STATES OF JERSEY

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ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL FOR 2002

Presented to the States on 6th May 2003
by the Privileges and Procedures Committee

STATES GREFFE

ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982,
AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL
FOR 2002

The Privileges and Procedures Committee, having assumed responsibility for the operation of the administrative appeals system in December 2002, is pleased to present to the States the Annual Report for 2002 of the Administrative Appeals Panel.

The Report shows that the number of cases dealt with has been relatively small but the findings of the various Boards, attached at the Appendices, show that the work of the system covers a wide range of matters and Boards are able to comment on a variety of issues relating to public administration.

The Committee is extremely grateful to the Chairman, Deputy Chairmen and members of the Panel for the work they have undertaken on a purely honorary basis in the last 12 months. The current 3-year term of office of the Panel is now at an end and the Committee will shortly be seeking the approval of the States to the appointment and reappointment of members of the Panel.

The Committee wishes to give particular thanks to Mr. R.R. Jeune C.B.E., Chairman of the Panel, who has decided to retire from this position after 6 years as Chairman. The Committee is grateful for the valuable service Mr. Jeune has given during his time as Chairman and is also conscious that it was largely as a result of his work as a member of the States in the late 1960s that the entire administrative appeals system was first established by the States in 1972. The Committee also wishes to acknowledge the work done by Advocate Geoffrey Le V. Fiott who has also decided to step down after 6 years as a Deputy Chairman.

The Privileges and Procedures Committee has established a sub-committee to review the present operation of the system and to ascertain if changes to the legislation are required. The Committee will, in this context, be considering the remit of the Panel and will also consider the advantages and disadvantages of an Ombudsman system. The Committee intends to consult with members of the Panel before making any recommendations and would also be interested to hear the views of members of the States. The Committee believes, in particular, that the profile of the present system needs to be enhanced to ensure that it provides an effective mechanism for members of the public as intended, and the Committee is seeking ways to address this objective.

The following is a summary of the outcome of the complaints which were outstanding in the 2001 Annual Report and of new complaints received in 2002 –

Outcome of complaints that were outstanding at the end of 2001 and which were referred to in the Annual Report for 2001 (R.C.15/2002) –

Planning and Environment Committee

(a) 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. A copy of the findings was attached at Appendix Eof the 2001 report (R.C.15/2002).

The Committee reconsidered several schemes in 2002 and after discussion with the applicant and his agent agreement was reached and permission granted by the Committee for a revised scheme that will enable the applicant to create the parking area he was seeking.

(b) 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.

Hearing held on 25th April 2002. The Board upheld the Committee's decision.

Copy of findings attached at Appendix A.

(c) 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.

Hearing held on 25th February 2002. The Board requested the Committee to work with the applicant to find a solution to the case.

Copy of findings attached at Appendix B.

(d) 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.

The Committee reconsidered the case in early 2002 and granted permission before the case was referred to a Board.

Education Committee

(e) 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.

Hearing held on 17th January 2001. The Board upheld the complaint and requested the Committee to reconsider its decision.

Copy of the findings attached at Appendix C

After reconsideration the Committee decided not to change its original decision in this case and the Board therefore presented a report to the Special Committee to Consider the Relationship between Committees and the States. This report was presented to the States by that Committee on 9th April 2002 (R.C.10/2002)

Home Affairs Committee

(f) 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.

Hearing held on 28th January 2002. The Board upheld the Committee's decision.

Copy of findings attached at Appendix D.

Public Services Committee

(g) 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 then Committee President as Connétable of St. Helier. The hearing was due to take place in 2002 but following amendments to the relevant legislation, and the introduction of a new method of bus licensing, it was considered that nothing could be gained by holding a hearing which related to a system that was no longer in place and the hearing did not take place.

New complaints received in 2002

Planning and Environment Committee

(h) Statement of complaint received on 28th February 2002 against the Committee's refusal to grant permission for the use of a mobile catering unit in St. Ouen's Bay (within the Les Mielles boundary).

Application refused as the Greffier of the States, after consultation with the Chairman as required, considered that there were no grounds for a hearing.

(i) Statement of complaint received on 17th April 2002 concerning the Committee's decision relating to the positioning of an electricity sub-station as part of a housing development at Sion, St. John

Hearing held on 19th July 2002. The Board upheld the Committee's decision.

Copy of findings attached at Appendix E.

(j) Statement of complaint received on 14th May 2002 against the Committee's refusal to grant permission for the construction of a new bungalow within the grounds of the complainant's property at Mont à la Brune, St. Peter.

Hearing held on 19th August 2002. The Board upheld the Committee's decision but requested the Committee to change its new policy of refusing to reconsider refusals of permission made under delegated powers.

Copy of findings attached at Appendix F.

In September 2002 the Committee informed the Board that it had amended its policy on the reconsideration of refusals.

(k) Statement of complaint received on 21st May 2002 against the Committee's refusal to grant permission for the demolition of a 5-bedroom dwelling in Plat Douet Road, St. Clement and its replacement with a new building contained 6 apartments.

The Greffier of the States, after consultation with the Chairman, suggested that the Complainant should seek a compromise solution with the Committee before a decision was taken to refer the complaint to a Board. The matter was still outstanding at the end of 2001 awaiting news from the Complainant.

(l) Statement of complaint received on 10th June 2002 against the Committee's refusal to grant permission for the change of use of a maintenance shed at La Rue du Presbytere, St. Clement.

Application refused in accordance with Article 4(b) of the Law as the complaint related to a decision which the Complainant had had knowledge of for more than 12 months and could not show that there were special circumstances.

(m) Statement of complaint received on 24th June 2002 against the Committee's refusal to

grant permission for the construction of an extension at the Complainant's dwelling at Rue de la Prairie, St. Mary.
Application did not need to proceed as the Committee reconsidered the case and indicated that it was willing to grant permission.

Housing Committee

(n) Statement of complaint received on 12th April 2002 against the Committee's refusal to grant permission for the Complainant to occupy an apartment he owned as he had not been resident in the Island for an aggregate period of 10 years.
Hearing held on 19th July 2002. The Board upheld the Committee's decision.
Copy of findings attached at Appendix G.

(o) Statement of complaint received on 17th July 2002 against the Committee's decision to allow tenants who were neighbours of the Complainants to keep birds in an outside aviary.
Application refused as the Greffier of the States, after consultation with the Chairman as required, considered that the matter should be dealt with under the Statutory Nuisances (Jersey) Law 1999. The case was referred to the Environmental Health Department to deal with.

(p) Statement of complaint received on 9th December 2002 against the Committee's decision to evict the Complainant.
The case was under consideration at the end of 2001.

APPENDIX A

1386/2/1/2(234)

BOARD OF ADMINISTRATIVE APPEAL

25th April 2002

Complaint by Mr. and Mrs. S. Harewood 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

Advocate G. Le V. Fiott, Chairman
Miss C. Vibert
Mr. T.S. Perchard

Complainants

Mr. and Mrs. S. Harewood

Planning and Environment Committee

Deputy J.B. Fox
Mr. P. Thorne, Director, Planning and Building Services

States Greffe

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

The hearing was held in public at St. Ouen's Parish Hall, St. Ouen on 25th April 2002.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. and Mrs. Stephen Harewood against a decision of th Planning and Environment Committee to reject an application for the erection of a new dwelling on land to the rear of their property, 'Atlantique', La Grande Route des Mielles, St. Ouen.

3. Site Visit to 'Atlantique'

3.1 After the formal opening of the hearing at St. Ouen's Parish Hall the Board and the parties went on a site visit to the property.

3.2 On arrival at the site the Board was able to view the land at the rear of the Complainants' house on which it was proposed to build the new dwelling. The Board also viewed the proposed access from the land to Five Mile Avenue which had been purchased by Mr. Harewood's late father.

3.3 Mr. Thorne showed the Board a copy of the 1983 La Crabière Improvement Plan and the Board saw the properties which had been constructed in accordance with the Plan. Members of the Board were also able to note the parts of the Plan which had never been implemented such as the improvements to Five Mile Avenue.

4. Planning history of the site

4.1 The Board was informed by the Complainants and the Committee that the facts of the case were not in dispute and the planning history of the site can be summarised as follows.

4.2 In 1983 the then Island Development Committee approved the La Crabière Improvement Plan which had been commissioned by the Committee and which outlined various proposals aimed to achieve an environmental improvement in this part of Les Mielles following the designation of the St. Ouen's Bay area as a 'special place' by the States in 1978. The La Crabière Plan identified several sites as being suitable for new dwellings and one such site was the land at the rear of 'Atlantique'. The Plan indicated vehicular access to the site as being across land immediately to the south (not in the same ownership) linking onto a realigned Five Mile Avenue.

4.3 In 1985 the then owner of 'Atlantique', the late Mr. Harewood senior, submitted a planning application for the erection of a dwelling on the site identified in the Plan. The application was not approved or refused but, in accordance with practice at the time, a formal 'preliminary advice' letter dated 29th April 1985 was sent by Mr. B.A. Morris, Technical Officer (Planning) to the owner's agent, Mr. B. Edmund Design Consultant, outlining various matters which needed to be addressed before the application could be progressed. Two matters were of particular relevance. Firstly there was a need to demonstrate that satisfactory foul drainage facilities could be achieved and secondly it was necessary to secure an adequate access to the site in accordance with the La Crabière Plan. The letter made it clear that if no response was received on these matters within 2 months the application would be deemed to have been withdrawn.

4.4 No response was given within the 2-month period as, at that stage, Mr. Harewood senior could not achieve the required access and it was unclear, from initial drainage tests, whether the drainage constraint could be resolved.

4.5 In early 1987 the then Island Development Committee reviewed the La Crabière Plan during the preparation of the new Island Plan and a number of sites which had previously been identified for new dwellings, including the land at the rear of 'Atlantique' were deleted. In November 1987 the area was included in the Green Zone as part of the new Island Plan approved by the States.

4.6 In February 1989 Mr. Harewood senior managed to acquire the necessary strip of land to the south of the site to secure access and in August 1989 he reapplied for permission to erect a dwelling on the site. The application was refused by the then Island Development Committee in October that year under the 1987 Island Plan policies, specifically Policy CO1 which referred to the presumption against new development in the Green Zone and Policy SE4 which referred to the presumption against any new development being allowed which relied on septic tanks, soakaways or private sewage treatment plants.

4.7 In April 1995 Mr. Harewood senior made an informal approach to the Committee requesting reconsideration of his application as an exception to approved planning policies. The Committee decided to maintain refusal and confirmed this view after a site visit in June 1985 made at the request of Mr. Harewood senior.

4.8 Mr. Harewood senior passed away in 1997 and his son, the Complainants in this case, submitted a further application to erect a dwelling on the site in November 2000. Since the 1995 approach referred to above there had been further changes in the planning circumstances. Mains drainage had been provided in the area hence removing the drainage constraint. Nevertheless the La Crabière Improvement Plan had been formally revoked by the Planning and Environment Committee and the St Ouen's Bay Planning Framework, which reaffirmed and strengthened the restrictive policies on development in the Bay, had been approved by the Committee in July 1999.

4.9 As part of the determination of the 2000 application the Committee sought the views of the Public Services Department which had no objections. The application was also considered by the Les Mielles Sub-Committee which supported the proposal as a suitable policy exception in view of the overall circumstances of the case. Four letters of objection were received.

4.10 The application was held in abeyance with the applicants' agreement and was considered by the Planning and Environment Committee's Applications Sub-Committee on 25th July 2001. Having considered all the circumstances of the case the application was refused by notice dated 1st August 2001 for the following reasons –

(i) the proposal was contrary to Policy CO1 of the approved Island Plan which stated that in the Green Zone there would be a presumption against all forms of new development for whatever purpose;

(ii) the proposal was contrary to Policy SO10 of the St. Ouen's Bay Planning Framework which stated that there would be a strong presumption against new development within the St. Ouen's Bay Special Area.

4.11 The Complainants asked for the application to be re-considered and the matter went before the full Committee on 11th October 2001. The Committee decided to maintain the decision to refuse permission for the reasons set out above and because it saw no reason to make an exception to policy.

5. Summary of the Complainants' case

5.1 The Board had received and noted the written submissions of the Complainants and these were amplified by Mr. and Mrs. Harewood at the hearing.

5.2 The Complainants explained that, in their opinion, the Committee was unreasonable in refusing permission for the erection of the new dwelling. The site was surrounded by existing properties on 3 sides and the proposed dwelling would have no significant impact on the landscape, unlike other new developments and extensions nearby which had been approved in recent years. The Board received a photograph of the site including an artist's impression of the new dwelling from which it could be seen, in the Complainants' opinion, that the appearance of the area would be improved when viewed from Le Chemin des Moulins as the rear of the existing property would be masked by a more attractive new house. Although the site was in the Green Zone it was a small parcel of land which could not be seen from the coast and did not contravene the essence of the Green Zone Policy. There was a presumption against new development in the Green Zone but this did not constitute a statutory bar on development and exceptions could be made where appropriate.

5.3 The Complainants reminded the Board that the La Crabière Plan was prepared by experts commissioned by the then Island Development Committee and the site had been earmarked as a site to be developed in order to improve the environment of the Bay. There would not therefore be a precedent if development was approved as the site should have been developed as part of the La Crabière Plan and this was effectively a delayed development not a new development.

5.4 The Complainants drew the Board's attention to the letter from Mr. Morris of the then Island Development Committee dated 29th April 1985 which gave in principle permission for the development subject to the resolution of the matters indicated. Mr. Harewood explained that his late father had suffered a heart attack soon after and had not been able to pursue the matter due to ill-health. Mr. Harewood informed the Board that his father had never spoken of the 2 month deadline mentioned in Mr. Morris' letter and, as the letter had been sent to the architect and not directly to his father, he had wondered since if his father had ever been aware of the deadline mentioned.

5.5 The Complainants informed the Board that, in 1989, Mr. Harewood senior had managed to purchase the land to provide the separate access towards Five Mile Avenue required in the 1985 letter. Having made the purchase and re-applied for planning permission in 1989 Mr. Harewood senior discovered that the land had been rezoned without his knowledge. The Complainants felt that, as the purchase had only been undertaken in order to comply with a requirement of the Island Development Committee, the Committee had a moral obligation to honour the in-principle consent or, alternatively, offer recompense for the costs incurred.

5.6 The Complainants pointed out to the Board that when Mr. Harewood senior had made the 1995 application, all the conditions required in the 1985 letter had been met. The access to the south had been acquired and tests into the porosity of the land had confirmed that a proposed septic tank and soakaway could be installed on the land. Nevertheless, despite the costs of complying with the conditions set out by the Committee, permission had not been granted.

5.7 In the Complainants' opinion it was significant that the Les Mielles Sub-Committee unanimously approved the application as a valid exception to the normal Green Zone policies. Furthermore an officer of the Planning and Environment Committee, who had been present at the Sub-Committee when the application had been considered, had stated that no precedent would be created if permission were granted as the site was the only one left within the La Crabière Plan that had not been developed where in-principle consent had been given.

5.8 The Complainants summarised their case by stating that they realised that the Planning and Environment Committee had a difficult task but they considered that this was an exceptional case because of the particular circumstances and history attached to the application. They therefore hoped that the matter could be brought to a satisfactory conclusion.

6. Summary of the Committee's case

6.1 The Board had received and noted the written submission of the Committee and Mr. Thorne and Deputy Fox gave further explanation at the hearing.

6.2 Mr. Thorne reiterated to the Board that the facts of the matter, and the planning history of the site, were not in dispute. It was therefore for the Board to decide whether or not the actions of the Committee had been reasonable.

6.3 In the Committee's opinion the elapse of time since the initial application made in 1985 was extremely significant. In accordance with standard practice at the time Mr. Harewood senior's agent was given 2 months from the date of the 29th April 1985 letter to respond. In fact no response was received and, in accordance with the advice given in the last paragraph of that letter, the application was deemed to have been withdrawn at the end of the 2-month period. It was important to remember that actual planning permission was never given.

6.4 Mr. Thorne reminded the Board that some 2 years after the 1985 application the Committee began to revise its policies for the Les Mielles area during the preparation of the new Island Plan. It was at that time that the proposal to allow new dwellings at 'Atlantique' and 'Les Pastures', a neighbouring property, was removed from the La Crabière Plan by the Committee. In November 1987 the States approved the new Island Plan which placed the area in the Green Zone and set out policies relating to development in that zone and also policies preventing new developments depending on septic tanks, soakaways or private sewage systems. During the debate on the Island Plan in the States it was further agreed that any application for new development within the Green Zone would not be approved without the approval of the States Assembly. Mr. Thorne therefore confirmed to the Board that, even if the Committee were to reconsider the matter and decide that it was minded to grant permission for the new dwelling at 'Atlantique', the matter would need to be debated by the States.

6.5 The Committee accepted that the visual impact of a new dwelling in this location would be very limited and the application was therefore less significant in planning terms than other sites in the Green Zone. The Planning and Environment Committee nevertheless believed that it was extremely important to apply the policies on the Green Zone consistently and rigorously with particular reference to Policy CO1 which stated that in the Zone there was a presumption against all forms of new development. The Committee and departmental officers had always been sympathetic to the personal circumstances which had prevented Mr. Harewood senior from pursuing the matter in 1985 but the Committee was conscious of its responsibilities and had to act fairly to all applicants. Mr. Thorne stated that, although the Committee asked the States to approve certain developments in the Green Zone, these related almost exclusively to

essential development and he could think of no recent examples where the States had been asked to approve the construction of a new private dwelling in the Zone. It was important to realise that the other developments in the vicinity of 'Atlantique' referred to by the Complainants were either redevelopments of existing properties (such as the houses on the neighbouring Sable d'Or site viewed by the Board during the site visit) or developments which had the benefit of outstanding permissions granted in accordance with the La Crabière Plan.

6.6 The Committee acknowledged that the conditions set out in the 1985 letter had now been met but planning policies had changed considerably since that date. The La Crabière Plan had been amended in 1987 and formally rescinded by the Committee in 1998. Most significantly the 1987 Island Plan had come into effect 2 years before the second application in 1989 and the planning policies for the Les Mielles area had been reinforced by the approval of the St. Ouen's Bay Planning Framework in 1999.

6.7 Deputy J.B. Fox explained to the Board that he was Chairman of the Les Mielles Sub-Committee which was a Sub-Committee of the Planning and Environment Committee established after the 1978 decision of the States to designate the St. Ouen's Bay area as a 'special place'. The Sub-Committee contained representatives of the Planning and Environment Committee, the Public Services Committee, the Connétables of St. Brelade, St. Peter and St. Ouen as well as representatives of La Société Jersiaise, the National Trust and the Friends of Les Mielles. The Sub-Committee was advised by officers and informed of pending planning applications affecting the Les Mielles area and, although it had no delegated authority in planning matters, its views were transmitted to the Planning and Environment Committee. Deputy Fox confirmed that the Les Mielles Sub-Committee had considered the application relating to 'Atlantique' at its meeting of 26th January 2001 and had expressed the view that it should be approved as an exception to policy in view of the particular circumstances of the case. This decision was a unanimous one amongst those voting although Deputy Fox explained that he did not vote on planning matters because of his position as a member of the Planning and Environment Committee that had to determine applications.

6.8 Deputy Fox confirmed that neither the Applications Sub-Committee nor the full Planning and Environment Committee had been on a site visit in connection with the November 2000 application. The Committee did not normally conduct site visits unless the members particularly expressed a wish to see a site but the Committee had the benefit of all relevant information and photographs when considering this application.

6.9 The Committee representatives summarised the Committee's stance in the case by reiterating that, even though it was sympathetic to the past circumstances of the case, the Committee saw no reason to seek the approval of the States to make an exception to the Green Zone policies to allow the development to proceed. Planning policies and circumstances changed over time and it was for this reason that advice letters and permissions were time limited. The Committee pointed out that when the November 2000 application was received from the Complainants 13½ years had elapsed since the Committee's decision to delete the site from the La Crabière Plan, 13 years had passed since the inclusion of the site in the Green Zone, 2½ years since the formal rescindment of the La Crabière Plan and 2¼ years since the adoption of the St. Ouen's Bay Planning Framework. The Committee was not therefore being unreasonable to state that advice given in a letter dated 29th April 1985 had been superseded by subsequent events.

7. The Board's findings.

7.1 Having visited the site the Board agrees that the visual impact of a new dwelling on the site would be minimal and could in fact improve the view from Le Chemin des Moulins as shown on the photo montage produced by the Complainants.

7.2 The Board nevertheless considers that it is necessary to recall that the site is within the Green Zone approved by the States in November 1987 and Policy CO1 states that, within that zone, there is a presumption against all new development. That restriction has been reinforced by the approval of the St. Ouen's Bay Framework and the Board notes that Policy SO10 of that framework states that there will be a strong presumption against new development in the Bay. The Board believes it is therefore necessary

to approach this complaint by considering whether the past circumstances of the case justify making an exception to these policies.

7.3 The Board notes that the Complainants believe that the advice letter of 29th April 1985 sent to Mr. Harewood senior is of great significance. The Board nevertheless notes that the letter was not a planning consent and no reply appears to have been sent within the 2-month deadline specified. The Complainants stated at the hearing that it was possible that Mr. Harewood senior was never aware of the deadline specified but, as the letter was sent to his architect who had a professional duty to inform his client of its contents, this is not a matter which the Board considers should be taken into account.

7.4 The Board has noted the circumstances which prevented Mr. Harewood senior from pursuing the application in 1985 but it is, nevertheless, the case that 4 years later Mr. Harewood proceeded to purchas land to create the access required in the 1985 letter. The Board has not been able to ascertain whether he had been informed of the amendment to the La Crabière Plan but it would not appear that he made any enquiries of the then Island Development Committee before making the purchase. It seems likely that, if he had, he would have been informed of the Green Zone designation and the deletion of the site from the La Crabière Plan.

7.5 The Board notes that on each occasion that the Committee has been asked to consider the matter since the purchase of the access land, namely in 1989, 1995 and again in 2000, the principal reason for refusal of planning permission has been that the site is within the Green Zone. The Board accepts that the Planning and Environment Committee must adopt a consistent and fair approach to applications within that Zone to avoid creating precedents. There are possibly many hundreds of areas within the Green Zone where new development could take place without undue visual impact and the fact that a new dwelling at 'Atlantique' would not adversely affect the surrounding environment would not seem to be, in itself, sufficient grounds for making an exception to Policy CO1. The Board notes that the Les Mielles Sub-Committee supported the application although, as explained by Deputy Fox, the Sub-Committee does not have any real status in relation to planning matters and might not have taken account of the effect a consent in this case would have had as a precedent for other cases.

7.6 Having accepted that it would not be appropriate to request the Planning and Environment Committee to make an exception to the Green Zone policy on 'planning' grounds the Board has considered whether the Committee has an obligation to the Complainants because of the actions taken by Mr. Harewood senior to comply with the advice letter of April 1985 and because the other conditions in that letter, notably the drainage requirements, have been fulfilled. The Board has considered this matter carefully but has taken into account the fact that, by the time the land was purchased, the new Island Plan policies had been in place for over a year and the site had been removed from the La Crabière Plan. As stated above it would not appear that any enquiries were made by Mr. Harewood senior before making the purchase. If he had he would almost certainly have been informed of the changed circumstances. The Board does not therefore believe that it would be appropriate to request the Committee to ask the States to agree that an exception should be made to the strict Green Zone policy on the basis of a letter written almost exactly 17 years ago and the Board therefore **rejects the complaint** and will not ask the Committee to reconsider its decision.

Signed and dated by –

..... Date:.....
Advocate G. Le V. Fiott,
Chairman

..... Date :.....
Miss C. Vibert

.... Date :..........................
Mr. T.S. Perchard

APPENDIX B

1386/2/1/2(235)

BOARD OF ADMINISTRATIVE APPEAL

Monday 25th February 2002

Complaint by Mr. G. Dawkins, (General Manager), representing Vanni (C.I.) Limited 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.
Mrs. L.J. King, M.B.E..
Mr. P.E. Freeley

Complainant

Mr. G. Dawkins, (General Manager), representing Vanni (C.I.) Limited

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 St. Ouen's Parish Hall, St. Ouen on 25th February 2002, at 9.30 a.m.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. G. Dawkins, (General Manager), representing Vanni (C.I.) Limited against a decision of the Planning and Environment Committee to refuse permission in respect of a retrospective application for the change of use of part of Field No. 657, La Route du Marais St. Ouen from agricultural to open storage of miscellaneous contractors' equipment.

3. Site Visit – Field No. 657, La Route de Marais, St. Ouen

3.1 After the formal opening of the hearing by the Chairman, the parties visited the Field in question.

3.2 The Board observed that the Field was located to the south of La Route du Marais, with a single gate entrance connecting with the main road. The Field's curtilage with the main road was planted with established trees, bushes and shrubberies. The Field was bordered by agricultural land to the south and the nearest property was located to the other side of a small adjacent lane.

3.3 Part of the Field was utilized by another tenant for the purpose of polytunnels, this having separate access to the main road.

3.4 Part of the Field was also used for the purpose of a block built pumping station, a similarly constructed store/toilet facility, and a HGV parking/turning area used by the Public Services Committee, (all with separate access).

3.5 The Board observed that the part of the Field in question was utilised for the outdoor storage of contractors' equipment such as signage, cables, barriers, scaffold and timbers. There was also a small detached timber hut on site providing a lock-up area for use by the Complainant, in addition to a privately owned storage hut belonging to an unrelated third party.

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 Vanni Limited's behalf in support of the case to change the designated use of the Field, retrospectively, from agricultural to open storage of miscellaneous contractors' equipment.

4.2 The Board noted that Vanni Limited, through its submissions, had stated that –

(a) it was a local company which was contracted predominantly by the Jersey Electricity Company Limited, whose main function was to trench, cable lay and reinstate for power cables and install electricity ducting and service cables;

(b) the part of the Field in question was situated adjacent to a sewerage treatment plant and since the ground was contaminated and marshy, it could not be utilized for agricultural, horticultural or housing purposes;

(c) the site had been used by both Vanni and its predecessors for a period in excess of 20 years (14 years in the case of Vanni Limited and at least 6 years formerly in the case of Messrs Cannons);

(d) the site was not overlooked and Vanni Limited had never received any complaints from the Parish of St. Ouen, landowners or otherwise regarding its use or nuisance;

(e) the company had been actively searching for an alternative site for the past 6 years but had not yet found an appropriate alternative, either because permission had not been granted, or because the site was considered unsuitable. On this point, the Complainant stated that the Planning and Environment Committee had declined to grant permission on several of the alternative sites identified in the past; and,

(f) the company needed to ensure that it retained ready access to its plant and equipment at all times of the day to meet the essential service it provided in continuing its operation in a sector which was paramount to the well-being of the Island's commercial, trade and business activities.

4.3 Vanni Limited maintained that it had always sought to minimize any visible use of the Field.

4.4 It was pointed out that the Public Services Committee already had a presence on the site and regularly attended the pumping station.

4.5 It was stated that a site located away from St. Helier was more desirable given the nature of Vanni Limited's operations and the need to access the site at any time.

4.6 Vanni Limited did not, as a matter of policy, use the existing Field for the parking of commercial vehicles, other than during periods of holiday, (summer and Christmas), when certain vehicles might be temporarily parked on the site.

4.7 The company had continued to search for an alternative site, without success, even as recently as advertising at the end of 2001.

5. Summary of the Planning and Environment 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 correspondence exchanged between the Department of Planning and Building Services and Vanni Limited), and the written submissions were supported orally 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 Vanni Limited in respect of the change of use of part of Field No. 657, La Route du Marais, St. Ouen from agricultural to open storage o miscellaneous contractors' equipment, and in particular, the date of the first advice of unauthorized use in July 1995, following which a retrospective application for change of use was submitted to the Planning and Environment Committee.

5.3 The site lay in the Agricultural priority zone, (Policy CO6 of the Island Plan states that there will be a presumption against any new non-agricultural development).

5.4 The Agriculture and Fisheries Committee had stated that the Field had no agricultural value and that it had no objections to the application for change of use.

5.5 The National Trust had submitted an objection to the application in 1995, stating that it despoiled the countryside.

5.6 The Planning and Environment Committee had undertaken a site visit in November 1995 and rejected the retrospective application stating that unless the Field was returned to its natural state, (in accordance with its Island Plan policies relating to development in the Agricultural Priority Zone), enforcement action would be pursued. The existing use was regarded as detracting from the rural character and appearance of the area, and the Committee strived to apply its policy consistently.

5.7 The Planning and Environment Committee had granted a number of periods of abeyance in order that matters relating to the relocation of Vanni Limited could be resolved by that company, (since 1995), and it regarded this as being more than reasonable in the circumstances.

5.8 The Committee maintained that Vanni Limited, or its predecessors, had moved on to the site without the appropriate permission, and that the use of the Field for the storage of plant and equipment was contrary to approved Island Plan policies.

5.9 The circumstances of the application were not regarded as being sufficient justification for making an exception to the policy of the Committee on this occasion.

5.10 Although the site was not clearly visible from the main road, due to existing hedging, the Committee considered the use of the land for the said open storage detracted from the area, and was entirely inappropriate in a countryside area, which might, if permitted, give precedent to other similar future applications.

5.11 The existing hedging, which provided some screening from the road was not justification to grant the change of use.

5.12 The pumping station itself was not regarded as significant in terms of the original development located in the area

5.13 Two of the purposes of the Island Planning (Jersey) Law 1964, Articles 2(c) and (d), were 'to protect the natural beauty of the landscape or the countryside', and to 'preserve and improve the amenities of the Island'.

5.14 The Committee had taken into consideration Vanni Limited's difficulties in finding an alternative site, and the granting of successive time extensions had been more than reasonable in the circumstances given that the Committee could have pursued prosecution.

5.15 It was not the responsibility of the Planning and Environment Committee to assist in identifying alternative sites for the storage of plant and equipment in the case of Vanni Limited or any other similar applicant.

5.16 The Planning and Environment Committee would be seeking to include, within its revised policies under the proposed new Planning Law later in 2002, the provision for change of use on agricultural sheds, given the changing circumstances of that industry, subject to certain criteria, and that this might present a possible solution in Vanni Limited's case.

5.17 If the existing site were vacated, it was proposed that it be returned to its 'natural state'.

66 The Board's findings

6.1 The Board has sympathy with Vanni Limited's position in view of the apparent lack of availability of alternative sites for the outdoor storage of plant and equipment. This case has served to highlight the need for such facilities away from residential areas. The Board notes that Vanni Limited has identified several other sites in recent years, which have subsequently proved to be unacceptable. The Board further agrees that the company provide a valuable service for the Island through its work with the Jersey Electricity Company Limited.

6.2 The Board, after giving careful consideration to the circumstances of the case, has formed the view that the Planning and Environment Committee, by way of its own actions in granting successive time extensions, has brought about an expectation that the Field's current use does not present a serious contravention of the Committee's policy. As such, the case might warrant consideration to an exception being granted. As the unauthorized use has continued for over 20 years, the Board finds it unreasonable that the Committee should now decide that Vanni Limited can no longer remain in occupation. In particular, the Board notes 2 lengthy periods where the Planning and Environment Committee appears to have taken no formal action but, rather, has let matters continue as they had done for many years.

6.3 The Board has given careful consideration as to whether it should, at this stage, request the Committee to reconsider its decision in view of the length of time the Committee has allowed the unauthorized use to continue, and given that no realistic alternative use for the land has been identified.

6.4 However, the Board has decided that in the first instance, the Planning and Environment Committee should grant a further extension to allow Vanni Limited to remain on the existing site. Meanwhile, the company should continue actively searching for an alternative site. To this end, the Board considers that the Committee should assist the company with its endeavours in locating an alternative site. However, it accepts that Vanni Limited should also make greater and renewed efforts in this regard.

6.5 The Board acknowledges that the Committee would not normally assist an applicant in this manner, but believes that it has a duty to assist in the present case having decided to take action against the Complainant following unauthorized occupation to continue for such a protracted period. In this regard, and despite the claim by the Committee that it is not part of its remit to assist applicants, the Board notes the comments of the Department of Planning and Building Services contained in a letter dated 13th January 1999, relating to the work of the 'Forward Planning Section' in providing assistance in locating alternative sites. Furthermore, the Board is encouraged to note that an imminent change in policy on the use of redundant agricultural sheds may provide a solution which is acceptable to both parties and an extension to allow Vanni Limited to remain on this site will enable the position to be reviewed once that change of policy has been effected.

6.6 The Board feels that any action by the Planning and Environment Committee in forcing Vanni Limited to

vacate the site immediately would be unjust, unreasonable and contrary to the principles of natural justice. The Board, therefore, requests that the Planning and Environment Committee reverts to it with an outcome within 3 months from the date of this report.

Signed and dated by –

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

..... Date :.....
Mrs. L.J. King, M.B.E.

..... Date :.....
Mr. P.E. Freeley

APPENDIX C

1386/2/1/3(11)

BOARD OF ADMINISTRATIVE APPEAL

17th January 2002

Complaint by Mr. Malay Basak (represented by Senator Wendy Kinnard) 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

Senator W. Kinnard

Education Committee

Deputy J.J. Huet
Mr. D. Greenwood, Assistant Director of Education
Mrs. M.O. Davies, Service Development Manager

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

The Board was convened to hear a complaint of Mr. Malay Basak (represented by Senator W. Kinnard) concerning the decision of the Education Committee that he was ineligible for a further education grant for his son, Anirban Basak's university course.

3. Summary of the complainant's case.

3.1 Senator Kinnard, on behalf of the Complainant, (who was not present at the hearing) explained that Mr. Malay Basak had initially approached her for assistance in September 2001 after finally receivin confirmation from the Education Department that he was not eligible for a grant for his son's university education. After months of waiting for a definitive answer the Complainant could no longer afford the services of a lawyer and contacted her to ask whether she would consider putting the case forward to a Board of Administrative Appeal. Although she might normally have pursued the matter through further correspondence with the Department there was a certain urgency in the matter as Anirban Basak's course was about to start and he required a review of the decision as quickly as possible.

3.2 Senator Kinnard explained that, in her opinion, there were 5 possible causes for complaint. Firstly, although the original application for a grant was dated 27th March 2000, the original decision of the Education Committee did not appear to accord with the regulations in force at that time. The rules in force at that time had been set out in a letter to the Complainant from the Student Finance Manager dated 18th April 2000 and were as follows –

"• *Applicants (and/or parents, guardians) must be residentially qualified (categories A-H, J & 1(1)(K))*

or

• *Applicants (and/or parents, guardians) must have been ordinarily resident in Jersey for five years immediately before 1st September of the first year of the course*

and

• *they must be ordinarily resident in Jersey on the 30th June prior to the commencement of the course (or would have met these requirements had their parents not been temporarily employed outside Jersey)."*

In addition, the Student Finance information booklet for parents, guardians and students, which had been obtained by the Complainant, stated that –

"• *Students or their parents/guardians must have been ordinarily in Jersey for five years immediately before 1st September of the first year of the course*

and

• *Students or their parents/guardians must be ordinarily resident in Jersey on 30th June prior to the commencement of the course (or would have met these requirements had their parents not been temporarily employed outside Jersey)*

or

• *Dependent children of parents on a 'J' category license providing that the 'J' category has not expired on 1st September of the first year of the course."*

3.3 Senator Kinnard pointed out to the Board that, in both cases, the word *'or'* treated certain residential statuses, including 1(1)(j) category status as separate and distinct from other criteria required for eligibility. The bullet points demarcating the paragraphs in both the student finance booklet and the Student Finance Manager's letter reinforced this interpretation. Mr. Basak was residentially qualified under Regulation 1(1)(j) of the housing regulations and was ordinarily resident in Jersey on the 30th June prior to the commencement of his son's course. Mr. Basak's initial '(j)' category consent had been extended and he remained in Jersey up to the end of the December 2001.

3.4 Senator Kinnard's second ground for complaint concerned delays in responding to correspondence that, in her opinion, had had the effect of wrongly applying the provisions of the Education (Discretionary Grants) (Jersey) Order 2001 retrospectively in this case. She pointed out to the Board that, in a letter from the Complainant's lawyer, Mr. G.A. Pollano, to the President of the Education Committee dated 21st March 2001, there was a handwritten departmental note that read, *"Are we doing a reply to this letter?"* No substantive reply was received for 5 months by which time new rules had apparently been agreed by the Education Committee but as yet had not been formally laid before the States. Nonetheless these new provisions were applied to this application in late August although they were not in the public domain until 11th September 2001 when the Order was laid before the States.

3.5 The third ground for complaint concerned the fact that, in Senator Kinnard's opinion, Mr. Basak had beer treated unfairly in relation to other comparable applicants for student grants. She drew attention to the case of a colleague of the Complainant who, in apparently similar circumstances, was deemed eligible. Although she had requested details of similar cases, particularly those studied by the Grants Appeal Sub-Committee, this information had not been forwarded to her.

3.6 Senator Kinnard explained that the fourth part of her complaint was that there had been a complete lack of transparency concerning the manner in which decisions had been taken in this case. Although she had written to the President of the Education Committee in an attempt to elicit precise information concerning the dates when decisions had been taken these questions had not been answered to her satisfaction and his response therefore failed to provide the necessary reassurance of adequate independence in the decision making process. In addition Senator Kinnard claimed that there had also been a lack of transparency in correspondence from the Education Department which had had the effect of making Mr. Basak jump through imaginary hoops in an effort to try to fulfill criteria which were not clear to anyone, only to find that, as soon as he had complied with any particular request, the relevant rules had changed. Senator Kinnard drew attention to the fact that that grants were discretionary and it was therefore vital that the bounds of such discretion were transparent.

3.7 The fifth ground for complaint related to the reference to 'reasons' for the extension to the Complainant's '(j)' category being referred to in the correspondence. Senator Kinnard drew the Board's attention to correspondence where it appeared that the 'reasons' for the extension of the '(j)' category consent were a factor in the decision, even though there was no mention of 'reasons' in any previous correspondence or in the published literature of the Education Department relating to '(j)' category eligibility. Senator Kinnard pointed out that there was nothing unusual in an extension being granted after an initial period if the relevant authorities (Immigration and Nationality and Housing Departments) gave consent. Senator Kinnard did nevertheless ask the Board to note that reference to the Complainant's '(j)' category status in correspondence from the Education Department dated 22nd January 2001 only served to confirm the relevance of the residential category as a criterion current at the time.

3.8 Senator Kinnard concluded by stating that Mr. Basak made the application for grant aid, and submitted al further information requested of him in good faith but believed that he had received mixed messages and was wrongly advised by the Department and Committee as to the criteria that correctly applied to him. He believed throughout that he had been eligible on the basis of his '(j)' category status, a fact he first learned through the letter he received from the Student Finance Manager dated 18th April 2000 and which was subsequently confirmed through correspondence received from another officer of the Education Department dated 19th May 2000. Further letters 24th May 2000, 2nd January 2001 and 22nd January 2001 had confirmed his belief that his '(j)' category status was the key to his eligibility for an award. Senator Kinnard contended that, when added to the unfair and discourteous treatment he had received, compounded by delays in answering correspondence and a lack of transparency with regard to the criteria by which his application was to be judged, Mr. Basak had been unjustly treated and she invited the Board to find in his favour and request the Education Committee to reconsider its decision. In addition Senator Kinnard suggested that the Committee should be requested to backdate the payment of a grant to reimburse Mr. Basak for the amounts he had paid towards his son's further education since September 2001.

4. Summary of the Education Committee's case

4.1 The Board had received a full written summary of the Committee's case and the written submissions were amplified by the Committee's representatives. Mr. David Greenwood, Assistant Director of Education set out the history of the Complainant's application for a grant. He pointed out that the first application for an award had been received in March 2000 for university entry in September 2001. Mr. Greenwood explained that this was known as a 'deferred application' and, although not common, was usually done when students were taking a 'gap' year and wished to obtain the comfort of knowing that financial support would be forthcoming in due course. In this case the Complainant had applied a year early as he knew that he did not meet the 3-year residency requirement and wished to defer entry to complete that

period. Mr. Greenwood explained that it was, however, important to realise that the rules that applied to any particular application were those that were in force on the date the course started and not those that were in force at the time of application. Applications received for future years were not processed until the Committee had clarified the rules that would be in force for the relevant year of entry of the student into higher education. No definite decision could be given until the year of entry.

4.2 Mr. Greenwood explained that within one month of the application being received from Mr. Basak th Education Committee decided to revise the rules on eligibility for grants because of the termination of the reciprocal agreement with the United Kingdom. Under the reciprocal agreement a period of residency in the United Kingdom had counted towards the residency requirement when a person moved to Jersey and vice versa. When the United Kingdom stopped giving student grants there was a risk that a person who had been resident in the United Kingdom for 3 years could come to Jersey and qualify for a grant which would not have been available in the United Kingdom and for this reason the agreement was ended. In considering revised residency requirements the Education Committee took the view that a period of 5 years residency for all applicants was reasonable. Although Article 51 of the Education (Jersey) Law 1999 (which came into force on 1st March 2000) allowed the Committee to make provision for the regulation of student awards by Order the process of drafting an Order was not a simple matter and required complex discussions between the Education Department, the Law Officers' Department, the Law Draftsman's Office and the Education Committee. The process was complicated by the fact that no Order had previously been in existence and it was therefore necessary to consolidate many Committee Acts and policy decisions into a new Order. The process was only completed when the Education Committee made the Education (Discretionary Grants) (Jersey) Order 2001 on 15th August 2001. The Order came into force on 1st September 2001 and was deemed to apply to all grant applications for Jersey students entering university in autumn 2001.

4.3 Mr. Greenwood drew the Board's attention to the letter to Mr. Basak dated 18th April 2000 from the Student Finance Manager. In that letter it was stated that applicants needed 5 years' residency although Mr. Greenwood accepted that the letter was confusing as the word '*or*' in the summary of the residency requirements (as quoted in paragraph 3.2 above) should have read '*and*' and it could therefore have appeared that applicants had to have either a '(j)' category *or* complete 5 years' residency. A similar error had been made in the printed booklet although, once the Education Committee had realised this, steps had been taken to amend the booklet.

4.4 With reference to the circumstances of the Complainant's case, Mr. Greenwood explained that, after the initial exchange of correspondence in April and May 2000, nothing further had been heard from him until December 2000 when he had submitted a fresh application. In subsequent correspondence Mr. Basak constantly referred back to his '(j)' category status and the 3-year residency rule although, in the Committee's submission, it had been made clear to him that the Education Committee had fixed a 5-year residency period for all applicants and he did not qualify for a grant.

4.5 The Complainant appealed to the Education Committee Grants Appeals Sub-Committee on 22nd February 2001. In the absence of Deputy J.J. Huet the Sub-Committee was chaired by Senator P.A. Bailhache. Mr. Greenwood explained that the Sub-Committee had accepted that the rules had changed but upheld the decision to refuse an award as it could see no reason to treat Mr. Basak any differently from other applicants.

4.6 On 21st March 2001 Mr. G.A. Pollano of Mourant du Feu & Jeune wrote to the President of the Education Committee to request reconsideration of the case. Mr. Greenwood explained that an appeal to the Sub-Committee was usually the last step that applicants could take but, in this case, the President replied on 24th April 2001 stating that he would be prepared to review the case after the necessary Order under Article 51 of the Education (Jersey) Law 1999 had been made. Mr. Greenwood re-iterated that, because of the complexity of the drafting of that Order, it was a further 4 months before it was made and he sent a substantive reply to Mr. Basak on 30th August 2001 when it was confirmed that he was not eligible for an award.

4.7 Mrs. Davies referred to the case of the colleague of the Complainant that had been mentioned by Senator

Kinnard and explained that the applicant concerned had received a grant in 1994 when the reciprocal agreement with the United Kingdom, and the 3-year residency rules, were still in force.

4.8 In response to the arguments set out by Senator Kinnard the Committee representatives explained to the Board that the Complainant had been told on numerous occasions, including at the appeal hearing before the Sub-Committee, that he needed to have 5 years' residency in accordance with the revised rules before he qualified for a grant. The Committee accepted that some of the correspondence with the Complainant had been misleading but he had not, in the Committee's view, been left in any doubt concerning the reasons for the refusal. He had, whilst understanding the 5-year requirement, continued to pursue his application on the basis of the information on '(j)' category status that he had been told was no longer applicable. Despite the error in the published booklet on grants the Department had made every attempt to ensure that parents and others were aware of the 5-year requirement. This had been done through parents' evenings, at meetings with careers teachers, at higher education fairs and, in this case, through telephone conversations. It was not the case that the provisions of the Education (Discretionary Grants) (Jersey) Order 2001 had been applied retrospectively in this case – all applications for 2001 entry had been dealt with according to the revised rules on residency agreed by the Committee and the enactment of the Order had merely served to encapsulate in legislation the rules already in place. If Mr. Basak had applied for his son to enter university in 2000, and if he had fulfilled 3 years' residency prior to that date, he would have qualified. His application had been refused because the residency rules had changed and although this change had an adverse effect for the Complainant he had been treated in exactly the same way as everyone else.

4.9 The Committee also refuted the allegation that it had taken 5 months to respond to the letter of 21st March 2001 from the Complainant's legal adviser – a reply had been sent on 24th April 2001 but, contrary to normal policy the President of the Education Committee had agreed to a further review of the case once the Order had been made.

5. The Board's findings

5.1 The Board has taken very careful note of the extensive bundle of correspondence supplied by the parties. The Board was informed by the Committee representatives that the Complainant had been informed in 'numerous' telephone conversations that he was not eligible for an award but there was no evidence in the papers supplied to the Board of the content of such telephone conversations. The Board is not aware whether file notes of such conversations exist but, if they do, none were produced to it. The Board has therefore had to base its findings exclusively on the written materials supplied and on the oral submissions of the parties at the hearing.

5.2 The Board considers it is necessary to quote at some length from the correspondence in order to set out the full background to its findings. The Board believes that the letter to the Complainant dated 18th April 2000 from the Student Finance Manager is extremely significant in this case. In that letter it is stated that (our underlining) –

'The current regulations state that a student admitted to a first degree is entitled to apply for an award if he or she –

- *has ordinarily resided in the Channel Islands, Isle of Man or the United Kingdom for three years immediately before 1 September of the first year of the course.*

Your son has only resided in Jersey since 1998 and does not meet the residency requirements'.

Despite this clear reference to a 3-year residency requirement the letter goes on to state –

'New regulations have been approved by the Education Committee which now require residency of at least five years, for people without residential qualifications.

These regulations were taken to the Education Committee in March 2000, and with effect from 1 March

2000 the residency requirements are:

- *Applicants (and/or parents, guardians) must be residentially qualified (categories A-H, J & 1(1) K)*

or

- *Applicants (and/or parents, guardians) must have been ordinarily resident in Jersey for five years immediately before 1st September of the first year of the course*

and

- *they must be ordinarily resident in Jersey on the 30th June prior to the commencement of the course (or would have met these requirements had their parents not been temporarily employed outside Jersey)".*

The Committee accepted at the hearing that the letter was confusing and inaccurate as the word *'or'* should have read *'and'* as the Committee claimed that it was the intention that applicants needed to be both residentially qualified and have 5 years' residency.

5.3 The Board accepts that errors can, on occasions, occur and the letter of 18th April 2000 would perhaps not be of such importance if the Education Department had moved swiftly to correct the information given in it. However it is clear that, far from correcting any misleading impression that may have been given, the Committee continued to compound the error by continually referring to the Complainant's '(j)' category status in subsequent correspondence.

5.4 Mr. Basak responded to the letter of 18th April 2000 on 16th May 2000. Having, quite understandably, thought that his '(j)' category status would be sufficient grounds for obtaining a grant he enclosed a letter from his employer confirming his residential status. A handwritten note made by the Student Finance Manager at the foot of the letter reads *'no, must be letter from Housing not bank'*. That message was formally given to Mr. Basak in a letter from the Education Department dated 19th May 2000.

5.5 The Housing Department wrote to the Education Department on 23rd May 2000 confirming the Complainant's '(j)' category status but pointing out that the '(j)' category licence would expire in February 2001. As a result the Education Department informed the Complainant the following day that he was not eligible for a grant because the date of entry of Anirban to university was *'after your contract expiry date'*. The Board has noted that no mention at all was made of a 5-year residence requirement in any of the correspondence after 18th April 2000 and Mr. Basak must have been left with the very clear impression that, if his '(j)' category was extended and he completed 3 years' residency, he would be able to qualify. He appears to have decided to defer pursuing his application until he was in a position to meet those requirements.

5.6 As mentioned earlier Mr. Basak re-applied for an award in December 2000 at a time when, the Board assumes, other applicants for entry in 2001 were beginning to apply. The Board considers that, if any confusion existed in the early part of 2000 about residency requirements, the Education Committee would have had ample time to resolve the matter before the end of the year. This appears, however, not to have been the case.

5.7 The Complainant's second application was acknowledged on 2nd January 2001. The letter from the Student Finance Manager refers back to the letter of 24th May 2000 and goes on to state –

"If your 'j' category has been extended please request the Housing Department to confirm to me in writing the new end date of the 'j' category."

The Board notes that no mention is made of the 5-year residency requirement in the letter despite the clear

statement by the applicant's son on the application form that *"My father is resident in Jersey since 1st March 1998 under work permit ('J' category)"*.

The Complainant complied with the request contained in the letter on 3rd January 2001 by faxing to the Education Department confirmation that his '(j)' category had been extended to 30th September 2001.

5.8 The Board has found the reply from the Student Finance Manager dated 4th January 2001 to be quite remarkable. Although a simple statement about the 5-year residency requirement would perhaps have sufficed to bring the matter to a close, the Department appears to have introduced further confusion into the process by referring to the 'reasons' for the extension of Mr. Basak's 'j' category. The letter states –

"I have spoken to the Housing Department and I regret to inform you that the Education Committee will not grant aid Anirban for a student award to attend a higher education institute.

The Housing Department informed me that it was agreed to you being employed on a (j) category for three years commencing March 1998, subject to immigration controls. The reason your employment license has been extended is due to your employer requesting an extension in November as they had not had time to identify suitable replacements. Under normal circumstances you would not have been eligible for grant aid."

The Board has struggled to understand what the last sentence quoted above is intended to refer to. Even under the 3-year residency rules which, it appears, the Complainant thought were still in place, no reference appears to ever have been made to the 'reasons' for a period of residency. It is not at all clear what the words *'normal circumstances'* are supposed to mean. Once again no mention of the 5-year residency requirement is made.

5.9 The Board has noted that there were several letters in early January 2001 between the Complainant and the Department but these do not raise any new issues. The next letter of significance is one dated 22nd January 2001 to Mr. Basak from the Student Finance Manager which appears to have been an attempt to clarify the residency requirements. In this regard the letter appears to start with a clear statement in the following terms –

"To clarify the residency position even local families with A-H housing qualifications need to have five years continuous residency prior to 1st September of the first year of the course to be eligible for consideration for a student award."

Notwithstanding the statement above in the first paragraph, the letter then goes on to give the impression that those applicants with '(j)' category status are to be treated differently and, once again, returns to the issue of the 'reasons' for the extension of the Complainant's '(j)' category –

"When discussing residency requirements for grant aid the Education Committee were mindful that they did not want to disadvantage dependants of J, or even possibly (though unlikely) K category residents.
As I have stated before the Housing Department informed me that it agreed to you being employed on a (j) category for three years commencing March 1998 subject to immigration controls. The reason your employment license has been extended is due to your employer requesting an extension in November 2000 as they had not had time to identify suitable replacements. Under normal circumstances you would not have been eligible for grant aid as your license would not have been extended."

The Board considers that, having received the above letter, Mr. Basak must again have been left with the very clear impression that '(j)' category applicants were to be treated differently from other residents.

5.10 The Board has noted that Mr. G.A. Pollano, Mr. Basak's legal adviser, came to an identical conclusion when he reviewed the papers given to him and wrote to the Committee on 21st March 2001 after the Sub-Committee had refused Mr. Basak's appeal.

5.11 The Board has concluded that, despite the submissions made by the Committee, the exact rules on

residency cannot have been agreed when this letter was received from Mr. Pollano. Indeed the Board has noted that, despite the indications from the Committee that a certain degree of confusion existed in April 2000, the written submission of the Committee states that the rules on residency were not confirmed by the Education Committee until 29th April 2001, over a year later. If the rules had been clear, a brief letter apologising for earlier confusion and setting out the 5-year residency requirement would have been an adequate and appropriate response to Mr. Pollano. Instead the Committee President replied on 24th April 2001 (after being prompted for a response) indicating that the case would be reviewed once the necessary Order under Article 51 of the Education (Jersey) Law 1999 had been made. The Board concurs with the view expressed by Senator Kinnard that, whatever the Committee's intentions, the letter gave an impression that the Committee was in the process of creating new rules that would, once finalised, be applied 'retrospectively' in Mr. Basak's case. The Board cannot understand why, if the rules on residency were actually clear in March 2001, as the Committee claims, it took some 5 months to provide a substantive response to Mr. Pollano. Furthermore the Board has noted that in that substantive response sent to Mr. Pollano by the Assistant Director on 30th August 2001, it is stated that *'financial assistance in this instance has been refused on the basis of the letter sent to Mr. Basak by Mrs. Madeleine Davies, the Student Finance Manager on 22nd January 2001'* (quoted above) and no simple reference to the 5-year rules was made.

5.12 The Board is of the view that throughout this case the Education Department has constantly given confused and misleading messages to the Complainant. At no stage was he given a clear and unequivocal statement in writing that his '(j)' category status was irrelevant under the new residency rules which the Committee claims were in place. On the contrary he was encouraged to produce letters confirming his housing status and subsequent extensions to the length of his contract. The Board finds it extraordinary that the Education Department saw fit to comment on the 'reasons' for the extension to his '(j)' category and gave the impression that his application had been refused because these reasons were somehow unacceptable.

5.13 The Board considers that the papers submitted point inevitably to one of 2 conclusions; either the rules on residency were not clearly in place when the applications were dealt with or, if they were, Mr. Basak was never told in an appropriate manner. Although the Committee has claimed that he was informed of the requirements on the telephone, and orally at the appeal, this is not confirmed by the subsequent correspondence and does not explain why a simple, brief, reply could not have been sent to Mr. Pollano in March 2001.

5.14 The Board, in accordance with the provisions of Article 9(2)(b) of the Administrative Decisions (Review) (Jersey) Law, 1982, as amended, finds that the Committee's actions towards Mr. Basak have been unjust and it therefore **upholds the complaint**. The Board accepts that, according to the rules on residency that the Committee claims were in place at the relevant times, he may never have technically qualified for an award but the Board finds that the manner in which his case has been dealt with is unacceptable and unjust. He was constantly encouraged to believe that his '(j)' category was of significance and had every reason to believe that, once he had completed 3 years' residency, he would be eligible for a grant. The Board notes that Mrs. Davies stated at the hearing that the Committee and Department had found the matter of '(j)' category applicants difficult and complicated to deal with when the rules on residency were being amended and it would appear that the dealings with Mr. Basak reflected that confusion. In the circumstances the Board requests the Committee to **reconsider its decision and to grant the application.** The Board has noted that Article 3(2) of the Education (Discretionary Grants) (Jersey) Order 2001 gives the Committee the discretion to treat persons as resident even when the normal criteria are not met and the Board believes that the Committee should exercise this discretion and treat the Complainant as resident at the material time for the purposes of the Order. It goes without saying that the award should be backdated to take effect as if the decision had been made before Anirban started his course and the Board appreciates that any grant will, of course, be subject to the usual means testing procedures. The Board requests the Committee to report back to it within **2 months**with the results of its reconsideration.

5.15 The Board wishes to mention one other ancillary matters that arose during the course of this hearing. This Board, by chance, consisted of the same Chairman and members who had heard a separate complaint against a decision of the Education Committee on 17th April 2001. The Board was therefore pleased to

note that revised appeal provisions have now been put in place in accordance with its recommendations in that case although it was curious to note that, in his letter of 26th September 2001 to Senator Kinnard, the President of the Committee refers to Mr. Basak's appeal to the Grants Sub-Committee (which was dealt with 2 months before the Administrative Appeal hearing referred to above) having been established ir accordance with that Board's recommendations. The Board is not aware how decisions of the Grants Appeal Sub-Committee are communicated to appellants under the new arrangements but is hopeful that arrangements are now in place to ensure that the decision of the appeals Sub-Committee is not communicated by the officer who took the original decision as happened in Mr. Basak's case.

Signed and dated by –

..... Date:.....
Mrs. C.E. Canavan, Chairman

..... Date :.....
Miss D.J. Watkins

..... Date :.....
Mr. T.S. Perchard

APPENDIX D

MdlH/VNL/037/02 **1386/2/1/11(6)**

BOARD OF ADMINISTRATIVE APPEAL

28th January 2002

Complaint by Mr. Barry Breuilly (assisted by Deputy J.B. Fox) against a decision of the Home Affairs Committee

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

1. Present –

Board Members:
Mr. R R Jeune C.B.E.
Mr. J.G. Davies
Mr. D.J. Watkins

Complainant:
Mr. B. Breuilly
Deputy J.B. Fox

Home Affairs Committee:
Deputy A.J. Layzell, President, Home Affairs Committee
Mr. S. Austin-Vautier, Director, Home Affairs Department

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. At the start of the hearing the Chairman explained that he had been Vice-President of the former Defence Committee until 2nd July 1996 but had no longer been a member of the Committee, or indeed of the States, at the time of any of the events referred to in this case. Both parties confirmed that they were quite content for the Chairman to deal with this complaint.

2. Summary of the dispute

The Board was convened to hear a complaint of Mr. Barry Breuilly concerning the decision of the Hom Affairs Committee to reject an appeal against the decision of the Chief Constable, Dorset Constabulary, to require him to resign from the States of Jersey Police Force following his conviction on 2 counts of common assault.

3. Summary of the Complainant's case

3.1 The Complainant had submitted a written summary of his complaint and this was amplified by his oral submission to the Board.

3.2 The Complainant explained that he considered that he had suffered an injustice as the Home Affairs Committee had upheld the decision of the Chief Constable of the Dorset Constabulary requiring him to resign from the States of Jersey Police Force whereas another colleague, a Police Constable who had a similar conviction, had been allowed to remain as a serving officer after a successful appeal to the then Defence Committee against the decision of the Chief Officer of the States of Jersey Police to dismiss him

from the force[1].

3.3 The Complainant stated that he had served for 18½ years as an officer of the States of Jersey Police and had an exemplary record. He felt strongly that he was not receiving natural justice because of the discrepancy between his case and that of the Police Constable who had been re-instated.

3.4 The Board noted that the Complainant had been arrested on 25th July 1999 and had subsequently been convicted on 28th April 2000 on 2 counts of common assault on a woman. He had been bound over by the Assistant Magistrate to be of good behaviour for a period of 2 years on both offences to run concurrently. Following a disciplinary investigation conducted by the Chief Constable of Dorset he had been found guilty of 19 disciplinary charges and required to resign on charges 5 and 6 (neglect of duty) and on charge 19 (criminal conduct). He was cautioned on 16 other minor charges. On 30th November 2000 he had appealed to the Home Affairs Committee against this punishment in accordance with the provisions of Article 42 of the Police Force (General Provisions) (Jersey) Order 1974. The Committee had reduced the punishment on charges 5 and 6 to a caution but had upheld the decision of the Chief Constable on charge 19 which related to his conviction for common assault. As a result he had been required to resign from the Force.

3.5 The Complainant compared his case with that of another Police Constable who had been arrested 6th December 1998 and charged with assaulting a prisoner in a police cell whilst on duty. Although he had initially been charged with one count of grave and criminal assault and one count of common assault no evidence had been offered on the former charge and he had pleaded guilty to the charge of common assault. He had been sentenced on 3rd March 1999 and fined £200 or 10 days in custody. Following an internal disciplinary investigation he had been dismissed from the Force after 2½ years' service. He had, however, appealed to the then Defence Committee against his punishment and the Committee had upheld his appeal and reinstated him as a police officer.

3.6 The Complainant contended that there was a discrepancy between the Committee's decisions in the 2 cases. Although, in his opinion, his own penalty of a 2-year binding-over order had been less severe than the £200 fine or 10 days in prison, his punishment had been upheld whereas his former colleague had been re-instated. The Complainant also claimed that the nature of his former colleague's offence was more serious. The Complainant's conviction had arisen as a result of a 'domestic' incident whilst off duty whereas the Police Constable who had been re-instated had admitted assaulting a prisoner in a cell when he was on duty. The Complainant drew attention to the fact that the Assistant Magistrate had referred to his record of exemplary service in the Police Force and the commendations he had received from the Court. In addition he had served in the Force for a total of 18½ years and considered he had been unjustly treated compared to the Police Constable who had only served for 2½ years. The Complainant felt that, although the Home Affairs Committee claimed that he would be subject to character challenge in future legal proceedings if allowed to remain in the Force, this argument could equally well be used against his former colleague because of his conviction and this was a further reason why he had suffered an injustice.

3.7 Mr. Breuilly explained to the Board that the actions of the Committee in refusing his appeal had caused him undue stress and he had suffered double jeopardy by losing his career and his livelihood after already being sentenced by the criminal court. He asked the Board to request the Committee to reconsider its decision and re-instate him as his former colleague had been.

4. Summary of the Home Affairs Committee's case

4.1 The Board had received a short written summary of the Committee's case and the written submissions were amplified by an oral submission. The President of the Home Affairs Committee distributed written copies of his oral submission and, as it was considered to raise certain new issues, the Chairman adjourned the hearing for a short period after Deputy Layzell had finished his submission to allow the Complainant and Deputy Fox to consider the matters referred to.

4.2 The President of the Home Affairs Committee preceded his response to the Complainant's case by

making 2 points. He wished firstly to make it clear that the Committee's submission should not detract in any way from the Complainant's record of service to the States of Jersey Police before the incidents which led to the court case and the subsequent disciplinary hearing. The Committee had been aware of the testimonials submitted in support of Mr. Breuilly and had taken them into account when reaching its various decisions Secondly the President stated that such cases, although they were thankfully few and far between, were always sensitive and placed particular pressures on individual members of the Committee. The Committee was required to sit in judgement on an officer knowing that an adverse verdict (in this case upholding the finding of the Chief Constable of the Dorset Constabulary that he be required to resign) could have far reaching consequences not only in respect of the individual's mental health but also his financial circumstances. This was one of the least enjoyable tasks undertaken by the Committee but, nevertheless, members discharged this responsibility with particular care. Deputy Layzell was reassured to note that there was no suggestion by the Complainant that the Committee had acted hastily or recklessly in reaching its decision. Due process had been followed and the President reminded the Board that the Committee had reduced the findings of the Chief Constable in relation to two of the disciplinary charges.

4.3 The President explained that in relation to the substantive disciplinary charge ('criminal conduct') the Committee had concurred with the findings of the Chief Constable and rejected the Complainant's appeal. The President believed that the Complainant was not objecting to that process *per se* but to the fact that the appeal should have been allowed because, in May 1999 in the case of the Police Constable referred to by way of comparison, the then Defence Committee had overturned the finding of the Chief Officer and that officer had been re-instated.

4.4 The President informed the Board that the Home Affairs Committee had been made aware of the findings of the 1999 case when it considered the Complainant's appeal and the point had also been made forcibly by Sergeant Troy who had acted as 'friend'.

4.5 The Home Affairs Committee recognised that, in law, it was a continuation of the former Defence Committee and an entity that had a life beyond the terms of its elected members. Nevertheless its case in response to the complaint was that the Committee members who heard the Complainant's appeal were entitled to reach their own conclusions about his case and were not bound by the decision in the 1999 appeal. Only Connétable de la Haye of St. Brelade had taken part in both appeals. Whilst the Committee operated within the law and its own promulgated policies, it was self-evident that appeals of this kind would be heard from time to time by different groups of members and those members would attach different degrees of importance to different parts of the evidence.

4.6 The President informed the Board that during his preparation for the hearing he had re-read the papers relating to both cases. There were similarities in the way the Committee dealt with the Police Constable re-instated in 1999 and the Complainant. In the case of the officer who had been re-instated the Committee recognised his personal circumstances and that the system might have failed him and regarded this as sufficient mitigation to overturn the disciplinary finding that followed his conviction.

4.7 In the Complainant's case the new Committee also recognised that, in respect of the Neglect of Duty charges, relating to the failure to submit witness statements, the system was less than ideal and the penalties were reduced. But in respect of the disciplinary findings which followed the Complainant's conviction for assault there were, in the Committee's view, important differences from the 1999 case.

4.8 Firstly the assault had involved a woman. The President pointed out that in finding the Complainant guilty the Assistant Magistrate had said – *'The court takes a serious view of assault by any man on a woman, especially by a man in the accused's position who ought to have known better'*. The Committee had shared that view and shared it strongly. Members had discussed the undesirability of having an officer of the force who might, at any time, be required to attend at one of the frequent domestic disputes the police were called to deal with when that same officer had a conviction for assault in the same setting. In addition the Committee was concerned about the inevitable character challenge that the Complainant would face when giving evidence in court.

4.9 Secondly the Committee had been concerned that the assault appeared to involve pre-meditation and it was also disturbed that the 2 assaults were separated by time. The Committee accepted that these were matters of degree compared with the conviction of the officer who had been re-instated for assault on a prisoner in the cells but the degree was sufficiently greater in the minds of the Committee members to deny the Complainant's appeal.

4.10 Thirdly and lastly the President requested the Board to take into consideration the context within which the Home Affairs Committee had reached its decision in November 2000. Four months earlier it had received the report of Her Majesty's Inspector of Constabulary, Mr. Colin Smith. Mr. Smith had drawn attention to a number of deficiencies in the Force but had reserved praise for the Complaints and Discipline Department and the way in which it investigated complaints against officers. The Committee believed that this was an important point. When the then Defence Committee deliberated on the 1999 appeal the Force had not been inspected for some considerable time but, by the time the Home Affairs Committee considered the Complainant's appeal, it had received an inspection and had turned its attention to the way in which integrity issues were dealt with. Indeed one of the reasons why the Committee had appointed the new Chief Officer, Mr. Graham Power, was because of his experience in setting standards of integrity during his time in the Police Inspectorate. The new Chief Officer had, coincidentally started work the day after the Complainant's appeal was heard although his appointment had been announced during the previous summer.

4.11 The President concluded that, having taken all the above matters into consideration, the Home Affairs Committee had decided that the actions of the Complainant in committing the assaults fell seriously short of the conduct that could reasonably be expected of a serving officer in the States of Jersey Police Force and had therefore upheld the decision of the Chief Constable of Dorset Constabulary that he be required to resign. The Committee considered that the fact that the assault had been on a woman, with the inevitable character challenge that would follow, meant that it would have been quite inappropriate to overturn the Chief Constable's decision.

5 The Board's findings

5.1 The Board recognises that consideration of this complaint centres entirely around the Complainant's assertion that there was a significant inconsistency between the decision of the Home Affairs Committee in his case and the decision of the then Defence Committee in the case of the Police Constable who had been reinstated in 1999.

5.2 The Board noted that the Complainant considered that his sentence of a 2-year binding over on 2 counts of common assault was a less serious penalty than the sentence of a £200 fine or 10 days' imprisonment for one count of common assault given to his former colleague. The Board is not convinced that there is a significant difference between these 2 sentences. The Board has also noted that the Assistant Magistrate drew attention to the significant delay that had occurred in processing the Complainant's case through the court system and had taken account of this in his sentencing. The Board therefore believes that it would be unwise to suggest that the difference in sentencing necessarily indicates that the circumstances of the assault committed by the officer dealt with in 1999 were significantly less serious than those surrounding the assault for which the Complainant was convicted.

5.3 The Board has given consideration to the difference in length of service of the 2 officers. At the time he was required to resign the Complainant had served for 18½ years whereas the officer who has been reinstated had only served for 2½ years. The Board does not consider that this matter is of significance as the weight that should have been given by the Committee to this lengthy period of service is balanced by the fact that it was right to consider that even higher standards would be expected of an officer with so many years' experience.

5.4 The Board is pleased to note that the President of the Home Affairs Committee confirmed during his oral submission that the Committee recognised that it was, in law, a continuation of the former Defence Committee especially as this issue had appeared somewhat uncertain from the Committee's initial written response. The Board believes that it is important for the Committee to have regard to the actions of

former Committees to ensure that it acts consistently but the Board also recognises that the Committee must respond to changing circumstances and cannot be indefinitely bound by the actions of previous Committees. The Board has noted that the Home Affairs Committee had received the report of Her Majesty's Inspector of Constabulary at the time of the Complainant's appeal and the Board agrees that it is not unreasonable for the standards of acceptable behaviour of serving police officers to change over a period of time particularly in the light of comments made in inspection reports.

5.5 The Board was offered the opportunity to study the complete set of appeal papers in both cases but did not consider that this would have been productive. The Board accepts that there are inevitably differences between such cases and it would be impossible for exact comparisons to be made between individual cases. The Board is satisfied that the Home Affairs Committee was in possession of all of the facts when dealing with the Complainant's appeal, took all relevant factors into account (including the 1999 case) and therefore accepts that the decision of the Committee was reasonable. The Board **rejects the complaint** and upholds the Committee's decision.

5.6 The Board would wish to say in conclusion that these findings should in no way be seen as detracting from the 18½ years exemplary service given to the States of Jersey Police Force by the Complainant and the Board has noted the comments on this subject made by the Assistant Magistrate when sentencing him. The Board recognises that the punishment suffered by Complainant in being required to resign has had a devastating effect on his life and recognises that police officers, like many others employed in a variety of professions, suffer, in the words of the Complainant 'double jeopardy' if convicted in a criminal court.

Signed and dated by –

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

..... Date :.....
Mr. J.G. Davies

..... Date :.....
Mr. D.J. Watkins

APPENDIX E

1386/2/1/2(238)

BOARD OF ADMINISTRATIVE APPEAL

19th July 2002

Complaint by Mr. and Mrs. C. Le Clercq 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
Mrs. L.J. King MBE
Miss C. Vibert

Complainant

Mr. C. Le Clercq

Planning and Environment Committee

Deputy J. B. Fox
Mr. R.T. Webster, Principal Planner
Mr. D. Chadwick, Assistant Planning Officer

Jersey Electricity Company Ltd (present as an observer)

Mr. B.H. Miles, Distribution Manager, Energy Division

States Greffe

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

The hearing was held in public at the United Reform Church Hall, Sion, St. Johnon 19th July 2002.

2 Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. and Mrs. Clifford Le Clercq against the actions of the Planning and Environment Committee concerning the siting of a Jersey Electricity Company Ltd. sub-station as part of the development of Field 1078, Sion, St. John

3. Site Visit

3.1 After the formal opening of the hearing the Board and the parties visited the site. The Board was able to see the siting of the J.E.C. sub-station and the new housing development which was nearing completion on the site.

3.2 The Board and the parties also viewed the J.E.C. sub-station from inside the Complainants' house and noted the impact from both the ground floor and the first-floor bedrooms.

4. Summary of the Complainants' case

4.1 The Board had received and noted the written submissions of the Complainants and these were amplified by Mr. Le Clercq during the hearing.

4.2 Mr. Le Clercq explained that after the former glasshouse site at the rear of his property had been rezoned for housing by the States in 1999 he and his wife had been to view the plans for the site when they were first advertised in the Jersey Evening Post in July 2000. The Complainants, having seen the plans, noted that it was proposed that a J.E.C. sub-station was to be situated near their southerly boundary, and wrote a letter of objection to the Committee concerning the development. Although they raised a number of points in that letter they did not officially object to the siting of the sub-station as no dimensions were given on the plans and they imagined it to be similar to the existing low level open sub-station opposite their property in La Rue des Houguettes. The Complainants noted that the sub-station was positioned on the plans against the boundary of the site and simply pointed out in their letter of objection that there was no information regarding the size and type of sub-station on the plans.

4.3 When the construction of the sub-station started, the Complainants noted that it was being constructed some 5 feet from the boundary of the site and was much larger and taller than they had anticipated Despite contacting the developer and the Jersey Electricity Company Ltd the Complainants were told that the sub-station could not be moved although an employee of the Company admitted that it could have been built on another part of the site, a matter confirmed later in a letter from Mr. M. Liston, Managing Director of the Company. Having made enquiries it transpired that the sub-station had been moved because the original position was over a main drainage pipe which had not been discovered by the developer when the original plans had been submitted.

4.4 Mr. Le Clercq informed the Board that he had written to the Planning and Building Services Department on 28th February 2002 to point out that the sub-station had moved from its original location. Although an officer of the Department visited the site and conceded that the sub-station had moved, no action was taken to require it to be moved back to the original approved location although, following the letter, the builder agreed that the building should be slightly lowered and the planned pitched roof replaced with a flat roof to reduce its impact.

4.5 Despite further correspondence between the Complainants and the Committee the sub-station was eventually finished in its new location and Mr Le Clercq was informed that nothing could be done to move the sub-station to another position.

4.6 Mr. Le Clercq informed the Board that he and his wife felt that the siting of the sub-station had significantly damaged the enjoyment of their property and would permanently spoil the view from the conservatory which had been situated to enjoy the former view to the south.

5. Summary of the Committee's case

5.1 The Board had received and noted the written submission of the Committee and Mr. Webster and Deputy Fox gave further explanation at the hearing.

5.2 Mr. Webster explained that Field 1078 had been identified as one of 11 sites shortlisted as new sites for housing and was subsequently rezoned by the States in November 1999. Early contact with the Jersey Electricity Company revealed that a new sub-station, to replace the existing one in La Rue des Houguettes, would be necessary to serve the development and the surrounding area. It had always been the intention of the JEC to construct the sub-station in the north-west corner of the site.

5.3 Various development briefs had been prepared between the developer and the Committee, some of which showed houses right against the boundary of the Complainants' southern boundary. The developers had eventually been requested to include a large area of public open space as part of the development and the final plans had shown the proposed housing further away from the Le Clercq's property.

5.4 Mr. Webster confirmed that 5 letters of objection, including one from the Complainants, had bee received when the plans were advertised in July 2000. The Committee had accommodated many of the objections made by Mr. and Mrs. Le Clercq and, in particular, had requested that the proposed hous nearest to the existing properties in La Rue des Houguettes (No. 41 on the plans) should be removed; i had agreed that access to the site during construction work would not be via the roadway alongside the Complainants' property and it also agreed that the new boundary wall should be rendered. The 'in principle' permission that was given at this stage specified that exact details about the sub-station should be included with the final plans.

5.5 Although not a statutory requirement, the final plans were advertised in the Jersey Evening Post on 5th December 2000. Plans showing the full dimensions of the sub-station were available for inspection at the Committee's offices but no letters of objection were received. Having assessed the overall plans the Committee granted permission for the development including the sub-station as there were no valid planning reasons to refuse permission.

5.6 Work started on the sub-station in September 2001 and Mr. Webster stated that the Committee had had nc further contact with the Complainants until February 2002 when Mr. and Mrs. Le Clercq had sent a letter querying the position of the sub-station. On receiving the letter, officers of the Committee had visited the site and confirmed that the sub-station, which by this stage was at eye-level height, had been built some 5 feet from the approved location because the developer had discovered that a main drain ran along the site boundary. Mr. Webster stated that the developer was at fault not to have contacted the Committee when it became clear that the sub-station could not be constructed on the approved location before deciding unilaterally to make the change.

5.7 On discovering that the sub-station was not in the correct location the Committee had to decide what action was appropriate. Mr. Webster explained that at any one time there were many hundreds of developments taking place in the Island and developers often needed to make minor changes as a result of unforeseen circumstances. When confronted with a change during a development, officers of the Committee initially assessed whether the change was acceptable and, if it was, then decided whether a formal application was required. Planning officers received some 10 telephone calls a day about such matters and, within the current resources of the Committee, it was simply not feasible to suggest that an application should be submitted for every change as this would lead to some 10,000 extra applications every year.

5.8 On this occasion the Assistant Planning Officer dealing with the sub-station had discussed the change with the Director of Planning and had concluded that the change was not significant as there would have been no reason to refuse an application even if one had been required. Nevertheless, in an attempt to respond to the concerns of the Complainants, the Assistant Planning Officer had negotiated with the developer and the J.E.C. and it was agreed that the floor to ceiling height of the sub-station should be reduced by 6 inches and the proposed pitched roof was changed for a flat roof to reduce the visual impact of the building.

5.9 Mr. Webster and Deputy Fox stated that they appreciated Mr. and Mrs. Le Clercq's disappointment with the siting of the sub-station and, with hindsight, it was clear that it could have gone elsewhere on the site although Deputy Fox pointed out that the siting in the corner of the site was a satisfactory location for crime prevention purposes and children's safety. They also appreciated how much pride they had in their property. There had been, however, no valid planning grounds to refuse the application when it was submitted and the Committee had no power, and no valid reason, to require that the building be demolished and relocated at this stage.

6. The Board's findings

6.1 Having visited the site and seen the current impact of the sub-station on the outlook from the Complainants' property the Board wishes to make it clear that it has every sympathy with the Complainants. Some may view the siting of a J.E.C. sub-station as a trivial matter not worthy of a hearing but the Board does not share that view and fully understands their reasons for bringing the complaint.

6.2 The Board has nevertheless taken care when considering this case, and in making its findings, to remember that it has been asked to review the action of the Planning and Environment Committee. Boards of Administrative Appeal are only able to review decisions of States' Committees and Departments and, in this case, the Board is not competent to review the actions of the private developer of the site or of the Jersey Electricity Company Ltd.

6.3 After the rezoning of the site by the States in 1999 the involvement of the Planning and Environment Committee that is relevant for this case began when the 'in principle' plans for the site were received from the developer and the application was advertised in the usual way in the Jersey Evening Post on 2nd July 2000.

6.4 The Board notes that the Complainants submitted a letter of objection dated 10th July 2000 to the Committee raising a number of issues. The Board considers that the Committee responded in a positive way to a number of the objections raised by the Complainants as indicated above.

6.5 In their letter of objection the Complainants mentioned the lack of information regarding the type and construction of the J.E.C. sub-station. This was addressed by way of a condition on the permit which specified that full plans, sections and elevations of the sub-station should be submitted as part of the detailed application.

6.6 The Board considers it is significant that the Complainants did not specifically object to the actual siting of the sub-station in their letter of 10th July 2000. The Board appreciates, as Mr. Le Clercq explained that the Complainants probably imagined that the sub-station would be similar to the existing low-level open air one opposite their property in La Rue des Houguettes. The Board can only speculate on what might have happened if the Complainants had objected to the actual siting of the sub-station but it has noted, as specified above, that the Committee responded positively to the Complainants' other objections and there was no reason why the sub-station could not have been placed elsewhere.

6.7 The Board finds it unfortunate that the Complainants were out of the Island in Australia when the final plans were advertised in the Jersey Evening Post on 5th December 2000. If they had seen this notification they would have had the opportunity to view the final drawings of the sub-station giving the dimensions which Mr. Webster produced at the hearing and which were available for inspection and they may well have objected at that point. The Board feels that this case has raised issues about the position of neighbours and other objectors and has decided to comment on this general point in paragraph 6.12 below.

6.8 The Board was extremely concerned to learn of the manner in which the sub-station was constructed 5 feet to the east of the location approved by the Planning and Environment Committee. It is clear that this has accentuated the negative impact of the sub-station on the outlook from the Complainants' property and it is also clear to the Board that this matter only came to the Committee's attention following receipt of the letter from the Complainant dated 28th February 2002. The Board is of the opinion that the present system of dealing retrospectively with changes made without consent clearly favours developers although the Board reluctantly accepts that there is little practical alternative within the Committee's current resources. Although no enforcement action was taken to require the developer to move the sub-station to its originally approved location, the Committee did manage to achieve a reduction in the height of the building through the replacement of the proposed pitched roof with a flat roof.

6.9 The Board has considered carefully whether the Committee acted reasonably and properly in relation to this application. The Board has in particular noted the role of the Committee in relation to such applications. The structure, which is not an inhabited building, does not, by definition, cause overlooking or loss of privacy. The Board considers that, in practice, it does not cause a significant loss of light to neighbouring properties. Importantly the Board was informed by the Committee that no landowner has a right to a view and the Committee cannot refuse an application on those grounds alone. The Board was interested to note that a garden shed up to 1000 ft^3 (for example a shed that was 14 ft. x 10 ft. x 8 f

would have been allowed on the site without even the need for a planning application under the exempted development regulations. The overall impact of the new development on Field 1078 on the Complainants' property could have been significantly worse if houses had been built close to the boundary as was apparently proposed in an early brief for the site. The Board has also noted that the concerns expressed by Mr. Le Clercq about the possibility of the 5 footgap' between the sub-station and the boundary wall being used by children and others have been addressed by way of an agreement with the Jersey Electricity Company that the gap will be enclosed.

6.10 The Board therefore accepts that the Planning and Environment Committee, within its present legal and policy framework, had no practical alternative but to approve the application as submitted and **rejects** the complaint. The Board concludes that, taking all aspects of the case into account, the Committee has responded positively to many of the concerns expressed to it by Mr. and Mrs. Le Clercq and there are n legal or other grounds on which the Committee could rely to request that the sub-station be demolished at this stage. It is unfortunate that it was built in this north west corner of the site when it clearly could have gone elsewhere but the Board notes that as the building is now completed the Committee has no power, in accordance with Article 7 of the Island Planning (Jersey) Law 1964, as amended, to revoke the permission and require its demolition.

6.11 The Board was encouraged by the positive spirit of co-operation and goodwill between all parties concerned at the hearing and particularly grateful for the helpful and positive attitude of Mr. Le Clercq in bringing this complaint. The Board therefore hopes that efforts can be made to hide the sub-station through appropriate planting both on the housing site and in the Complainants' garden. The Board admits to being somewhat surprised to have been shown an aerial photograph of the field when it was covered with glasshouses which abutted some of the boundary of the Complainants' property (albeit not at the western end where the sub-station has now been built) and the Board is hopeful that the public open space being created on Field 1078 will, once completed and landscaped, compensate in some small way for the loss of view caused by the sub-station.

6.12 As mentioned in paragraph 6.7 above the Board wishes to make some general points about the position of objectors and neighbours in cases such as this one. The Board notes the Committee is not currently required to advertise applications but does, in practice, do so as a matter of course. It is nevertheless clear that the present system requires considerable vigilance on the part of a neighbour and, in addition, in many cases, such as when the Committee agreed to the variation in the position of the sub-station as in this one, a neighbour has no way of knowing that changes have been made. The Board was therefore pleased to hear from the Committee representatives that the new Planning and Building (Jersey) Law 200- , recently approved by the States, will allow the Committee to require greater steps to be taken to ensure that objectors are aware of proposed developments. Since the hearing the Board members have noted the contents of Article 11 of the draft Law and would urge the Committee to ensure, once the new law comes into force, that procedures are prescribed to ensure that neighbours and others affected by developments are adequately informed at each stage of the process to enable them to make appropriate objections and appeals. The Board was nevertheless concerned to hear from Deputy Fox that the Committee has not yet been granted adequate resources by the States to implement the new law and the Board supports any requests being made by the Committee to obtain the necessary resources to ensure that the improved provisions can be implemented as soon as possible.

Signed and dated by –

..... Date:.....
Mrs. C.E. Canavan, Chairman

..... Date :.....
Mrs. L.J. King, M.B.E.

.... Date :...........................
Miss C. Vibert

APPENDIX F

1386/2/1/2(239)

BOARD OF ADMINISTRATIVE APPEAL

19th August 2002

Complaint by Mr. Gordon Forrest (represented by Mr. Jason Dodd of Martin L. Dodd and Sons Ltd.) 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. D.J. Watkins
Mr. P.G. Farley

Complainant

Mr. G. Forrest
Mr. J. Dodd, Director, Martin L. Dodd and Sons Ltd.

Planning and Environment Committee

Senator N.L. Quérée, President
Mr. P. Thorne, Director of Planning

States Greffe

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

The hearing was held on 19th August 2002 in public at St. Peter's Parish Hall.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. Gordon Forrest against the decision of the Planning and Environment Committee to refuse permission for the construction of a bungalow within the grounds of the property known as 'Zeelandia', Mont à la Brune, St. Peter.

3. Site visit to 'Zeelandia'

3.1 After the formal opening of the hearing at St. Peter's Parish Hall the Board and the parties visited the site. The Board and the parties stopped briefly in the public car park at Le Braye en route to the site to view 'Zeelandia' from that location. On arrival at the property the Board was able to view the proposed location of the bungalow and was also able to see the new indoor tennis centre constructed at the Les Ormes sport complex. Before returning to the Parish Hall the Board also viewed the site from a short distance down Le Mont à la Brune to assess the possible impact of a new dwelling from that road.

4. Summary of the Complainant's case

4.1 The Board had received a written summary of the Complainant's case in advance of the hearing and Mr. Dodd amplified the written case at the hearing.

4.2 Mr. Dodd explained that on 11th February 2002 Mr. Forrest had made an 'in principle' application to the Planning and Environment Committee for permission to construct a bungalow in the grounds of 'Zeelandia'. The application was made after a Principal Planner had indicated informally to the Complainant that the application had a 50-50 chance of success because the property was not within either the Green Zone or the Agricultural Priority Zone on the 1987 Island Plan Map where it was shown within the airport boundary (where no specific planning policies presuming against development applied).

4.3 On 25th April 2002 the 'in principle' application was refused by the Director of Planning under delegated powers. The reasons for refusal were that: (1) it was considered that a new dwelling in this location would be harmful to the visual character of the countryside area and was therefore contrary to Article 2(c) of the Island Planning (Jersey) Law 1964; and (2) the proposal was contrary to policies SO3 and SO4 of the St. Ouen's Bay Planning Framework which presumed against new development that did not achieve the aims and objectives of the Framework and resulted in development that adversely affected the landscape character and appearance of the St. Ouen's Bay Special Area.

4.4 Mr. Dodd stated that, in his opinion, the first reason for refusal, namely the visual impact, was inconsistent with the Committee's decision to allow the construction of the indoor tennis courts at Les Ormes. That building, even though it was constructed in a specially created 'quarry' had a footprint of 2,340 square metres, 13 times greater than the 180 square metres of the proposed bungalow. Furthermore the Complainant was prepared to clad the new building in naturally self-toning materials that would not only make it inconspicuous but would also help to mask the gable of the existing property thereby reducing the overall visual impact of the property when seen from St. Ouen's Bay.

4.5 Mr. Dodd stated that after the refusal the Committee had acted unreasonably by refusing to negotiate or discuss the application in an attempt to find an acceptable design solution even though the Complainant had been required to pay a fee when making the application. He referred the Board to the Committee's own Code of Practice which stated *'The Committee believes that it is better to negotiate with the applicant on a proposal where there is a reasonable prospect of improvement, rather than to refuse the application outright.'* Mr. Dodd considered it was significant that the Committee had, unusually, needed to refer to Article 2(c) of the Island Planning (Jersey) Law, 1964, as amended, in the refusal notice as the site was, in effect, an anomaly because of its position outside the Green or Agricultural Priority Zone. Nevertheless the Committee's officers had simply refused to discuss the application further once it had been refused.

4.6 In relation to the second reason for refusal, namely the reference to Policies SO3 and SO4 of the St. Ouen's Bay Planning Framework, Mr. Dodd pointed out to the Board that neither policy contained an actual presumption against new residential development, unlike Green Zone or Agricultural Priority Zone policies. The Framework was intended to sustain the unique character of the Bay and this modest development would do nothing to damage that character, unlike the huge hangar-like building for the indoor tennis courts which had been approved by the Committee after the St. Ouen's Bay Framework had been put in place and which, in addition, was in the Sensitive Landscape Area of the Agricultural Priority Zone. Mr. Dodd pointed out that Policy RE1 in the 1987 Island Plan, which concerned the provision of leisure and recreation facilities, stated that, although it was the Committee's aim to meet the needs and demands for leisure, this would be done provided it could *'be achieved without undermining other policies in the Plan, especially those relating to the safeguarding of the environment'*. Mr. Dodd further stated that he considered it was unreasonable that, having referred only to Policies SO3 and SO4 in the refusal notice, the Committee had now introduced reference to Policy SO10 in its response to the complaint.

4.7 Mr. Dodd stated that the proposed development would not create a precedent for other development in the St. Ouen's Bay Area because the property was unique as the remainder of the Bay was within one of the planning zones in the 1987 Island Plan, which was not the case for this site. Because of this anomaly the

matter should, in accordance with the Committee's Delegation Code of Practice, have been referred to the Applications Sub-Committee as the circumstances of the case made it one which would involve a departure from the Committee's policy but where there were good grounds to consider approving the application. Mr. Dodd did not believe it was a clear cut case as he had, in error, even been sent a copy of the plans stamped with an approval stamp which he produced to the Board. The case should not therefore have been decided by the Assistant Director of Planning.

4.8 Mr. Dodd stated that, in his opinion, the decision of the Planning and Environment Committee taken in April 2002 to cease all non-statutory services (as set out in a letter from the Director of Planning dated 19th April 2002) was quite unreasonable as it had been introduced without warning and, after many decades of various procedures, the changes had come into immediate effect. Because this application was for an 'in principle' consent, and not a formal application under Article 6 of the Island Planning (Jersey) Law 1964, as amended, it was possible that the Complainant did not have any statutory right of appeal to the Royal Court and the Committee's decision not to reconsider applications that had been refused effectively denied him any route of appeal except to this Board.

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, at the hearing, following a request from the Board, addressed both the issue of the withdrawal of non-statutory services and the circumstances of this particular case.

5.2 In relation to the withdrawal of non-statutory services Senator Quérée explained that the letter from the Director of Planning dated 19th April 2002 reflected a statement he had made in the States. Although previous Planning and Environment Committees had allowed a process of reconsideration of refused applications the Committee had not been provided with the resources to continue this non-statutory practice. The Committee had taken the view that the burden on staff was so great that it had no choice but to withdraw non-statutory services. The Committee would, nevertheless, normally allow reconsideration if political representations were made on behalf of an applicant. The Island Planning (Jersey) Law 1964, as amended, provided a right of appeal to the Royal Court and recent changes to the Royal Court Rules would hopefully make that route of appeal more accessible to applicants although the Committee recognized that legal proceedings were expensive and had, for that reason, proposed the creation of a Planning and Building Appeals Commission in the new Planning and Building Law.

5.3 Mr. Thorne set out the Committee's response to the Complainant's case in relation to 'Zeelandia'. He explained to the Board that the property was, as pointed out by Mr. Dodd, shown on the 1987 Island Plan map within the airport boundary where policies on the Green Zone or the Agricultural Priority Zone did not apply. This was presumably simply due to an error on the 1987 Map and the matter had been corrected on the new Island Plan map approved by the States in July 2002. Despite the anomaly the application nevertheless fell to be considered under the Island Planning (Jersey) Law 1964, as amended, which required the Committee to protect and enhance the natural beauty of the countryside as well as to preserve and improve the general amenities of the Island.

5.4 Mr. Thorne explained to the Board why the Committee had been prepared to grant permission for the construction of the indoor tennis courts. In 1997, before the introduction of the St. Ouen's Bay Planning Framework, permission had been granted to create open tennis courts on the site although the Committee had required the courts to be sunk below ground level to reduce their visual impact on the surrounding landscape. In May 2000 an application had been received to cover the courts to increase their use. The application had been supported by the Lawn Tennis Association, the Channel Island Lawn Tennis Association, the Tourism Committee and the Sport, Leisure and Recreation Committee. After a site visit, and careful consideration, the Committee had decided to grant permission as an exception to the St. Ouen's Bay policies because the land was already approved for use as tennis courts, there were Island-wide community benefits and the building would be 'sunk' with appropriate landscaping to reduce its visual impact. These reasons did not apply in the Complainant's case which concerned a private residential development and the two cases could not therefore be compared.

5.5 Mr. Thorne accepted that the St. Ouen's Bay policies did not contain a general presumption against all new development in the Bay but pointed out that policy SO4 stated that '*new development will not be permitted where it would adversely affect the landscape character or appearance of St. Ouen's Bay Special Area'*. Mr. Thorne stated that the Committee had a duty to protect the appearance of the countryside for all and it was a narrow approach to suggest that road users would not see the new bungalow. The site was also visible from other areas such as the sand dunes, the La Moye Golf course and other areas away from roads. The St. Ouen's Bay Framework existed to protect the Bay against this type of development and the fact that the application was only for a small dwelling was not, in itself, a reason to make an exception to the policy.

5.6 Mr. Thorne stated that, even if a Principal Planner had indicated informally that there might be grounds for the application to be granted because of the zoning anomaly, it did not necessarily follow that the application would be granted. The application had been assessed in the usual way and, as it was considered to be contrary to policy, was refused by the Assistant Director of Planning under the powers delegated to him by the Committee in accordance with Article 36A of the States of Jersey Law 1966, as amended. Mr. Thorne did not accept that the application should have been referred to the Applications Sub-Committee as the decision was in accordance with policy and the officers did not consider there were any grounds to make an exception to policy. The officers did not offer to negotiate or discuss the case because the entire principle of constructing a dwelling on this prominent site on the St. Ouen's Bay skyline was unacceptable in any form and there were therefore no grounds for discussion. It was true that policy SO10 had not been referred to in the reasons for refusal but the officers had considered that policies SO3 and SO4 provided sufficient grounds.

5.7 Senator Quérée explained that the Committee had in place a procedure that it would reconsider all cases referred to a Board of Administrative Appeal and, in accordance with this procedure, the full Committee had considered this case on 1st August 2002 but had decided to maintain the decision of its officers. The Committee did not visit the site but it was likely that members were aware of the location of the site and considered the policies relating to it.

5.8 Mr. Thorne stated that the Committee strongly refuted the assertion made by the Complainant that a grant of permission would not create a precedent. The Committee believed that the case would undoubtedly be cited in future applications for development within the St. Ouen's Bay area and the grant of permission would certainly create a precedent that would weaken the Committee's position in relation to other cases even though it was true that the site was not in the Green Zone or Agricultural Priority Zone.

5.9 Senator Quérée reminded the Board that the whole of the St. Ouen's Bay area had been treated as a 'special place' by the States and had been described as Jersey's only 'national park'. There was therefore a presumption against development in the Bay and no new residential developments that were not replacements of existing dwellings had been approved since the St. Ouen's Bay Framework had been put in place. Although the Complainant had stated that this was only a small development this could be applied to almost any application and was not, in itself, a reason to make an exception. In the Committee's opinion the decision was not contrary to any of the matters set out in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, and the complaint should therefore be rejected.

6~~6~~. The Board's findings

6.1 In considering this complaint the Board has considered separately the complaint itself and the decision of the Planning and Environment Committee to withdraw certain of its services which was partly the reason why Mr. Forrest's complaint was referred to the Board.

6.2 The Board has considered carefully the circumstances surrounding the application made by the Complainant. The Board notes the anomaly in relation to the zoning of the site in the 1987 Plan which undoubtedly arose as the result of an error. The Board nevertheless considers that it is of greater significance that the site falls within the St. Ouen's Bay area where the policy framework for that special area applies.

6.3 The Board has considered very carefully whether or not the decision of the Committee in relation to the Complainant's application should be seen as inconsistent when viewed alongside the decision to grant permission for the indoor tennis courts at Les Ormes. The Board has noted the special circumstances that surrounded that application and, having visited the site, agrees that the visual impact of the building has been minimised by its siting in a form of artificial 'quarry' although it is, undoubtedly, still visible from the Complainant's property. The Board, without being in a position to comment on the merits or otherwise of the Les Ormes application, has concluded for the purposes of this complaint that the nature of the applications is so fundamentally different that it is impossible to make comparisons between the two. If the Complainant's application had to be granted simply because of the Les Ormes decision the Committee would be obliged to grant virtually any application in the St. Ouen's Bay area.

6.4 The Board, having visited the site and viewed it from afar, is of the opinion that a carefully designed bungalow, with appropriate cladding, would, in practice, have little visual impact in this location. The Board has therefore, in accordance with the matters set out in Article 9 of the Administrative Decisions (Review) Jersey Law 1982, as amended, considered whether or not the decision to refuse the application was appropriate and reasonable.

6.5 The Board is conscious of the decision of the States to designate the St. Ouen's Bay area as a 'special place' and has taken particular note of the comment of the President of the Committee that no new residential developments that are not replacements of existing developments have been permitted in the area since the planning framework and associated policies were put in place. The Board therefore accepts the argument of the Committee that, despite the anomaly in relation to the zoning of this site in the 1987 Island Plan, its location within the St. Ouen's Bay area means that permission to construct a bungalow would undoubtedly create a precedent for other new residential development in the Bay. The Board considers that in the light of the clear decision of the States to give St. Ouen's Bay a special status the Committee is correct to do all it can to protect and enhance the area and the Board has therefore concluded that the decision to refuse the application was not unreasonable in light of the policies governing development in the Bay and **rejects the complaint**.

6.6 Despite rejecting this particular complaint the Board, as mentioned earlier, wishes to comment on the manner in which this application was considered by the Committee and, in particular, the impact of the decision of Committee in April 2002 to suspend all non-statutory services. The Board notes that the Committee considers that, due to budgetary pressures, it has not been possible to continue to offer some of the services that have been in place for many decades but the Board is of the opinion that this decision will have certain unfortunate consequences. Although the Board accepts that the delegation of certain decisions to officers of the Committee has been properly undertaken in accordance with the statutory provisions in the States of Jersey Law 1966, as amended, the Board considers that it was **unreasonable** for the Committee, or its Applications Sub-Committee, to refuse to reconsider such applications and state that an applicant must simply appeal to the Royal Court. The Director of Planning justified this by quoting Article 21 of the Island Planning (Jersey) Law 1964, as amended, but may have overlooked Article 11 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, which states that–

> *"The provisions of this Law shall be in addition to, and not in derogation of, any other remedy which may be available to a complainant."*

In practice such a route of appeal is out of reach for many applicants meaning that a decision by an officer of the Committee to refuse an application is never considered by an elected member of the States and cannot be effectively reviewed. In addition the Committee's stance would appear to be somewhat inconsistent as it appears that the Committee will reconsider decisions when requested to do so by a member of the States on behalf of an applicant but will not do so in other circumstances. The decision to refuse reconsideration, taken with the withdrawal of the 'in principle' planning application service, the reduction in the scope of pre-application advice and in the availability of planning officers to discuss applications will undoubtedly considerably reduce the level of service offered by the Committee and may, in fact, be counter-productive. The Board considers that an individual applicant's basic rights are being prejudiced by the Committee's failure to have in operation a system of reconsideration and cannot

understand why the Committee has arbitrarily chosen to cut this important aspect of its services.

6.7 The Board was concerned to note that no reference is made in the letter of the Director of Planning dated 19th April 2002 to the possibility of an appeal to a Board of Administrative Appeal. The Board was pleased to note that the Committee representatives accepted that such a route of appeal is also open to any person who is aggrieved by a decision of the Committee and hopes that applicants will be reminded of their right to appeal to a Board in such circumstances.

6.8 The Board wishes finally to comment on the procedure adopted by the Committee when an application for a review by a Board of Administrative Appeal is submitted to the Greffier of the States. The Board was informed that the Committee has in place a procedure for the full Committee to reconsider decisions when an application for a Board is agreed by the Greffier of the States. In this particular case the Committee considered the application relating to 'Zeelandia' (the first time it had ever been before political representatives) on 1st August 2002, which co-incidentally was the same date on which the Deputy Greffier of the States circulated to the Board and the parties the full set of papers for the hearing which was to be held some 2 weeks later. The Board would remind the Committee that, by this stage, the Greffier of the States had been required to investigate the complaint and an officer of the Committee had forwarded an 8-page response with appendices to the Greffier. Before taking a decision on whether to refer the case to a Board the Greffier, in accordance with the provisions of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, had to consult with the Chairman of the Administrative Appeals Panel. The Board believes that it would be preferable for cases to be referred to the Committee for reconsideration as soon as an application is submitted and urges the Committee to amend its procedures accordingly. The Board believes this would be a far more effective use of time and resources for all concerned in the process including the officers of the Committee who might be spared the need to provide the Greffier with a report if the decision is changed.

Signed and dated by –

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

..... Date :.....
Mr. D.J. Watkins

..... Date :.....
Mr. P.G. Farley

APPENDIX G

1386/2/1/4(82)

BOARD OF ADMINISTRATIVE APPEAL

9th August 2002
and
16th August 2002

Complaint by Mr. Marcus Le Cornu (represented by Deputy F.J. Hill, B.E.M.) against a decision of the Housing 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. M. Le Gresley
Mr. P. Freeley

Complainant

Mr. M. Le Cornu
Mrs. H. Le Cornu
Deputy F.J. Hill, B.E.M.

Housing Committee

Deputy T.J. Le Main, President
Mr. P. Connew, Law and Loans Manager

States Greffe

Mrs. K.M. Larbalestier, Committee Clerk (9th August 2002)
Mr. M.N. de la Haye, Deputy Greffier of the States
(16th August 2002)

The hearing held on 9th August 2002, was held in public in the H.V. Benest Room, Morier House, Halkett Place, St. Helier. The hearing was adjourned on that day and resumed on 16th August 2002, in public, in the Halkett Room, Morier House, Halkett Place, St. Helier.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. Marcus Le Cornu concerning a decision of the Housing Committee to reject his application for consent to occupy the property known as Apartment No. 26, Springbank,Springbank Avenue, St. Helierwhich he owned on a share transfer basis.

2.2 Mr. Le Cornu had made a formal application to the States of Jersey Housing Department on 16th March 2002, for permission to occupy the above premises and had received notification on 2nd April 2002 from that Department that the Housing Committee had not been prepared to accede to his request for

permission to occupy the above premises.

3. Summary of the Complainant's case

3.1 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.

3.2 The Board received a presentation from Deputy F.J. Hill BEM on behalf of Mr. Le Cornu. It noted that Mr. Le Cornu had been born in Jersey on 22nd June 1971. His parents, grandparents and great grandparents (both paternal and maternal) had been born in the Island but at the age of 2 years and 6 months, Mr. Le Cornu had been taken to Australia when his parents had emigrated to that country. He had returned to reside in the Island on a permanent basis in November 1996. On his return Mr. Le Cornu had been advised that in order to qualify under Regulation 1(1)(a) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended, an individual born in Jersey had to reside in the Island for an aggregate period of 10 years. Mr. Le Cornu had subsequently been made aware that Regulation 1(1)(a) had been amended in 1974, introducing this 10-year residency requirement. He believed that it was wrong of the Housing Committee to apply this amendment to persons such as himself who had been born prior to the making of the amendment and who would, therefore, have gained qualifications on reaching the age of 20 without the need to complete any qualifying period of residency.

3.3 Deputy Hill suggested that the Committee had both misunderstood the purpose of the above amendment and was misinterpreting the same. In the absence of any official record of the States debate relating to the amendment of the Regulations in 1974, Deputy Hill made reference to a report which had appeared in the Jersey Evening Post on 5th June 1974 which implied that States members *"had not understood what the new Regulations entailed"*. Deputy Hill also referred to the fact that the States had agreed to reduce the period of qualification for non-Jersey-born persons (from 20 years to 19, and then from 19 years to 18) but not for Jersey-born persons and he suggested that this was particularly unfair on individuals such as Mr. Le Cornu due to their strong connections with the Island.

3.4 In February 2001, wishing to 'take his first step on the property ladder' Mr. Le Cornu had purchased Apartment 26, Springbank, Springbank Avenue, St. Helier, by means of the acquisition of shares. Occupancy of the property was restricted to persons qualified under Regulations 1(1)(a-j) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended. As he had been unable to occupy the aforementioned property due to the fact that he did not qualify under the said Regulations Mr. Le Cornu had leased the property and had continued to reside in non-qualified accommodation. However, the 'inferior' nature of this accommodation and the emotional consequences which Mr. Le Cornu claimed had resulted from residing in such property, its unsuitability for children (the Board noted that Mr. Le Cornu and his wife wished to start a family) and the absence of any security of tenure, had prompted Mr. Le Cornu to apply to the Housing Committee for consent to occupy the property he owned under Regulation 1(1)(g) (hardship) of the Housing Regulations. Mr. Le Cornu had also received notification that the person leasing the apartment intended to terminate the lease in May 2002 and the property has been vacant from that time.

3.5 Deputy Hill explained to the Board that he believed that Regulation 1(1)(g) had been introduced in order to assist Jersey born residents who found themselves in situations akin to Mr. Le Cornu's. The qualifying period of 10 years was particularly difficult for a mature person returning to the Island after a period of absence. He made reference to the fact that a letter dated 25th April 2000, addressed to Mr. Le Cornu from the Senior Law and Loans Officer, Housing Department, had stated that *"the Housing Committee received many requests such as yours"*. Deputy Hill advised that as far as he was aware, during the 15-month period that he had been a member of the Housing Committee, only 2 cases similar to Mr. Le Cornu's had been considered. Deputy Hill referred the Board to the contents of the Housing Committee's Act No. B4. of 27th March 2002, which related to Mr. Le Cornu's application for consent to occupy property in the Island under Regulation 1(1)(g) of the Housing Regulations. Deputy Hill was concerned that although the Committee Act stated that *"there was no justification to grant consent on the grounds of hardship"* it did not give specific reasons for the decision to reject the application. In this connexion Deputy Hill referred the Board to the case of Donald George Mark Bundy v. the Housing Committee. In

considering this case the Royal Court had stated that *"an applicant is entitled to more than a mere recital of the law under which his or her application had been refused. He or she must be told specifically what the grounds are*". Deputy Hill made further reference to the letter dated 25th April 2002, addressed to Mr. Le Cornu from the Senior Law and Loans Officer, Housing Department, and, in particular, drew the Board attention to the statement that *"…the Housing Committee has to be consistent with the decisions it takes"*. He again referred to the case of Donald George Mark Bundy v. the Housing Committee and pointed out that, in considering the same, the Royal Court had made reference to the case of Cottignies v. the Housing Committee. In this latter case the Royal Court had stated that *"… the Committee, for so long as the Law remains unchanged, is a body which has a continuous existence, separate and apart from its individual members and it cannot, therefore, divorce itself from its past actions and decisions because if it did so, its decisions, instead of being consistent and coherent would be capricious…"*.

3.6 Deputy Hill stated that in his opinion, due principally to the costs and length of time associated with appealing to the Royal Court against the refusal of the Housing Committee to grant consent under Regulation 1(1)(g) of the Housing Regulations, very few applicants actually pursued such an appeal and it was, therefore, extremely difficult for applicants whose requests had been rejected to challenge the Housing Committee as the Committee was not, in effect, bound by previous decisions. He complained that, although certain criteria had been established in order to assess applications under Regulation 1(1)(j) (essentially employed) of the Housing Regulations no such criteria for applications under Regulation 1(1)(g) (hardship). Decisions were, therefore, made purely on the basis of the judgement of the Committee and he further stated that the Committee was using Regulation 1(1)(g) as a means of controlling immigration.

3.7 Deputy Hill pointed out that he also believed, in relation to Mr. Le Cornu's case, that the issue of whether the granting of the consent would have an adverse impact on the accommodation available for those *"whom the States thought should have first claim upon it"* should not have been a consideration for the Committee as there was no shortage of accommodation in the sector of the housing market in which Mr. Le Cornu wished to purchase (the Board noted that he intended to sell No. 26 Springbank Springbank Avenue, St. Helier and acquire a house). In support of this point Deputy Hill referred the Board to comments prepared by Mr. Mark Boleat, who had chaired a working party on population matters, on the interim report on population policy which had been produced by the Policy and Resources Committee on 19th June 2001. Mr. Boleat had stated that "*there is no more a shortage of housing in Jersey than there is a shortage of cars. Obviously where prices are below market level, as in the States rental sector, then there is a shortage"*. The Board's attention was drawn to the contents of a 1999 report of the Planning and Environment Committee entitled 'Planning for Homes' (R.C.10/99) in which statistics had been provided in relation to the States Rental waiting list, which was considered to be a good indicator of relative pressure on the housing market generally and, more specifically, of demand by residentially qualified persons. Deputy Hill concluded that the statistics revealed that there had been little variation in demand between the years 1986 to 1997. He also referred the Board to an article which had appeared in the Jersey Evening Post on 14th February 2002, in which a local estate agent had provided figures pertaining to the number of units for sale at that time (approximately 540) and the number of homes awaiting planning permission (1,718). Deputy Hill advised the Board that although the article had implied that these figures were Island wide they actually related to only the properties being handled by that particular agent. With regard to the demand for first-time buyer/States rental and properties owned by housing trusts Deputy Hill stated that he believed that the figures held for persons awaiting such properties was not, for a number of reasons, completely accurate. On census night there had been 1,849 vacant properties in the Island and although there might be a shortage of property at the lower end of the market there was no shortage in the type of property that would be occupied by Mr. and Mrs. Le Cornu and there would therefore be no impact on the housing shortage if consent were granted in his case.

3.8 Deputy Hill considered that, in assessing Mr. Le Cornu's case, the Housing Committee should have visited the uncontrolled accommodation he rented in order to properly assess the hardship which was claimed. In this connexion he was of the opinion that the Committee had made certain assumptions regarding the standard of the accommodation. He was also disappointed that Mr. Le Cornu had not been afforded the opportunity of meeting the Committee to discuss his case, neither had he been made aware of the opportunity to appeal against the Housing Committee's decision to its Sub-Committee.

3.9 Deputy Hill drew the Board's attention to a number of other cases where permission had been granted by the Housing Committee for consent to occupy premises in the Island under Regulation 1(1)(g) of the Housing Regulations. He highlighted the fact that, in many of the cases where consent had been granted, the individuals concerned had no obvious connections with the Island and had resided in the Island for a lesser period of time than Mr. Le Cornu when consent had been granted. Deputy Hill also referred to a case where the qualifying period had been reduced to 10 years in respect of an individual who was granted consent under Regulation 1(1)(j) where, although the applicant would not normally have qualified in 10 years, the Housing Committee had taken into account the applicant's family connections with the Island. Deputy Hill stated that the Committee had clearly used discretion in this case and had been mindful of the individual's connections with the Island.

3.10. Deputy Hill highlighted the fact that both Mr. Le Cornu and his wife had studied accountancy and through their work in the finance industry and in the area of training (the Board noted that Mr. and Mrs Le Cornu provided information technology related training) made a valuable contribution to supporting the Island's economy. Mr. Le Cornu found it particularly unjust that individuals employed in the same field as himself were able to reside in 'high quality' accommodation controlled under Regulation 1(1)(j) of the Housing (Jersey) Law 1949, as amended, whilst he, a man born in Jersey with strong family connections, was forced to reside in unqualified accommodation.

3.11 The Board heard from Mr. Le Cornu. Mr. Le Cornu advised that since he had returned to the Island he had moved home at least 8 times and this had contributed to the hardship of being unable to reside in controlled accommodation. Mr. Le Cornu provided the Board with details of the difficulties associated with residing in non qualified accommodation, for example, sharing facilities, loss of privacy, lack of security and, having to abide by what he perceived as unreasonable rules.

3.12 In conclusion the Board noted that it was both Mr. Le Cornu's and Deputy Hill's assertion that the amendment to Regulation 1(1)(a) of the Housing (Jersey) Law 1949, as amended, in 1974 had been applied retrospectively and that, due to the emotional hardship he and his wife had experience as a direct result of being unable to reside in accommodation controlled under the said Regulation, the Housing Committee had acted unfairly in not acceding to Mr. Le Cornu's request for consent to occupy property in the Island under Regulation 1(1)(g) (hardship) of the Housing Regulations.

4. Summary of the Committee's case

4.1 The Board had received a full written summary of the Committee's case before the hearing and Deputy T.J. Le Main, President, Housing Committee and Mr. P. Connew, Law and Loans Manager, States of Jersey Housing Department summarised the Committee's response to the Complainant's case at the second part of the hearing on 16th August 2002 when the Committee representatives had had the opportunity to consider the additional information presented to the Board on behalf of the Complainant on 9th August 2002.

4.2 Mr. Connew responded initially to the Complainant's assertion that the 1974 amendment to the Regulations, which had introduced the 10-year residency requirement for persons born in the Island, had been applied retrospectively in Mr. Le Cornu's case. The Committee's view was that legislation could only be described as 'retrospective' if it took away an existing right and, for this reason, the change had not been applied with retrospective effect to Mr. Le Cornu. He had only been 2½ years old when the Regulation had been changed and would not have obtained his qualifications for another 17½ years. The wording of the Regulation was clear and unambiguous and introduced a requirement for <u>all</u> persons born in Jersey to compete a 10-year aggregate period of residency before qualifying under Regulation 1(1)(a) If there had been any intention to introduce transitional or saving provisions the Regulations would have been drafted accordingly. Deputy Hill had asserted that the Committee was interpreting the Regulations incorrectly but in Mr. Connew's opinion the legislation was perfectly clear. In addition, although Deputy Hill had claimed that there had been confusion when the States had approved the amendment and had never intended to create the 'injustice' that the change had introduced, Mr. Connew pointed out that the Regulations had been in place since 1974 without any challenge or proposed amendment from the States

Assembly.

4.3 Mr. Connew referred to the claims by Mr. Le Cornu that his human rights had been breached by th Committee and reiterated that he had not possessed housing qualifications in 1974 and had not, therefore, possessed any entitlement which had subsequently been taken away from him. Although the European Convention on Human Rights gave individuals a right to peaceful enjoyment of their own property this did not apply in respect of the Complainant's apartment at Springbank as he had bought it as an investment and known, when doing so, that he was not entitled to reside in it. The Committee did not, therefore, accept that this case raised any human rights issues – the Housing Regulations had already been tested in the European Court for human rights compliance and the Committee had, in addition, recently completed a human rights audit of all its legislation in conjunction with the Law Officers' Department.

4.4 Mr. Connew stated that the Committee strongly refuted the contention that there was no housing shortage in the Island at the present time. The Committee's own waiting list, which only included 'needy' applicants had increased to 333 and it was not true, as claimed by Deputy Hill, that the Committee was having difficulty selling recently completed first-time buyer developments. In approving the new Island Plan in July 2002 the States had agreed to rezone a large number of sites for new housing and this would not have been done if the States had not accepted that a real need for additional housing existed. It was obviously the case that the severity of the housing shortage varied over time and over various sectors of the housing market but there was a real shortage and it was for this reason that the Housing Regulations had been kept in place for over 30 years. If the States had wished to repeal the current provisions there had been ample time to do so. Although it had been claimed on behalf of the Complainant that, in his particular case, there would be no impact on the housing market if he were allowed to occupy the apartment he owned, it was not possible to take cases in isolation and the legislation was clear that all share transfer property could only be occupied by residentially qualified persons.

4.5 Mr. Connew responded to Deputy Hill's claim that, in 1974, the States had expected that Regulation 1(1)(g) would safeguard Jersey families in Mr. Le Cornu's position. The Committee had no evidence that this was the case. Regulation 1(1)(g) referred only to the grant of consent in cases where the Committee was satisfied that the hardship (other than financial hardship) which would be caused to the individual concerned if consent were not granted outweighed the fact that he did not qualify under any other provision of the Regulations. If there had been any other intention the Regulations could have been worded differently. The Committee did not accept Mr. Le Cornu's claims that he was a Jerseyman who was being penalized and 'punished' because his parents took him away from the Island. The Regulations were clear in that they required any person born in the Island to complete 10 years' residency before qualifying under Regulation 1(1)(a). Persons born in Jersey were, in fact, treated in a more favourable manner than persons born elsewhere (and who were not children of locally-qualified persons) who had to complete 18 years' residency.

4.6 In the Committee's view the professional skills of Mr. and Mrs. Le Cornu were not of direct relevance to this case as they were both resident and employed in the Island already. The Committee did consider applications from persons who would eventually qualify under Regulation 1(1)(a) for consent to occupy property under Regulation 1(1)(j) (essentially employed) and such applications were, on occasions granted. In this particular case no application had been made by Mr. Le Cornu's employers on his behalf.

4.7 Mr. Connew addressed the issue of whether the Committee should consider Mr. Le Cornu's case more favourably because he was so near to completing his 10-year residency period. (The Board noted that although Mr. Connew had stated in a letter to the Complainant dated 2nd April 2002 that he would be qualified within 15 months the actual period still outstanding was actually still some 20 months. Mr. Connew stated that, although the Committee took account of the period remaining before a person would qualify when considering applications, this would only affect the outcome of an application if there were other strong grounds to grant it. If the Committee simply granted applications because the remaining period was relatively short, it would be necessary to grant all applications in these circumstances and the qualifying period agreed by the States would, in practice, be shortened.

4.8 Mr. Connew referred to certain legal matters raised in Deputy Hill's submission. He stated that, although

it had been claimed that the Committee had not made sufficient enquiry into the facts of the case, the Committee had not needed to do this as it accepted, without enquiry, Mr. Le Cornu's claim that he was suffering hardship.

4.9 In relation to the matter of consistency of decisions, Mr. Connew stated that the Committee could not divorce itself from previous decisions but no 2 cases were ever identical and, as a result, it was not possible to rely entirely on previous decisions. The Committee could only refer to previous cases as a guide to decision-making and had received advice from the Law Officers that each case had to be treated on its merits. In the Committee's view the cases presented by Deputy Hill for comparative purposes were selectively chosen and Mr. Connew pointed out that of 29 cases considered during the period 1997-98 only 6 were considered worthy of an early grant of consent. Consent under Regulation 1(1)(g) (hardship) was only granted when there very compelling medical reasons or when children were living in unacceptable conditions. The Committee accepted that all persons who lived in unqualified accommodation, including the Complainant, suffered a degree of hardship caused by the existence of the Regulations but the Committee required evidence of additional hardship before granting consent under Regulation 1(1)(g). The Committee had a difficult task but attempted to operate in a fair and humane manner within the constraints imposed by the Regulations. Mr. Connew was of the view that a grant of consent to Mr. Le Cornu could set a risky precedent which could require the Committee to grant consent in many other similar cases.

4.10 Deputy Le Main, President of the Housing Committee, reiterated that the Complainant had known, when he bought his apartment, that he would not be permitted to occupy it immediately. It was therefore inappropriate for the ownership of the property to be used as a 'lever' to be granted consent early. In addition the Committee had received legal advice that, in law, there was no difference between a person who had a long family connection with the Island and a person who was born in the Island of parents who were not even residentially qualified themselves. The President confirmed that the Committee only granted consent on hardship grounds when there were compelling medical or social reasons to do so and problems of accommodation alone were not sufficient grounds. In addition, as stated by Mr. Connew, if the Committee simply granted consent because a person was nearing the end of the qualifying period it would, in practice, be unilaterally reducing the 10-year period agreed by the States.

5~~6~~. The Board's findings

5.1 In considering this case the Board has taken care to recall that the Housing Committee is required to operate within the legal framework set out in the Regulations and approved by the States. The relevant parts of that framework have, for the purposes of this case, been in place since 1974 and the role of the Board is therefore to assess whether the Committee has acted correctly and reasonably in dealing with the Complainant's application within that framework.

5.2 The Board has noted that Mr. Le Cornu was aware, on purchasing Apartment 26, Springbank, that he and his wife would not be able to live in it. It therefore concurs with the view expressed by the President of the Housing Committee that the existence of the apartment should not, in any way, be used as a factor to influence the decision.

5.3 In relation to Regulation 1(1)(a) itself, the Board notes that it leaves no discretion to the Committee. It simply states that a Jersey born person who has completed a total of 10 years' residency in the Island shall be granted consent to occupy property in the Island and it is a fact, accepted by both parties in this case, that the Complainant does not yet fulfill the statutory requirement. In this connexion the Board does wish to comment on the apparent error in Mr. Connew's letter dated 2nd April 2002 in which he stated that *'it would appear'* that Mr. Le Cornu would qualify in 15 months' time. Although this statement was qualified by a reference to the need to produce satisfactory documentary evidence the Board would point out that it was apparent from the relatively simple facts given in Mr. Le Cornu's letter dated 16th March 2002 that he had only completed approximately 8 years' residency at the time the letter was written (2½ years from birth plus the period between November 1996 and the date of the letter, say, 5 years 5 months). The Board, whilst accepting that mistakes can be made, would urge the Committee to take particular care when making statements such as this which can have such significance for persons seeking

to clarify their housing status.

5.4 The Board rejects the argument made by the Complainant that the 1974 amendment has been applied to him 'retrospectively'. The Board is of the view that legislation could only be described as truly retrospective if it took away a right already given to a person. In 1974 Mr. Le Cornu had a further 17½ years to complete before he would, on reaching the age of 20, have become qualified under Regulation 1(1)(a) as enacted in 1970. The Board considers that the wording of the Regulations is clear and unambiguous and notes that no transitional or saving provisions were included in them. The Board does not think it is helpful to speculate on the intentions and understanding of members of the States in 1974 and would simply point out that the Regulations have been in place, and implemented by the Committee, since 1974 with, apparently, no legal successful challenge on this point and no move by the States to bring forward any amendments.

5.5 The Board does not wish to dwell at length on Mr. Le Cornu's statement that he works alongside persons who have obtaining consent under Regulation 1(1)(j) (essentially employed) and that he should therefore be considered under that category. The Board is not aware whether or not the Complainant has discussed this matter with his employers but notes that, even if he has, they have not taken steps to support any such application by providing evidence of the essential nature of his employment to the Committee.

5.6 In the light of the matters referred to above it is clear that the only way in which Mr. Le Cornu could have been permitted to reside in his apartment before completing the 10-year period was if the Committee had been willing to grant him consent under Regulation 1(1)(g) (hardship). The Board accepts the Committee's argument that, although it takes into account the total outstanding length of time a person has to complete before qualifying under Regulation 1(1)(a) when dealing with cases such as this one, it cannot grant consent under this provision simply because that period is relatively short. To do so in all cases would, in practice, reduce the 10-year period agreed by the States to a shorter period and the Board accepts that the Committee has no authority to do that. It is therefore correct that the Committee considers the level of hardship in each individual case to assess what other factors are present to influence a decision. The Board has noted the statement made by the Committee that consent is only granted when there are strong medical grounds, cases involving children, or other exceptional reasons. None of the details of other cases produced to the Board by Deputy Hill have given any real evidence that the decision in this case is manifestly inconsistent with other cases as the facts of those other cases are not known to the Board and it would be impossible to make a sensible judgment based on a brief summary of some of the facts of selected cases.

5.7 Although the Committee has to operate in a generally consistent manner, and look at precedents for comparison, the Board agrees that, more importantly, each case must be dealt with on its merits. The Board has therefore considered whether the circumstances surrounding Mr. and Mrs. Le Cornu's case are such that the Committee should have granted consent under Regulation 1(1)(g). The Board accepts that living in unqualified accommodation has undoubtedly led to a large number of difficulties for the couple and caused a degree of hardship and it is unfortunate that Mr. Le Cornu was not informed of his right of appeal to the Housing Sub-Committee to explain the position in greater detail. The Board has nevertheless concluded that the hardship they are suffering is, in fact, no greater that the hardship suffered by many hundreds of persons living in the unqualified sector. It is a fact, as pointed out and accepted by the Committee representatives, that the mere existence of the Regulations causes some degree of hardship and the Board, after careful consideration, has concluded that it has no evidence that Mr. and Mrs. Le Cornu are suffering any exceptional hardship beyond that caused by the existence of the Regulations themselves. The Board accepts the Committee's assertion that, despite Mr. Le Cornu's long family connections with the Island, it is not, in law, able to treat him any differently from any other applicants born in Jersey without such connections. There are undoubtedly a variety of opinions amongst members of the States and Island residents generally about the desirability or otherwise of maintaining the Regulations in place and it is open to the Housing Committee, or to an individual member of the States, to bring forward proposals to amend the Regulations if there is a political will to do so, but any change can only come about through a decision of the States Assembly. The Board finds that, within the existing legal framework, the Committee did not deal with this case incorrectly or unreasonably and therefore **rejects the complaint.**

Signed and dated by –

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

..... Date :.....
Mrs. M. Le Gresley

..... Date :.....
Mr. P.E. Freeley

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[1] *Although this Police Constable's name was mentioned in the written and oral submissions the Board has not felt it necessary to refer to him by name in these findings.*