ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL FOR THE YEAR 2001

Presented to the States on 23rd April 2002
by the Special Committee to consider the relationship between Committees and the States

STATES OF JERSEY

STATES GREFFE

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ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL FOR 2001

The Special Committee to Consider the Relationship between Committees and the States is pleased to present to the States the Annual Report of the Administrative Appeals Panel for 2001.

The Committee, once again, wishes to place on record its sincere appreciation of the work undertaken by the Chairman of the Panel, Mr. R.R. Jeune, C.B.E., who together with the Deputy Chairmen, Advocate G. Le V. Fiott and Mrs. C.E. Canavan, members of the Panel, dedicate many hours of their time to the work of the Panel without any form of remuneration.

The Committee notes that the Boards continue to find anomalies in the system of appeals used by some Committees. Some of the delays to which the Chairman made reference in his foreword to the 2000 report continue. A number of Committees are not treating Boards with the urgency required of them. The Special Committee plans to address this matter.

The work of the Panel is important. It is the checks and balances, of which we have all heard so much in the last year, working in a practical way. The members of the public who have a complaint rely on the Panel to place the urgency and thoroughness which they have so admirably demonstrated to their complaints. The work of the Panel will only meet its objectives if States Committees place the same urgency and thoroughness on their responses and dealings with the Panel.

Foreword by the Chairman of the Administrative Appeals Panel

Dear Mr. President,

I have pleasure in forwarding to you the report of the Administrative Appeals Panel for the year ending 31st December 2001.

I believe that the Panel has had another successful year. You will note that the Greffier of the States received 14 new complaints during the year and of these 6 were referred to a Board, 4 applications were refused and one case was withdrawn when the Committee concerned settled the matter. Three cases were still under consideration at the end of the year although at the time of writing I am able to inform you that a decision has been taken to refer one of these to a Board and another has been withdrawn as the Committee concerned has now reviewed its decision and granted consent.

There were a total of 6 hearings during the year. In 5 cases the Board upheld the relevant Committee's decision and in only one case did the Board ask the Committee concerned to reconsider its decision. The findings of the Boards are reproduced in full in Appendices **A** to **F**. There has, perhaps, been an unusually high proportion of cases this year where the Board has rejected the complaint and upheld the Committee's decision. I believe nevertheless that the findings show that Committees of the States have nothing to fear if they can demonstrate that they have acted properly, fairly, consistently and in accordance with agreed policies, and even if Complainants remain aggrieved when their complaints are not upheld they have the satisfaction of knowing that a thorough and independent review of their case has taken place.

The Deputy Greffier of the States and I attended the biennial conference of the British and Irish Ombudsman Association at Warwick University in May 2001. As at previous conferences we were able to meet a wide range of those working as Ombudsmen and attended sessions on public and private sector Ombudsman and alternative dispute resolution schemes led by a wide range of speakers including the U.K. Parliamentary Commissioner for Administration and the Local Government Ombudsman. Those we met were interested to hear details of the Jersey scheme and the Deputy Greffier was subsequently asked to submit an article to the Ombudsman Journal about the system of administrative appeals in the Island.
Several speakers at the conference referred to the making of recommendations concerning 'systemic change' in their findings. This is done when those involved in alternative dispute resolution schemes uncover examples of general maladministration or inappropriate procedures when investigating individual complaints. Even if the individual complaint is rejected the findings might comment on these general issues. There are several examples of this being done in the findings of our Boards during 2001. In April 2001 a Board under the chairmanship of Mrs. C.E. Canavan considered a complaint against the Education Committee in relation to a student grant (see Appendix C). Although the Board dismissed the individual complaint it was extremely concerned about the system of appeals which was in use by the Education Committee and commented at length about this in its findings. The Committee responded positively to the Board's comments and instituted a revised system of appeal in line with the Board's recommendations. In August 2001 a Board under my chairmanship considered a complaint against a decision of the Planning and Environment Committee concerning the creation of a parking area. (see Appendix E). During the hearing it became clear that the Public Services Committee had, for many years, allowed its officers to make comments to the Planning and Environment Committee in planning cases even though the Island Planning (Jersey) Law 1964, as amended, requires the Committee to comment and no formal delegation of this power was in place. I understand that steps have now been taken to rectify this matter. I think that comments of this type are an additional benefit of our local system enabling more general issues to be addressed in addition to individual complaints.

Once again I would wish to express my thanks to the Deputy Chairmen and the members of the Panel for the work they have undertaken during the past year. I am also grateful to the Greffier of the States, to the Deputy Greffier and the staff of the States Greffe for their efficient and timely work on behalf of the Panel. I am sure that members of the Panel would wish to make a special vote of thanks to the Deputy Greffier of the States who has done so much in organising the appeals, in getting the right documents from Committees and in drafting the decisions.

Yours sincerely,

R.R. Jeune C.B.E.
Chairman

The following is a summary of the outcome of the complaints which were outstanding in the 2000 Annual Report and of new complaints received in 2001 -

Complaints referred to in the Annual Report for 2000 (R.C.10/2001) -

Planning and Environment Committee

(a) Statement of complaint received on 18th October 2000 concerning the refusal of the Committee to allow the demolition of a building classified by the Committee as a 'Building of Local Interest'.
Hearing held on 19th April 2001 and the Board upheld the Committee's decision.
Copy of the findings attached at **Appendix A**

(b) Statement of complaint received on 1st November 2000 concerning the imposition of conditions on a house and store and against the decision of the Committee to withhold information from the Complainant.
First part of the application refused by the Greffier of the States as the complaint was considerably out of time. The second part of the application was settled when the Committee supplied the information requested.

Public Services Committee

(c) Statement of complaint received on 27th November 2000 concerning refusal of consent to establish a vehicular access to a property via a slipway which was administered by the Committee.
Hearing held on 26th June 2001 and the Board upheld the Committee's decision.
Copy of the findings attached at **Appendix B.**

Education

(d) Statement of complaint received on 11th December 2000 concerning the refusal of an educational grant for the Complainant's daughter to attend university.
Hearing held on 17th April 2001 and the Board upheld the Committee's decision.
Copy of the findings attached at **Appendix C.**

Complaints received in 2001

Planning and Environment Committee

(e) Statement of complaint received on 22nd January 2001 concerning the granting of planning permission for a proposed residential development adjacent to the Complainant's property.
Application refused as the Greffier of the States considered there were no grounds for a hearing.

(f) Statement of complaint received on 25th January 2001 concerning the Committee's decision to refuse consent for the demolition of a shed and the construction of a 1½-storey dwelling at the Complainant's property in Grands Vaux, St. Saviour. (this was a request to the Greffier of the States to reconsider her previous decision (see item (j) in the 2000 Annual Report) not to refer this case to a Board in the light of additional information).
Hearing held on 18th May 2001 and the Board upheld the Committee's decision.
Copy of the findings attached at **Appendix D.**

(g) Statement of complaint received on 6th February 2001 against the Committee's refusal to grant permission for the creation of a car parking area in front of the Complainant's property on the Coast Road, St. Clement.
Hearing held on 22nd August 2001. The Board upheld the complaint and requested the Committee to reconsider.
Copy of the findings attached at **Appendix E.**
At the end of 2001 the Board was giving consideration to the results of the Committee's reconsideration.

(h) Statement of complaint received on 11th April 2001 concerning a decision of the Committee to grant consent for a cottage to be demolished and replaced with a two-bedroom dwelling with vehicular access.
Application refused as the Greffier of the States considered there were no grounds for a hearing.

(i) Statement of complaint received on 18th July 2001 concerning the Committee's refusal to grant consent for the change of use of a store to a workshop in Southcote Lane, St. Helier
Hearing held on 29th October 2001 and the Board upheld the Committee's decision.

Copy of the findings attached at **Appendix F.**

(j) Statement of complaint received on 29th October 2001 concerning the Committee's refusal to grant permission for the creation of a new access adjacent to a residential conversion at La Rue du Colin, Grouville.
Application refused as the Greffier of the States considered there were no grounds for a hearing.

(k) Statement of complaint received on 23rd November 2001 concerning the Committee's refusal to grant consent for the construction of a dwelling on land to the rear of the Complainants' property at La Grande Route des Mielles, St. Ouen.
Application under consideration at the end of 2001.

(l) Statement of complaint received on 29th November 2001 concerning the Committee's requirement for the Complainant company to cease unauthorised occupation of a field in La Route du Marais, St. Ouen for storage of industrial equipment.
Application under consideration at the end of 2001.

(m) Statement of complaint received on 19th December 2001 concerning the Committee's rejection of a change of use application to use part of a warehouse in Bellozanne Valley as a showroom and retail area.
Application under consideration at the end of 2001.

Education Committee

(n) Statement of complaint received on 8th October 2001 concerning the Committee's refusal of a grant application in respect of the Complainant's son's university education.
Application referred to a Board to be held in January 2002.

Home Affairs Committee

(o) Statement of complaint received on 24th September 2001 concerning the Committee's rejection of the Complainant's appeal against a requirement for him to resign from the States of Jersey Police Force.
Application referred to a Board to be held in January 2002.

Housing Committee

(p) Statement of complaint received on 20th August 2001 concerning the decision of the Housing Department not to adjust the level of the Complainant's rent rebate to take account of a drop in his income.
Application withdrawn as Committee resolved matter to the satisfaction of the Complainant before the matter was referred to a Board.

Public Services Committee

(q) Statement of complaint received on 30th May 2001 concerning the procedures followed by the Committee when dealing with a number of road service licence applications.
The Greffier of the States decided that the matter could not be referred to a Board as the nature of the complaints was not clearly specified.

(r) Statement of complaint received on 28th August 2001 concerning the procedures followed by the Committee when dealing with road service licence applications on 22nd August 2001.
The complaint was referred to a Board that was to have been held on 20th December 2001. The hearing was deferred following the election of the Committee President as Connétable of St. Helier. The hearing will take place in early 2002.

APPENDIX A

BOARD OF ADMINISTRATIVE APPEAL

19th April 2001 and 21st May 2001

Complaint by Mr. F. Le Gresley and Mrs. M. Boleat (represented by Mr. P. Grainger) against a decision of the Planning and Environment Committee

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended

1. Present -

Board Members

Mrs. C.E. Canavan, Chairman
Miss C. Vibert
Mr. J.G. Davies

Complainant

Mr. F. Le Gresley
Mrs. M. Boleat
Mr. P. Grainger (19th April 2001 only)

Planning and Environment Committee

Deputy J.B. Fox
Mr. R.S. Fell, Assistant Director (Design and Development)

States Greffe

Mr. M.N. de la Haye, Deputy Greffier of the States

The first part of the hearing was held at St. Peter's Parish Hall, St. Peter on 19th April 2001. The Board then reconvened in the Peirson Room, Morier House, St. Helier on 21st May 2001 to give consideration to the further written submissions made by both parties. Both parts of the hearing were held in public.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. F. Le Gresley and Mrs. M. Boleat (represented by Mr. P. Grainger) against a decision of the Planning and Environment Committee on 25th November 1997 to reject an application to refurbish the property known as 'Overdale', Le Carrefour au Cendre, St. Peter and construct two new dwellings on the site and the subsequent indication from the Committee of its decision of 25th November 1999 that the demolition of the property would not be allowed if a formal application to do so was submitted.

3. Site Visit to 'Overdale'

3.1 After the formal opening of the hearing at St. Peter's Parish Hall on 19th April 2001 the parties went together on a site visit to the property. At the request of Mr. Grainger the Board was taken to 3 other sites in the vicinity where development had taken place. These were -

Warren Place, La Petite Rue d'Elysée where 4 dwellings had been constructed;
Fitzroy House, La Petite Rue d'Elysée where 3 dwellings had been constructed;
Clos de la Caroline, La Rue des Sillons, where 4 dwellings had been constructed.

Mr. Grainger also indicated to the Board other properties en route to the property which were designated by the Planning and Environment Committee as proposed Sites of Special Interest or Buildings of Local Interest.

3.2 On arrival at the site Mr. Le Gresley explained to the Board that the property had been lived in by two successive

occupants who had benefited from life enjoyment without the responsibilities of ownership. As a result no significant amounts had been spent on the property for many years and, as the Board was able to ascertain on entering the property, it was in a dilapidated state with no facilities such as a kitchen or bathroom. Mr. Le Gresley explained to the Board that he and Mrs. Boleat, his sister, had concerns about the location of the property as it was on a busy road junction and issues of road safety and noise meant that, in his opinion, it would not be a particularly attractive property to live in even if refurbished.

3.3 Mr. Fell, on behalf of the Planning and Environment Committee, advised the Board that although the exact age of the property was not known it was believed to date from the mid-19th century or slightly earlier. It was not an outstanding example of an historic building but it was typical of its period and had a certain charm. It was an unusual building because of its location on a prominent junction and also because it had two quite distinct facades with the old shop entrance on the north side and a more classic Jersey cottage facade on the south. Mr. Fell reminded the Board that no application to demolish Overdale had ever been formally submitted to the Planning and Environment Committee and the refusal of permission for the development of 2 new houses on the site in 1997 had been taken on strict planning policy grounds as the site fell within the Agricultural Priority Zone where there was a presumption against all new non-agricultural development. Mr. Fell assured the Board that the Committee had been fully aware of the difficulties associated with any refurbishment of the property when insisting on its retention. Although the property might, to a layman, appear to be in a dilapidated state there were many hundreds of similar properties that had been successfully refurbished.

3.4 The Board visited the interior and exterior of the property before returning to St. Peter's Parish Hall for the first part of the hearing.

4. Summary of the complainant's case

4.1 The Board had received a written summary of the Complainants' case in advance of the first part of the hearing. The Board subsequently considered a transcript of Mr. Grainger's oral submission made on 19th April 2001 and received further written comments in advance of the second part of the hearing on 21st May 2001.

4.2 Mr. Grainger, on behalf of the Complainants, set out the reasons why he believed the decisions of the Planning and Environment Committee in relation to the property had been unreasonable.

4.3 He explained that he did not consider that the current Register of Buildings of Architectural or Historic Interest ('the Register') was a valid document that the Committee could rely upon to determine applications that related to a property identified on the Register as a Building of Local Interest (BLI). The Island Planning (Jersey) Law 1964, as amended, set out the statutory procedure that was to be followed by the Committee when designating a property as a 'Site of Special Interest' and, as this procedure had not been followed for the full list of historic properties identified by the Committee since 1992, the Committee could not rely on the Register in determining applications.

4.4 Mr. Grainger pointed out that the Committee had designated 'Overdale' as a Building of Local Interest and therefore had no intention to follow the statutory procedure to designate it as a Site of Special Interest. 'Overdale' was not, therefore, in his submission a 'special' property and the Register had no relevance for the property.

4.5 Mr. Grainger challenged the Committee's reliance on the advice of the Solicitor General dated 13th February 1998 (that had been circulated to the Board with the Committee's papers) and which, in the Committee's view, confirmed that historic buildings, whether or not designated as Sites of Special Interest, might contribute to the amenities of the Island and, as a result, their protection contributed to one of the purposes of the Island Planning (Jersey) Law 1964, as amended, as set out in Article 2 of that Law. Mr. Grainger stated that the 'opinion' was not a legal ruling and was not, in his opinion, tenable under the provisions of the Law. In particular it did not confirm that the Committee had been entitled to create the Register. The Law only entitled the Committee to treat buildings as 'special' if they were formally designated as Sites of Special Interest in accordance with the statutory procedure and the view that 'Overdale' contributed to the amenities of this area was a purely subjective judgment by the Committee which, in Mr. Grainger's submission, would not be shared by the majority of the local population. It was important to realise that modern buildings would, in due course, become the 'historic buildings' of the future and any approach which sought to protect all 3,000 properties on the Register would lead to a situation in the future where there were virtually no new 21st century buildings in the countryside.

4.6 Mr. Grainger claimed that there were no specific policies in the Island Plan that permitted the Committee to list and protect secondary and non-special buildings that it had no intention to designate as Sites of Special Interest. The recently published document entitled 'Interim Policies for the Conservation of Historic Buildings' was not therefore of any validity. The general public were entitled to rely on official Orders, schedules and lists prepared in

accordance with the Law and other 'unofficial' lists such as that containing Buildings of Local Interest (BLIs) were *ultra vires*. Furthermore, because the Committee had not yet officially notified all owners of BLIs that their properties were on the list owners had no means of knowing, until an application was made, that such onerous restrictions had been placed on their property. No monetary grants were currently available to owners of historic buildings unless the property was on the list of Sites of Special Interest. No funds would therefore be available to the owners of 'Overdale' to refurbish and maintain the property which was unjust. If society wished to protect certain properties because it was perceived to be in the 'public interest' then the public should be prepared to assist financially.

4.7 Mr. Grainger drew attention to the fact that the purposes of the Island Planning (Jersey) Law 1964, as amended, included the need not only to 'preserve' but also to 'improve' the amenities of the Island. The Committee was, in his opinion, placing too great an emphasis on the need to 'preserve' and had omitted to consider the 'improvements' that would arise from the replacement of 'Overdale', which had reached the end of its useful life, with new dwelling accommodation on the site. 'Overdale' was a 'typical' house and there were literally hundreds of similar properties in the Island. It did not, as such, make any significant or positive contribution to the architectural or historical background of the Island and the fact that a property was 'old' was not, in itself, a reason for preserving it. It was, in addition, in a dangerous location at the apex of a fork in the road and had been hit on occasions by passing vehicles.

4.8 In reaching any decision under the Planning Law the Committee had to be seen to be acting reasonably. It also had an obligation to ensure that land was used in a manner serving the best interests of the community. The Committee, unfortunately, placed undue emphasis on the preservation of historic buildings at the expense of other considerations such as the necessary provision of housing. This site, developed in an appropriate and sympathetic way, could assist in addressing the Island's housing shortage.

4.9 The Planning Law was, in the Complainants' submission, a draconian piece of legislation affecting the traditional rights of property owners. The Committee therefore had to ensure that it took an unbiased, reasonable and tenable view on applications. It could not simply adopt and apply policies that it had no legal authority to make. The actions of the Committee, in insisting on the retention of 'Overdale' at all costs, were not reasonable and the Complainants considered that the Board should therefore uphold the complaint.

5. Summary of the Committee's case

5.1 The Board received the written submission of the Committee in advance of the first part of the hearing and subsequently received the Committee's written response to the transcript of the Complainants oral submission.

5.2 On behalf of the Committee Mr. Fell reminded the Board that no formal application to demolish Overdale had ever been made to the Planning and Environment Committee. The only formal application that had been considered was the 1997 application to refurbish the property and construct two new dwellings on the site. That application had been rejected as there was a presumption in the Island Plan policies against allowing new residential development in the Agricultural Priority Zone.

5.3 Mr. Fell addressed the Board on the issue of the legal advice from the Solicitor General dated 13th February 1998. Mr. Fell explained that the Committee was not in a position to challenge the advice it had received from its legal advisers and in the light of that advice the Planning and Environment Committee believed that it was entitled to take into account the special interest of any building when determining planning applications even if the property in question was not formally designated as a Site of Special Interest through the procedures specified in the Island Planning (Jersey) Law 1964, as amended. The Complainant's assertion that the Committee's use of the list of properties defined as Buildings of Local Interest was in some way *ultra vires* was therefore unjustified.

5.4 Mr. Fell explained that the Planning and Environment Committee had asked the Complainants to show that refurbishment of Overdale was not a financially viable option. Professional valuations and advice had been received and, in October 1999, the figures presented were as follows -

	£
Cost of refurbishment	225,000
Market value of property before refurbishment	220,000
Forecast market value after refurbishment	325,000
Likely shortfall if refurbished and sold	**105,000**

When obtaining these valuations the Complainants had been advised by officers of the Committee that some enabling development on the site might be possible but the Committee itself was not persuaded that this was appropriate. The Committee had taken the view that the Complainants could sell the property and realise its capital

value before refurbishment and the Committee believed that a potential purchaser might be willing to refurbish the premises without seeking to realise a capital gain in exactly the same way that would be necessary for the Complainants. It was a routine matter for the Committee to deal with matters relating to the safeguarding of historic buildings and imaginative solutions had to be found on occasions. Although the Committee had rejected the application for two new properties in the garden of 'Overdale' Mr. Fell was of the view that the Committee would probably allow a new extension of the property to replace the single-storey building on the west side of the site and the Committee would also allow a new small building, ancillary to the main house, to replace a dilapidated shed near the entrance.

5.5 At the request of the Board Mr. Fell gave some of the background to the present policies and procedures relating to historic buildings. He admitted that there had, in the past, been a lack of clarity in the Committee's approach because of the size of the task involved in notifying all owners of buildings identified as 'special' by the Committee. The 1987 Island Plan had identified that there should be a register of historic buildings and a list had first been prepared in 1992. It was accepted that the 1992 list was flawed and it was now being reviewed on a parish by parish basis. The Committee had simplified the designations used in the original list so that buildings were now defined as either Sites of Special Interest, or Buildings of Local Interest (BLIs). Properties in the former category would, in due course, be subject to the full statutory procedure for designation and, once designated, would be subject to stringent controls which meant that both internal and external features could not be changed without the consent of the Planning and Environment Committee. Grants were available to assist owners of Sites of Special Interest when undertaking work to their properties. The procedure was different for BLIs as no grants were currently available and owners would simply be notified of the status of their property by letter as soon as the revised list was finalised.

5.6 Although Mr. Grainger had claimed that the Committee had no legal powers to designate properties as BLIs Mr. Fell explained that, on the basis of the advice of the Solicitor General, the Committee believed it had the right to take into account the special features of any property and its contribution to the amenities of an area when considering applications. The Solicitor General was the Committee's legal adviser, her opinion was unambiguous, and the Committee saw no reason not to rely on her opinion in reaching decisions affecting historic buildings. The Committee did not claim that the Register had any statutory force and the existence of the BLI list was simply an attempt to inform owners and others dealing with property developments of the special status of a property rather than merely considering such matters when an application for development was submitted. If the list did not exist the Committee and its officers would have to go through the same analytical process on an application-by-application basis. This would cause consternation to applicants, who would have no prior warning of the issues relating to historic buildings, and would be a recipe for planning chaos.

5.7 Mr. Fell stated that the Committee wished to act to preserve Jersey's historic buildings and believed that in doing so it was representing the public interest. Properties being designated as Sites of Special Interest or BLIs were agreed by the Jersey Building Heritage Sub-Committee which was a sub-committee of the Planning and Environment Committee. The Committee considered that 'Overdale', although not an outstanding building, made an important contribution to the amenities of the area in which it was situated and believed it was capable of refurbishment. It was, in Mr. Fell's view, perverse in the extreme to suggest that the destruction of this historic building and development of new houses on such a prominent rural site could be regarded as an improvement in the amenities of the surrounding area. Furthermore the Committee was not convinced that enabling development in the garden was necessary and took the view that if 'Overdale' were placed on the market there would be considerable interest in purchase for refurbishment notwithstanding the theoretical shortfall between total investment outlay and estimated value following refurbishment.

5.8 The Committee was aware of its duty to ensure the best use of land but the development of new dwellings on this site, which was situated in the Agricultural Priority Zone (where there was a presumption against all new non-agricultural development) would create a precedent and run counter to the established strategic objectives of this Zone. All of the new developments shown to the Board in the neighbourhood of 'Overdale' were replacements of existing buildings and not developments on virgin territory.

6. The Board's findings

6.1 In considering this case the Board has noted that the property, in its existing state, cannot be said to contribute greatly to the amenities of the surrounding area. The Board was able to ascertain during its site visit that the property is currently in a very poor state of repair and indeed Board members had to take care inside the property because of its current condition. If 'Overdale' is left in its current state it will continue to deteriorate and it is not, of course, in the interests of either party that this is allowed to happen. The Board was informed by Mr. Grainger of a property in the east of the Island, also designated as a BLI, where a 'stalemate' situation between the owner and the Planning and Environment Committee was causing the property concerned to fall into total disrepair. The Board nevertheless notes that, although the amount of refurbishment required at 'Overdale' appears, to a layman, to be extensive, the

professional judgment of Mr. Fell is that properties in much worse condition have been successfully refurbished and 'Overdale' is by no means beyond repair.

6.2 The Board notes that the Committee has relied extensively on the opinion of the Solicitor General and further notes that the Complainants have challenged the validity of that opinion. The interpretation of any legal opinion is ultimately a matter for the Courts to decide but the Board nevertheless concurs with the Committee's view that it is entitled, at present, to rely on the opinion of its own legal adviser. The Complainants have not obtained legal advice of their own or sought to challenge the opinion relied on by the Committee in the Courts. As a result the Board agrees that the Committee is entitled to take into account the contribution of historic buildings to the amenities of an area irrespective of whether or not the properties concerned have been formally designated as Sites of Special Interest in accordance with the statutory procedure. The existence of the list of Buildings of Local Interest, far from being *ultra vires*, in fact assists property owners to know in advance of the likely constraints that will affect their property in the event of a planning application being made. The Board was nevertheless concerned to learn that the Committee has taken nearly ten years to deal with the list prepared in the early 1990s and has not yet notified all owners of BLIs that their property was on the list. The Board heard that the notification process is unlikely to be complete until later this year and urges the Committee to act swiftly to resolve this issue.

6.3 The Board has taken care to remember that only two matters fall to be considered in this complaint. The first concerns the decision of the Committee to refuse an application to refurbish 'Overdale' and allow the construction of two new dwellings in the garden. The second concerns the subsequent indication from the Committee (albeit in the absence of a formal planning application) that it would not allow the demolition of 'Overdale'. Having taken all factors into account the Board does not consider that the Committee has acted unreasonably or oppressively in considering that 'Overdale' is an historic building of significance and in requiring the retention of the property. The Board therefore **rejects** the complaint. Although 'Overdale' is currently in a poor state of repair the Board sees no reason to challenge the Committee's view that the property is not beyond repair and, if refurbished and repaired, could make an interesting and unusual contribution to the amenities of the surrounding area. The Board notes that the property is situated on a busy road junction and, as such, enjoyment of it will always be blighted by traffic disturbance but considers that this applies to many hundreds of properties in Jersey and is not, as such, a reason to allow its demolition.

6.4 Having rejected a complaint it is not normally within the remit of a Board to make additional comments on how the parties should proceed although, as already stated, it is in no-one's interest that 'Overdale' continues to deteriorate. However, having received such lengthy written and oral submissions from both parties and having given this case very careful consideration, the Board feels that it may be helpful to make some general observations in this regard. The Board notes for example that, in assessing the costings and valuations submitted by the Complainants, the Committee took account of the fact that the property had been inherited by the Complainants and, in its view, had therefore been received at 'nil cost'. The Board considers that if the Committee is to take account of economic criteria when dealing with historic building matters then it should apply consistent economic criteria in all cases and it was unfair to discount the value of this property in the way it did. Although there would be no requirement for the Committee to allow the Complainants to make a profit from the refurbishment of 'Overdale' it would be unreasonable to expect them to make a loss. The Board was interested to hear from Mr. Fell that 'enabling development' is frequently allowed in the United Kingdom in situations where an historic building cannot be economically refurbished without some accompanying new development nearby. It would appear that this concept is not generally considered by the Committee in Jersey and the Board believes that, in situations such as this one, it should be considered as one option if refurbishment alone is shown to be uneconomical. Although it would not be possible to form a view until up to date costings were prepared, it may be that an extension to 'Overdale' and a small additional dwelling in the garden would be sufficient to allow the refurbishment to become economically viable. The Board was interested to learn from Mr. Fell that there was extensive U.K. case law indicating that enabling development had, in appropriate circumstances, been accepted as being a necessary exception to other planning policies.

6.5 The Board feels it necessary to make one minor procedural comment in relation to this case. At the first part of the hearing Mr. Grainger, on behalf of the Complainants, produced a lengthy written transcript of his submission together with an additional bundle of papers referring to other properties in the area. Because neither the Board nor the Committee had received these papers in advance it was necessary to adjourn the hearing to enable the Committee to respond. The Board considers that this was unsatisfactory although it wishes to stress, for the avoidance of doubt, that this difficulty has in no way affected its consideration of the facts of the case. The Board will nevertheless be recommending to Mr. R.R. Jeune C.B.E., Chairman of the Administrative Appeals Panel, that guidelines are issued setting out deadlines for the submission of any additional papers to a Board.

Signed and dated by -

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Mrs. C.E. Canavan., Chairman

Miss C. Vibert

Mr. J.G. Davies

APPENDIX B

BOARD OF ADMINISTRATIVE APPEAL

Tuesday 26th June 2001

Complaint by Mr. and Mrs. Leonard Philip Baudains (represented by Mr. N.P.E. Le Gresley) against a decision of the Public Services Committee

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended

1. Present -

Board Members

Mr. R.R. Jeune C.B.E., Chairman
Mrs. L.J. King M.B.E.
Advocate G. Le V. Fiott

Complainants

Mr. and Mrs. L.P. Baudains
Mr. N.P.E. Le Gresley

Public Services Committee

Deputy A.S. Crowcroft - President
Mr. J. Richardson, Chief Officer designate

Parish of St. Clement

Connétable S.J. Le Cornu

States Greffe

Mr. M.N. de la Haye, Deputy Greffier of the States

The hearing was held in public at Samarès Methodist Church Hall, St. Clement on 26th June 2001.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. and Mrs. L.P. Baudains (represented by Mr. N.P.E. Le Gresley) against a decision of the Public Services Committee to refuse permission for the creation of an opening in the sea wall adjoining the property known as 'Rockview' and the creation of a vehicular access to the property over the slipway leading to Green Island beach which is administered by the Public Services Committee.

3. Site Visit to 'Rockview'

3.1 After the formal opening of the hearing at Samarès Methodist Church Hall the parties went on foot to Green Island slipway to view the site of the proposed entrance. Mr. Le Gresley showed the Board the location of the proposed opening and the Board was also able to note that vehicles were allowed to park on the west side of the slipway right up to the area in front of the proposed entrance (although two small dinghies were placed on the slipway against this part of the sea wall during the site visit). The Board was also shown the pedestrian route from the western part of the beach to the car park via low steps which led onto the slipway just below the proposed opening.

4. Summary of the complainant's case

4.1 The Board had received a full written summary of the Complainants' case before the hearing and had taken note of the submissions made on their behalf.

4.2 Mr. Le Gresley, on behalf of the Complainants, explained in his submissions that although there was a pedestrian right of way from the car park at Green Island to 'Rockview' no vehicular access was enjoyed to the property. As a result Mr. Le Gresley contacted the Conveyancing Section of the Law Officers' Department in October 1997 to request that steps be taken to establish whether or not the appropriate authorities would be prepared to allow a vehicular access to be created.

4.3 Mr. Bechelet, Head of Conveyancing at the Law Officers' Department, advised Mr. Le Gresley that the slipway over which a right of way was sought was owned by the Crown but leased to the public. The slipway and the adjoining sea wall were administered by the Public Services Committee.

4.4 In November 1997 Mr. Le Gresley attended a site visit with Mr. Bechelet, H.M. Receiver General and Mr. Chris Carey, Valuer/Estates Surveyor of the Property Services Department. As a result of that meeting Mr. Le Gresley was advised in a letter from Mr. Bechelet dated 20th November 1997 that the Crown had no objection in principle to the creation of a vehicular access to 'Rockview' subject to the necessary authorisation being obtained from the Planning and Environment Committee and any other interested States Committee or Department.

4.5 In January 1998 Mr. Le Gresley received a letter from Mr. Carey of the Property Services Department stating that the Public Services Department had no objection in principle to the creation of an access but nothing further could be done until planning permission for the proposed access was received from the Planning and Environment Committee.

4.6 The Complainants submitted an application for planning permission shortly afterwards and, in the usual way, the Planning Department advertised the application and sought comments from interested parties. Two letters of objection were received. One was from the Parish Secretary of St. Clement stating that the Roads Committee of the Parish were not in favour of the creation of the new access as it was concerned that there would be little visibility for vehicles exiting from the property and, in addition, it was likely that the entrance would often be obstructed by cars parking on the slipway. The Roads Committee was also concerned about the possible impact of the sea defences if the sea wall was breached. The second letter of complaint related to a private matter concerning the occupant of 'Rockview' and was not of relevance to the Board. In addition to the letters of objection the Planning Department received a letter in the following terms from Mr. E.J. Cuthbert, Manager, Engineering Services at the Public Services Department -

"I refer to your letter dated 27th February 1998 regarding the Planning application to create a new vehicular access onto Green Island slipway.

At the present time the owner of the property has not got permission to create an opening through the sea wall, which is under the administration of this Department. In principle there is no objection to the proposal, but no work can be commenced until a contract has been sorted out by Property Services/Law Officers Department".

4.7 Planning permission to create the new vehicular access was granted by the Planning and Environment Committee on 12th March 1998 and following the grant of that permission the Property Services Department wrote to Mr. Le Gresley setting out the terms on which that Department was prepared to recommend to the Public Services Committee that the transaction be entered into.

4.8 Mr. Le Gresley wrote to the Property Services Department in July 1998 confirming that his clients were prepared to enter into the transaction on the terms suggested and requesting that the necessary contract be prepared. The reply from the Property Services Department stated that formal consent from the relevant committees would now be sought so that the Law Officers Department could be instructed to complete the matter.

4.9 Mr. Le Gresley heard no more about the proposed transaction until he received a letter dated 24th November 1998 from the Head of Conveyancing at the Law Officers' Department stating that the Public Services Committee, at its meeting of 21st September 1998, had decided that it was not prepared to grant consent for the proposed opening in the slipway. This was the first intimation received by the Complainants that the proposal did not meet with the Committee's approval despite the previous indication that there was, in principle, no objection.

4.10 The Complainants did not pursue the matter following receipt of the letter as they were involved in a potential legal challenge to the will under which Mr. Baudains had inherited the property 'Rockview'. However following the resolution of those difficulties Mr. Le Gresley, in November 1999, requested the Public Services Committee to reconsider the matter. The Committee eventually did that on 8th May 2000 but decided that it was not prepared to alter its decision.

4.11 Mr. Le Gresley explained to the Board that he was aware that the Public Services Committee had taken account of objections from the Parish of St. Clement when reaching its decision. These concerned the potential danger to pedestrians from the new access, problems with parking and the impact on the sea defences of breaching the sea wall. However the Complainants considered that those objections were not justified. The traffic from the new entrance would be extremely minor when compared to the general level of vehicular traffic on the slipway. Furthermore the responsibility for any flooding or damage arising from the creation of an opening would lie with the Complainants and was not therefore an issue that the Committee should have taken into account. The Complainants were extremely aggrieved to learn in November 1998 that the transaction was not approved after being led to believe over several months that the relevant authorities had no objection.

5. Summary of the Committee's case

5.1 The Board had received a full written summary of the Committee's case before the hearing and the written submissions were amplified by Deputy A.S. Crowcroft, the Committee President, and Mr. John Richardson, Chief Officer designate.

5.2 Deputy Crowcroft explained that the Committee had considered the matter on several occasions including in January 2001 after the request for a review by a Board of Administrative Appeal had been submitted. However the Committee had decided on each occasion that it had considered the proposal that it was not prepared to grant permission.

5.3 The Committee's objection to the proposal were based on two grounds; pedestrian safety and the integrity of the sea wall. In relation to the first the Committee's view was that vehicles would exit from the proposed entrance at right angles to the slipway with virtually no visibility of persons on the slipway. Although the Committee accepted that there was vehicular traffic on the slipway at present this traffic was clearly visible to pedestrians. The presence of vehicles on the slipway presented a certain danger but it would be extremely foolish of the Committee to allow an additional danger to be created especially as the pedestrian route from the western side of the slipway to the car park was well used. If the new access were created pedestrians would walk straight into the path of vehicles exiting from it.

5.4 The Committee's second objection related to the integrity of the sea defences. The Committee was extremely concerned that an opening in the sea wall at this location could allow sea water to flood into 'Rockview' and neighbouring properties in storm conditions. The Committee was concerned that it could be liable for such damage if it allowed the new opening to be created.

5.5 The Committee accepted that the dealings with the Complainants had not been entirely satisfactory. In particular the Committee accepted that the former Manager of Engineering Services, Mr. E.J. Cuthbert, should not have given encouragement to the Complainants by indicating that there was no objection in principle to the proposal when it had not been considered by the Committee itself. However the Committee's case was that the Complainants should have been aware from correspondence received that the transaction was subject to approval by the Committee and members of the public should not take comfort from indications from officers when dealing with the States. Furthermore the issue of planning consent was not of particular relevance to this case as the wall and slipway in question were under the administration of the Public Services Committee and the transaction could not proceed without approval from the Committee. The Committee nevertheless conceded that there had been a lack of co-ordination between the Property Services Department, which had written to the Complainants setting out the full terms of the transaction, and the Public Services Department. The Complainants had clearly been encouraged by the early indications that the transaction could proceed although, in the Committee's submission, that encouragement only lasted for a period of some six months, from March to September 1998.

5.6 Deputy Crowcroft informed the Board that the original decision had been taken by the Committee as previously constituted, and not under his presidency. When the Committee under his presidency had reconsidered the matter it had, in his words, to choose between the *'lesser of two evils'*. On the one hand the Committee had to consider the sense of grievance felt by the Complainants as a result of the encouragement received whilst, on the other hand, the Committee had to consider the serious consequences of granting permission. After careful consideration it had concluded that, despite the errors of administration that had occurred, it would not be acceptable to allow the entrance to be created.

6. Parish of St. Clement

The Connétable of St. Clement was present during the hearing and, with the agreement of both parties was allowed to address the Board on the concerns of the Parish authorities of St. Clement. Connétable Le Cornu showed

photographs of the area taken at high tide during a winter storm in 1992. The parish authorities shared the views of the Committee in relation to the potential danger to pedestrians and in relation to the potential risks involved in breaching the sea defences. In addition the Parish was concerned that policing problems would arise if a new vehicular entrance was created as it would inevitably be blocked by parked vehicles on busy summer days and the parish police would then be called upon.

7. The Board's findings

7.1 Article 2 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, allows any person who is aggrieved by a decision made, or by any matter of administration by any Committee or Department of the States, to apply for a review by a Board of Administrative Appeal. The Board considers that the Complainants have every reason to be aggrieved by the actions of the States Committees and Departments that have been involved in this case which, in the Board's view, has revealed a serious level of maladministration and lack of co-ordination between States bodies. Having made an initial approach to the Law Officers' Department the Complainants were given constant encouragement that the application would proceed. Her Majesty's Receiver General indicated that he had no objection, planning consent was granted and a senior officer of the Public Services Department indicated in the letter quoted above that there was, in principle, no objection from that Department. The Board noted that this letter appeared to be inconsistent with an earlier letter written to Mr. Carey of the Property Department in which the same officer of the Public Services Department wrote *"I am concerned at the possible effect on the sea wall and Rockview if the wall is breached and we experience a heavy tidal action"*. The encouragement given to the Complainants culminated in a formal notification of the terms of the transaction, signed under delegated authority by the Director of Property Services on behalf of the Planning and Environment Committee, being sent to the Complainants. The Board noted from the letters copied to it that the Complainants were, at this stage, so confident that the transaction would proceed that Mr. Le Gresley submitted a cheque for £1,000, the agreed consideration, to the Head of Conveyancing. The Complainants' hopes were finally dashed following receipt of a letter from the Head of Conveyancing in November 1998 informing them that, at a meeting held some two months earlier, the proposal had been rejected by the Public Services Committee.

7.2 The Board has given very careful consideration to this case and its decision, although unanimous, has been very finely balanced. It has considered whether the level of encouragement given to the Complainants was so great that it was then unreasonable for the Committee to reject the application. It has also, however, considered whether the decision taken by the Committee was, notwithstanding the encouragement given to the Complainants, ultimately the correct one. Taking all the issues into account the Board has, somewhat reluctantly, concluded that the Committee's decision was, on balance, correct. The Board accepts that the two grounds relied on by the Committee, namely the integrity of the sea wall, and, perhaps more importantly, pedestrian safety, are important concerns and it would not have been in the public interest for the Board to have ignored those issues simply because of the maladministration that had occurred. The Board therefore **rejects** the complaint and will not ask the Committee to reconsider its decision.

7.3 In making this decision the Board wishes to make it clear that it has considerable sympathy for the position of the Complainants. They have undoubtedly incurred considerable expense in pursuing this application and had every reason in the early stages to expect that it would proceed to a satisfactory conclusion. Although some letters they received were headed 'Subject to Committee approval' others were simply headed 'Subject to Contract'. The Board was not impressed with the Committee's assertion that the negotiations had not reached a stage where they would be legally binding because they were deemed to be subject to subsequent Committee approval. Although it is not within the Board's remit to advise the Complainants on the way forward the Board considers that other remedies may be available to them. It is with some regret that the Board notes it has no power to deal with the matter of costs as in legal proceedings as, if it had the power, it would undoubtedly suggest that the Committee should meet the Complainants' legal costs in pursuing this complaint. The Board considers that citizens are entitled to a higher standard of service from Committees and Departments than that received by Mr. and Mrs. Baudains. In particular this case has revealed an apparent lack of co-ordination between Departments which has led to the difficulties referred to earlier. The Board considers that efforts must be made to improve the co-ordination between Departments involved in such transactions to avoid similar problems arising in the future. In addition the Board has sympathy with the Connétable of St. Clement who considered that Connétables were not currently consulted to the extent that they should be in relation to the creation of access onto public roads in their parishes. The Board urges that Connétables should always be consulted at an early stage, not only because they have an in-depth knowledge of their own parish, but also because the Parish authorities will, if the changes are approved, be called upon to deal with subsequent policing problems.

Signed and dated by -

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

Mrs. L.J. King M.B.E.

Advocate G. Le V. Fiott

APPENDIX C

BOARD OF ADMINISTRATIVE APPEAL

17th April 2001

Complaint by Mr. Michael William Forrest against a decision of the Education Committee

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended

1. Present -

Board Members

Mrs. C.E. Canavan, Chairman
Mr. D.J. Watkins
Mr. T.S. Perchard

Complainant

Mr. M.W. Forrest
Miss L. Forrest.
Mr. R. Forrest (for a time)

Education Committee

Deputy J.J. Huet
Mr. D. Greenwood, Assistant Director of Education
Mrs. M.O. Davies, Student Finance Manager
Mr. C. Kelleher, Student Finance Officer

Viscount's Department

Mr. C.R. Renault, Principal Administrator, Désastre Section (for a time)

States Greffe

Mr. M.N. de la Haye, Deputy Greffier of the States

The Hearing was held in public in the Halkett Room, Morier House, St. Helier.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. Michael W. Forrest concerning the decision of the Education Committee to assess him for maximum parental contribution (£8,800) in respect of his grant application for the cost of his daughter Laura's further education at Bath University.

2.2 Mr. Forrest had initially been informed of this decision in a letter dated 7th September 2000 from Mrs. Madeleine Davies, Student Finance Manager at the Education Department. He had subsequently appealed against the decision to the body known as the Education Committee Appeals sub-committee on 3rd October 2000 but the original decision had been upheld by the Appeals sub-committee.

3. The Complainant's financial position

3.1 Before hearing from both parties the Board invited Mr. Christopher Renault, Principal Administrator, Désastre Section, Viscount's Department, to address it concerning the Complainant's financial situation as he had been dealing with Mr. Forrest's *désastre*. The press were asked to withdraw during this part of the hearing.

3.2 Mr. Renault referred the Board to judgments of the Royal Court dated 11th June 1999 and 8th July 1999, the latter date being the day on which Mr. Forrest had been declared *en désastre* on the application of Mrs. Linda Mary Giles

his former wife. Mr. Renault explained that at the time of the *désastre* the only asset available was a Porsche car which had been sold at auction for £9,500. Mr. Forrest lived in a substantial property known as 'La Sergenté', St. Mary but this property had been transferred into a trust in 1988. The beneficiaries of the trust were initially Mr. Forrest's former wife (now Mrs. Giles) and his three children, but subsequent changes had added Mr. Forrest himself as beneficiary, removed his former wife and added his present wife when he had remarried. The property was on the market for £3.25 million but had been independently valued on behalf of the Viscount for £1.85 million. At the time of the *désastre* there was a mortgage on the property of £650,000 and two other charges on the property amounting to some £90,000. The application for *désastre* came about following an application by Mrs. Giles for a claim of £677,661.26.

3.3 At the time of the désastre the trust had had the benefit of the income from a financial arrangement made when Mr. Forrest had sold his trust company and office building it occupied to the managers of the company, his former colleagues, in a management buyout. The loan repayments in respect of the realty had amounted to some £8,000 a month but these payments had finished in November 2000. As part of the agreement the trust was also to receive 10% of the gross billing of the Langtry Trust for 20 years under the terms of a consultancy agreement but these payments had been stopped by the new owners of the company after Mr. Forrest's *désastre*.

3.4 Mr. Renault explained to the Board that no money had been paid in or out of the *désastre*. The Viscount's Department believed that Mr. Forrest and his wife currently had no income other than some £400 received weekly from 2 lodgers and livery of horses. The Viscount was taking legal advice concerning the status of the trust and whether or not an application to break the trust could be made to the Court.

3.5 Following his explanation of the Complainant's financial situation Mr. Renault withdrew from the hearing.

4. Summary of the complainant's case

4.1 The Complainant agreed that Mr. Renault had given an accurate overview of his current financial situation. He reiterated that although the trust had a substantial asset in the form of the property 'La Sergenté' it currently had no income and because of his own bankruptcy he was unable to work in his former profession as an accountant until the *désastre* was recalled. The mortgage on the property was being paid by the trustees and funds were also being made available by the trustees for the maintenance and upkeep of the property. He and his wife were living from the small income received from the 2 lodgers and the livery business and a recent holiday to Australia had been paid for from money saved by his wife over a period of some 1½ years. He himself had no income at all to pay for the cost of his daughter's university education and Anchor Trust, trustees of the trust, had had to lend money to pay the last fees.

4.2 Mr. Forrest confirmed that when the application for Laura's grant had been made to the Education Department the trust had had a monthly income of £8,000 from the loan repayments and he himself had been paying £1,500 a month into the trust from employment as a compliance assistant, although this employment had subsequently ceased in August 2000.

4.3 The Complainant informed the Board that if he were unable to obtain a grant he would be content to receive a loan from the Education Committee to cover the cost of his daughter's further education which he could repay when his financial situation improved.

5. Summary of the Committee's case

5.1 Mr. David Greenwood, Assistant Director of Education, gave the Board a general overview of the Jersey system of further education grants.

5.2 Some 1,400 students received financial assistance from the Education Committee and the annual budget for the grants system was approximately £9 million. Article 51 of the Education (Jersey) Law 1999 gave the Education Committee the power to make provision with respect to financial assistance by Order. Mr. Greenwood explained that the Committee was currently liaising with the Law Draftsman concerning the preparation of the necessary Orders which would codify the current procedures and practices of the Committee. It was hoped that the Orders would be made by the Committee in June 2001.

5.3 The calculation of the level of financial assistance to be provided to students was a two-stage process. The Committee firstly had to calculate the total cost of the course to be followed and the living expenses of the student. This calculation comprised the fees to be paid to the University, the day-to-day living expenses of the student together with an allowance for travel. The level of fees could vary greatly depending on the course being followed and the amounts of living expenses and travel were 'weighted' according to the location of the university. Once the

total amount required had been calculated in this way the income of the student's parents was assessed and grants were then made on a sliding scale depending on the financial means of the parents. The maximum payable by any parent was £8,800 which meant that every student whose parents applied for a grant obtained some level of assistance. Therefore although Mr. Forrest had been assessed as being able to make the maximum parental contribution the Committee had paid the sum of £2,000 towards the cost of Laura Forrest's course at Bath University.

5.4 Mr. Greenwood explained that the assessment of parental income was a simple matter for a salaried employee but became more difficult for self-employed persons and others. In addition the Committee reserved the right to consider company profits, emoluments such as free accommodation and, of particular relevance in this case, any income from trusts. The attention of the Board was drawn to the following extract from the Grant Information Booklet -

'The gross income for the purpose of the award is income from all sources as used for income tax purposes, except that gross amounts are used in the case of income on which tax has already been paid. Income under trust arrangements for the benefit of the award holder is also counted as parental income. As a general principle the Committee will not make grants on purely an income basis to students whose parents capital assets and general financial position are considered adequate to meet the expenses involved.'

5.5 The Assistant Director informed the Board that any person aggrieved by the decision of the Student Finance Manager could appeal to a body known as the Education Committee Appeals sub-committee and some 20 appeals a year were heard by this body. The sub-committee normally consisted of Deputy Jacqui Huet, together with one of the Assistant Directors of Education and the Student Finance Manager. The sub-committee could consider whether (a) the Student Finance Manager acted correctly and/or (b) there were any special circumstances which would warrant overturning the original decision. If an applicant was not satisfied with the decision of the sub-committee there was, however, no further right of appeal and the Education Committee itself was not informed of decisions of the Appeals sub-committee. Indeed Deputy Huet stated that in most cases the Education Committee would not be aware that an appeal had been lodged. Mr. Greenwood informed the Board that the Committee was currently reviewing the appeals process in the light of the coming into force of the Human Rights (Jersey) Law 2000 and it was believed that the appeals procedure may have to change once that Law was brought into force. He did not, however, believe that the decision in Mr. Forrest's case would have been any different even if the appeals body had been differently constituted.

5.6 If a parent's income changed substantially after the assessment of parental income had been made the Education Committee could, in certain circumstances, reassess the position. This was normally only done when income fell by more than 20% as a result of death, illness or compulsory redundancy.

5.7 Although Mr. Forrest had indicated that he would be content with a loan from the Education Committee there was currently no provision for loans even though the concept of loans is mentioned in the Education (Jersey) Law 1999.

5.8 Mrs. Madeleine Davies, Student Finance Manager, addressed the Board on the circumstances surrounding Mr. Forrest's application. The Application for Grant form had been submitted to the Education Department in March 2000 and Mr. Forrest was informed by letter dated 11th April 2000 that financial assistance would be provided subject to an assessment of his financial means and the attainment by his daughter of the required educational standard. In early September 2000 Mr. Forrest had still not completed the required Income Statement Form and he was requested to do so by Mrs. Davies. By fax dated 4th September 2000 Mr. Forrest invited Mrs. Davies to contact the Viscount's Department to obtain details of his financial situation and, although it was not normal practice for the Education Department to initiate such enquiries, she contacted Mr. Renault the same day and obtained the necessary information. On being informed of the appropriate details she had written to Mr. Forrest and informed him that he was to be assessed for maximum parental contribution in respect of Laura's course.

5.9 Mr. Forrest had requested an appeal against this decision on 11th September 2000 and his completed Income Form (Form F.E.2) giving details of his income for the year ending 31st December 1999 was finally received by the Education Department on 12th September 2000. This form showed an income of 'Nil' in each section.

5.10 The Appeals sub-committee met on 3rd October 2000 to consider Mr. Forrest's case. The sub-committee on this occasion consisted of Deputy Huet, Mrs. Davies and, as the Assistant Director was not available, the Student Finance Officer (a civil servant working with Mrs. Davies who had since left the Education Department).

5.11 Deputy Huet and Mrs. Davies explained to the Board that the sub-committee had decided that Mr. Forrest's overall financial position was such that, at the time of the appeal, the decision to assess him for maximum parental contribution had been the correct one. There was, at that time, a monthly income of some £8,000 being paid into the trust and the sub-committee had also considered that the asking price for the property 'La Sergenté' was too high

thereby preventing its sale. Although Mr. Forrest had claimed that the beneficiaries of the trust could take legal action against the trustees if the property was sold at an undervalue Deputy Huet was of the opinion that Laura's education was such a vital matter that any such legal action would not have been successful. In addition Deputy Huet noted that, although Mr. Forrest could not work as an accountant, he was free to take alternative employment if he wished. The omissions on Mr. Forrest's form had also been taken into account by the sub-committee, notably the lack of any mention of the income from lodgers and his employment or the existence of the trust.

5.12 Mrs. Davies explained to the Board that it was open to Mr. Forrest to apply for a review of the situation for the academic year 2001-2002. Mr. Forrest was not aware of that fact.

6. The Board's findings

6.1 In considering this case the Board has been careful to note that it has been asked to consider whether the decision made by the Education Committee in October 2000 was a reasonable one and although the Board heard extensive submissions relating to Mr. Forrest's current financial situation it was not being asked to consider whether he would qualify for assistance at the present time. The Board further noted that the Complainant had been somewhat dilatory in pursuing his complaint. He had written to the Greffier of the States on 18th October 2000 requesting information on the procedure for requesting a review and had been sent a letter the following day inviting him to make an appointment with the Deputy Greffier of the States to discuss the matter. He had not contacted the States Greffe following this invitation and enquiries made of his office in mid-November 2000 had revealed that he was out of the Island. He had finally made an appointment on 12th December 2000 and formally requested a review of the decision the same day. When arrangements had been made by the Greffier of the States for a hearing in mid-February it had transpired that Mr. Forrest was absent from the Island on holiday which led to the postponement until April.

6.2 The Board notes that when Mr. Forrest's application for financial assistance was considered by the Committee, the trust was still in receipt of some £8,000 a month from the loan repayments. As Laura Forrest was one of the beneficiaries of the trust it was not unreasonable for the Committee to consider that the financial situation was such that Mr. Forrest should be assessed as being liable for the maximum parental contribution notwithstanding the fact that he claimed at the time that this income was required for the payment of the mortgage, insurance and upkeep of the property 'La Sergenté'. The Board further considers that the Complainant neglected to forward details of his financial situation to the Committee and the Committee was therefore justified in taking account of the omissions and errors on the Income Assessment Form when it was finally submitted. The Education Department had, in fact, taken the unusual step of initiating enquiries with the Viscount's Department to ascertain information that should have been submitted by the applicant.

6.3 The Board therefore **rejects** Mr. Forrest's complaint and will not ask the Education Committee to reconsider its decision. The Board accepts that it is essential that Laura Forrest is able to continue her university education but understands that all her fees have been paid for the current academic year and was informed by the Education Committee's representatives that a fresh assessment of an applicant's financial situation can be made every year. The Board therefore notes that the Committee will be able to assess whether Mr. Forrest should receive further financial assistance for the academic year 2001-2002 when the necessary information about his financial situation for the year ending 31st December 2000 is submitted.

6.4 Despite rejecting the complaint the Board nevertheless wishes to comment on two ancillary matters relating to the procedure being followed by the Education Committee in relation to applications for student grants that are of concern to it.

6.5 The first matter relates to the current statutory position concerning financial assistance. The Board noted that Article 51 of the Education (Jersey) Law 1999, which gives the Education Committee the power to make provision with respect to the grant of financial assistance by Order, had been brought into force on 1st March 2000 but the necessary Orders were not yet made. Although the Board learnt that the Orders were being drafted and should be made in June 2001 it considers that it is extremely unsatisfactory for the Committee to have taken steps to bring Article 51 into force when the necessary subordinate legislation was not prepared. Although it has not sought to clarify the exact legal position concerning grants the Board believes that there is some doubt about the legality of the current procedures being used in the absence of any Orders made under Article 51.

6.6 The second matter of extreme concern to the Board relates to the current procedure for appealing against a decision taken by the Education Department. As mentioned earlier the Board learnt that appeals are currently heard by a body known as the Education Committee Appeals sub-committee which consists of one member of the Education Committee (usually Deputy Huet) who sits with one of the Assistant Directors and the Student Finance Manager. The Board further noted that the Education Committee itself is not informed of the decisions of the Appeals sub-

committee and there is no further right of appeal if an applicant is aggrieved by the decision of the Appeals sub-committee. The Board was troubled to hear the admission by the Assistant Director of Education that the appeals procedure was almost certainly incompatible with the provisions of the new Human Rights (Jersey) Law 2000 which, it is understood, will be brought into force in early 2002.

6.7 The Board does not believe that the present system of appeals is adequate and does not consider that it is proper for the Education Committee to await the entry into force of the Human Rights (Jersey) Law 2000 before adopting a revised system. It is unsatisfactory that appeals are currently heard in the presence of the person who took the original decision (the Student Finance Manager) and, furthermore, the Board believes it is inadequate for only one member of the Education Committee to hear appeals. The Board therefore believes that a revised appeals procedure should be established and invites the Committee to address this issue as soon as possible. Although it is not within the remit of the Board to suggest to the Committee how this revised body should be constituted, it believes that the new appeals body should not contain any officers who were involved in the original decision and, if constituted by members of the Education Committee, should comprise at least 3 or more members. The Board considers that the results of the appeals should be reported to the Education Committee and believes that consideration should also be given to the possibility of giving applicants who are aggrieved by the decision of the appeals body a final right of appeal to the full Committee.

Signed and dated by -

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Mrs. C.E. Canavan., Chairman

Mr. D.J. Watkins

Mr. T.S. Perchard

APPENDIX D

BOARD OF ADMINISTRATIVE APPEAL

18th May 2001

Complaint by Mr. and Mrs. Kenneth Charles Le Cuirot (represented by Advocate M.M.G. Voisin) against a decision of the Planning and Environment Committee

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended

1. Present -

Board Members

Mr. R.R. Jeune C.B.E., Chairman
Miss C. Vibert
Mrs. M. Le Gresley

Complainants

Mr. and Mrs. K.C. Le Cuirot
Advocate M.M.G. Voisin

Planning and Environment Committee

Deputy A.S. Crowcroft
Mr. N. Fagan, Senior Planner

States Greffe

Mr. M.N. de la Haye, Deputy Greffier of the States

The hearing was held in public at St. Saviour's Parish Hall, St. Saviour on 18th May 2001.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. and Mrs K.C. Le Cuirot (represented by Advocate M.M.G. Voisin) against a decision of the Planning and Environment Committee to reject an application to demolish an existing outbuilding at the property 'La Maison du Haut', Les Grands Vaux, St. Helier, and construct a 1½-storey one-bedroom dwelling.

3. Site Visit to 'La Maison du Haut'

3.1 After the formal opening of the hearing at St. Saviour's Parish Hall the Board and parties went on a site visit to the property. On site the Board was shown photographs of the site before the construction of 'La Maison du Haut' showing 1 & 2 La Ferme Cottages, that had existed before the construction of the house, and Field 1414A that had since been incorporated into the garden of the property.

3.2 The Board was able to view the outbuilding which was the subject of the complaint and was able to assess from the plans shown the approximate footprint and height of the proposed new 1½-storey dwelling. The Board was also able to see the conservatory and terrace that had been constructed at the property and was also able to note that access to the proposed new dwelling would be via the same entrance and driveway used to access 'La Maison du Haut'.

3.3 On leaving the site the Board was shown the development that had taken place, and was taking place, in the neighbourhood nearer to Grands Vaux Primary School and was also taken to the east side of Grands Vaux Reservoir to view 'La Maison du Haut' from a distance in an attempt to assess the possible visual impact of the proposed new dwelling on the skyline above the valley.

4. Summary of the complainant's case

4.1 The Board had received a full written summary of the Complainants' case before the hearing and had taken note of the submissions made on their behalf. Advocate Voisin explained to the Board why his clients believed that the reasons given by the Planning and Committee for the refusal of permission for the demolition of the outbuilding and the construction of a new dwelling were invalid and open to challenge.

4.2 Advocate Voisin explained the planning history of the site to the Board. In July 1991 the then Island Development Committee granted in-principle permission for the demolition of 1 & 2 La Ferme Cottages and the construction of a three-bedroom dormer style two-storey dwelling in their place. In September of that year the Committee agreed that the proposed house could be moved slightly to the south and east and the planning permit was issued on 5th March 1992. 'La Maison du Haut' was subsequently built in accordance with the permit. In November 1992 the Agriculture and Fisheries Committee granted permission to vary the agricultural conditions on Field 1414A, which was immediately to the south of the property, to allow the planting of trees. On 10th December 1992 the then Island Development Committee granted permission for the change of use of the agricultural land into domestic garden and in the same month also granted permission for the construction of the terrace and the conservatory which enabled the property to become as it was seen at present.

4.3 In July 1998 the Complainants applied to the Planning and Environment Committee for permission to demolish the one remaining outbuilding and construct a one-bedroom dwelling in its place. The application had been refused on 15th September 1998 for the following reasons -

1. *The proposed dwelling in the Sensitive Landscape Area of the Agricultural Priority Zone cannot be justified in terms of agricultural need and is therefore contrary to adopted Policy CO6 and CO7 of the Island Plan.*

2. *The new building would have an unacceptable environmental impact on the valley side within the Sensitive Landscape Area of the Agricultural Priority Zone in terms of its height, scale and mass.*

Advocate Voisin explained to the Board that, in his opinion, the reasons for refusal were invalid. He did not accept that the proposed development would be contrary to Countryside Policies CO6 and CO7 of the Island Plan which, the Board noted, were in the following terms -

Policy CO6

Agricultural land and all other land outside the 'Green Zone', the defined 'Built-Up Area', the 'Green Backdrop Zone' and the 'Villages' is designated as an 'Agricultural Priority Zone' where:

(a) There will be a presumption against any new non-agricultural development;

(b) Applications for new agricultural buildings and other forms of development which must occur in a rural area will generally be approved subject to considerations of siting and design;

(c) Applications for new dwellings arising out of agricultural need will be considered sympathetically. The Committee will wish to be convinced of the need and will consult the Committee of Agriculture and Fisheries. Special conditions or agreements will be used to ensure that such dwellings are occupied by bona fide members of the agricultural community and remain within the corpus fundi of the farm holding.

Policy CO7

Permission for essential agricultural development within the 'Sensitive Landscape Area' of the 'Agricultural Priority Zone' will only be given if:

(a) The applicant has no suitable alternative site outside the Sensitive Landscape Area' which can be used to accommodate necessary buildings;

(b) There are no existing buildings which can be satisfactorily modified or converted to meet the requirement;

(c) There is a convincing demonstration, supported by the Committee of Agriculture and Fisheries, that the proposed development is essential for the economic running of the farm holding.

In Advocate Voisin's opinion the above policies were intended to deal with agricultural development in the Agricultural Priority Zone and were of no relevance in relation to the present application as the site was no longer in agricultural use. The question of agricultural need was therefore totally irrelevant and the protection of agricultural land was not a material planning consideration in this case. Although the land was zoned in the Island Plan as being within the Sensitive Landscape Area of the Agricultural Priority Zone this zoning was, in Advocate Voisin's submission, superseded by the fact that the then Island Development Committee had approved the change of use of the land to that of a domestic garden on 10th December 1992. Policies CO6 and CO7 could not be relied on in the context of the domestic curtilage of a private house as they were concerned with the prevention of the loss of agricultural land. Furthermore the purpose of the policies was not, as stated in the Committee's statement, to prevent *'ribbon development or the coalescing of groups of homes'*.

4.4 Advocate Voisin stated that the proposed development would not be a development in the open countryside, nor was it in a 'field' or 'garden area' within the countryside. The actual site for the proposed new dwelling was that of an existing outbuilding, adjoining a garage at the neighbouring property and situated in the car parking area to the north west of the existing house. There was no question of a precedent being set as there was already, where the new house was to be built, an existing outbuilding and the proposed dwelling was a very modest one.

4.5 The Board's attention was drawn to the fact that the Planning and Environment Committee had claimed in its statement that the outbuilding in question should have been demolished as part of the original permission granted for the construction of 'La Maison du Haut'. Advocate Voisin pointed out that this had never been a condition of the permit granted which *allowed* the demolition of the buildings on the site but did not *require* their demolition. In 1991 the owners of the site had agreed with the then Island Development Committee that the footprint of the new dwelling should not exceed that of the cottages on the site, but it had never, in the Complainants' opinion, been a requirement that all outbuildings be demolished. Furthermore the agreement of the Committee in 1991 to allow the proposed replacement property to be moved to the south and the east had moved it further away from the outbuilding which remained and reduced the need to remove it to allow access to the new house. It was therefore inappropriate for the Committee to claim in its statement that it would be *'unfair and inequitable'* if the failure of the Complainants to remove the outbuildings was *'rewarded by a permit for a new house'*. In Advocate Voisin's submission the Committee had no right to consider issues other than matters that were strictly material to the planning aspects of the application.

4.6 Advocate Voisin drew the Board's attention to paragraphs 4.26 and 4.27 of the 1987 Island Plan (Volume 2) concerning housing development and, in particular, to the statement in paragraph 4.27 that *'where proposals meet all other planning objectives the presumption will be in favour of development'*. In Advocate Voisin's opinion there was currently a strong demand for housing in the Island and the suitability of this site for building should override the presumption against new development in the Sensitive Landscape Area of the Agricultural Priority Zone. Furthermore the fact that the Committee had allowed the construction of the terrace and conservatory was evidence that the Committee itself was willing to concede that development was possible in this Zone despite its reliance on Policy CO6 in relation to the refusal.

4.7 Advocate Voisin addressed the Board at some length on the Royal Court judgment of 22nd April 1999 in the case of Taunton -v- Planning and Environment Committee (the 'Taunton case') the facts of which were, in his opinion, extremely similar to the Complainants' circumstances and which therefore could be relied on as a precedent to show that the reasons for refusal given to his clients were invalid.

4.8 The Board noted from the judgment that in the Taunton case the appellants had been seeking planning permission for an extension to a property known as 'La Maison du Coin' which was also situated in the Sensitive Landscape Area of the Agricultural Priority Zone. The appellants had, over a period of some 12 months, received encouragement from officers of the Planning and Environment Committee in relation to the proposed extension but the application had been refused when it had come before the Applications sub-committee of the Planning and Environment Committee. The appellants had been informed in the formal notice of refusal that the proposed extension was contrary to Policies CO6 and CO7 even though it would appear from the papers before the Court that the sub-committee had referred only to Policy CO7 when taking its decision. The Court had found that Policy CO7, which referred only to agricultural development, was of no relevance to the application and should not have been relied on. Furthermore the Court found that the constant encouragement given by the officers of the Committee, and the fact that no-one had alerted the appellants to what was said to have been clear criteria, was fatal to the arguments of the Committee. The Court found that it was unreasonable to refuse the development of the extension solely on the grounds that it could have been sold separately, taking the view that it seemed unlikely in the extreme that the linked cottage could, or would, have ever been sold independently. The appeal was allowed and the Planning and Environment Committee was directed to grant permission.

4.9 Advocate Voisin submitted to the Board that the facts of the Complainants' case were so similar to the Taunton case that the Planning and Environment Committee was unable to rely on Policy CO6 in relation to the application for the new dwelling at 'La Maison du Haut'. Furthermore Advocate Voisin drew the Board's attention to the reference in the Taunton case to the Planning and Environment Committee's Policy Note entitled 'The Future Use of Jersey's Traditional Farm Buildings' which stated that the Committee might be prepared to consider the residential conversion of redundant farm buildings when they were *(a) situated within an existing settlement or built-up area, and (b) standing as part of a group of other mainly residential buildings, or within a domestic curtilage, adjacent to buildings which had long since ceased to be used for farming.* Advocate Voisin stated that the Planning and Environment Committee should have had regard to this policy when dealing with the Complainants' case as the application related to the conversion of a redundant farm building, was within an existing residential area, and stood in a group of residential buildings within a domestic curtilage adjacent to buildings which were no longer used for farming.

4.10 Advocate Voisin set out the reasons why he believed the Planning and Environment Committee could not rely on the second ground for refusal of the application, namely that the new building would have an unacceptable environmental impact on the valley side within the Sensitive Landscape Area of the Agricultural Priority Zone. Advocate Voisin referred the Board to the contents of a letter dated 26th June 2000 written by Senator Nigel Quérée, President of the Planning and Environment Committee, to Connétable C.J. Le Herissier Hinault who was, at th time, assisting the Complainants with an appeal against the Committee's decision and, in particular, to the third paragraph, of that letter which was in the following terms -

However, I concede that this site is not agricultural land and the new dwelling would have no great impact in landscape terms, and it is certainly the case that the Island Plan review will address the issue of whether such sites (i.e. gardens of houses, particularly those adjacent to built up areas) should or could contribute to meeting the Island's ongoing housing requirements.

Advocate Voisin submitted that, on the basis of this letter, the Committee had effectively conceded the second ground for refusal.

5. Summary of the Committee's case

5.1 The Board had received a written summary of the Committee's case before the hearing and Mr. Nick Fagan, Senior Planner, summarised the Committee's response to the Complainants' case.

5.2 Mr. Fagan explained that when the permit for the construction of the new dwelling had been issued the then Island Development Committee had believed that all the existing buildings and outbuildings on the site would be removed. The attention of the Board was drawn to a plan, submitted with the 1991 application, on which the outbuilding which remained was shown alongside a note stating *'existing buildings shown as dotted to be removed'*. If the Committee had suspected that the outbuilding would have remained it would have put a condition in the permit requiring its demolition but as it was dilapidated the Committee had simply assumed, in good faith, that it would be demolished.

5.3 Mr. Fagan explained that it was inappropriate for the Complainants to claim that the applications that had beer allowed on the site since 1991 provided precedents which should allow the Committee to grant this latest application even though the site was situated within the Sensitive Landscape Area of the Agricultural Priority Zone. Mr. Fagar reminded the Board that the original application to demolish 1 & 2 La Ferme Cottages and build the new dwelling was allowed as it was a replacement of existing residential accommodation and was not new development as such. Although it was believed that 1 & 2 La Ferme Cottages had been used to house agricultural workers there had been no specific occupancy condition on them and, as such, they were regarded as normal residential accommodation. Furthermore, once permission had been given for the construction of 'La Maison du Haut', it would have been quite unreasonable for the Committee not to allow the construction of a terrace and a conservatory as additions to the property.

5.4 Mr. Fagan set out the background to the change of use of Field 1414A from agricultural use to domestic garden Although the Agriculture and Fisheries Committee had granted permission for a change of condition on the field to allow the planting of trees, and had rescinded the condition that it had to be occupied by a *bona fide* agriculturalist, that Agriculture and Fisheries Committee had never intended that the field should be lost to agriculture. It was only as a result of an administrative error at the Planning Department that a change of use to domestic garden was granted in 1992 although the Agriculture and Fisheries Committee had now accepted that it would be impractical to seek to return the land to agricultural use.

5.5 The Committee conceded that Policy CO7, referred to in the refusal notice dated 15th September 1998, was not in fact of relevance to the application and the Board noted from a letter written to Advocate Voisin dated 19th January 2001 that the Planning and Environment Committee had confirmed at its meeting of 18th January 2001 that the only policy now relied on for the refusal was CO6. Mr. Fagan also accepted that the letter from Senator Quérée to Connétable Hinault was a concession that the environmental impact of the proposed dwelling would be minimal.

5.6 The Committee's position on Policy CO6 was quite clear. The policy as set out in the Island Plan made it clear that there was a presumption against any new non-agricultural development in the Agricultural Priority Zone and there were, in the Committee's view, no reasons to rebut that presumption in relation to this particular application. The Board was shown a copy of the Island Plan map and it was pointed out that the Agricultural Priority Zone extended over much of the Island and was not simply restricted to agricultural land. The Sensitive Landscape Area, in which 'La Maison du Haut' was situated, was, as the name implied, the most environmentally sensitive area of the Zone. Policy CO6 was not only applicable to agricultural land- it was the means of protecting the countryside within the Zone and covered all land including domestic gardens. Decisions on zoning were taken by the States and it was quite incorrect for the Complainants to assert that the change of use allowed for Field 1414A, and the fact that the site had no connection with agriculture, superseded the zoning of this area of land. The policy of the Planning and Environment Committee was that no new houses were allowed in the gardens of properties situated within Agricultural Priority Zone. It was immaterial whether or not the proposed new house could, or would, be sold separately from the main house - any development of a new dwelling not required for an agricultural need was contrary to Policy CO6. The fact that a garage or outbuilding already existed within the Zone was not a valid reason to allow its replacement by an entirely new dwelling. The Island Plan countryside policies, taken together, were intended to prevent development encroaching onto open land which, if allowed to continue unabated, would eventually cause the built up areas of the Island to coalesce.

5.7 Mr. Fagan responded to the Complainants' submissions on the Committee's Policy Note entitled 'The Future Use of Jersey's Traditional Farm Buildings'. This was, in his opinion, of no relevance to the present application. The Policy Note referred to the conversion of agricultural buildings, not to the construction of entirely new dwellings and, furthermore, the remaining outbuilding on this site could not be said to be a farm building.

5.8 The policies on housing, and in particular paragraph 4.27 of the Island Plan (Volume 2) referred to by Advocate Voisin, which stated that *'where proposals meet all other planning objectives the presumption will be in favour of development'* were, in the Committee's opinion, of no relevance in this case. The development at this property was contrary to Policy CO6 and it was not therefore the case that other planning objectives were met.

5.9 Mr. Fagan set out why, in the Committee's opinion, a precedent would be set if development was allowed on this site. It was vital that the Committee acted consistently at all times and in a manner that was fair and equitable to all applicants. New dwellings were never allowed in the Sensitive Landscape Area of the Agricultural Priority Zone and others would treat this case as a precedent if permission was granted. When dealing with any case the Committee had to take account of the totality of the Island Plan policies.

5.10 Deputy Crowcroft and Mr. Fagan set out the reasons why the Committee did not agree with the Complainants that the Committee should have had regard to the Taunton case when considering the appeals against refusal of permission in this case. In the Committee's opinion the cases were significantly different. Although the Tauntons' property was also situated in the Sensitive Landscape Area of the Agricultural Priority Zone the application had been for an extension to the existing house, not an entirely separate new dwelling. Furthermore the Court had allowed the appeal because the appellants had been given constant encouragement by officers of the Planning and Environment Committee before making a formal application and the Court considered that the Committee had then acted in a cavalier manner in refusing the application. The Court also noted that the Applications sub-committee, which had dealt with the Tauntons' application, had relied, in error, on Policy CO7 which was of no relevance to the application.

5.11 Deputy Crowcroft stressed to the Board how important it was for the Planning and Environment Committee to act consistently. If Policy CO6 was breached by allowing a new dwelling on this site there would be implications for many other sites and it would also, in theory, be impossible to reject applications for further development on the site of 'La Maison du Haut' itself. Deputy Crowcroft felt that the Complainants had not been harshly treated by the Committee in the past - they had been allowed to build and extend their property and, in addition, had benefited from the error made by the Committee which had allowed them to convert the agricultural Field 1414A into their own domestic garden.

5.12 The importance of respecting the Island Plan zones was stressed by Deputy Crowcroft. He reminded the Board of

the extensive development that they had seen in the vicinity of 'La Maison du Haut' and explained that this work had only been allowed because the sites involved were within the Built-Up Area, the boundary of which was close to the Complainants' property. Although neighbours had felt aggrieved by the grant of planning permission for the developments seen, the Committee had defended its position by explaining that development had been allowed because the sites were in the Built-Up Area and the objectors had been informed that development would not have been allowed in the adjoining Agricultural Priority Zone. It would therefore be inconsistent to now allow the proposed new dwelling at 'La Maison du Haut'. New zoning proposals were about to be announced with the release of the revised Island Plan and the Board was informed that, although zoning decisions were ultimately a matter for the States, the draft Plan showed no change in the zoning of this site which was situated in the proposed new Countryside Zone (which will replace the Agricultural Priority Zone).

5.13 Deputy Crowcroft conceded that the Committee would probably, subject to the usual planning considerations, allow an extension to 'La Maison du Haut' and would also undoubtedly allow the conversion of the existing outbuilding into a garage or garden shed. The Committee was, however, adamant that it would be contrary to Policy CO6 to allow the creation of an entirely new dwelling on the site.

6. The Board's findings

6.1 In considering this complaint the Board notes that, although the Notice of Refusal issued by the Planning and Environment Committee on 15th September 1998 refers to the fact that the proposed dwelling would be contrary to Policies CO6 and CO7 and would have an unacceptable environmental impact on the valley side, the Committee has stated following reconsideration of the matter that it was not now relying on Policy CO7 and the President has also conceded in correspondence that the proposed dwelling would not have an adverse environmental impact. The Committee is therefore relying entirely on the application of Policy CO6 in justifying its refusal of the application.

6.2 In their respective submissions both the Complainants and the Committee quoted extracts of paragraphs 2.15 to 2.17 of Volume 2 of the Island Plan which set out the background to Policies CO6 to CO7 (which are published or the same page of the Plan). The Board has taken careful note of these paragraphs which it believes must be read in their entirety to understand the principles underlying the policies. The Board is of the view that there is no doubt that the Agricultural Priority Zone, as described in paragraphs 2.15 and 2.16 of the Plan, is a Zone which covers all land designated within it and there is therefore a presumption against all new non-agricultural development in the Zone.

6.3 The Board notes that Advocate Voisin relied extensively in his submissions on the similarity he considers existed between the Taunton case and the Complainants' case and the Board has therefore studied the judgment of the Royal Court dated 22nd April 1999 in some detail. The Board accepts that there are some parallels that can be made between the cases, in particular that both relate to proposed development within the Sensitive Landscape Area of the Agricultural Priority Zone, in properties that had no connection with agriculture. The Board is nevertheless of the opinion that there are significant differences between the two cases which lead it to believe that, it would be unwise to treat the Taunton case as a precedent in dealing with the Complainants' application. In particular the Board notes that the application in the Taunton case related to an extension and not to a new and separate dwelling and indeed it is clear from a letter quoted on page 4 of the judgment that the Tauntons had been advised by a Senior Planner that the Committee would not allow the formation of a separate unit of accommodation in the Sensitive Landscape Area of the Agricultural Priority Zone. Furthermore the Board notes that the Court was critical of the members and officers of the Committee for relying on Policy CO7 to justify the refusal when that policy was not applicable. In addition the Court stated that the constant encouragement given to the Tauntons by officers of the Committee, and the fact that no-one alerted the applicants to what the Committee members considered to have been clear criteria, was fatal to the arguments of the Committee. The Board has therefore concluded that there are significant differences and the facts of the present case do not fall to be considered in accordance with the Court's decision in the Taunton case.

6.4 Although each planning application falls to be dealt with on its merits the Board accepts that the Planning and Environment Committee must take a consistent view in applying the approved Island Plan policies and it notes that Policy CO6 specifies that there is a presumption against all non-agricultural development in the Agricultural Priority Zone. That presumption is, of course, rebuttable but the Board has heard no evidence from the Complainants to lead it to consider that the presumption should be rebutted in relation to this application. The Board therefore **rejects** the complaint and will not ask the Planning and Environment Committee to reconsider its decision.

Signed and dated by -

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

Miss C. Vibert

Mrs. M. Le Gresley

APPENDIX E

BOARD OF ADMINISTRATIVE APPEAL

Wednesday 22nd August 2001

Complaint by Mr. Robert Currie (represented by Mr. P. Grainger) against a decision of the Planning and Environment Committee

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended

1. Present -

Board Members

Mr. R.R. Jeune C.B.E., Chairman.
Mr. T. S. Perchard.
Mr. D.J. Watkins.

Complainant

Mr. R. Currie.
Mr. P. Grainger.

Planning and Environment Committee

Deputy J.B. Fox.
Mr. R. Webster, Principal Planner.
Mr. A.S. Muir, Director of Transportation
(representing the Public Services Department)

States Greffe

Mr. M.N. de la Haye, Deputy Greffier of the States

The hearing was held in public at St. Clement's Parish Hall, St. Clement on 22nd August 2001.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. R. Currie (represented by Mr. P. Grainger) against a decisi of the Planning and Environment Committee to reject an application for the creation of a new vehicular access and car parking area at the property known as 'La Cabane', La Grande Route de la Côte, St. Clement.

3. Site Visit to 'La Cabane'

3.1 After the formal opening of the hearing at St. Clement's Parish Hall the parties went together to visit the site. At the request of Mr. Grainger the Board stopped to view another property near Le Hocq referred to for compariso purposes in the Complainant's submissions where a vehicular access had been created.

3.2 At 'La Cabane' the Board was shown the proposed location of the parking area. The Board noted that the Complainant wished to create access to allow two vehicles to be parked on the site which would be excavated to ensure that the access was level with the road. The Board noted that the granite wall bordering the road would be removed with the remaining part of the wall lowered to a height of 900 mm to improve visibility.

3.3 The Board viewed the garage currently used by Mr. Currie and also three properties neighbouring the garage which had been built some five years previously. All three properties had vehicular accesses onto La Grande Route de la Côte and the Board viewed the visibility available when exiting from the properties.

4. Summary of the Complainant's case

4.1 The Board had received a full written summary of the Complainant's case before the hearing and had taken note of the submissions made on his behalf.

4.2 The Board noted that 'La Cabane' was situated on the south side of La Grande Route de la Côte with only a pedestrian access from the public highway. Apart from the leased garage to the west of the property there was no means of parking a vehicle or servicing the property as there was a yellow line along the entire frontage. It was, therefore, particularly difficult to unload shopping from a vehicle and the Complainant considered that it was dangerous when his daughter was required to park on the yellow line to unload her young child when visiting.

4.3 The first application to create a vehicular access was submitted on behalf of Mr. Currie by his architect, Mr. Livingston of Architectural Services Ltd., on 29th January 1999. After consulting with the Public Services Department the application was rejected by the Planning and Environment Committee by notice dated 18th March 1999 for the following reasons -

"1. The available frontage onto the highway is of insufficient length to enable a satisfactory road junction, with adequate visibility splays, to be provided in accordance with the standards of the Planning and Environment Committee.

2. The proposal does not include adequate facilities to enable a vehicle to turn on the site and enter the highway in a forward direction, considered essential in the interests of road safety".

4.4 Mr. Livingston submitted an appeal against this decision in August 1999. He pointed out that the garage used by Mr. Currie had even worse visibility than that being proposed and added that the garage was only leased and not owned by him. The appeal also stated that there was no resident parking in the area and, as there was a yellow line along the main road, it was essential to provide an unloading and visitor space. The architect was asked to provide additional information and he also submitted a revised plan of the proposed development showing improved visibility but the appeal was rejected by Committee on 3rd August 2000 as the Public Services Department was not willing to withdraw its opposition to the development.

4.5 Mr. Grainger submitted a further appeal on behalf of the Complainant in November 2000. A revised site plan was submitted showing a realignment of the hedge and a lowering of the wall to establish the maximum possible visibility to the east. The Committee was also asked to consider the fact that, in Mr. Grainger's submission, there were literally thousands of access points to private property where the visibility splays were considerably less than the ideal identified by the Public Services Department and where there was no turning area on site. Mr. Grainger pointed out that it was not physically possible to create a vehicular access or parking space within the curtilage of the property in any other location than the one being proposed and stated that the principle of *'enclavé'* should apply. Despite these arguments the Planning and Environment Committee, after further consultation with the Public Services Department, rejected the appeal by notice dated 4th January 2001.

4.6 Mr. Grainger addressed the Board to amplify his written submissions and to explain why he felt the decision of the Planning and Environment Committee had been unreasonable. He drew the attention of the Board to the provisions of Article 6 of the Island Planning (Jersey) Law 1964, as amended, which state that the Planning and Environment Committee shall consult with the highway authority and take into account any representations made by the authority when considering any application to create a new access from land onto the highway if it appears to the Committee that the works would be a source of danger to persons using any road bordering the land. Mr. Grainger also drew attention to the proviso to that Article which is in the following terms -

"Provided that the Committee shall not exercise its power under this Article in such a manner as to deny reasonable access to land either to persons or to vehicles."

Mr. Grainger submitted that the Planning and Environment Committee was not required to base its decisions exclusively on the advice of the highway authority although it was clear that it had done exactly that in respect of Mr. Currie's application. The most recent notice of refusal, dated 4th January 2001, stated that *'Based on the continuing opposition from the Public Services Department to a vehicular access and parking area at La Cabane, the Planning and Environment Committee will not change its decision on the revised scheme'.*

4.7 Mr. Grainger stated that, in his opinion, neither the Planning and Environment Committee or the Public Services Department had any published standards regarding visibility splays for the creation of new vehicular access to land. The only guidance he had been able to find was in a document published by the Public Services Department entitled Technical Guide No. 1 "Roads Serving Small Housing Developments". In that document the minimum visibility distance at a junction with a main road was stated as being 30 metres between the driver (taken to be 2 metres within

the road) and drivers in the centre of the traffic lanes on both sides. The Technical Guide did not, however, give guidance on new access of the type sought by Mr. Currie and Mr. Grainger pointed out that the Public Services Department ha taken two years to give notice that the visibility requirements for this site were 2 metres x 50 metres. This standar was even higher than those shown in the Guide for road junctions. Mr. Grainger accepted that visibility splays meeting this standard could never be achieved at 'La Cabane' given the constraints of the site but, in his opinion, the revised scheme he had designed gave adequate visibility when compared to other existing sites and the Committee was being unreasonable in maintaining its refusal. The property was on a reasonably straight stretch of roadway and not immediately next to a bend or junction.

4.8 Mr. Grainger stated that the Committee had, in his opinion, been inconsistent when dealing with applications for the creation or adaptation of vehicular access points. He referred the Board to four colour photographs included with his written submissions which showed two properties further along the coast road, one in New St. John's Road and one near Le Hocq which the Board had viewed en route to 'La Cabane'. In all four cases it was clear that the visibility splays did not meet the standard being required for 'La Cabane' and Mr. Grainger claimed that this showed inconsistency. In addition Mr. Grainger reminded the Board of the 3 properties adjoining the garage used by th Complainant and which had been viewed during the site visit. These properties had been completed some 18 months previously and it was clear that the visibility when exiting from the property at the eastern end of the site was only some 20 metres towards the most important traffic lane, namely the nearside lane approaching from the east. In addition the visibility from the property was partly obscured by the height of a pillar which exceeded the standard height of 900 mm considered to be essential to ensure maximum visibility. This new development had been approved by the Planning and Environment Committee relatively recently even though the visibility was considerably less than could be achieved with the latest proposals for 'La Cabane'.

4.9 Mr. Grainger accepted that the site was not large enough to allow for a turning area but contended that there were many such sites in the Island and the Complainant would, as happened elsewhere, use a common sense approach and reverse into the site so that he could exit in a forwardly direction.

4.10 Mr. Grainger concluded his case by stating that the Committee was failing to allow reasonable access to the site and its actions were unreasonable as there were no published guidelines on the standards required by the Committee which had been inconsistent in dealing with similar applications.

5. Summary of the Committee's case

5.1 The Board had received a full written summary of the Committee's case before the hearing and the written submissions were amplified by Mr. Roy Webster, Deputy Fox and Mr. Alan Muir who represented the views of the Public Services Department.

5.2 Mr. Webster confirmed that the Planning and Environment Committee, as required by Article 6 of the Island Planning (Jersey) Law 1964, always consulted with the Public Services Department when dealing with applications of this nature. The comments sought were on technical issues and it had therefore been the practice for many years for the comments to come from officers of the Public Services Committee and not from the Committee itself.

5.3 Although there were occasions when the Planning and Environment Committee granted permission against the advice of the Public Services Department the Committee would not, in general, go against advice received concerning safety issues. Mr. Webster confirmed that the sole reason for refusing Mr. Currie's application was the issue of road safety and there were no other 'planning' grounds for refusal. In particular the potential loss of the granite wall which ran along the length of the boundary with the pavement had not been an issue in the decision. The Committee had nevertheless been aware that the Complainant's lease on the adjacent garage had some 70 years to run and it was not therefore the case that he had no parking available at all. The Committee accepted that visibility when exiting from the garage was extremely limited but the construction of the garage probably predated the planning law controls and even if the Complainant was allowed to create a new parking area this, in itself, would not prevent the garage being used.

5.4 Mr. Webster stated that the Committee tried, as far as possible, to act consistently. If an unauthorised access was created the Committee would require a retrospective application and if that was refused it would, if necessary, take enforcement action to require the removal of the access. Mr. Webster pointed out that there were occasions when permission was granted for a new or revised access which did not meet the full standards of the Public Services Department but which was an improvement in relation to an existing access. This had been the case in three of the cases referred to by Mr. Grainger where existing garages with dangerous exits had been replaced. Although the new access points did not meet the normal visibility requirements they were a substantial improvement on the previous situations. In two of the cases permission had been granted despite unfavourable comments from the Public Services

Department. Mr. Webster informed the Board that the Committee relied on legal advice received from the then Attorney General in 1987 which stated that the Committee could only refuse permission for the creation of a new access on highway safety grounds.

5.5 Mr. Webster addressed the issue of the new properties neighbouring the garage and admitted that an error had been made by the Committee when the development had been approved. The application to redevelop the site had been submitted in 1994 and the Public Services Department had required visibility splays of 2 metres x 30 metres, pointing out in its comments that these might be difficult to achieve within the layout of the site. The final plans that were approved in 1996 showed the 2 m x 30 m visibility splays required but it had subsequently been ascertained that the plans were inaccurate as the pavement width shown was incorrect. Planning officers should have checked and discovered the error but did not and, as a result, the visibility from the site was indeed, as claimed by Mr. Grainger, substantially less than the standard required at the time. Although this site could be viewed as an example of inconsistency it was, in fact, nothing more than an error.

5.6 Mr. Alan Muir addressed the Board concerning the actions of the Public Services Department in relation to this application. He confirmed that planning applications referred to the 'highway authority' had been dealt with by officers of the Public Services Department for at least 30 years and it was only in recent months that a system of reporting a summary of comments retrospectively to the Public Services Committee had been introduced. As the applications in relation 'La Cabane' predated this new procedure none of the comments given by officers to the Planning and Environment Committee had been notified to the Public Services Committee.

5.7 Mr. Muir explained that the Public Services Department wished to safeguard the safety of everyone and not only the safety of the applicant. In an increasingly litigious society he believed that action could be taken against the States if an accident occurred following the grant of permission to create a new access in a position known to be dangerous. When considering applications the Department considered the nature of the road involved and the speed and volume of traffic. The average speed of traffic on the section of La Grande Route de la Côte in front of 'La Cabane' was approximately 35 mph (in a 40 mph limit area) with a traffic flow of some 400 vehicles per hour, or every nine seconds. In wet conditions the average stopping distance at 35 mph was 50 metres. The area was also shown in police statistics as an accident 'hotspot'.

5.8 Mr. Muir conceded that there were no up-to-date published guidelines on visibility splays although it was something that the Public Services Department was working to produce. It was hoped that such standards, when produced and approved by the Public Services Committee, would cover the vast majority of applications. At present each application was considered in relation to the individual circumstances of the case. If 'La Cabane' had been situated on a quiet country road the visibility standards required would almost certainly have been less. Mr. Muir also explained that the standards had increased in recent years which explained the apparent discrepancy between the 2 metres x 30 metres which had been required for the development adjoining the Complainant's garage and the 2 metres x 50 metres being sought for 'La Cabane'.

5.9 Although a visibility of at least 30 metres to the east had been shown on the latest proposals for the access at 'La Cabane' Mr. Muir believed that such a visibility could only be achieved if a vehicle was parked in the centre of the proposed parking area. As it was the intention of the applicant to allow parking for two cars the actual visibility of a car exiting from the side of the parking area would be considerably less than that shown on the plan.

5.10 Deputy Fox informed the Board that the Planning and Environment Committee had not visited the site before taking its decision but had relied on the report prepared by planning officers and on photographs of the site. He confirmed that the Committee took careful account of safety issues when considering applications of this nature.

6. The Board's findings

6.1 The Board was concerned by several matters of procedure that emerged during this case. The Board noted that although the *'highway authority'* is defined by law as being the Public Services Committee it appears that for many years all planning applications referred to the highway authority have been dealt with at officer level in the Public Services Department and not by the Committee itself. The Board accepts that advice of this nature must be based on a level of technical expertise that only the Public Services Committee's officers possess but the Board does not believe that the lack of a formal delegation of the Public Services Committee's powers is nothing more than a 'technicality' as was claimed during the hearing. The Board's attention was drawn to an extract from an Act of the Public Services Committee dated 18th March 1991 which stated that *'The Committee decided that it wished to delegate authority to the Chief Executive Officer to comment on applications to develop land received by the Island Development Committee. It also nominated Deputy M.C. Buesnel and Deputy S. Syvret to be responsible for considering the political implications of applications'*. This Act is clearly out of date and does not even reflect the

actual procedure used as it is, understandably, not the Chief Executive Officer who deals with these applications. The Board believes that if the Public Services Committee wishes to delegate its powers to certain of its officers then this should be done by way of a formal Committee Act setting out the scope of the delegation and the titles of the officers to whom these functions are being delegated. The Act of delegation should also specify the circumstances, if any, in which matters should be referred to the full Committee. The Board is aware that the legislation enabling a Committee of the States to delegate any of its statutory functions was only introduced following an amendment to the States of Jersey Law in 1997 and believes that there must be some doubt over the *vires* of the procedure being used at present by the Public Services Committee.

6.2 The Board considers that it is unsatisfactory that no formal guidelines appear to be in place on the visibility requirements for new vehicular access points. The initial notice of refusal dated 18th March 1999 stated that the visibility splays that could be achieved did not meet the *'standards'* of the Planning and Environment Committee but it is clear that no such standards actually exist for applicants to consult. The Board noted that visibility splays of 2 metres x 30 metres had been required during the relatively recent redevelopment of the properties neighbouring th garage used by the Complainant but the standard now required is greater. The Board was encouraged to learn that officers of the Public Services Department are developing standard guidelines and believes that this should be done as soon as possible.

6.3 The Planning and Environment Committee has made it clear in its submissions that its decision in this case was based exclusively on the advice received from the Public Services Department and, because of the unsatisfactory manner in which those comments were obtained, the Board has had difficulty in deciding whether the decision of the Committee was a reasonable one. The Board considers that the Complainant may understandably feel aggrieved that new access points were allowed at the neighbouring properties with less visibility than he can achieve and, even disregarding the error that apparently occurred with that application, a higher standard is now being demanded.

6.4 The Board accepts that safety is an important consideration for the Planning and Environment Committee when dealing with applications of this nature but considers that in this particular case the Committee may have overlooked the dangers that are created at present during the short term parking and unloading of vehicles on the yellow line which, at present, is an inevitable consequence of the lack of any 'off road' parking at 'La Cabane'.

6.5 After careful consideration the Board has concluded that, in accordance with Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, it will request the Planning and Environment Committee to **reconsider** its decision in this case. The Board does not intend to express a definite view on whether permission should be granted to the Complainant although it does not consider that is unreasonable for any property owner to expect to have a private parking area unless there is clearly no realistic prospect of achieving that within the constraints of their land and in this regard the Board has noted the proviso to Article 6(6) of the Island Planning (Jersey) Law 1964, as amended which states that the Planning and Environment Committee should not exercise its power to deny reasonable access to land. The Board therefore considers that the Committee should reconsider the matter having obtained comments of the Highway Authority in the correct manner and this will obviously require the Public Services Committee to address the defects in its current procedures. (A copy of these findings will be issued to the Public Services Committee so that it is aware of the Board's concerns.) The Board believes that in reconsidering the case the Planning and Environment Committee should attempt to negotiate with the Complainant in an attempt to ascertain whether there is a realistic prospect of achieving an acceptable solution. The Board rejects Mr. Grainger's argument that the legal principle of *'enclavé'* applies in this case as it is clearly not of any relevance. The Committee should also consider the requirement to act consistently and, in particular, take account of the background to the permission granted to the neighbouring properties. In addition the Board considers that the members of the Committee should visit the site so that they can appreciate the safety hazards that are created at present when vehicles are required to stop, albeit briefly, on the yellow line and weigh these against the potential benefits that a new access could bring.

6.6 In accordance with Article 9(3) of the Law the Board requests the Planning and Environment Committee to inform it within a period of 3 months of the steps that have been taken to reconsider the matter and of the result of that reconsideration.

Signed and dated by -

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

Mr. T.S. Perchard

Mr. D.J. Watkins

APPENDIX F

BOARD OF ADMINISTRATIVE APPEAL

Monday 29th October 2001

Complaint by Mr. P.G. Green against a decision of the Planning and Environment Committee

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982, as amended

1. Present -

Board Members

Mrs. C.E. Canavan, Chairman.
Mr. T.S. Perchard.
Mr. P.G. Farley.

Complainant

Mr. P.G. Green

Planning and Environment Committee

Deputy J.B. Fox.
Mr. R. Webster, Principal Planner.

States Greffe

Mr. D.C.G. Filipponi, Senior Committee Clerk

The hearing was held in public at Morier House, St. Helier on 29th October 2001.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. Peter G. Green against a decision of the Planning and Environment Committee to reject a retrospective application for the change of use from a garage/store to a builders' store/workshop of the property known as The Store/Workshop, Southcote Lane, Upper Clarendon Road, St. Helier, under the provisions of the Island Planning (Jersey) Law 1964, as amended.

3. Site Visit to Premises - 'Garage/Store', Southcote Lane, St. Helier

3.1 After the formal opening of the hearing, the parties visited the premises in question.

3.2 The Board observed that the property formed an end of terrace, two-storey property, constructed of random stone and brick under a pitched slate roof.

3.3 The Board viewed the access lane to the property, ownership of which was historically unknown, the building's aspect in relation to other neighbouring properties, its internal arrangement and the nature of stored materials and machinery.

3.4 The Board received an explanation from Mr. Webster of the access and parking arrangements for all properties served by Southcote Lane, together with a brief resumé of the nature of these neighbouring properties, which included dwelling houses, flats, other storage premises, and garages.

3.5 The Board observed that the premises housed, amongst other things, an Elektra Beckum PKF255 Profiline single bladed circular saw and listened to a demonstration of the equipment in action, firstly with the premises doors open, followed by a demonstration with the doors closed.

3.6 On leaving the site, the Board was greeted by a small group of residents whose properties directly bordered

Southcote Lane. They expressed their concerns regarding the alleged 'over-use' of the lane, its narrow confines, and the risk of damage to their properties by vehicles using the lane.

4. Summary of the Complainant's case

4.1 The Board had received a full written summary of the Complainant's case before the hearing and had taken note of the submissions made on Mr. Green's behalf in support of his case to change the designated use of the premises from a garage/store to that of a store/workshop for the purpose of his trading business, (carpenters, decorators and general builders).

4.2 The Board noted that Mr. Green, through his submissions, had stated that-

(a) he had run a long established small business employing up to 9 persons, which undertook among other work, work for the States' Education, and Health and Social Services Committees;

(b) the store belonged to him and was the only store he had. It had been used for the purpose of his trading company for many years;

(c) the greater part of work carried out by Mr. Green's trading company was carried out 'on site', away from the premises in question;

(d) he would be willing to give an undertaking to only use the premises between the hours of 8 a.m. and 4 p.m and not at all on weekends and Bank Holidays in order to minimise vehicular and working activities in and around the lane/premises;

(e) he would be willing to block-up one set of double doors and to ensure that the other set remained closed when workmen were using the premises, in order to minimise any noise nuisance;

(f) the store would not be utilised for work on a regular basis and, if it was, this would not be for periods of more than three or four hours a day, and sometimes not for several weeks. The noise levels arising from the work activities in and around the premises were not considered to be excessive; and,

(g) use of the premises would be carried out in a good neighbourly fashion, and any intentions for use would be discussed with surrounding neighbours beforehand.

4.3 Mr. Green disputed the Planning and Environment Committee's interpretation that the area surrounding the premises was predominantly residential.

4.4 Mr. Green had approached three residents living in the vicinity of the premises before utilising it as a store/workshop, without any objections being raised; these premises included 'Southcote', 'Chez Nous' and 'Campbell Cottage'.

4.5 No complaints had ever been received by Mr. Green during his use of the premises as a store/workshop.

4.6 Mr. Green's business operated with one lorry and two small pick-up vans, and currently employed seven staff, of which only one or two members would be present working at the premises at any one time. Most of his staff resided in St. Helier, and, therefore, it was desirable to keep the premises centrally located.

4.7 Alternative premises, located at Thistlegrove, St. Lawrence, had been investigated earlier in 2001 by Mr. Green However, these had proved unsuccessful.

4.8 Mr. Green had utilised premises at Highlands College prior to acquiring the premises in question. He had had to move from Highlands College due to a change by the authorities regarding use of such accommodation.

4.9 Mr. Green queried the identities of the original complainants who had contacted the Department of Planning and Building Services to lodge a complaint in relation to his use of the premises in question in May 2000. Mr. Webster advised that complaints made to the Department, such as those that were originally made in respect of Mr. Green's use of the premises in Southcote Lane, were usually treated in confidence. However, he did go on to advise the Board that the complainants lived in Southcote Lane itself.

5. Summary of the Committee's case

5.1 The Board had received a full written summary of the Planning and Environment Committee's case before the hearing, (including various copies of exchanged correspondence between the Department of Planning and Building Services and Mr. Green, together with a copy letter dated 21st October 2001, addressed to the Board/Planning and Environment Committee from the owner of the adjacent property known as 'Southcote'), and the written submissions were amplified by Deputy J.B. Fox, Committee member, and Mr. R. Webster, Principal Planner.

5.2 The Board noted the history of the retrospective application by Mr. Green in respect of the change of use of the premises from store/garage to store/workshop, (June 2000), following complaints received by the Department of Planning and Building Services in May 2000. The application had subsequently been rejected by the Planning and Environment Committee, which had been appealed by Mr. Green. The appeal was considered by the Planning and Environment Committee in October 2000, at which time it decided to maintain its previous decision to reject the retrospective application.

5.3 Following this refusal, Mr. Green had invited the Committee to attend the premises. He also advised that he had canvassed the immediate neighbours without any objections being raised, and suggested that the continued use of the premises be monitored. He had also suggested that certain restrictions be imposed on the hours of use.

5.4 As no new evidence had been submitted in support of the application, any further appeal was dismissed.

5.5 The reason for the Committee's refusal was stated as - "The proposal introduces an industrial use into a residential area, which would have an adverse effect on its amenities".

5.6 The comments of the Environmental Health Department had been sought, (as was normal practice in relation to such applications), which stated that - "Any externally audible plant or equipment shall comply with Noise Rating NR40 daytime and NR30 night time measured 1 metre from the façade of the nearest affected building".

5.7 The comments of the Parish of St. Helier Roads Committee had been sought, which stated that - "The Parish Roads Committee expresses its concern that the proposed workshop is within a residential area and requests further details of its proposed use, including plant and machinery". Additional information had been provided by Mr. Green subsequent to which the Parish Roads Committee had responded that should the Planning and Environment Committee approve the application, the following conditions should be applied -

(a) use of the store was to be restricted to between the hours of 8 a.m. and 4 p.m. and would remain closed at weekends and Bank Holidays; and,

(b) one set of double doors was to be blocked-up and the other set was to remain closed when work was being carried out in the store.

5.8 The Department of Planning and Building Services had received a further complaint from another resident living in the area of the premises in question in May 2001, and the matter was taken-up by an Enforcement Officer.

5.9 It was regarded as planning policy and good planning practice that commercial businesses were not normally allowed in residential areas, for obvious reasons regarding potential noise nuisance and adverse impact on surrounding residential amenities.

5.10 Paragraph 7.57 of the Island Plan stated that Service industries needed to be near the people that they served, but preferably not in residential areas whose environment could be disturbed by noise and traffic".

5.11 The premises in question lay in the middle of a predominantly residential area, with existing dwellings in close proximity on all sides. Vehicular access to the premises was by a single substandard road of single width and limited turning/maneuvering space, which served numerous other dwellings in the vicinity. The intended use of the premises was inappropriate in such an area given its limited access.

5.12 Complaints to date clearly indicated that there was also a noise nuisance associated with the intended use of the premises, particularly in relation to the machinery (single circular saw).

5.13 The owners of the adjacent property known as 'Southcote' had, in their written complaint, indicated that noise levels from works at the premises often found their way into their dwelling house via the attached garage building, which was connected to Mr. Green's premises by an external wall. Complaints had also been made by the owners of 'Southcote' relating to exit/entry of their property caused through regular obstruction by commercial vehicles

attending the premises of Mr. Green.

5.14. The Planning and Environment Committee, if it granted conditional permission, had no control under the Island Planning (Jersey) Law 1964, as amended, over the detailed nature and intensity of the use of the machinery located at the premises, especially as this could change over a period of time if the business expanded or if there was a future change of ownership.

5.15 The Planning and Environment Committee would set a dangerous precedent by which others in the area might seek to follow if it granted permission to the request of Mr. Green.

5.16 The Planning and Environment Committee could not control the number of vehicular movements at the premises.

5.17 The Planning and Environment Committee was not able to visit all of the applications it considered during the course of any one year, and, notwithstanding Mr. Green's invitation to the Committee to visit his premises, the planning policies applied to the particular case in question were clear and non-ambiguous.

5.18 The Planning and Environment Committee's decision to refuse permission had also been based on safeguarding the amenities of neighbouring residents, and, in the circumstances, was considered to be reasonable.

6. The Board's findings

6.1 The Board expressed some sympathy with Mr. Green's position in view of the apparent lack of availability of St. Helier based sites for small commercial businesses, and served to highlight the need for such premises away from residential areas.

6.2 The Board agreed that the location of the premises in question was heavily residential.

6.3 The Board agreed that the issues of noise and traffic nuisance were the overriding factors of relevance to the case in terms of the proximity of neighbouring residential buildings to the premises in question, and the restricted access to all such properties served by a single restrictive substandard communal lane.

6.4 The Board accepted that the Planning and Environment Committee, if it approved the change of use application in favour of Mr. Green, would not be able to control the nature and intensity of the use of any machinery that might come to be used at the premises. Furthermore, such consent would act as a precedent by which others might seek to follow given the nature of other buildings in the immediate vicinity of the premises in question, which would lead to an unacceptable level of commercial activity in, what was, a restricted area.

6.5 The Board, having decided to uphold the decision of the Planning and Environment Committee on the grounds that the proposal introduced an unacceptable industrial use into a predominantly residential area, which would have an adverse effect on its amenities shared by all neighbouring properties, **rejected** the complaint by Mr. Green and would not ask the Planning and Environment Committee to reconsider its decision.

6.6 In making its decision, the Board wished to register its sympathy with Mr. Green in respect of the difficulties encountered in identifying suitable commercial premises from which to operate in St. Helier. From this, the Board formed the view that there was a general shortage of such accommodation which needed to be addressed, and it requested that the Industries Committee be provided with a copy of this report accordingly.

Signed and dated by -

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Mrs. C.E. Canavan, Chairman

Mr. T.S. Perchard

Mr. P.G. Farley