the site and concluded that the size of the field (1.2 vergées) precluded it from giving a significant contribution to agriculture. Further, the Committee had considered that, given the specific location of the site, it would be a logical conclusion to the development of St. Peter's Village. Having regard, therefore, to the specific circumstances of the case, consent had been granted, contrary to the prevailing policies.

4.9 Deputy Crowcroft indicated that, in relation to the Committee's decision in respect of Field No. 640, St. Peter, the size of the agricultural land involved had been of importance insofar as the small area then involved (1.2 vergées) had not been considered important enough to prevent the development from going ahead. However, as regards Field No. 1514, St. Helier (measuring 1.8 vergées), the Committee had considered that this slightly larger area, in tha particular location, did merit its preservation for agriculture.

4.10 The parties withdrew from the Hearing.

5. The Board's findings

5.1 The Board recognised that any questions surrounding the effect which the development of Field No. 1514, St Helier, might have on the adjacent properties could be disregarded, particularly as it was evident that, in the event that the principle of the development were to be agreed, the objections which had been raised could be overcome through negotiation and redesign.

5.2 The Board noted that in this case two conflicting policies of the Planning and Environment Committee applied. On the one hand, it was a site upon which the Committee would normally allow building to take place, but in this case the Committee had had regard to the agricultural value of the land as urged by the Agriculture and Fisheries Committee. In the latter regard the Board noted that in the case of Field No. 640, St. Peter, permission had beer given to develop the land, although the Agriculture and Fisheries Committee had not agreed and the reasons given were that the Planning and Environment Committee had concluded that the size of the field (1.2 vergées) precludec it from giving a significant contribution to agriculture.

5.3 Concerning the present site, the Board noted that it was a small area (measuring 1.8 vergées)- only 0.6 vergées larger than Field No. 640, St. Peter- and that it was not an integral part of a farm holding. The Board also noted that the field was not currently worked as farm land at the request of the owner of the field who terminated the informal arrangement with the then tenant. The Board considered that the loss of the land had not been shown to be detrimental to the farmer concerned.

5.4 It was apparent to the Board that the Committee was in the process of reviewing sites throughout the Island in order to identify further land for development. The officers of the Committee had conceded that Field No. 1514 might well be recommended for use for this purpose once the review had been completed.

5.5 The Board, having noted the present pressures on housing, is unanimously of the opinion that the Planning and Environment Committee would be unreasonable in persisting in its refusal, and recommends that in the best interests of the Island the Committee should now grant permission. As to the number of houses to be built on the site and the alleviation remedies on the neighbours and the neighbourhood, this is a matter for the Planning and Environment Committee, who can lay down appropriate conditions.

5.6 Accordingly, the Board finds that the decision of the Planning and Environment Committee to refuse to grant planning permission in respect of Field No. 1514, St. Helier could not have been made by a reasonable body of persons after proper consideration of all the facts.

5.7 The Committee is asked to reconsider its decision in respect of Field No. 1514, St. Helier within a period of two months from the notification to it of the Board's findings.

Signed and dated by -

....
R.R. Jeune, Esq., C.B.E., Chairman

....
Mrs. C.M. Rumboll

....
Miss C. Vibert

APPENDIX 4

Findings of the Review Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by JCN Investments (Jersey) Limited against a decision of the Planning and Environment Committee

Senator N.L. Quérée, President of the Planning and Environment Committee

The Board was constituted as follows -

Mr. R.R. Jeune, C.B.E., Chairman
Mr. G.C. Allo
Miss C. Vibert

Clerk - Mrs. M.K. Hannaford

The parties were heard in public at the Members' Room, Société Jersiaise, St. Helier, on 25th and 26th February 1998

The Committee was represented by -

Senator N.L. Quérée, President of the Planning and Environment Committee
Mr. R.S. Fell, Conservation Architect/Urban Designer
Mr. R. Williamson, Senior Planner

The complainant was represented by -

Mr. S. Neal, Director of JCN Investments (Jersey) Limited
Advocate J.D. Kelleher
Mr. G. Reddish, Architect

The complaint concerned the refusal of the Committee to grant JCN Investments (Jersey) Limited permission to develop the property known as 17½ Esplanade and 30 Commercial Street, St. Helier, and the adjoining property 18 Esplanade and 32 Commercial Street, St. Helier (separately referred to by their individual names and collectively as "the Property") and the construction of a new five-storey office building with basement parking on the site of the Property.
Prior to discussion of the complaint, the Board, accompanied by the above-mentioned persons, visited the site and viewed 32 Commercial Street, both inside and outside, and also compared the facade of No. 32 with adjacent surviving warehouses of similar construction, following which the facade of 18 Esplanade was viewed. The group then went on to view the Maritime Museum, at the request of the complainant.

The complainant's case

JCN purchased 18 Esplanade and 32 Commercial Street on 15th December 1995, already having the ownership of 17½ Esplanade and 30 Commercial Street in respect of which development consent had already been granted by the Committee. On 15th November 1995, JCN applied for permission to develop the Property and this application detailed the demolition of the warehouse situated on 18 Esplanade and 32 Commercial Street (the Warehouse) (the buildings at 17½ Esplanade and 30 Commercial Street were already demolished) and the construction of a new five-storey office building with basement parking. This application was refused by the Committee on 8th January 1996 on the grounds that -

the proposal would result in the over-development of the site in a manner detrimental to the amenities of the area;

the proposed development was of inappropriate design in relation to its surroundings and would therefore have an adverse impact on the appearance of the area;

the proposal suggested the demolition and loss of a building deemed to be of Architectural and Historic Interest.

A revised application was made on 13th February 1996, which showed a reduced design and retaining the existing elevations through reconstruction of 18 Esplanade and 32 Commercial Street. JCN assert that the revised application incorporated all of the suggestions and comments made in meetings with representatives of the Committee after the rejection of the original application. This application was also rejected by letter dated 15th March 1996 from Mr. Richard Williamson. Although no rejection notice was issued; the letter repeated the reasons for the rejection of the original application, and pointed out that the Committee found -

the proposed building to be of inappropriate scale and design;

the Warehouse to be of "Architectural and Historic Interest and worthy of preservation and retention".

The Warehouse was to be retained and the decision of 8th January was upheld.

The majority of JCN's case is concentrated on that part of the Committee's refusal based on the alleged historical and architectural qualities of the Warehouse. The question of over-development of the site and inappropriate design, which formed part of the Committee's decision to reject the Revised Application was also referred to.

With reference to the Island Plan, the complainant drew attention to the following -

that the Warehouse is within the "defined office development and redevelopment area" as referred to in the Island Plan (Paragraph 7.47 and Figure 7.5);

that the Warehouse is outside the "historic core of the town conservation area" referred to in the Island Plan (Paragraph 3.31 and Figure 3.4);

that the Warehouse has not yet been designated as a Site of Special Interest pursuant to Policy BE5 of the Island Plan or pursuant to any order made by the Committee under Article 9 of the Island Planning (Jersey) Law 1964;

that the Warehouse is not mentioned in "Old Jersey Houses", in "Victorian Jersey" or in the Treasure Surveys. In "Buildings in the Town and Parish of St. Helier" only the upper part of the walls, above ground level, of 32 Commercial Street are considered to have merit. Indeed, in the Committee's own publication, "Townscape Studies", of the Property only 30/32 Commercial Street is considered to be of townscape importance and this is reflected in its designation as a Building Frontage of Townscape Importance in the Town Map;

that subsequent to the reference material provided by the Committee and the Island Plan there has been no new scholarship or information to cause a rethink of the assessment of the Warehouse, prior to the submission of the application by JCN. New assessments were made after submission of the application.

The complainant's case was presented under three main headings, the first being -

(1) The period leading up to the decisions made by the Committee

Prior to purchase of the Warehouse, JCN was aware that planning permission had been given to demolish 17½ Esplanade/30 Commercial Street and to construct a four-storey office block, and being aware of the benefits of developing two adjoining properties, made enquiries in relation to 18 Esplanade/32 Commercial Street, as follows - (a) of the Officers of the Committee; (b) a property information enquiry; and (c) into the Register of Buildings of Architectural and Historical Importance. With regard to (a), the first meeting on 13th October 1995 was between Mr. Neal, Mr. Reddish and Mr. Williamson, when the complainant was informed that the elevations of both 18 Esplanade and 32 Commercial Street would have to be retained as they were "listed". On 16th October Mr. Neal met Mr. Peter Thorne, the Director of Planning, who advised Mr. Neal that only the elevation of 32 Commercial Street was listed.

Reference was made to correspondence from Mr. David Lyons dated 8th January 1996 and to the late Mr. Malcolm Peck dated 17th May 1995, which spoke of the elevations of 32 Commercial Street: no mention was made of the requirement to retain the Warehouse as a whole. With regard to (b), 32 Commercial Street is referred to as a listed building; and with regard to (c), 32 Commercial Street is listed as Grade 3, which means that sympathetic and sensitive conservation would be encouraged but it was below the category requiring statutory protection. Taking the above into consideration, as well as the fact that the frontage of 30 Commercial Street, together with the frontage of No. 32 has been identified in the Town Map as a "Building Frontage of Townscape Importance" but that 30 Commercial Street has been demolished with the consent of the Committee, led the complainant to believe that the position had been sufficiently clarified with respect to the Warehouse so that purchase could go ahead on 15th December 1995, subsequent to the submission of an application for development permission on 15th November 1995. The complainant also placed reliance on the fact that the Warehouse was not in a Conservation Area as defined in the Island Plan, but rather was in an Office Development Area.

(2) Decision of the Committee to reject the applications

The second application to develop was for an office building of four floors (one less than the previous application which had been rejected on the grounds of “overdevelopment of the site”) Four floors had already been approved for 17½ Commercial Street and in the interests of unification, it was assumed that since the proposal was for one building, four floors would be acceptable at No. 18. The elevations onto 18 Esplanade and 32 Commercial Street had also been altered from the original application to show the retention by reconstruction of the elevations of the Warehouse in its original form, thus taking into account one of the original grounds for rejection. The Committee’s other ground for rejection was that the building was of architectural and historical merit, based (among other things) on the advice of its “expert Sub-Committee” (none of whom, it was claimed, were experts on the architectural and historical merit of 19th Century Jersey warehouses.) But this Sub-Committee never visited the Warehouse and consequently did not see the interior. The Committee did in fact seek the opinion of an expert but not until the summer of 1996. However, it is claimed by JCN that the Committee did not see the revised drawing which formed the second application.

JCN sought the opinion of Mr. A. Blee, FRIBA FRSA, an historic buildings and conservation expert, on the Warehouse and his findings refute certain areas of the opinion of the Committee’s expert Dr. W. Rodwell, MA DPhil Dlitt DLC FSA FR HistS. JCN claim that Dr. Rodwell had made a hasty visit to the premises at the request of the Committee and his report was subsequently found to be flawed in certain respects.

(3) Validity of the Island Planning (Jersey) Law 1982, as amended (the principal Law)

JCN now claims that the Committee’s decision was based on a mistake of Law, contrary to paragraph 2(c) of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982.

An opinion was sought by the Committee from H.M. Solicitor General on Article 2 of the principal Law, with particular reference to the following sub-paragraphs defining the purposes of the law to be (inter alia) -

“(d) to preserve and improve the general amenities of any part of the Island;

(g) to protect buildings of special architectural or historic interest and generally to prevent the spoliation of the amenities of the Island;”.

The Solicitor General has since reviewed that opinion, taking into consideration an amendment to the Law relating to (g) above. Her most recent opinion is that although the provisions of Article 9A relate only to sites designated or intended to be designated as sites of special interest, it is nevertheless legitimate for the Committee, when considering an application relating to a building not so designated, to take into account any architectural or historical interest which the building may have and, if it considers that the building contributes to the amenities by reason of its architectural/historical interest, to refuse the application if satisfied that the proposed development would diminish or destroy that interest and thus constitute a spoliation of the amenities.

But the complainant’s contention is that the Committee’s decision is based on a mistake in Law because the Law had been amended. Further, with regard to (d) above, JCN does not believe that the interior of the Warehouse can be considered as an amenity of the Island.

The Committee's case

The Committee believes that the complaint has been brought because JCN invested a large sum of money in the purchase of the property in December 1995, with the expectation that there would be no obstacle to its demolition and redevelopment in conjunction with the adjoining site which they owned, and the Committee believes that this expectation was extremely ill-founded and unrealistic.

The Committee, whilst acknowledging the nature of the enquiries made by JCN prior to the purchase of the property, asserts that these were not sufficiently exhaustive, bearing in mind JCN's extensive experience in the development of office buildings. The company did not seek written confirmation of the advice of the officers, nor did they seek direct advice from the Committee, and made no preliminary planning application to establish development principles, although advised to do so. JCN, as a building developer of some standing, should be familiar with that principle also. The fact that the building was in the Office Development Area did not justify demolition.

The Committee put forward a File Note from Mr. R. Williamson, the Senior Planner, in which Mr. Williamson stated that he had advised the applicant that the Committee was quite likely to insist on the retention of the building and that the best way to "test" that was to submit a Planning Application. This was not done.

The Committee also believes that since the conversations with different officers of the Committee did not entirely match, and were, in both cases, indicative of a presumption against development, this should have rung warning bells.

The Committee believes that it is its duty to protect buildings of architectural, historical, cultural or traditional interest as set out in the Register and, in view of the anomalies in the Register, it is now normal practice for the architectural and historic quality of a building in the Register to be re-assessed before significant planning or development applications relating to such buildings are determined. If JCN had sought written advice from the Committee prior to purchase, this would have been made apparent. A commonsense approach would have been to enquire how much of the building was protected. In Townscape Studies, the whole of Commercial Street is mentioned as being worthy of protection, and JCN were ill-advised to purchase the property within that policy framework.

Senator Quérée made reference to a change in the way the Committee looked at buildings of architectural or historical importance in the light of the Island's signing up to the European Convention on the Protection of Historic Buildings.

The Committee believes it is possible to provide effective office use of the Property without demolishing and starting again, and its judgment was based to a large extent on the reliance it placed on Mr. Stuart Fell, their urban designer, who has had 30 years' experience in identifying such buildings. If the interior of the building had been beyond repair, Mr. Fell would have advised the Committee accordingly, and this would have had a bearing on the decision.

As far as the Heritage Sub-Committee is concerned and JCN's assertion that this Sub-Committee has no experts on it, the members of that group were well-versed in considering such matters, and their knowledge was supported by the recommendations of Mr. Fell, its acknowledged expert. The Committee believes that 32 Commercial Street is a relatively rare survival of a privately-built warehouse, and to allow this building to be demolished would have implications for other buildings in the Commercial Street area. 32 Commercial Street represents a certain type of unique vernacular construction.

Referring to other buildings with "Building Frontages of Townscape Importance" which had been demolished with the consent of the Committee, it was pointed out that each case was decided on its merits and the present enquiry was not set up to justify the decisions of previous Committees.

The Board's findings

This is a complex case and was divided into three aspects by the complainant. Our findings are therefore as follows -

1. Events leading up to the decisions

   Although discussions on future development of the building were somewhat confused and unclear, the members of the Board are satisfied that the complainant company was experienced in this type of development, and indeed has stated in its pleadings that it has more than 40 years' experience in that field and could have (if it had wished so to do) taken more definite steps to ascertain what would be permitted to be built on the premises. Indeed a Senior Planning Officer contended (and produced an office file note to this effect) that he had advised the company that the only way was to test the matter by a preliminary application to the Committee. This they failed to do.

   The Board has therefore decided that they will make no recommendations to the Committee on this aspect of the

matter.

2. The decision on historical and architectural merit of the building

The Board accepts that there is disagreement as to the uniqueness and historical value of this property, but is satisfied that the matter was considered on two occasions by the Committee, advised by Mr. Stuart Fell who has had long experience of such matters, and that after receiving his advice, the Committee came to a decision in possession of all the necessary facts. The members of the Board are conscious that in such matters as this experts will differ and much can be subjective judgement.

The Board has had considerable difficulty in coming to a decision on this aspect of the matter. It is conscious of the fact that the Board should not substitute its views for those of the Committee. The Committee came to its decision based on the information known to it at the time of the application, prior to purchase of the Warehouse. The Board cannot take into consideration information which has been made available since the Committee's decision, and therefore makes no recommendation to the Committee on this second aspect of the matter.

3. The legal situation

The Board believes that continuing confusion arises from the lack of certainty and clarity surrounding Sites of Special Interest and the so-called "Register of Properties" relating to Buildings of Architectural and Historical Importance. Indeed it was informed by Mr. Stuart Fell that a new Register was being compiled - a situation for possible greater and continuing uncertainty.

The building in question was not made a Site of Special Interest, but it was concluded that the Committee had a general power under the Law and mention was made of the "amenity" value as contained in Article 2 of the Planning Law. There appears to the Board to be much uncertainty over the legal interpretation and legal powers of the Committee in such matters. The Board, however, does not feel itself competent to pronounce on such legal matters and would recommend (if JCN wish to take this matter further) that this aspect should be fully tested before the Royal Court of Jersey, particularly having regard to the change of Law by amendment in 1983. Accordingly, it makes no recommendation to the Committee in this respect.

Signed by -

....
R.R. Jeune, C.B.E. (Chairman)

....
G.C. Allo

....
Miss C. Vibert

Subsequent to the Hearing and the findings of the Board as set out above, but before the publication of those findings, the Planning and Environment Committee has taken an extraordinary and precipitate action by designating by Order the building known as 18 Esplanade/32 Commercial Street as a Site of Special Interest by reason of its special architectural, cultural, historical and traditional interest. This action on the part of the Committee has only added to the concern of the Board as to legal matters surrounding this appeal.

Signed by -

....
R.R. Jeune, C.B.E. (Chairman)

....
G.C. Allo

....
Miss C. Vibert

APPENDIX 5

Administrative Decisions (Review) (Jersey) Law 1982

REVIEW BOARD: The Reverend C.D. Le Seelleur, 5 Cloverley Court, St. Martin

Public Hearing held on 4th February 1998
in the Committee Room, St. Martin's Public Hall

Members present -

Mr. R.R. Jeune, C.B.E. (Chairman)
Mr. D.J. Watkins
Mr. G.C. Allo
Mrs. R. Heald, Committee Clerk

Rev. C.D. Le Seelleur, complainant
Mr. R. Le Sueur, Architect

Deputy E.M. Pullin, Planning and Environment Committee
R.S. Fell, Conservation Architect/Urban Designer
Miss S. Karch, Senior Assistant Planner

1. The Hearing had been convened to consider a complaint against a decision of the Planning and Environment Committee to reject an application by The Reverend C.D. Le Seelleur to erect a conservatory at 5, Cloverley Court, La Grande Route de Faldouet, St. Martin.

2. The Chairman, having convened the Hearing, adjourned the meeting to conduct site visits to view the property 5, Cloverley Court, St. Martin. It noted the proposed siting of the conservatory and details of the siting of the greenhouses which had been on the site until around 1970. A visit was also made to the property La Tourelle, Le Rue d'Ava, St. Martin, where consent had been granted for the erection of a conservatory.

3. Summary of the complainant's case

3.1 The Board heard that the old farm buildings on the site had lain disused for years and had begun to deteriorate. In 1990 Rev. Le Seelleur, having retired back to the Island, had commenced development of an additional four units of accommodation on the site with the aim of providing himself with a small retirement home, which would include the construction of a small conservatory on the south side of the house at a later stage, to reduce heating bills and provide additional space for family occasions. Planning consent to install additional uPVC and Velux windows in the property had been granted. Rev. Le Seelleur advised that the development, including the tree planting scheme, had been undertaken in close co-operation with the Planning Department and was now, in his view, a graceful complex which he considered would be enhanced by the addition of a conservatory.

3.2 Rev. Le Seelleur stressed that the proposed conservatory would be constructed approximately three feet below the adjacent lawn and that a hedge had been planted to provide further screening. He was of the view that the whole structure would be as well or even better hidden from view than other similar constructions in the Island.

3.3 Board noted that the property had been included on the Register of Buildings of Architectural and Historical Importance in Jersey (The Register) as a low priority building, and noted the concern of the complainant at the accuracy of this Register. Mr. R. Le Sueur outlined details of communications received from several members of the Historical Buildings Advisory Panel, which had been responsible for the listings, claiming that the Panel had never given final approval to The Register.

3.4 Rev. Le Seelleur felt that the refusal of consent had been unjust in view of the fact that permission had been granted for other conservatories in remarkably similar situations, in particular, La Hougue House, St. Ouen, Les Marais Farm, St. Mary and La Tourelle, St. Martin. Whilst accepting that the Planning and Environment Committee had given consideration to his application on three different occasions, he questioned whether due consideration had been given to the proposal during a site visit. It was also ascertained that although the application had also been considered by the Jersey Building Heritage Sub-Committee, it had never visited the site.

3.5 In relation to the claim that the proposal would be visually damaging, Rev. Le Seelleur pointed out that whilst the development had enhanced the visual character of the farm, change of use had been granted for it to become a residential development. He stressed that prior to the development, the facade had developed over the years and had previously included greenhouses, hedges and other activities.

4. Summary of the Planning and Environment Committee's case

4.1 The Planning and Environment Committee considered that the decision to refuse consent for this development was reasonable and had been made after proper consideration of all the facts. It was consistent with its approach for the treatment of buildings included on the Register. In clarification of the complainant's concerns in relation to the compilation of The Register, the Conservation Architect advised that this had been accepted and The Register was to be simplified with many buildings being deleted. However, a decision had already been taken that the property Cloverley would remain. The Board was reminded of the importance and validity of The Register, which had been recognised by previous Review Boards. In addition, the Conservation Architect also advised that the issue of the greenhouses on the site had not been drawn to his attention or been taken into consideration.

4.2 The Board noted that the application had been considered under three separate policies of the Planning and Environment Committee -

- the Island Plan;
- Planning Policy Note 2 - The Future Use of Jersey's Traditional Farm Buildings - tabled;
- The Register.

The Committee had examined the matter on three separate occasions and had refused consent because it would be visually damaging to the character of the building. Following appeal the matter had been presented to the Jersey Building Heritage Sub-Committee, which was of the view that the proposal would considerably detract from the rural nature and architectural character of the range. Following a further appeal - that the Committee had been inconsistent in its decision-making process - the Committee considered details of examples of similar conservatories for which consent had been granted, and had decided to maintain refusal, because it felt that such a structure would detract from the character of the existing building group, which had retained its visual coherence and agricultural quality.

4.2 Details of the other installations mentioned were considered and photographs viewed, and it was noted that an exception to the policy had been made for the La Hougue House conservatory, which, with hindsight, might be considered an error of judgement; and that whilst La Tourelle had been registered as a Site of Special Interest, consent had been granted after careful consideration because it was felt that it would not intrude on the facade of the building. In addition, this property was in single ownership. In relation to the Les Marais development, it was noted that because of a number of alterations to the building group, which included the replacement of timber windows with uPVC and the introduction of new doors, permission had been granted as an exception to the normal policy. The Senior Planner stressed that in refusing the application for Cloverley, the establishment of a precedent with potential for three conservatories on the facade had been a consideration.

4.3 The Conservation Architect highlighted the need to maintain the character of existing buildings in the countryside and stressed that whilst the use of this property had changed to residential there was still a need for its character to be retained. He advised that several properties had been taken off the Register because their character had been eroded by insensitive development.

4.4 In conclusion, Deputy E.M. Pullin stressed that in making the decisions the Planning and Environment Committee had considered all issues and had been advised of all aspects of the proposal. She advised that the objectives of the Committee were to control and retain Jersey farmland and adhere to its agreed policies. Whilst sympathetic to the needs of Rev. Le Seelleur, the Committee was convinced that it would not be appropriate to grant consent.

5. **Creation of a precedent**

In relation to the issue of a precedent which could result in applications for a further two conservatories being received, Rev. Le Seelleur gave an assurance that this would not be the case. Whilst the properties held separate titles, the plans for the exterior of the main house had already been agreed by the Planning and Environment Committee and, being the owner of the other property, Rev. Le Seelleur confirmed that he would not be submitting an application for this property. Whilst accepting the sincerity of this statement, the Conservation Architect stressed that his Committee currently had no power to enforce such an agreement.

The parties withdrew from the Hearing.

6. **The Board's findings**

6.1 The Members of the Board appreciated the difficulties facing the Planning and Environment Committee in relation to the conversion of Jersey Farms, but in this particular case that Committee had permitted a conversion of such a nature as to change a farm and outbuildings into a new residential area of six dwellings, a new access and a substantial car park. As a result, the character had been sympathetically changed into a residential development. The request was for a small conservatory which was largely hidden from the main road and would be further screened with the maturity of evergreen hedges and trees.

6.2 The Board viewed photographs of examples which appeared to it to affect the character of other properties more than the proposed application. The examples which particularly impressed the Members were those of Le Marais, La Tourelle and Le Hougue House. In all these cases, exceptions to the policy had been approved.

6.3 The Officers of the Planning and Environment Committee had made the point that these exceptions were all part of one property, whereas the present application concerned a house which was one of three on the south side which could result in the possibility of one or more applications for a conservatory being forthcoming in the future.

6.4 However, the Board felt that, in view of the fact that all the property remained in the ownership of the Le Seelleur family, it would not be difficult for the Planning and Environment Committee to lay down conditions and to obtain undertakings so that it was clear that only this one conservatory would ever be permitted on the development.

6.5 The Board was also impressed with the improvements to this area, upon being shown photographs of the property, which heretofore had glasshouses in front, and which had all been removed.

6.6 The Board unanimously was of the opinion that, subject to making the arrangements relating to one conservatory only, and taking into account the glasshouses previously sited adjacent to the buildings, that the Planning and Environment Committee should permit the erection of this conservatory on The Reverend C.D. Le Seelleur's property, 5 Cloverley Court, St. Martin, and that a continuing refusal would, in its view, be discriminatory and

contrary to the generally accepted principles of natural justice.

Signed and dated by -

....
R.R. Jeune, Esq., C.B.E., Chairman

....
G.C. Allo, Esq.,

....
D.J. Watkins, Esq.

APPENDIX 6

Findings of the Review Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by Flying Flowers Limited against two decisions of the Planning and Environment Committee

1. The Review Board was composed as follows -

R.R. Jeune Esq., C.B.E.
Miss C. Vibert
D. Watkins Esq.

The parties were heard in public at St. Lawrence Parish Hall on 27th July 1998.

The complainant, Flying Flowers Limited, was represented by Mr. T. Dunningham, Managing Director, Mr. T. Walker, Administration Director, Mr. B. Dodds, Consultant, Roger Norman Design. Deputy J.L. Dorey attended to represent the company.

The Committee was represented by Deputy M.F. Dubras, Mr. G. Smith, Assistant Director Planning and Senior Planner, Mr. P. Le Gresley.

The Board and the parties viewed drawings of the proposed development, prior to visiting Fields 774, 777 and 778, St. Lawrence/St. Mary, and the existing plug plant operation at the Flower Centre after the opening of the Hearing.

The complaint concerned the refusal of the Committee to grant planning permission in principle for the erection of plug plant producing glasshouses on Fields 774, 777 and 778 St. Lawrence/St. Mary.

2. Hearing

Summary of the complainant's case

Flying Flowers Limited expressed frustration at the absence of advice from the Committee, following two rejected planning applications, which would explain on what basis the Committee had made its decisions, and clarify how the company could prepare an application which would be successful for development of the fields in question.

Following rejection of the first application, which was affected by policies CO6, CO7 and CO8 of the approved Island Plan, Flying Flowers radically altered its application so it was sited outside the Sensitive Landscape Area of the Agricultural Priority Zone and would be affected by policy CO6 only. However, the second application was also rejected on precisely the same grounds as the first, with no detailed reasons or guidance for the future. Flying Flowers Limited stated that it had therefore been treated unreasonably.

Flying Flowers Limited had already established with the assistance of the Agriculture and Fisheries Department that there were no dilapidated greenhouses measuring 6 - 7 acres (11-16 vergées), or in which there had been no recent investment. Given the criteria necessary, it concluded that a green-field site was necessary. It was prepared to protect the landscape by planting and by design to minimise the effect of the greenhouse, and would retain the topsoil removed from the site on an adjacent field so that the land could be reinstated as an agricultural field in the event of the glasshouses falling into disuse and disrepair.

The company had had meaningful discussions with, and significant assistance from, the planning officers, and felt that it had the support of the officers, although this was never stated. Prior to the application being submitted, the department had confirmed that there were no outstanding matters.

The Company had taken into account the points raised by objectors relating to the width of the road opposite Broadfields, country views and the restoration of the site by (a) being prepared to allow the Public Services Committee to widen the road; by (b) introducing landscaping to provide a more attractive amenity; and by (c) setting up a sinking fund of £100,000 so that funds would be available to reinstate the fields to their former state.

Mr. Walker pointed out that the second application was subject only to policy CO6, which stated that there would be a presumption against any new non-agricultural development. However, as this development was agricultural it was not felt that this should apply. That policy also stated that applications for new agricultural buildings and other forms of development for which the Committee accepted a need would generally be approved, subject to conditions of siting and design. The economic benefits of approving this application had been highlighted in Senator F.H. Walker's letter dated 9th January 1998.

The Planning and Environment Committee had indicated that it would accept applications for a similar scale of development on less sensitive sites, however that Committee had not indicated what was sensitive about this site which would not be sensitive elsewhere. While it was accepted that the fields in question looked better without glasshouses, it was the Committee's duty to determine applications in accordance with the Island Planning (Jersey) Law 1964, as amended.

Summary of the Planning and Environment Committee's case

The Committee had considered the applications while in possession of all the facts, had visited the site when considering the applications, and had received a presentation from the company.

The Committee had to work within the following constraints -

(a) the Island Planning (Jersey) Law 1964 as amended, in particular Article 2, which required the Committee to ensure that land was used in a manner serving the best interests of the community, to protect and enhance the natural beauty of the landscape or the countryside, to preserve and improve the general amenities of any part of the Island, and generally to prevent the spoilation of the amenities of the Island;

(b) States' strategic environmental policies, as set out in the Strategic Policy Review 1995 Part I '2000 and Beyond', which required the Committee to exercise political judgement, for example, inter alia -

- to ensure that the development and management of natural resources does not limit choices in the future;

- to enhance the quality of the shoreline, the rural and the urban environment;

- to preserve open land while recognising and responding to the need to provide for the Island's economic and social policy objectives;

- to discourage development in the rural environment;

(c) the policies included in the approved Island Plan adopted in 1987 by the States. The Committee stated that Policy CO6 made it clear that "applications for new agricultural buildings and other forms of development... will generally be approved...". The use of the word 'generally' made it clear that there could be instances when the Committee would not approve development.

With regard to the applications, the Committee contended that the size and scale of the proposals would have such a visual impact that they were unacceptable, and even if a bank of earth was created, this would in fact close off all the open vistas. The Committee believed that Flying Flowers had not considered thoroughly whether there was a suitable alternative site outside of this immediate area. The Committee remained supportive of the company as demonstrated by approval of its applications for glasshouses in St. Martin.

Deputy Dubras addressed the point that the officers had appeared to be supportive of the application in their dealings with the company. Officers as part of their duties gave advice without prejudice, however there were occasions when a Committee did not accept the advice or recommendation of an officer. This was entirely possible when a Committee had to exercise political judgement as well as view applications against planning criteria. The Committee had indeed weighed up the interests of the economy against the best use of land just as it had considered all relevant factors. However, none of these factors alone were overriding. It was necessary to achieve a balance, and given the small size of the Island and the intimate nature of the countryside, the Committee needed to feel that a development would enhance the environment. The character of the Island was in the custodianship of farmers and growers, and the Committee had a duty to prevent obvious or irretrievable mistakes.

Deputy Dubras believed the Committee had considered the applications carefully, against the constraints, and taking into account the objections raised on planning grounds, and had made a reasonable decision. The Committee had serious reservations about secondary plans to reinstate the fields, and believed that the proposals would do irrevocable harm to the open nature of the fields. The Committee had encouraged Flying Flowers to look at other less sensitive sites, and while it was not the responsibility of the Committee to assist in this, it would try to help the company in so doing.

In reply, Flying Flowers Limited said that they had identified Fields 774, 777 and 778, St. Lawrence/St. Mary as those which best met their criteria for the development of glasshouses, and had been unable to obtain planning permission for their plans on this site. The company was particularly concerned that it had not received guidance which would enable it to prepare an application with an expectation of success on the said fields. It had taken the steps it could to alleviate the fears of neighbours, and was at a loss as to how to proceed. The company believed that the Committee did not wish it to build glasshouses on this site, contrary to policy CO6 of the Island Plan.

Finally, the Planning and Environment Committee reiterated that it had refused permission because of its obligations under Article 2 of the Island Planning (Jersey) Law 1964, as amended, the States approved Island Plar policies CO6 and where appropriate CO7 and CO8, and its wider responsibilities as defined within States Strategic policies. The Committee had considered the applications carefully and fully while in possession of all the facts.

The Committee did not give advice which could fetter their consideration of future applications, and the advice of officers was given without prejudice to the Committee's ultimate decision.

The parties then withdrew.

3. The Board's findings

The Board agreed that the responsibilities of the Planning and Environment Committee under Article 2 of the Island Planning (Jersey) Law 1964, as amended, were quite clear and that it had a duty to protect and preserve the landscape, beauty and amenities of the countryside.

The Board noted that the Committee had used its discretion, which was within its power, and agreed that it had not

acted unreasonably. The wording of the policy CO6 indicated that there would be occasions when the Committee could refuse an agricultural development.

The Board accordingly decided to advise the parties that it did not consider that the Planning and Environment Committee had acted unreasonably in the circumstances and would make no recommendation to change the decisions.

Signed and dated by -

....
R.R. Jeune Esq., C.B.E., Chairman

....
Miss C. Vibert

....
D. Watkins Esq.

APPENDIX 7

Findings of the Board of Administrative Appeal constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended, to consider a complaint by Mr. and Mrs. A.C. Smail against a decision of the Planning and Environment Committee

1. The Board was constituted as follows -

Mr. W.J. Morvan, Chairman
Mrs. C.E. Canavan
Mr. P.E. Freeley

The Board received and took as read the following papers -

Administrative Decisions (Review) (Jersey) Law 1982, as amended;

Letter dated 23rd February 1998 from Mr. Andrew M. Morris R.I.B.A., John Richards and Partners, and application forms, photographs and related correspondence dating back to December 1996;

Report dated March 1998 from Mr. G.D. Smith, Assistant Director - Development Control, Department of Planning and Building Services;

Relevant policies of the 1987 Island Plan.

The parties were heard in public at St. Saviour's Parish Hall on Friday 16th October 1998, immediately after they had visited the site which was the subject of the complaint.

The complainants, Mr. and Mrs. A.C. Smail, were present, together with their architect, Mr. Andrew M. Morris, of John Richards and Partners, and were represented by Deputy D.L. Crespel.

The Planning and Environment Committee (the Committee) was represented by Deputy R.C. Hacquoil and Mr. G.D. Smith, Assistant Director - Development Control. Ms. J.J. van Huysen, Senior Planner, Department of Planning and Building Services, was in attendance.

The complaint related to the refusal of the Planning and Environment Committee to grant consent for the construction of a four-bedroom single-storey dwelling with basement garage on a site occupied by disused glasshouses adjacent to La Biarderie, Rue de la Monnaie, Trinity.

2. Summary of complainants' case

Mr. Andrew M. Morris

Mr. Morris outlined his firm's brief, which was to provide a single family dwelling taking into consideration its impact on neighbouring properties. He explained that they had visited the site and had felt that, given the knowledge they had accrued in over 30 years of dealing with the Committee and Department of Planning and Building Services, a planning application was likely to be given due consideration by the Committee. Subsequently, a planning application was submitted on 10th December 1996 but was refused without consultation. The reason for the refusal was that the proposal was contrary to the approved Island Plan policy for the Sensitive Landscape Area of the Agricultural Priority Zone, in which there is a presumption against non-agricultural development. However, Mr. Morris was of the opinion that the site was ideally suited for residential development, and pointed out that this was the first time his firm had attended a Board of Administrative Appeal to press a client's case.

Mr. Morris referred to the exchange of correspondence between his firm and the Planning Department, and reminded the Board of the letter he had forwarded on 3rd January 1997 asking the Committee to visit the site and review its decision. This appeal failed and Mr. Morris met Mr. P. Thorne, Director of Planning, on 5th March 1997, when Mr. Morris was advised that the only courses of action open to him were to appeal to the Royal Court or to ask a Board of Administrative Appeal to review the Planning Committee's decision. Mr. Morris wrote again to the Committee on 10th March 1997 asking it to reconsider. Following this letter, a site meeting was arranged on 14th April 1997 between Mr. Morris and Ms. J.J. van Huysen, Senior Planner, who had taken over responsibility for the case from Mrs. K. Wagstaffe. Referring to her subsequent letter, dated 21st April 1997, Mr. Morris drew the Board's

attention to Ms. van Huysen's suggestion that a fresh application be submitted for a smaller re-positioned unit on the site. He argued that this represented a change in approach as the original application had been refused on policy grounds and not because of the size of the proposed development.

Mr. Morris wrote again on 1st May 1997 requesting that the Committee visit the site and in her reply, dated 15th May 1997, Ms. van Huysen advised that she would be inviting the Committee to consider this request. The Committee reconsidered the application on 11th June 1997 but could see no reason to make an exception to their policies and saw no need to visit the site as it had all the information necessary to reach its decision. It again refused the planning application, but following the intervention of Deputy D.L. Crespel, acting on behalf of the complainants, it met Deputy Crespel on 24th July 1997 to reconsider the matter again. After considering the case put forward by the Deputy, the Committee decided to maintain its position.

Mr. Morris referred to the report to the Greffier of the States, dated March 1998, which was prepared by Mr. G.D. Smith in response to the complainants' request for a Board of Administrative Appeal. The report set out Planning's opposition to the planning application and Mr. Morris sought to clarify a number of the points raised in this report. He informed the Board that the complainants had not sought the advice of the Planning Department before purchasing the land in question because it had been a family transaction. Mr. Morris also sought to assure the Board that a number of the objections raised by neighbours, including the Le Fondrés, had now been addressed.

The complainants felt that they fulfilled the criteria of the Island Planning (Jersey) (Law) 1964, as amended, by providing for the orderly planning and comprehensive development of land and by ensuring the land was used in a manner serving the best interests of the community. Their proposal would also improve the general amenities of the Island. The complainants argued that the site was already in a built-up area, and had not been properly considered by the Committee as it had not undertaken a site visit, and had issued the original refusal without regard to all the representations made by letter between 20th and 27th December 1996.

The complainants noted that the Island Plan was currently under review, and Mr. Morris suggested that one possible area under consideration was the policy in respect of the development of small parcels of land, such as the site in question. He urged the Board to reconsider the desirability of current policy in light of the ongoing review. Furthermore, the Board was also asked to take into account the anomalies in the Island Plan which, for example, had allowed the development of Woodbine Corner on Route de Noirmont in St. Brelade.

Deputy D.L. Crespel

The Deputy expressed concern at the rejection of the application in the light of the ongoing housing shortage. He drew the Board's attention to paragraphs (d) and (e) of Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, and questioned whether the Committee had given 'proper consideration of all the facts' of the case when it did not visit the site. The Deputy felt the site was an anomaly in the Island Plan and did not feel the Committee had applied its discretion in rejecting the Smails' application.

Deputy Crespel told the Board that he did not feel the Committee had given sufficient consideration to his arguments when he attended a Committee meeting on 24th July 1997, and had not complied with repeated requests to visit the site, which he felt was the proper procedure for determining an appeal. He also reminded the Board that Mr. and Mrs. Smail were prepared to amend their plans to ensure minimum interference with neighbouring properties.

The Board was asked to consider the policy statement in the Island Plan relating to development within the Agricultural Priority Zone, including the Sensitive Landscape Area, where the aim was to protect agricultural land and to "limit the spread of new development in the open countryside by restricting it to existing settlements where there are adequate services". Deputy Crespel reasoned that as the site was part of an existing settlement and had adequate services available, as both mains drains and mains water could be accessed, the Committee was unjust, under Article 9(2)(b) in not making an exception.

3. Summary of the Planning and Environment Committee's case

Mr. G.D. Smith

Mr. Smith advised the Board that approximately 3,800 applications were processed by the Committee each year, and that in determining applications the Committee had regard to the Island Planning Law, the Island Plan and the Strategic Policies of the States. He also referred to the incremental effect the determination of each application had on future policy and stressed the need to adhere closely to the Island Plan. Mr. Smith noted that no advice had been

sought from the Department of Planning and Building Services prior to the purchase of the site or the submission of a planning application, but now acknowledged that, as the site had been the property of the Smail family, the complainants were well aware of the history of the site and surrounding developments.

With reference to the letter dated 3rd January 1997 from Mr. F. Le Maistre, Technical and Development Officer Department of Agriculture and Fisheries, to the Planning Department, which stated that the site had no agricultural value and that development would not be opposed, it was stressed that the planning application was not refused on agricultural grounds but because it was against accepted policy. The sole reason given for refusing the application was because it was 'contrary to the approved Island Plan policy for the Sensitive Landscape Area of the Agricultural Priority Zone in which there is a presumption against any non-agricultural development'. Similarly, a number of the objections which were received were objecting on points of principle.

Mr. Smith also referred to the letter sent by Ms. J.J. van Huysen, dated 21st April 1997, in particular the passage where she advised Mr. Morris that there was no guarantee the Committee would accept a revised application and reminded him that any application was subject to the provisions of policy.

In dealing with the points raised by Mr. Morris in respect of the Island Planning (Jersey) Law 1964, Mr. Smith was of the opinion that the development of the site was not necessary to enhance the natural beauty of the landscape. He reminded the Board that when the States had voted in 1987 to approve the Island Plan, they had shown their support for a plan led system of decision making.

The Board was advised that the Committee followed different policies when considering applications in the countryside, where there is a presumption against any non-agricultural development, as opposed to a built-up area, where its policies allow for new building development. Despite the complainants' claims, the site in question was not within a built-up area as defined in the Island Plan, and any departures from the Island Plan would need to be made the subject of rezoning reports and propositions for approval by the States, as had happened with the St. Martin's Village development. Furthermore, one of the policies of the Island Plan was to protect against the 'infilling' and 'rounding off' of existing developments which was what was being proposed by the complainants.

Mr. Smith accepted that the Committee could use its discretion if it felt that the circumstances merited making an exception to normal policy, but he was of the view that the Committee itself was the sole body empowered to make such a decision. The policies of the Island Plan were quite specific and stressed the need to protect the countryside from the loss of agricultural land to new non-agricultural development. Similarly, policies CO26 and CO27 dealt specifically with the status of disused glasshouses, and stated that there was a presumption against any new development on sites occupied by unused or derelict glasshouses.

The Board was also requested to consider the history of the site and was reminded that the Committee had consistently refused permission for any development on the site since 1987. It had also applied the same policies when turning down a similar application to build on a disused glasshouse site on Rue des Cotils in St. Helier, which was the subject of a Review Board in 1995, which found no fault with the Committee's decision.

In conclusion, Mr. Smith submitted that there had been a history of refusal of any development of the site, that the Committee had given full and fair consideration to the numerous requests it had received, and had applied its policies fairly and without prejudice.

Deputy R.C. Hacquoil

The Deputy informed the Board that the Committee had access to numerous photographs, drawings and plans of the site, and had discussed the matter at considerable length before arriving at its decision. The Committee had not undertaken a site visit as the reason given for the refusal of the application related to policy and not to the specifications of the proposed development. Nevertheless, the Committee was familiar with all the points raised by the complainants in the course of their subsequent appeals but did not feel these warranted making an exception to the Island Plan. In fact, the Committee received numerous similar applications every year.

4. Discussion

The Board wanted to know the purpose for which the Smails had purchased the land in question, as the letter from the Agriculture and Fisheries Department, dated 3rd January 1997, suggested that the original intention had been to use the site as a garden/allotment. The Board was assured that this was never the case.

The Board also sought to determine the likely status of the site in 20 years' time if the proposed development was

not to go ahead, and was advised that the Committee wished the site to remain in its current state although it might look favourably on any extension of the gardens of the neighbouring properties into the area of the site.

5. The Board's findings

The Board noted that the Planning and Environment Committee considered the above application, which related to a site in the Sensitive Landscape Area of the Agricultural Priority Zone, having regard to its overriding planning policies, which include a presumption against any non-agricultural development. In those circumstances, the Board can understand why the Committee chose not to visit the site when the application was first made.

The Board took the view that an officer of Planning and Building Services, in correspondence, had given encouragement to the applicants to submit a revised application for a smaller dwelling, although there appears to have been little point in giving this advice if the Committee's policies were clear, and approval was unlikely to be given. Given that an application was submitted on that advice, the Board is of the opinion that the Committee should have conducted a site visit. The Board believes that the Committee might well have exercised its discretion to make an exception to its policy had it conducted a site visit. The Board noted that between the letter of 21st April 1998 and the Committee meeting on 11th June 1998 when the second appeal was considered, there was adequate time for such a visit to have been conducted.

Having visited the site, the Board noted that the land in question was bordered on three sides by dwellings - on one side by a high fence, on a second side by a wall, on a third side by a hedge and access road, and on the fourth side by high hedging beyond which there was a meadow, and that the site could not therefore reasonably be reincorporated into agricultural land. In those circumstances, the only outcomes for the site appeared to be incorporation into neighbouring domestic gardens, a dwelling for an agriculturalist, or to be left as it is. To the layman's eye, it is a building plot, and the Board believes that had the Committee visited the site, it might have been minded to exercise its discretion and permit the applicants to build a sympathetic dwelling on the land which had been gifted to them by members of their family.

Furthermore, the Board noted that, with regard to the Sensitive Landscape Area of the Agricultural Priority Zone, the aim of the Island Plan was to protect agricultural land and 'to limit the spread of new development in the open countryside by restricting it to existing settlements'. The Board was of the opinion that, as the Agriculture and Fisheries Department was not opposed to the loss of agricultural land, the agricultural land did not need protecting, and that the proposed development was sited in an existing settlement and not in open countryside.

The Board finds that the decision to reject the planning application for a dwelling on a site formerly occupied by disused glasshouses adjacent to La Biarderie, Rue de la Monnaie, Trinity, could not have been made by a reasonable body of persons after proper consideration of all the facts, and accordingly requests the Planning and Environment Committee to advise it, **within a period of three months of the date of publication of this report,** of the steps which have been taken to reconsider the matter and the result of that reconsideration. The Board recommends that the Committee conduct a site visit as part of its reconsideration.

Signed and dated by -

....
W.J. Morvan, Esq., Chairman

....
Mrs. C.E. Canavan

....
P.E. Freeley, Esq.

APPENDIX 8

BOARD OF ADMINISTRATIVE APPEAL
25th November 1998
Complaint by Token Limited against a decision of the Planning and Environment Committee
Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982

1. Present -

Board Members
R. R. Jeune C.B.E., Chairman
G. C. Allo
Mrs. L. Jean King M.B.E.

Complainant
Token Limited represented by Mr. P. B. Higgins
Advocate M. M. G. Voisin, Legal Representative

Committee
Deputy E. M. Pullin, Planning and Environment Committee
G. D. Smith, Assistant Director, Development Control
R. T. Webster, Senior Planner

States Greffe
Miss. T. J. Audrain, Acting Committee Clerk
Mrs. P. Evans, States Greffe

The Hearing was held in public in the Committee Room, St. Brelade's Parish Hall.

2. Summary of the dispute

The Hearing had been convened to consider a complaint by Mr. Peter Beardsley Higgins against a decision of the Planning and Environment Committee to reject an 'in principle' application made by him, through Token Limited, in September 1997 to construct three single-storey bungalows on Field 248A, Le Mont Gras d'Eau, St. Brelade.

The Chairman, having opened the hearing, adjourned the meeting to conduct a site visit to view the property and its environs. The Hearing reconvened at St. Brelade's Parish Hall.

3. Summary of complainant's case

3.1 The Board heard that Field 248A, St. Brelade, had been included in the Green Zone when the Island Plan was approved by the States in November 1987. Advocate Voisin, representing Mr. Higgins, contended that this had been an error. He suggested that the land had been included in the Green Zone because, at the time, the then Island Development Committee believed that it was in the same ownership as Field 248 to the north. He also argued that, as the Committee of the day did not visit the site, the zoning was only arbitrary. Furthermore Field 248A intruded into what was an otherwise built-up area and should have been included in that designation.

Mr. Higgins had sought to develop Field 248A in 1987 and had asked the Island Development Committee to consider removing it from the Green Zone to facilitate this. He received a reply dated 17th September 1987 from Mr. Peter Thorne, Assistant Director of Planning at the time, confirming that the Committee would be prepared to support rezoning of the field and the subsequent development for housing. This was considered by Mr Higgins to be a clear and unequivocal statement by the Island Development Committee of its support. He believed it was tantamount to agreeing that permission would be given. However, a proposition was never taken to the States to rezone Field 248A.

3.2 Eight years later, on 1st November 1995 Mr. Higgins made a renewed request, through the intermediary of his legal consultant at the time, Mr. Vernon Tomes, to have the field taken out of the Green Zone. On 8th October 1997, having considered the advice of H.M. Solicitor General, the Committee refused permission for the following reasons -

(a) the proposal was contrary to the approved Island Plan policy for the Green Zone, in which there was a

presumption against all forms of new development for whatever purpose;

(b) it would adversely affect the established spacious character and appearance of the neighbouring residential area; and

(c) further residential development in this area, with the associated increased traffic generation on the existing sub-standard private access road would cause unacceptable loss of amenity to existing residents.

3.3 Advocate Voisin believed that the Planning and Environment Committee had given undue weight to the objections of neighbouring residents when it was not required by the Island Planning (Jersey) Law 1964 to give regard to their views at all. He put forward the following points -

(a) the argument that three extra bungalows would suburbanise the area did not have merit because there were already 28 homes and two hotels served by the road;

(b) a row of conifers planted along the northern boundary of Field 248A would provide a natural boundary along the Green Zone and would limit visual impact of the development from La Route des Genets;

(c) the increase in traffic brought by three bungalows would be minimal compared to the volume already using the road.

Advocate Voisin reminded the Board that the same objections had been raised by residents in 1995 when Mr. Higgins built three bungalows on Field 303A directly opposite. In this case, the Committee had granted planning permission. He argued that the Committee was required by law to apply consistency in its approach and to honour the decisions of a previous Committee unless it had good reasons to do otherwise.

3.4 Advocate Voisin argued that Field 248A was not a truly viable piece of land for agricultural purposes and was not cultivated except for an occasional crop of hay. He suggested that it was the duty of the Planning and Environment Committee to consider housing for the site in view of the severe accommodation shortage in the Island. He felt Field 248A was ideal for the development of Category B or 'demand' housing. It was an obvious infill site, being surrounded by buildings on three sides and possessing easy connections to all the major utilities.

3.5 The Board was advised that here had been no material change in circumstances on the site between 1987 and 1997, when the applications were made, but that the initial favourable decision had been reversed without explanation. Furthermore, in a letter dated 4th December 1996, the Solicitor General had been unable to advise that the Committee would not be bound by a previous decision. Advocate Voisin therefore concluded that rejection of the application to build three bungalows on Field 248A had been unreasonable.

4. Summary of the Planning and Environment Committee's case

4.1 On behalf of the Planning and Environment Committee, Mr. Roy Webster, Senior Planner, stated that there was no evidence to suggest Field 248A had been included in the Green Zone by mistake. On the contrary, it had been identified as a valuable open space in a built-up area. Therefore, the refusal of the application was in line with the existing policy which presumed against any new development in the Green Zone. The Committee's representatives explained that land use consultants had walked the boundaries of the built-up areas during the preparation of the Island Plan and that the zones had been defined by surveyors and landscape architects and therefore could not be described as arbitrary. The designations had not been influenced by any questions of ownership.

4.2 Mr Webster argued that, although Mr. Thorne's letter of 17th September 1987 was a clear statement of intent, it in no way constituted the granting of planning permission. Furthermore, the rezoning did not automatically mean that planning permission would be granted because the Committee would still take into account the impact of the development on its environs.

4.3 There had been a change of Committee since Mr. Higgins' first application in 1987 and greater weight was now afforded to residents' objections in line with a policy of public consultation. The Committee also considered that the content of the residents' comments constituted material planning considerations rather than being a not-in-my-backyard mentality. The Committee did not regard Field 248A as an infill site and maintained that the proposed development would adversely affect the character of the surrounding residential area. Additionally, the row of conifers could not be taken into account because it was not a permanent feature or an official boundary.

4.4 The Planning representatives pointed out that although a development of three bungalows had been approved for

Field 303A, directly opposite, the Committee had expressed serious concerns at the time about the road, the amenities and the impact on the character of the area. Field 303A had been zoned in the “Built-Up Area” but the Committee had felt that any further development on Field 248A would exacerbate existing problems. It had therefore rejected an application to build a house in the grounds of an adjacent property known as “The Pines”.

During consideration of Mr. Higgins’ request in 1995, the Committee had made a site visit and sought the advice of H.M. Attorney General. It was, therefore, argued that it had taken reasonable action in dealing with the case.

5. The Board’s findings

5.1 The Board of Administrative Appeal would not normally deal with matters concerning land or buildings in the Green Zone because the line of demarcation had been fixed by the States of Jersey upon a recommendation of the Planning and Environment Committee. Any alterations to this line or exceptions to be made to building within the Green Zone are taken to the States of Jersey by the Planning and Environment Committee for approval or otherwise. This is in conformity with the terms of the Amendment to the ‘Island Plan - Volume 2: Plan and Policies (P.126/87) Amendment’ lodged in October 1987 and approved by the States of Jersey in November 1987.

5.2 However, in the case under review, the applicant had produced correspondence from the Committee of the day which caused the Review Board to respond differently. Critical to this was a letter dated 17th September 1987 from the then Assistant Director of Planning, Mr. Peter Thorne, who was now the Department’s Director. In the letter, he expressed an undertaking on behalf of the Committee to support not only rezoning of Field 248A but also the subsequent redevelopment of the site for housing. The following is the text of the letter from Mr. Thorne to Mr. Higgins -

> “Further to your recent correspondence with this Department, I write to advise you that the Island Development Committee, having visited the site, would not oppose in principle the development for housing purposes of Field 303A and the southern part of Field 248 as shown on the drawing appended to your letter of 5th June 1987.
>
> Clearly at this late stage it is not possible to include the site as part of the ‘built-up area’ on the Island Map, which hopefully will be approved later this month. However, the Committee would be prepared to recommend the re-zoning of the land to the States at a later date as intimated in Mr. Paton’s letter to you of 24th July.”

In 1997 the Committee reversed this decision and turned down both the rezoning and the development without giving an explanation to the applicant.

5.3 The Board was concerned that the case had been so protracted and believed that Mr. Higgins’ application had not been well-handled. He was particularly unfortunate that there had been a combination of inefficiencies in the Departments dealing with the matter. The Board, therefore, suggested that a system should be put in place to ensure that cases were highlighted at the Planning Department if they had not been resolved after a certain period of time.

5.4 The Board noted a letter of 4th December 1996 from H.M. Solicitor General to the Planning and Environment Committee setting out previous precedents and on which the Committee appears to have made its decision to reject the application. But the Board also noted the last paragraph of that letter, which reads -

> “As against that, it appears from the papers that the Committee, having adopted one stance in 1987 and communicated it to Mr. Higgins, has now adopted the contrary view. The arguments as to infill, access and drainage all appear, in the absence of any contrary argument, persuasive, and there is no explanation as to why the Committee rejects them. It may be that the Committee had good reason for changing its viewpoint since 1987, as it appears to have done, and for now deciding that Field 248A must remain Green Zone, but if so that reason is not disclosed on the papers. In the circumstances I do not feel able to assure the Committee that it would be sure of success if it refused an application for planning or development permission and the company appealed against that refusal.”

The Board recommends that the Committee should honour the undertaking to take the Green Zone proposal to the States of Jersey. This would give an opportunity for a public hearing and for the neighbours and residents to make their views known. The Board makes no recommendation at this stage with regard to an actual development on the site as to whether any building or what amount of building should take place thereon.

5.5 In conclusion and in line with Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board is of the opinion that the decision of the Planning and Environment Committee in this case was contrary to the generally accepted principles of natural justice and could not have been made by a reasonable body of

persons, and that the Planning and Environment Committee should honour the undertaking of its predecessor Committee. The Board, therefore, requests that the case of Field 248A, Mont Gras d'Eau, St. Brelade, be reconsidered by the Planning and Environment Committee and for it to seek a States decision on the rezoning of Field 248A before 31st March 1999.

Signed and dated by -

....
R.R. Jeune Esq., C.B.E., Chairman

....
G.C. Allo Esq.

....
Mrs. L. Jean King, M.B.E.

APPENDIX 9

Findings of the Board of Administrative Appeal constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended, to consider a complaint by Mrs. M. Langlois against a decision of the Planning and Environment Committee

1. The Board was constituted as follows -

Mr. R.R. Jeune, C.B.E., Chairman
Mr. W.J. Morvan
Mr. D.J. Watkins

1.1 The parties were heard in public at St. Ouen's Parish Hall on Monday 30th November 1998, immediately after they had visited the site which was the subject of the complaint.

1.2 The complainant, Mrs. M. Langlois, was present, and was represented by Senator J.A. Le Maistre.

1.3 The Planning and Environment Committee (the Committee) was represented by Senator Nigel Quérée, President; Mr. G.D. Smith, Assistant Director Development Control; and Ms. J.J. van Huysen, Senior Planner.

1.4 The complaint related to the decision of the Planning and Environment Committee to reject an in principle application to construct two dwellings on part of Field 588, La Route de Vinchelez, St. Ouen.

2. Summary of complainants' case

Senator J.A. Le Maistre

2.1 Senator Le Maistre submitted to the Board a number of papers and related correspondence, dating back to April 1981, which had been drawn from the Department of Planning and Building Services' file. The submission of these documents as evidence was not opposed by the Planning and Environment Committee.

2.2 Senator Le Maistre said he intended to show that the Committee's decision to refuse in principle planning permission for the construction of two two-storey four-bedroom dwellings on part of Field 588, with the remainder of the field to be used for public amenity space, was misguided. He was of the opinion that, in accordance with Article 9(2)(b), 9(2)(d) and 9(2)(e) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board should find that the Committee's decision was "unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;" or "could not have been made by a reasonable body of persons after proper consideration of all the facts;" or "was contrary to the generally accepted principles of natural justice".

2.3 Senator Le Maistre referred to the internal Planning memorandum prepared by the Senior Planner on 2nd December 1997, which had recommended that approval be given to the proposed development. This had later been amended to a refusal. However, the original recommendation was that sketch plans of the proposed buildings and their relationship to surrounding properties should be submitted and approved by the Committee prior to any development application being submitted.

2.4 The Senator detailed the history of the site and pointed out that in 1980 Mrs. Langlois' mother, Mrs. A. Hacquoil, had ceded part of the field to allow the construction of a bus lay-by. No application to develop had been made by the family and the application currently under consideration had only been made following an approach by the parish of St. Ouen with a view to developing the field as a village green. In those circumstances, it was only right and fair that Mrs. Langlois should seek some sort of benefit.

2.5 Senator Le Maistre drew the Board's attention to P.133/84 and P.149/84, relating to the rezoning of land for the St. Ouen's Village development. In particular, the Board was asked to note the rezoning of a number of agricultural fields surrounding Field 588 for housing purposes. Furthermore, the 1987 Island Plan demonstrated that Field 588 was in the White Zone, where development was accepted, and was well within the built-up area. No objections to the proposed development had been received from neighbours. The Senator also produced correspondence dating back to 1984 relating to the proposed development of a St. Ouen's Village Plan. In a letter, dated 6th January 1984, to the Chief Executive Officer at the Agriculture and Fisheries Department, Mr. P. Thorne, the then Assistant Planning Adviser, wrote: "The purple line surrounding the village is intended to define the extent of the built-up

area, outside which normal White Land policies would apply. We would, it is proposed, adopt a sympathetic attitude towards infill housing proposals within this 'envelope'."

2.6 No reference was made to Field 588 in the proposition attached to P.133/84, although the States were asked to approve a drawing plan showing Field 588 as an 'open amenity space'. Similarly, no reference was made to Field 588 in the proposition attached to P.149/84. However, the report attached to P.133/84 envisaged that Field 588 'might in time, be acquired and 'developed' by the parish as a village green'. No explanation was given as to what was meant by an 'open amenity space' or a 'village green' and Senator Le Maistre felt this left them open to interpretation. This was further illustrated in a handwritten note in the Planning and Building Services Department's file which referred to a future village green with possible recreational facilities.

2.7 However, Senator Le Maistre questioned how the Planning Department intended to obtain the land needed for a village green, and surmised that as it was not States policy to obtain such land by compulsory purchase they would have to develop it in conjunction with the owner. This was what the parish was trying to do, recognising that they were "very much in the hands of Mrs. Langlois". The proposed development would take up a third of the three-vergée site but it had never been stated that a minimum area of land was necessary to achieve the aims of the parish and, as had been demonstrated in a letter dated 3rd November 1997 from the Connétable of St. Ouen to the Planning Department, the parish was fully supportive of Mrs. Langlois' application.

2.8 Senator Le Maistre also argued that there was a presumption that Mrs. Hacquoil would develop the field, and referred to the handwritten notes prepared by Mr. P. Thorne of a meeting at St. Ouen's Parish Hall on 1st November 1983, which was attended by the then Connétable of St. Ouen and his two Procureurs du Bien Public, to discuss the proposed development of St. Ouen's Village. Field 588 was discussed, and Mr. Thorne noted that the existing situation was that they 'would not favour development on bottom end of site near main road'. Senator Le Maistre submitted that this could be interpreted as an acceptance that there would be development at the top end of the field.

2.9 He criticised the Committee for their refusal to enter into negotiations with Mrs. Langlois to resolve the situation and for failing to take any steps to implement their 1984 intention of developing Field 588 as an open amenity space. Senator Le Maistre was of the opinion that the Committee should have reconsidered the application following the offer by Mrs. Langlois to scale down the size of the proposed dwellings and reposition them at the Committee's discretion, so as to cause minimal visual impact.

2.10 Examining the Committee's grounds for refusing the application, Senator Le Maistre drew the Board's attention to Policy CO26 of the 1987 Island Plan which stated that "when considering development proposals, full account will be taken of the quality of the agricultural land affected and the impact on the economics and viability of individual farm holdings". He referred to the letter sent to the Planning Department by the Technical and Development Officer at the Department of Agriculture and Fisheries, dated 31st October 1997, which stated that the loss of the field for agriculture would not be opposed and that the existing farm tenant did not feel the loss of the field to be important to his farm holding. Indeed, the Senator felt it was well recognised that single fields surrounded by housing were becoming increasingly difficult to work. Furthermore, Field 588 was no different to the surrounding fields which had already been developed and this had been recognised by the site investigation group who visited Field 570, La Rue Militaire, St. Ouen, in April 1981.

2.11 Senator Le Maistre contended that the two reasons put forward by the Committee for refusing the application were contradictory, as any development of the field as a village green would remove it from agricultural use.

2.12 Senator Le Maistre questioned whether the Committee had been aware of all the correspondence relating to the application before making their decision on 30th January 1998. He had requested confirmation that they had been made aware of the letter from the parish, dated 3rd November 1997, and had been advised that this letter, and other correspondence, had been considered by the Committee on 8th February 1998 and at subsequent meetings. However, the Committee had not had sight of the parish's letter before making their original decision, and the Senator believed that had they had the letter in their possession they might have come to a different conclusion. Subsequent appeals by both the Connétable and Deputy of St. Ouen, and by Mrs. Langlois, would have left the Committee in no doubt as to the strength of their desire.

2.13 He was also critical of the omission of the St. Ouen's Village development from the 1987 Island Plan, even though it was agreed some three years previously.

2.14 In conclusion, Senator Le Maistre asked the Board to give consideration to asking the Committee to review its decision.

3. Summary of the Planning and Environment Committee's case

Senator Nigel Quérée

3.1 Senator Quérée explained that each application had to be considered in the light of the Planning Law and the 1987 Island Plan. In this instance, consideration also had to be given to the 1984 St. Ouen's Village Plan, which had the same standing as the 1987 Island Plan.

3.2 Responding to Senator Le Maistre's claim that Field 588 was within the built-up area, which was defined as being land within the boundary of the White Zone, Senator Quérée stated that this did not mean that all the land within this boundary was classified as being part of the built-up area.

3.3 With reference to P.133/84, Senator Quérée explained that as the drawing referred to in paragraph (a), which outlined the rezoning of various fields as part of the St. Ouen's Village Plan, and showed Field 588 as open amenity space, had been adopted by the States, the Committee had to be guided by this decision. Furthermore, as Field 588 had not been rezoned for development it was still classified as agricultural land.

3.4 Senator Quérée also took issue with the remarks made by the Technical and Development Officer at the Department of Agriculture and Fisheries in his letter, dated 31st October 1997. The Officer, with regard to Field 588, wrote: "I also note that it is within the boundary of the built-up area (White Zone) in St. Ouen and as such has therefore been zoned where development may be allowed which could be regarded as infilling or completing a group." However, Senator Quérée said that this was only the view of the Officer, who was not properly qualified to determine planning matters. The Senator also stressed that the quality of the agricultural land was not a consideration when the States was asked to approve the rezoning of land for the St. Ouen's Village development.

3.5 He explained to the Board that the final decision on planning matters lay with either the Committee or its Applications Sub-Committee, and that whether or not an application received the support of other States Committees, it was ultimately the Planning Committee who made the decision. Similarly, while Planning Officers could make recommendations to the Committee, the Committee could, and did, choose to go against these recommendations. However, in respect of this application, the approval recommendation had been withdrawn and a refusal notice recommended after the Senior Planner took advice from senior colleagues, who advised her of the existence of the St. Ouen's Village Development Plan.

3.6 In stressing the Committee's desire to adhere to Policy CO25, which contained a presumption against the permanent loss of agricultural land, the Senator reminded the Board that the policy still applied even if a field were not in active agricultural use.

3.7 In reaching its decision, the Committee had remained open to being convinced of the strength of the application, but could not neglect the 1984 decision by the States to approve the land as an open amenity space. This did not necessarily mean that the field had to be used for recreational purposes to justify its status as an amenity for the public, as in its present grassed state it already provided a 'green lung' at the heart of the village development.

3.8 Senator Quérée accepted that the Committee and its predecessors could have made greater efforts to develop Field 588 as a public park/village green but pointed out that the field had provided a welcome open space for the past 14 years. The concept of having a public open space had been recognised, for example, in the 1982 St. John's Village Development Plan, and the reasoning behind the Committee's decision was that such a space should remain free of housing development.

3.9 The Committee remained open to negotiation on the development of Field 588 as a village green but, with regard to this application, the Committee felt that any benefits were negated by the development of two houses on the site as this did not allow residents full access to the field.

4. Discussion

4.1 The Board enquired as the procedure for rezoning Field 588 as a village green without housing and was informed that, in the Committee's opinion, such a move would need to be approved by the States as it currently remained classified as agricultural land. Mr. G.D. Smith was of the opinion that the States, when they considered the matter in 1984, would not have envisaged any development of the site and so any change to its character would need States' approval. This was disputed by Senator Le Maistre, who reminded the Board that the future development of Field 588 had never been debated, and he added that if the Board was to make assumptions then it might well decide that the Planning authorities had recognised that the top end of the field would be developed at a future date when, in

Mr. P. Thorne's notes of 1st November 1983, it had been stated that development would not be favoured on the bottom end of the field.

4.2 The members of the Board sought to determine why the Senior Planner processing the application had decided to change her recommendation. The Senior Planner explained that that her original assessment of the application had been made without reference to the 1984 St. Ouen's Village Development Plan, as she had been unaware of its existence and had instead relied on an interpretation of the 1987 Island Plan. When she had reconsidered the application with regard to the 1984 St. Ouen's Village Development Plan, she decided to amend her previous recommendation. The Board also noted that the Technical and Development Officer at the Department of Agriculture and Fisheries was unlikely to have been aware of this plan when submitting his comments.

4.3 The Board further enquired as to the status of Field 588 within the White Zone and was informed by Mr. Smith that the adoption of P.133/84 took the area out of the Green Zone and Green Backdrop Zone but did not automatically rezone the entire area as built-up area. However, Mr. Smith accepted that within the boundary of the White Zone there was a general presumption in favour of development. The Senior Planner also referred to paragraph 4 of the report attached to P.133/84, which envisaged that Field 588 might, in time, be acquired and developed by the parish. But Senator Le Maistre asked the Board to note that this was an explanatory note attached to the proposition and was not part of the proposition itself.

5. The Board's findings

5.1 The Board noted that the field in question lay within a built-up area (White Zone), and that although one of the objections of the Planning and Environment Committee related to the loss of agricultural land, the Agriculture and Fisheries Committee had no objection to the change of use. It further noted that the existing tenant did not consider that the loss of the field would be important to his farm holding. In any event, the field was set out in the St. Ouen's Village Plan as "amenity open space" and as a consequence would be lost to agriculture.

5.2 The Board also noted a letter from Mr. P. Thorne, then Assistant Planning Adviser, dated 6th January 1984, addressed to the Chief Executive Officer of the Department of Agriculture and Fisheries, in which he wrote:

> "The purple line surrounding the village is intended to define the extent of the built-up area, outside which normal White Land policies would apply. We would, it is proposed, adopt a sympathetic attitude towards infill housing proposals within this 'envelope'."

5.3 And, more importantly, the Board's attention was drawn to a handwritten note of Mr. P. Thorne, after a meeting at St. Ouen's Parish Hall on 1st November 1983 with the then Connétable and Procureurs du Bien Public, detailing discussions on the development of St. Ouen's Village and, apparently, Field 588. Mr. Thorne noted that they 'would not favour development on the bottom end of the site near the main road', which indicated a possibility of development elsewhere on the site.

5.4 A very important aspect of this matter relates to the desire of the parish of St. Ouen to have the use of this field for the creation of a 'village green'. It is, after all, earmarked in the St. Ouen's Village Plan as a public amenity space. The Board noted that in the Committee's report (paragraph 6.4) it is mentioned that the Committee had visited the site. In fact this was not the case and only the Applications Sub-Committee had indeed visited the site.

5.5 This is not achievable without the willing co-operation of Mrs. Langlois. Indeed, the parish authorities have already arrived in broad terms at an arrangement with Mrs. Langlois, and in the light of what the Board has noted with regard to the above site and the parish's desire to proceed, the Board has concluded that the decision arrived at by the Committee was unreasonable. The Board noted that the property had remained in the same family for over 200 years, and only now has the opportunity occurred for the parish and Planning to realise their long-term wish to have an amenity open space within their control which would realise the Village Plan as approved.

5.6 The Board therefore recommends that the Planning and Environment Committee should invite a fresh joint application from both the parish of St. Ouen and Mrs. Mary Langlois in relation to the field and that the Planning and Environment Committee should permit Mrs. Langlois as part of that joint application to erect two dwellings on the north-eastern corner of Field 588.

5.7 Accordingly, the Board finds that in relation to the total plan for the field, the decision to reject the planning application for two dwellings on part of Field 588, La Route de Vinchelez, St. Ouen, could not have been made by a reasonable body of persons after proper consideration of all the facts, and accordingly requests the Planning and Environment Committee to advise it, **within a period of three months of the date of publication of this report,** of

the steps which have been taken to reconsider the matter and the result of that reconsideration.

Signed and dated by -

....
R.R. Jeune, CBE, Chairman

....
W.J. Morvan

....
D.J. Watkins