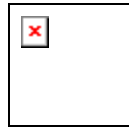


**REPORT OF THE BOARD OF ADMINISTRATIVE APPEAL RELATING TO THE COMPLAINT BY MR. AND  
MRS. A.C. SMAIL AGAINST A DECISION OF THE PLANNING AND ENVIRONMENT COMMITTEE**

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**Presented to the States on 28th September 1999  
by the Special Committee to Consider the Relationship between Committees and the States**

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**STATES OF JERSEY**

**STATES GREFFE**

140

1999

R.C.35

Price code: C

## **Report**

The Special Committee to Consider the Relationship between Committees and the States has received a report, submitted under Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, from the Board of Administrative Appeal appointed to review a complaint by Mr. and Mrs. A.C. Smail against a decision of the Planning and Environment Committee to reject an application 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.

The Board has reported that the Planning and Environment Committee has not implemented the recommendations in the Board's original report and, accordingly the Special Committee, in accordance with Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, refers the matter to the States.

## BOARD OF ADMINISTRATIVE APPEAL

### Report submitted to the Special Committee to Consider the Relationship between Committees and the States relating to the complaint by Mr. and Mrs. A.C. Smail against a decision of the Planning and Environment Committee

1. A Hearing was held on 16th October 1998 to consider a complaint by Mr. and Mrs. A.C. Smail against a decision of the Planning and Environment Committee to refuse 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. The Board requested the Committee to reconsider the matter. The Board also recommended that the Committee conduct a site visit as part of its recommendation. A copy of the Findings is **attached** as an Appendix.
3. The Planning and Building Services Department, in a letter to the Greffier of the States dated 3rd February 1999, advised that, following a site visit, the Committee decided not to accept the Board's recommendations.
4. The Chairman of the Board, Mr. W.J. Morvan, was out of the Island, and the Board did not meet until 14th April 1999. Mr. P.E. Freeley was not present as he was out of the Island. Mr. R.R. Jeune, C.B.E., Chairman of the Administrative Appeals Panel, was present at the meeting. The Board, in a letter dated 14th April 1999 to the Department, expressed disappointment that the Committee had not accepted its recommendation, which was unanimous. Before deciding to take any action under Article 9(4) of the Administrative Decisions (Jersey) Law 1982, as amended, the Board decided to ask the Committee to reconsider its decision and also to advise if the full Committee had visited the site. Article 9(4) of the Law states -

*[Where a Board, having requested reconsideration by the Committee ... is of the opinion that the findings of the Board have been insufficiently considered or implemented, it may present a report on the matter to the Special Committee to Consider the Relationship between Committees and the States (hereinafter referred to as "the Special Committee") which shall refer the matter to the States.]*

5. The Committee reconsidered its decision on 26th May 1999, and the Department, in a letter dated 10th June 1999, advised that "The Committee remains of the opinion that La Ville à l'Eveque is not a settlement area as envisaged by the Island Plan which shows clearly those areas of the Island which would have village or settlement plans prepared for them. This group of houses was not an area identified for such a plan. As such it is regarded as a group of dwellings in the countryside of which there are many similar examples. To allow additional dwellings to be added to such groups would be contrary to the policies of the Island Plan which have been discussed at length and approved by the States. Accordingly, therefore, the Committee is not prepared to change its decision with regard to this particular case. ... The President has arranged to meet with Mr. Jeune to discuss Review Board procedure as the Committee is concerned to ensure that its overall legal and policy remits are fully understood."
6. The President of the Planning and Environment Committee, and the Chief Executive Officer and the Director of Planning, met Mr. Jeune, together with the Greffier of the States and the Deputy Greffier, on 18th June 1999. The Director, in a letter dated 20th July 1999 to Mr. Jeune, stated that -

"The Committee does not accept the findings of the Board for the following reasons -

- \* the Board did not give sufficient regard to the policies of the Island Plan, approved by the States of Jersey in 1987, and consistently applied by the Island Development Committee/Planning and Environment Committee;
  - \* the Board appears to have substituted its own decision for that of the Committee while not subjecting itself to the constraints of consistency and fairness under which the Committee has to operate;
  - \* the Board's finding is wholly inconsistent with that of another Board of Administrative Appeal held in a very similar case;
  - \* the Board placed an erroneous interpretation on the word "settlement" in its findings, and did not ascribe to it the meaning accorded in the Island Plan. It thus applied incorrect policies in its consideration of this case."
7. The Board met on 9th August, when Mr. Jeune was again present. The Board, having reconsidered the matter in the light of the comments of the Planning and Environment Committee, remained unanimous that it did not wish to

amend its Findings and accordingly decided that, in accordance with Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, it would present a report in the matter to the Special Committee to Consider the Relationship between Committees and the States, and that Committee shall refer the matter to the States.

Signed and dated by -

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

Mrs. C.E. Canavan .....

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

**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.