STATES OF JERSEY

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ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL FOR 2003 – 2004

Presented to the States on 5th April 2005
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

Foreword

The Privileges and Procedures Committee is pleased to present the report of the Administrative Appeals Panel for the years 2003 and 2004. This has been quite a busy period for the Panel and the Committee would like to place on record its thanks to the Chairman, Deputy Chairmen and all of the members of the Panel (listed below) for their tremendous hard work in an honorary capacity dealing with a wide variety of complaints during this period.

Chairman
Mrs. C.E. Canavan

Deputy Chairmen
Mr. N.P.E. Le Gresley
Advocate R.J. Renouf

Members
Mr. P.E. Freeley
Miss C. Vibert
Mr. D.J. Watkins
Mr. J.G. Davies
Mr. P.G. Farley
Mr. T.S. Perchard
Mrs. M. Le Gresley

The Committee has embarked on a review of the Administrative Appeals system and presented to the States a consultation report on proposals for improvement to the system (R.C.20/2004) comparing and contrasting the Administrative Appeals system with the U.K. public sector Ombudsman's system and putting forward the options for change in Jersey. A number of improvements were suggested for example in creating greater flexibility in the system, dealing with the findings of Boards, introducing stricter timescales and publicizing the system and following that consultation the Committee will bring forward its proposals during 2005.

Deputy R.G. Le Hérissier
President,
Privileges and Procedures Committee.

Foreword by the Chairman of the Administrative Appeals Panel

Dear Mr. President,

I have pleasure in forwarding to you the report for the years 2003 and 2004, which includes the resolution of matters outstanding as at the end of 2002. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

	Application rejected	*Matter resolved before hearing held*	*Complaint upheld*	*Committee decision upheld*	*Withdrawn*
Carried forward from 2002	2	1	1	1	
2003	1	1	1 in part 1	3	1
2004	2		2	2 1 in part	1
Total: 20 reviews processed, plus 3 incomplete	5	2	4, and 1 in part	6, and 1 in part	2
Note:	3 applications were being processed and were incomplete at the end of 2004				

During this period, the Privileges and Procedures Committee, having assumed responsibility for the operation of the Administrative Appeals system in December 2002, has been reviewing the system to establish whether improvements could be made. From the perspective of the Panel it would seem appropriate to review whether third party appeals are appropriate and can achieve a meaningful outcome.

The Panel has been pleased to note that in a number of cases, Committees have amended their decisions following review of decisions, and one Committee has thanked the Panel for highlighting an issue and has been pleased to amend its procedures in the light of the review.

I wish to thank the Deputy Chairmen Mr. N.P.E. Le Gresley and Advocate R.J. Renouf for their assistance and various members who comprised the boards for the hearings. In addition I would like to thank the Greffier of the States, the Deputy Greffier and the States Greffe staff for their assistance.

Yours sincerely

C.E. Canavan
Chairman,
14th March 2005

The following is a summary of the outcome of the complaints which were outstanding in the 2002 Annual Report and of new complaints received in 2003 and 2004 –

Outcome of complaints that were outstanding at the end of 2002 and which were referred to in the Annual Report for 2002 (R.C. 21/2003) –

Environment and Public Services Committee

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

Application refused as the Greffier of the States, after consultation with the Chairman as required, concluded that the case should not be referred to a Board as he considered it unproductive for Boards to hear cases where there were no obvious grounds to find against a Committee.

Housing Committee

(b) Statement of complaint received on 9th December 2002 against the Committee's decision to evict the Complainant.

Hearing held on 26th March and 23rd April 2003. The Board upheld the Committee's decision.

Copy of findings attached at Appendix A.

(c) Statement of complaint received in February 2002 concerning the publication of a letter in the Jersey Evening Post containing personal, private and confidential details.

The application was deemed to have been withdrawn as no further contact was made by the Complainant after the Data Protection Registrar had upheld a complaint on the same matter in accordance with the Third Data Protection Principle as set out in the First Schedule of the Data Protection (Jersey) Law 1987.

The Claimant sought compensation in relation to the publication, however this matter was not considered suitable for review and the application was refused.

(d) Statement of complaint received on 17th July 2002 concerning a decision of the Housing Committee to permit the tenants to keep an excessive number of noisy birds. The Environmental Health Department had concluded that the noise levels constituted a nuisance under the Statutory Nuisances (Jersey) Law 1999 and accordingly the Department was now taking steps to resolve the situation so that an Appeal Board was no longer justified.

New complaints received in 2003

Environment and Public Services Committee

(e) Statement of complaint received on 5th August 2003 against the Committee's decision to refuse a retrospective application for the use of Field 534, Le Mont de la Hague, St. Peter for the storag of skips.

Hearing held on 19th January 2004. The Board upheld the Committee's decision.

Copy of findings attached at Appendix B.

(f) Statement of complaint received on 18th August 2003 against the Committee's decision to refuse to give permission to extend the residential property "Midday Sun", La Grande Route des Mielles, St. Ouen.

The Committee reconsidered the modified application plans and decided to grant permission for the proposed extension and an Appeal Board was accordingly no longer required.

(g) Statement of complaint received on 8th September 2003 against the Committee's decision to

permit the development of land east of "Southview", St. Brelade's Bay and immediately north of the Complainant's property "Carysfort".

Hearing held on 29th March 2004. The Board found that certain criteria of Policy TR2 of the Island Plan had not been met. The Environment and Public Services Committee reconsidered the matter on 13th May 2004 and agreed that the decision was not unreasonable given the circumstances of the case.

Copy of findings attached at Appendix C.

(h) Statement of complaint received on 25th July 2004 against the level of compensation awarded by a Court of Appeal for road widening undertaken by the Jersey Electricity Company Limited and the then Public Services Committee which led to the foundations of a building being undermined. The Greffier, following consultation with the Chairman, determined that the matter had already been deliberated on by the Royal Court and the Court of Appeal, and there being no special circumstances, the request for review by an Appeal Board was refused.

(i) Statement of complaint received on 22nd September 2003 against the Committee's decision to reject an application for the construction of a parking area in front of Nos. 16 and 17 Beach Crescent, St. Clement.

Hearing held on 16th February 2004. The Board upheld the Committee's decision.

Copy of findings attached at Appendix D.

(j) Statement of complaint received on 15th October 2003 against a decision of the Committee concerning the refurbishment of the Royal Court/States' Building.

Hearing held on 13th May 2004 and the Board upheld the complaint in relation to certain specific points raised in its findings. The Committee was asked to reconsider directional signage, railings to the external ramp, tactile warning strips along the edge of steps. The findings of the Board were considered by the Committee on 29th July 2004 and it agreed to the erection of appropriate directional signage and tactile warning strips, however for ascetic reasons it maintained its decision not to erect railings to the external ramp.

Copy of findings attached at Appendix E.

(k) Statement of complaint received on 31st December 2003 against the Committee's decision to refuse an application to construct a small traditional Jersey cottage on land in the Built-Up Zone at Meadowvale, Les Grands Vaux, St. Helier.

A hearing was held on 3rd June 2004 and the Committee was requested to reconsider the application. The Committee later decided to grant permission for a small cottage on 7th October 2004.

Copy of findings attached at Appendix F.

Housing Committee

(l) Statement of complaint received on 28th March 2003 against the Committee's refusal of consent under the hardship category of the Housing (General Provisions) (Jersey) Regulations 1970, as amended.

Application withdrawn as Committee granted consent.

New complaints received in 2004

(m) Statement of complaint received on 12th March 2004 against a refusal by the Committee to grant permission for the use of a trailer mounted mobile asphalt coating plant for more than 21 days in any consecutive period of 12 months at McQuaig's Quarry, La Rue de la Porte, St. John.

Hearing held on 19th July 2004. The Board requested that the Committee reconsider its decision. The Committee has accordingly commenced reconsideration and has requested environmental information from the Complainant. The matter had not been concluded as at the end of 2004.

Copy of findings attached at Appendix G.

(n) Statement of complaint received on 16th April 2004 against the Committee's decision to refuse permission to start a sheep farm. Hearing held on 26th July 2004. The Board upheld the Committee's decision.

Copy of findings attached at Appendix H.

(o) Statement of complaint received on 28th June 2004 against the Committee's decision to refuse an application to construct a farmhouse dwelling in Field 96, La Grande Route de Rozel, St. Martin Hearing held on 2nd September2004. The Board upheld the complaint. On 14th October 2004 the Environment and Public Services Committee granted in principle approval for a dwelling in this location.

Copy of findings attached at Appendix I.

(p) Statement of complaint received on 27th August 2004 against a decision of the Environment and Public Services Committee to allow a landfill site to be created in Fields 519, 520, 521, 524, 527 and 528 Woodside Farms, Trinity.

The application for an administrative review was subsequently withdrawn following the decision by the Committee to commission an independent Inquiry whose report was presented to the States as R.C.43/2004.

(q) Statement of complaint received on 27th August 2004 against the Committee's decision to approve a dwelling using an existing access at Bel Air, Petit Port Close, St. Brelade. The case w under consideration at the end of 2004.

(r) Statement of complaint received on 7th September 2004 against the Committee's decision to grant a planning permit for the construction of stables against the boundary wall of Little Acre, La Rue Parcquthée, St. Lawrence.

Application for an administrative review rejected.

(s) Statement of complaint received on 10th November 2004 against the Committee's decision to refuse the development of a site at 1 and 4 Trinity Road, St. Helier. Under consideration at th end of 2004.

(t) Statement of complaint received on 24th November 2004 against the Committee's decision to refuse to allow the rationalization of working area and extension of existing dwelling at Les Lauriers, La Route de St. Jean, St. John.

The case was under consideration at the end of 2004.

(u) Statement of complaint received on 23rd December 2004 against current and proposed appeal

mechanisms. The complaint was disallowed as falling outside the terms of the Administrative Decisions (Review) (Jersey) Law 1982, as amended.

Housing Committee

(v) Statement of complaint received on 11th March 2004 against a decision of the Committee to refuse rent rebate. Hearing held *in camera* on 21st June 2004. The Board upheld the Committee's decision.

Copy of findings with names and addresses removed is attached at Appendix J.

Health and Social Services Committee

(w) Statement of complaint received on 16th August 2004 against the Committee's decision to recover the cost of stay at Glanville Home, St. Helier. Hearing held on 14th October 2004. The Board upheld the appeal in part.

Copy of findings with names removed attached at Appendix K.

APPENDIX A

BOARD OF ADMINISTRATIVE APPEAL

26th March and 23rd April 2003

Complaint by Mrs. X against a decision of the Housing Committee to evict her from XXX, St. Helier

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

1. Present –

Board Members

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

Complainant

Mrs. X
Deputy G.P. Southern

Housing Committee

Deputy T.J. Le Main, for a time at the first public hearing
E.H. Le Ruez, Chief Executive Officer, Housing Department

States Greffe

Mrs. A.H. Harris, Deputy Greffier of the States

2. Withdrawal of the President of the Housing Committee

Deputy T.J. Le Main presented a brief written statement to the Board as it was opened, advising that he did not wish to participate. Following a brief adjournment, he authorised the Chief Executive Officer to present the case on behalf of the Committee. While the Board considered that the President was discourteous to the Administrative Decisions Appeal process and to the Board members personally, it wishes to make it clear at the outset that his behaviour in no way influenced the outcome of the hearing.

3. Summary of the dispute

The Board was convened to hear a complaint of Mrs. X against the decision of the Housing Committee to evict her from XXX, St. Helier.

4. Summary of the Complainant's case as outlined on 26th March 2003

4.1 The Board had received and noted the written submission presented by Deputy G.P. Southern on behalf of the Complainant together with additional written notes tabled at the hearing.

4.2 Deputy Southern advised that the bases of the complaint were that –

- Mrs. X was a joint tenant but important correspondence had not been addressed to her;

- The department was mistaken in asserting that Mrs. X had always had 2 jobs;

- The Housing Committee, by its decision of 30th August 2002, had confirmed that Mrs. X was a suitable tenant in her sole name, but that the problem lay with Mr. X.

4.3 Deputy Southern advised the Board that Mrs. X was a joint tenant with her husband, and that within their marriage, he had been responsible for dealing with all matters regarding rent and rent abatement. Mrs. X was at no stage aware that her husband had made any false declarations or had inappropriately claimed rent rebate. Had she suspected a problem with her husband's declaration, she would have acted immediately. Mrs. X advised that she and her husband had led increasingly separate lives because of his alcoholism, and that they had now separated.

4.4 As joint tenant, Mrs. X would have expected the department also to communicate with her, but letters were written solely to her husband. A letter dated 12th December 2001 relating to failure to notify the department of changes in financial income had been addressed to Mr. X in his sole name and she was not aware of its content. Mrs. X stated that the first she knew of what was happening was a notice of eviction dated 27th February 2002, when it was issued, following a decision of the Housing Committee on 1st February 2002.

4.5 Following an appeal, the Housing Department wrote to Mr. and Mrs. X in a letter dated 27th March 2002, advising that the Housing Sub-Committee at its meeting held on 25th March 2002 had turned down their appeal, and requiring them to relinquish the property by 1st October 2002. However, Mrs. X stated that that letter had never been received. That letter had acknowledged that the adjustment to the rent account for mis-declaration had been paid; that the Committee was mindful of the work and expense of the Department caused by Mr. X's failure to declare fully the family's earnings for the purpose of rent abatement. Mrs. X submitted that that 'work and expense' was caused by the Committee's failure to communicate with her and her husband jointly, and had she known what was happening, she would have acted to rectify the situation.

4.6 Deputy Southern advised the Committee that when questioned prior to the Housing Sub-Committee meeting of 25th March 2002 it had been noted that in her letter dated 6th March 2002 Mrs. X had stated that they 'had always had 2 jobs each in order to maintain a standard of living'. Deputy Southern maintained that this was a linguistic error, due to English being Mrs. X's second language, and this should more correctly have been phrased as 'they have always both had to work'. Mrs. X denied that she had always had a second job as this would not have been possible alongside her childcare responsibilities. However she confirmed that she had taken on a second job in the Employment and Social Security Department in 2001. Mrs. X maintained that all dealings with the Housing Department had been conducted by her husband, and she had not personally made any false declarations.

4.7 However, due to the letter sent by the Housing Department on 27th March not being received, Mrs. X remained unaware of her situation until a third party contacted the department on her behalf on 16th July 2002. Following receipt of a letter dated 16th July 2002 confirming the March decision, and extending the date of requirement to quit to 6 months after the issue of this second letter, that is until the end of January 2003, she pursued a further appeal with the assistance of Deputy Southern. That appeal resulted in a decision dated 30th August 2002 of the Housing Committee as follows –

> "*The Committee decided that it would pursue the eviction of Mr. and Mrs. X from XXX St. Helier, but would offer alternative two-bedroom accommodation to Mrs. X to rent solely in her own name.*"

4.8 Deputy Southern maintained that as Mrs. X was judged in this Act to be a suitable tenant in her sole name, she should be able to stay in her current house and should not be moved to another unit. The Board was advised that Mrs. X was appealing that she should not be evicted, and that

she should also be permitted to continue with a tenancy of XXX, St. Helier.

5. Summary of the Housing Committee's case as outlined on 26th March 2003

5.1 Mr. E.H. Le Ruez, Chief Executive Officer, outlined the response of the Housing Committee, an explained that this was a complicated case, where one party of a joint tenancy either withheld or gave false information to gain rent subsidy. The Committee had found it hard to accept that Mrs. X did not know anything about the problems associated with the tenancy.

5.2 It was confirmed that prosecution was not pursued where overpayments of subsidy were repaid, or where cases were not entirely clear. While there had been enough information at the Committee's disposal to pursue a prosecution of Mr. X, there was insufficient documentary information to support the prosecution of Mrs. X.

5.3 Mr. Le Ruez admitted that during the period 2000 – 2001, the department did fail to correspond jointly with Mr. and Mrs. X. It had been policy to have joint tenancies, although in some cases the tenancy was in one person's name only, for example in cases where only one party qualified to occupy property. Where a rent rebate application was received, a cross-check was not necessarily made to see whether it was in respect of a joint tenancy. The Board was advised that the department's procedures had already been changed to address this deficiency.

5.4 Mr. Le Ruez put the view that assertions that Mr. and Mrs. X had always had 2 jobs each in order to maintain a standard of living' suggested to the Housing Committee that the financial affairs of Mr. and Mrs. X were not as separate as claimed. In addition, the department had discovered that Mr. X jointly owned one property in Madeira with 2 other siblings, and that Mr. and Mrs. X had jointly-owned property dating from 1999. The Committee had also found it difficult to believe that where a property was jointly owned and on which there was a voluntary mortgage in both names, one party could be unaware of this. While ownership of property in other countries did not disbar persons from becoming tenants, nor from receiving rent rebate, a declaration of ownership was required. Photographs of one of the properties were included with the Housing Committee response to the complaint.

5.5 Since the Committee believed there must have been joint knowledge of the property jointly purchased in 1999, it had been satisfied that some penalty should occur, but having regard to Mrs. X's circumstances had drawn back from eviction and had offered an alternative property to Mrs. X for her and her daughter.

5.6 Following a brief adjournment, Mr. Le Ruez presented to the Board and the Complainant documentary evidence relating to property in Madeira. These documents had been requested by the Housing Committee and were attached to a covering letter dated 27th January 2003 from SMS Advogados.

5.7 Mrs. X advised the Board in response to questioning that she had been aware that some of the parties' joint savings had been used to acquire property in Madeira and she had signed a document to effect this. She thought that her husband and his siblings had jointly inherited money from their parents, and this has been topped up with their joint savings jointly to purchase property between the children as an investment, the resulting property being in her husband's name. However, she stated that she did not own property in Madeira.

6. Adjournment

6.1 The Board established that the claimant was also appealing against the downgrade of accommodation as well as eviction, and that it was unclear, despite the Committee's decision of 30th August 2002, whether other accommodation would be offered to Mrs. X as this matter would be the subject of further Committee consideration.

6.2 The Board decided to adjourn the hearing for further clarification of the ownership of property in Madeira, and pending the receipt of additional documentation.

7. Resumption of hearing 23rd April 2003

The Board resumed the hearing on 23rd April 2003 with the same participants present. The Board had received a letter dated 2nd April 2003 from the Housing Department explaining the delay in the disclosure of the SMS Advogados letter; a reply dated 3rd April 2003 from Deputy G.P. Souther regarding the ownership of property in Madeira; and a reply dated 9th April 2003 from the Housing Department enclosing various documents requested by the Board. The Board had also had time to consider the documentation relating to the properties and it noted a mortgage of £60,000 (90,000 Euros).

8. Further comments relating to the Complainant's case as outlined on 23rd April 2003

8.1 Deputy Southern had established that there was only one property in Madeira, and this came about following the death of Mr. X's parents in approximately 1996. In 1999 Mr. X decided to put the money he and his siblings had inherited into a property, and became the part owner of a property with his siblings. Deputy G.P. Southern had established that under Portuguese Law, to protect wife's position, a wife automatically owns 50% of her husband's estate, and this was the reason why Mrs. X's name appeared in the property documentation. Mrs. X had been unaware that this had occurred. Her name did not appear on the mortgage documentation. Mrs. X was aware however, that she had invested an amount of money in the property, and **a** document that she had signed, and which was presented to the Board, was a power of attorney to act on her behalf in Madeira. She was also aware that Mr. X borrowed more money from friends for the same purpose.

8.2 Mrs. X added that Mr. X's parents had also owned some land and a house, but with no roof, which was inherited by Mr. X and his siblings. This property was judged to be worthless.

8.3 The Chairman questioned Mrs. X on the decision of the siblings to purchase property together and whether this had been agreed between them. Mrs. X stated that she was aware of some acrimony as she had heard her husband arguing with his sister on the telephone about the matter. She confirmed that £10,000 had been contributed towards the purchase of the property from savings.

8.4 The Chairman asked how Mrs. X had become aware of the Housing Department investigation, and she confirmed that she had read a letter, addressed only to Mr. X, stating that they would soon be issued with a notice to quit. The letter of 27th February 2002 was shown to Mrs. X and she confirmed that this was the letter she had found in the house, addressed solely to her husband and she had opened it and read it when her husband was not there.

8.5 Deputy Southern expressed concern that the documents relating to property ownership, and which had been received by the Housing Department on 30th January 2003, had been withheld.

9. Further comments of the Housing Committee as outlined on 23rd April 2003

9.1 Mr. Le Ruez expressed some confusion about the two properties, albeit that one was stated to b valueless and asked whether Mrs. X had any benefit from this. Mrs. X explained that he husband's parents had a lot of land, whereas she was one of 12 children. As Mr. X married unde the age of 21 years, his parents had to consent to the marriage, and only did so on condition tha Mrs. X would not receive any benefit on their death. She did not recall whether she had signed anything at the time to this effect.

9.2 Mr. Le Ruez asked for clarification on the property that had been purchased, and Mrs. confirmed that she knew a property was being bought. She said that her own sister had a key to it and acted as caretaker. She also said that she hoped to be able to use the flat herself.

9.3 Mrs. X did not respond to Mr. Le Ruez's question asking whether she was aware that the ownership of a property in Madeira might prejudice any tenancy in Jersey.

9.4 Mr. Le Ruez confirmed that as the application for a tenancy in Jersey occurred prior to th inheritance, those assets would, naturally, not have been taken into account. However, the Housing Committee could ask for details of income and assets in respect of a tenancy, even where rent rebate was not being sought.

9.5 Mr. Le Ruez confirmed that there had not been an investigation into Mrs. X's 2 jobs, and it was clarified that she had 2 separate part-time jobs, both with the same States department, and received 2 separate cheques in payment. The first of these jobs had not been declared by Mr. X No checks had been made with the Income Tax department, as this was only usual in the case of self-employed persons.

9.6 Mr. Le Ruez advised that the documentation received in January 2003 from SMS Advogados ha not been released earlier, and specifically when Deputy Southern inspected the files in March 2003, because, although it had by that time been translated, the department wished to give Mrs. X the opportunity to declare her part-ownership of it. Mr. Le Ruez was now satisfied that Mrs. had not been aware of her ownership of the property in March.

9.7 Deputy Southern reiterated that he saw no reason for the Housing Committee to punish Mrs. X because of her husband's behaviour, especially as there was no communication between them, and Mrs. X reiterated that she never saw any letters from the Housing Department until 27th February 2002.

10. Board's Findings

10.1 The Board considered whether the decision of the Housing Committee made on 27th March 2002 was unreasonable, given the information available at that time. Having regard to the fact that Mr. X had not disclosed relevant information, the Board agreed that it was not unreasonable Mrs. X has stated that she knew nothing about Mr. X's non-disclosure of facts to the Housing Committee, and the Board makes no comment on this assertion, but feels it would not be unreasonable for the Committee to expect Mrs. X to have realised that the ownership of property in joint names or with siblings, purchased with the assistance of the joint savings of her husband and herself and the joint mortgage, and the fact that she had taken a second job, should have an effect on rent rebate and would have reasonably expected Mrs. X to raise these matters with her husband to ensure that he had taken the appropriate action.

10.2 The Board considered whether the decision of the Housing Committee made on 30th August 2002 was unreasonable given the information available at that time. The Board found that it was not. The Board found that Mrs. X had been discriminated against as a joint tenant in that letters had not been addressed to her jointly with her husband, but that was not sufficient to find that the decision of the Committee had been improperly and grossly discriminatory. Indeed it is worthy of note that whilst it was one of Mrs. X's complaints that letters had not been addressed to the parties jointly, Mrs. X herself confirmed that she had actually opened and read a letter addressed solely to Mr. X dated 27th February 2002 advising of notice to quit XXX. The Housing Committee had taken into account its shortcomings in communication by delaying eviction, and by offering alternative accommodation.

10.3 The Board considered that the procedures of the Housing Committee relating to Mrs. X, in their dealings with joint tenancies were discriminatory but under the circumstances and taking everything into account, the Board does not feel that the Committee has acted improperly. Every time a mistake was made, or considered to have been made, Mrs. X was given more time, and her circumstances taken into account in mitigation.

10.4 The Board considered whether the decision of 30th August 2003 was oppressive and agreed that it was not. Whilst it is the policy of the Committee to evict tenants who have not made full disclosure the Committee had exercised its discretion in favour of Mrs. X by not evicting her immediately, and later by agreeing to provide her with alternative accommodation in the public sector. This was, in the Board's view, a binding decision.

10.5 The Board accordingly endorses the decision of the Housing Committee that –

> "*The Committee decided that it would pursue the eviction of Mr. and Mrs. X from XXX St. Helier, but would offer alternative two-bedroom accommodation to Mrs. X to ren solely in her own name.*"

10.6 The Board makes it clear that the information provided by the Madeiran lawyer had no effect on its decision. Therefore the non-disclosure of that information prior to the hearing did not prejudice Mrs. X in any way. In any event, the ownership of property outside the Island would not necessarily have debarred either tenant from the tenancy. In the interests of justice, the ownership of property should have been declared.

10.7 The Board is pleased to note that the procedures of the Housing Department with regard to joint tenancies have been improved, and in particular would recommend –

- that all tenants should be advised clearly and/or reminded of the Housing Committee's position in relation to fraud;
- joint tenants should be advised that false declarations, actions or omissions by one tenant could lead to the eviction of all tenants;
- eviction notices should be sent by recorded delivery.

10.8 The Board is disappointed at the standard of documentation submitted by both sides in this complaint, the presentation of important late information, and the need actively to seek omitted documents. The Board hopes that any future Reviews will be accompanied by complete and, preferably, chronologically ordered information. The Board was further disappointed that the information relating to the property in Madeira from SMS Advogados was not passed to Mrs. X for her comments when received (subject to the usual legal clearances). It gave the impression of wishing to conceal important information the facts of which could have been agreed fairly by the parties much earlier in the proceedings.

Signed and dated by –

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

..... Dated:.....
Miss C. Vibert

..... Dated:.....
Mr. J.G. Davies

APPENDIX B

BOARD OF ADMINISTRATIVE APPEAL

19th January 2004

Complaint by Mr. G.H. Le Ruez (represented by Deputy C.H. Egré of St. Peter) against a decision of the Environment and Public Services Committee

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

1. Present –

Board Members

Advocate R.J. Renouf, Chairman
Mr. J.G. Davies
Miss C. Vibert

Complainant

Mr. G.H. Le Ruez
Deputy C.H. Egré

Environment and Public Services Committee

Deputy R.C. Duhamel
Mr. R.T. Webster, Principal Planner, Planning and Environment Department

States' Greffe

F.G. Le Maistre

The hearing was held in public at St. Peter's Parish Hall on 19th January 2004.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. G.H. Le Ruez against a decision of the Environmer and Public Services Committee to refuse a retrospective application for the use of part of Field No. 534 Le Mont de la Hague, St. Peter, for the storage of skips.

3. Site Visit to Field No. 534

3.1 After the formal opening of the hearing at St. Peter's Parish Hall the Board and the parties visited the site, which comprised the south west corner of Field No. 534 and formed part of the landholding of the property known as Home Farm, Le Mont de la Hague, St. Peter. The Board stopped briefly in the mai yard to the rear of the aforementioned property to view the area of hardstanding currently licensed for the storage of skips. This area is used for storage by A.C. Mauger & Son (Sunwin) Limited as is a triangular piece of land to the north west of Field No. 534. The Board also had sight of the redundant agricultura shed which the Environment and Public Services Committee had allowed to be used for storage purposes. This shed is currently used by Dunell's Premier Wines (Wine Merchants).

3.2 On arrival at the site used for the unauthorized storage of skips, the Board was apprised by the Complainant of the efforts he had made to improve the site. It was noted that a hedge had been planted to separate this part of the field from the remaining part of Field No. 534, which is used for rough grazing The Board inspected the site and had regard to its location and the nature of the surrounding area. In

particular, it was able to judge its proximity to the rear of St. George's Preparatory School. The Board also viewed the tree-lined lane immediately to the west of Field No. 534 where 2 site cabins/portakabins are being stored.

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 Deputy Egré elaborated on the written case at the hearing.

4.2 The Board was reminded that the south-west corner of Field No. 534 had an area of concrete hard standing just below ground level which dated back to the time of the Island's Occupation by German troops when various roads, bunkers and tunnels had also been constructed in this field. In 1985, permission had been granted to Mr. Le Ruez to dig out the old roads and German bunkers and re-level the field as it was his intention to return it to agricultural use. Ultimately, this had proved unsuccessful and the land had only been suitable for rough grazing. However, in recent years, Mr. Le Ruez had levelled and resurfaced part of the south west corner of Field No. 534 with hardstanding and it was currently used for the storage of skips.

4.3 Deputy Egré referred to Article 2(b) of the Island Planning (Jersey) Law 1964, as amended, which required the Environment and Public Services Committee "to ensure that land is used in a manner serving the best interest of the community". He argued that, as the site in question was unsuitable for agricultural use, and as there was a need for land for the storage of skips, the use of this area for the storage of skips should be considered as being in the best interests of the community. Deputy Egré also referred to the precedent that existed for the operation of similar businesses in the countryside, as exemplified by the skip business (Michel & W.P.) that operated from a site at Broadlands, Le Mont Fallu, St. Peter.

4.4 Deputy Egré also drew the Board's attention to Article 2(c) of the Island Planning (Jersey) Law 1964, as amended, which required the Committee "to protect and enhance the natural beauty of the landscape or the countryside". It was his contention that, as the site could not be viewed from the surrounding area, the use of this site for the storage of skips could not be considered to have any adverse impact on the beauty of the landscape or countryside. Furthermore, officers of the Environmental Services Unit, and of the Department of Agriculture and Fisheries, had confirmed that they had no objection to the use of this land for the storage of skips.

4.5 The Board noted that parts of the landholding of Home Farm had been used by J.H. Michel & Sons (Haulage Contractors) for the storage of empty skips and trailers, on an occasional basis, prior to 1985 and was reminded that the continuing use of this site was solely for the storage of skips and that no other plant, equipment or materials would be stored on this land. It was also advised that the use of this site for the storage of skips was not subject to any commercial agreement between Mr. Le Ruez and the skip operator but was a "grace and favour" arrangement.

5. Summary of the Committee's case

5.1 The Board had received a written summary of the Committee's case before the hearing and the written submissions were enlarged upon by Mr. Webster.

5.2 The Board noted that the reason for the Committee's refusal of the retrospective application had been that "the storage of skips represents an inappropriate storage use in the countryside, detrimental to the amenities of the area and contrary to Policy C6 Countryside Zone, which states that this zone will be given a high level of protection and there will be a general presumption against all forms of new development for whatever purpose".

5.3 Mr. Webster stressed that, in refusing the application, the Committee had acted within the Law and had followed all normal and proper procedures. Therefore, it could not be said to have acted unlawfully or unreasonably. Furthermore, in considering and determining all applications, the Committee strove to apply the approved planning policies in a fair, reasonable and consistent manner.

5.4 Mr. Webster explained that the Committee did not 'blindly' follow the policies but always took into account the circumstances of each case in order to assess whether those circumstances justified an exception to these policies, and also whether the making of an exception could set an unacceptable precedent which would make it difficult to resist similar uses and hence prejudice the policies. The Board was informed that, in this instance, the Committee had taken into account the comments and representations received, had visited the site, and had concluded that the circumstances did not justify making an exception to its policies. The Committee also felt that approval would set an unacceptable precedent which would prejudice these policies.

5.5 Mr. Webster reminded the Board of the former Planning and Environment Committee's decision to refuse a similar retrospective application to use part of a field for open storage. This decision related to an application by Vanni (C.I.) Limited for a change of use of part of Field No. 657, La Route du Marais St. Ouen, from agricultural to open storage of miscellaneous contractors' equipment. This application had also been considered by a Board of Administrative Appeal, in February 2002. On that occasion, the applicant/Complainant had also maintained that the change of use should be permitted because the site could not be used for agricultural purposes and because its activities would be well screened from the surrounding area. It had also been argued that approval of Vanni's application would be in the best interest of the Island. Mr. Webster pointed out that, in setting out its case in respect of the Vanni application, the Committee had also emphasized the possible precedent that would be set if it had granted permission for the change of use. In the present case, if permission was to be granted for a change of use for storage purposes, Mr. Webster considered that the Committee would have difficulty in limiting further applications to intensify the use of the site.

5.6 The Board was further reminded of the permission that had already been granted to Mr. Le Ruez (in February 1998) for a change of use of a large redundant agricultural shed for non-agricultural storage. This was the shed currently used by Dunell's Premier Wines (Wine Merchants). It was also noted that a recent approval had been given for a retrospective application to store skips in the main yard immediately to the rear of the property known as Home Farm, which was now being used by A.C. Mauger & Son (Sunwin) Limited. This demonstrated that the Committee did not blindly follow its policies but was prepared to consider each application on its own merits.

6. Discussion

6.1 The Board sought clarification of the status of the two site cabins/portakabins that were situated in the narrow tree-lined lane immediately to the west of Field No. 534. Mr. Webster explained that this small section of lane had been included in the area authorised for the storage of building supplies by A.C. Mauger & Son (Sunwin) Limited. This permission was based on an existing use prior to the introduction of the Island Planning (Jersey) Law 1964.

6.2 The Board also sought clarification from Mr. Le Ruez as to why he had not previously applied for a change of use of part of Field No. 534, as he had previously applied for a change of use of the redundant agricultural shed. He explained that, following the cessation of work to restore Field No. 534 to agricultural use (in 1989) the site had been left with a small layer of topsoil. Mr. Le Ruez had subsequently removed the topsoil and had deposited a quantity of builder's rubble to create an area of hardstanding. He admitted that he had not sought planning permission because the site was already out of agricultural use and there had already been occasional use of land at Home Farm by J.H. Michel & Sons (Haulage Contractors). The Board noted that the line of trees which separated the south west corner of Field No. 534 from the remainder of the field had been planted in 1988 and had marked the progress of the work that had been undertaken to improve the land. Additional trees had been planted to provide shelter for animals grazing in the remaining part of the field.

6.3 The Board was advised that the Complainant was appealing against the Committee's decision on the following grounds, as provided for under Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982 –

- it was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory; or

- it could not have been made by a reasonable body of persons after proper consideration of all the facts; or

- was contrary to the generally accepted principles of natural justice.

6.4 The Board questioned why approval had been granted for the retrospective application to use the rear yard of Home Farm for the storage of skips as this application was also contrary to existing planning policy. Mr. Webster explained that consideration had been given to the previous use of the yard for the storage of skips when allowing this application. Furthermore, it had been felt that the storage of machinery on this yard was ancillary to its existing agricultural use. The Board wondered whether the south west corner of Field No. 534 could have been considered to be part of the existing builder's yard had the original concrete slab laid during the Occupation not been covered with topsoil as part of the 1980s improvement works. However, Mr. Webster maintained that it had to be treated separately from the areas currently used by A.C. Mauger & Son (Sunwin) Limited as it was part of an agricultural field and was not subject to any established non-agricultural use. Even though it had been permissible to store agricultural machinery on the south west corner of Field No. 534 whilst Home Farm was a working farm, it would not have been permissible to store this and plant machinery once farming had ceased at the property.

7. The Board's findings

7.1 The Board, having taken into account all the arguments put forward by the Complainant, and having regard to the actions taken by the Committee and to the previous precedents for the application of its policies, did not consider that the Committee had acted unreasonably or that its decision had been unjust, oppressive or improperly discriminatory or contrary to the generally accepted principles of natural justice. Accordingly, **the Board decided to reject the complaint**.

7.2 In reaching its decision, the Board had regard to the letter, dated 18th January 2004, that had been received immediately prior to the hearing, from the Headmaster of St. George's Preparatory School expressing concern at the possible sorting of the skips on site. It recalled that Mr. Le Ruez had admitted during the site visit that limited sorting of material had taken place. However, as the unauthorised use of Field No. 534 had only come to light as a result of a letter received from an unnamed parent of the school the Board accepted that the existing operation could not be said to be causing an environmental nuisance. Nevertheless, it was recognised that this operation was clearly contrary to existing planning policy and the Board doubted whether it was practical or realistic to think that the site would only be used for storage.

7.3 The Board also recognised that the Committee had allowed a previous retrospective application for an extension of the existing commercial activity at Home Farm into the main yard and that it was within the ambit of Mr. Le Ruez to set aside part of this expanded commercial area for the unauthorised ski operation.

7.4 The Board also had regard to the decision made by the former Planning and Environment Committee to refuse a retrospective application by Vanni (C.I.) Limited for a change of use of part of Field No. 657, St. Ouen, from agricultural to open storage and the decision of a Board of Administrative Appeal which upheld the Committee's decision. The Board considered their decisions relevant as the present case was similar in many respects.

7.5 The Board, having been apprised of the difficulties that had been caused by the works undertaken during the Occupation which had prevented full reinstatement of the field to agricultural use, nevertheless noted that the concrete hardstanding in the south west corner of Field No. 534 only formed a small part of the area in question. The Board also recognised that a large number of farms or farm holdings have land

which is deemed unusable for agriculture but that this did not necessarily mean that this land could be used for storage instead.

7.6 The Board recalled that an enforcement notice had been served on Mr. Le Ruez to cease the unauthorise use of part of Field No. 534 for the storage of skips. This notice also required the removal of all materia placed on the land to create an area of hard standing and sought the return of the land to the condition it was in prior to the unauthorised work. The notice had been served on Mr. Le Ruez on 11th June 2003, fo compliance by 11th August 2003. However, following the request for a hearing by a Board of Administrative Appeal, the enforcement proceedings had been put on hold on 6th August 2003 pending the outcome of this hearing. In the circumstances, the Board was of the opinion that Mr. Le Ruez shoul be given sufficient time to comply with the requirements of the enforcement notice. It also considered that a reasonable period of time should be given for the relocation of the skips currently stored on Field No. 534 if these could not be accommodated within the existing commercial area at Home Farm.

Signed and dated by –

..... Dated:.....
Advocate R.J. Renouf, Chairman

..... Dated:.....
Mr. J.G. Davies

..... Dated:.....
Miss C. Vibert

APPENDIX C

BOARD OF ADMINISTRATIVE APPEAL

29th March 2004

Complaint by Mr. and Mrs. D. Ratel represented by Advocate C.J. Scholefield against a decision of the Environment and Public Services Committee

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

1. Present –

Board Members

Mrs. C.E. Canavan, Chairman
Mr. T.S. Perchard
Mrs. M. Le Gresley

Complainants

Mr. and Mrs. D. Ratel
Advocate C.J. Scholefield

Environment and Public Services Committee

Deputy J.A Hilton, Vice-President
Mr. P.C.F. Thorne, Director of Planning, Planning and Environment Department
Mr. R.T. Webster, Principal Planner, Planning and Environment Department

States Greffe

Mrs. A.H. Harris, Deputy Greffier of the States

The hearing was held in public at St. Brelade's Parish Hall on 29th March 2004.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. and Mrs. D. Ratel, represented by Advocate C.J. Scholefield, against a decision of the Environment and Public Services Committee regarding permission given under the Island Planning (Jersey) Law 1964 for a proposed development at South View, La Route de la Baie, St. Brelade lying immediately north of the Complainant's property "Carysfort". The Complainants urged that the decision be reviewed for the following reasons –

(a) Article 9(2)(d)– this decision could not have been made by a reasonable body of persons after proper consideration of all the facts; and

(b) Article 9(2)(e)– this decision was contrary to generally accepted principles of natural justice.

3. Site Visit to South View, St. Brelade

3.1 After the formal opening of the hearing at St. Brelade's Parish Hall the Board and the parties visited the site, which comprised "South View" (a Building of Local Interest), an old two-storey dwelling forming part of a residential terrace located in the middle of St. Brelade's Bay behind the old Post Office and just west of the main public car park (next to Sir Winston Churchill Memorial Park). The site includes an

open area of land and cotil to the east, between the existing dwelling and public car park. The property and land are just to the north of the property known as Carysfort and the adjacent property known as Yellow Sands. The Board viewed the site both from the open area of land and from the first-floor north-facing balcony and top-floor terrace of Carysfort. The Board noted the location of a large timber storage shed which had existed on the south-eastern part of the site but had now been cleared. The Board also noted photos taken by Mrs. Ratel showing profiles which had been erected in May 2003 up to eaves height. The photographs showed a blue line which represented the eaves height and, while it was not a full profile, alongside South View, the Committee felt it was in a position to visualise the proposals.

3.2 While on site the Board was apprised that Yellow Sands belonged to relatives of Mr. and Mrs. Ratel and that Advocate Scholefield was representing both properties.

4. Summary of the Complainant's case

4.1 The Board had received a written outline of the arguments to be advanced on behalf of Mr. and Mrs. Ratel prepared by Advocate C.J. Scholefield and dated 2nd February 2004 upon which Advocate Scholefield elaborated at the hearing. Advocate Scholefield advised the Board that Mr. and Mrs. Ratel had found an earlier plan for the site acceptable – this showed a one-and-a-half-level cottage style development with a high quality of design. However, the developer had dismissed this style of development as being financially unviable. This plan was known as "the Garner plan". On 22nd May 2003 the Environment and Public Services Committee had approved a two level development with a shallow roof and a less attractive design, known as "the Le Sueur plan", which the developer did find to be financially viable. However, he suggested that the Le Sueur plan represented an overdevelopment of the site and was to the detriment of Mr. and Mrs. Ratel.

4.2 Advocate Scholefield elaborated on the 8 points of the written submission–

(i) The change in the decision of the Committee was abrupt and disregarded the views of the Committee as previously constituted and the views of its officers. The circumstances of the decision were that it was taken in the absence of the President; there was not a complete set of profiles; the Committee had received special pleading from Deputy L.J. Farnham on behalf of the Tourism Department. Neither Mr. and Mrs. Ratel nor their representative was present and the Complainant's felt that this was a bad decision which could not have been taken by a reasonable body of men and that the circumstances in which the decision was taken were also inappropriate. The proposed properties in the revised Le Sueur plan would, in the opinion of the Complainant's, be intrusive on the neighbours.

(ii) St. Brelade's Bay had suffered in the hurricane of 1987 however, attempts had been made to improve the hotels in the area and the example of the St. Brelade's Bay Hotel with an improved roofline was quoted. Without the proper scaffolding profile poles on the site, the Committee would have been unable to see the wider impact on the bay, in particular distant views from either side of the bay.

(iii) The St. Brelade's Bay Environmental Improvement Plan Consultative Report was published in January 1989 and in particular included guidelines relating to residential areas. (Paragraphs 7.4(1) to (4)). The Complainant's were not sure whether the Committee had this particular plan at its disposal during consideration of the proposals for South View. Mr. and Mrs. Ratel were of the view that this plan was a reference point for all development in the bay. This decision to approve revised plans for the site had been taken in May 2003 by a Committee established in the autumn of 2002 which might not have been aware of the policy relating to residential areas in the St. Brelade's Bay Environmental Improvement Plan.

(iv) In 1998 the Tourism Committee had appealed the former decision on behalf of the applicant because the proposals for self-catering accommodation were not viable. Financial viability was offered as the only reason for increasing the number of units on the site.

(v) The site fell into 2 zones, the Green Backdrop Zone, and the wedge at the rear of the site was in the Green Zone. The development would take place in the Green Backdrop Zone to which Policy C05 would apply. Advocate Scholefield believed that Policy C05 requires new developments to leave the natural landscape as the dominant element of the street scene.

(vi) The prejudice to neighbours occupying Carysfort and Yellow Sands would be significant. The gable end of the north-south block would reach within 1.2 metres of the boundary with Yellow Sands. The development would be multi occupancy with noise and activity generally close to the boundary. There would be vehicular prejudice: vehicles were already to the east and south of Carysfort and Yellow Sands, and now there would be cars also along the immediate northern boundary where the parking areas adjoined Carysfort. There would be noise disturbance from vehicular activity and it was contended that the hire car use would not have been as intensive as holidaymakers using the site, who would come and go at all hours including the evenings.

(vii) As a tourism development, it appeared that tourism ventures could be given every opportunity which might lead to overdevelopment. The tourism season was at best between 13 and 15 weeks a year. However, the units would not stand empty, and it was established policy to make self catering accommodation available to lodgers outside of peak periods. Therefore, the development would be a tourism development for 13 weeks of the year, and potentially a lodging house for the remaining 39 weeks. It was noted that another self catering development, the Mariners Cottages, were leaving the tourism market and therefore doubt must be cast over the viability of this development in tourism. It was felt that as a minimum, the counter arguments of the respondents should have been heard at the time the Committee was considering its decision.

(viii) Road safety is an issue in a 20 mile an hour zone, with no pavements or splay lines. It was highly likely that the hire car representative probably assisted with the egress of cars from the site, and drivers driving hire cars for the first time were likely to start off very carefully. With daily familiar use it was felt that this exit would be dangerous.

4.3 The Committee in 2003, of which Deputy M.F. Dubras was President, disagreed with the view of the Committee presided over by Deputy N.L. Quérée over a period of 8 years and on 8 separate points. Indeed, the Committee had been prepared to defend its position in the Royal Court with regard to the refusal of the Le Sueur plan application. However, Deputy L.J. Farnham had made a special pleading on tourism grounds and the Committee abandoned its intention to defend its position in court and reversed its earlier decision. This the Committee had done without allowing the opposite opinion to be put by the applicants at the site visit.

4.4 Advocate Scholefield put a number of questions to the representatives of the Planning and Environment Department which elicited the following information –

(a) The St. Brelade's Bay Environmental Improvement Plan had not been available to the Committee in May 2003 when the previous decision was overturned. Section 7 of the plan contained a presumption against new residential development, however, the Plan was not a valid reason for refusal of a self-catering facility.

(b) The personal professional opinion of the officers was that the Garner plan was more sympathetic. However the Committee decision was the issue and it was always possible to have more than one right conclusion. The report showed the facts underlying the Committee decision, which the officers were attending the Review Board hearing to explain.

(c) The Department considered that the Committee had a reasonable case to win the Le Sueur appeal in court. In arriving at its decision in May 2003 the Committee did not fear that it would lose the court case. Both the Committee and the Department considered that there was a good case.

(d) No further self-catering accommodation was planned in St. Brelade's Bay, most of which was in the Green Zone, therefore, there was no space to accommodate further development of this kind.

The La Rocco Self Catering Apartments at La Pulente were thriving, and the former Chalet Hotel had obtaine recent approval. Deputy Farnham had considered that South View was an ideal location for self-catering facilities. The Board noted that the Tourism Registration Certificate had been amended in February 2001. Previously the Registration Certificate stated that holiday self-catering accommodation should not be occupied by non-holiday makers for more than 90 days. In February 2001, following an appeal by the Jersey Hospitality Association, the Certificate had been changed so that self-catering would be the primary use of the accommodation at the time of normal tourism demand and this would exclude the period November to February. Therefore, the accommodation must be used for tourism purposes from March to October.

4.5 Advocate Scholefield indicated that it was a strange change of tack for the Committee to abandon the court case and approve the new application and wondered whether this had occurred because it was a new Committee. The Department agreed that the change had been motivated by the Committee change. A submission had been made by Advocate Voisin with a final plea to the newly constituted Committee. This submission was supported by further supplementary information which included a photo montage. The Le Sueur proposals were agreed subject to the retention rather than the replacement of South View.

4.6 In the Island Plan 2002, St. Brelade's Bay was designated as a tourism destination. Part of that plan was to encourage the economy of the Island which also would include supporting new tourism development. There is very little self-catering accommodation in the Island, despite this type of accommodation being very popular.

4.7 The profiles put up in 2003 were not complete; however they showed the proposed development up to ridge height. The footprint was clearly identified and the eaves height was picked out with a blue line. Viewed alongside South View, and with the architect on site to explain, the Committee was able to visualise and determine the application.

4.8 The Committee can modify or change a decision and is not bound by the decision of a Committee as previously constituted. If the Committee as presently constituted were to review the proposals under Article 7 of the Island Planning Law it could modify or revoke the decision. However this would carry with it the right to appeal under Article 21 for compensation for loss arising from the change in decision While it is possible to change the decision it is not so easy to revert back to a lesser plan.

Advocate Scholefield drew the Board's attention to Policy TR2 described on pages 2 and 3 of the Committee's submission. He stated that the incomplete profiles erected for the May 2003 consideration detracted from the ability to access the impact of the development from the Church and from Le Grouin The development would cast into shadow, at certain times of year, the properties adjacent and noise and smells would be intrusive. The trellis to be erected to cover the car parking spaces would be insufficient to mask noise, and the caution voiced by the Public Services Department on the safety of egress had been ignored. He expressed concern that the decisions of Committees could be overturned each time a new membership of a Committee occurred and that developers could take advantage of Committee membership changes.

4.9 Advocate Scholefield summarised the Complainants' arguments, and concluded that both the substance of the decision taken by the Committee, and the way that it was made were defective.

5. Summary of the Committee's case

5.1 The Board had received a written summary of the Committee's case before the hearing and the written submissions were enlarged upon by Mr. Thorne.

5.2 Mr. Thorne stated that the case of Mr. and Mrs. Ratel turned on 2 appeal grounds – whether the decision was reasonable and whether Mr. and Mrs. Ratel were denied natural justice when they were not able to attend the site visit. Mr. Thorne advised that Mr. Webster had spent a lot of time talking to Mr. and Mrs. Ratel and had kept them informed of developments in the application. While the Department had been surprised by the decision, this did not make the decision wrong or defective or illegal. Officers do

not make decisions: the Committee exercises its judgement. The Committee is not bound by its predecessors and has a duty to consider all factors. It is also not bound to accept the advice of either Planners or Highway Engineers.

5.3 From July 2002 the site came within the area designated the Tourism Designation Area detailed in the 2002 Island Plan. It made sense therefore to have regard to the new policies. The Committee would have had regard to Policy TR2 as set out in the Committee's submission and the new Island Plan approved by the States in 2002, which was more recent than the St. Brelade's Bay Environmental Improvement Plan of 1989.

5.4 The issues of access and the retention of South View as a Building of Local Interest were important, but the main issue was scale and development of the site. The Committee as newly constituted simply took a different view. As detailed in paragraph 4.3 of the Committee's submission, the Committee went to the first-floor north-facing balcony of Carysfort to view the site and took account of all of the information. Mr. Webster gave Mr. and Mrs. Ratel's concerns orally to the Committee on site. The scaffolding was erected to eaves height, but the Committee felt able to visualise the development and felt that the gable end adjacent to Yellow Sands, which had a hipped roof, would run away from the eye. Mr. Thorne corrected the statement in the Committee submission and advised that there was a small window at ground floor level in the gable end of the building. The plans showed planting along the boundary and on the trellis and the Committee can enforce this condition. The wooden structure which had been on site before was at least one storey albeit that this building had now been removed.

5.5 The hire car service which had previously been run from the site according to Mr. Parry, the site operator, was estimated to have a considerable movement of cars. The Committee took the view that holiday use would be less intrusive. On the issue of access and visibility splay, the Committee had taken the view that access and egress would be less frequent and would be an improvement on the previous use. Mr. Thorne had driven to the site in his own car for the site visit and had discovered that egress was not too bad from the site.

5.6 The Tourism Board representation was clearly significant to the Committee. The Committee judgements on Policy TR2 are subjective ones. Mr. Thorne shared the Principal Planner's view in relation to the site, but the Committee had taken its own, different view.

5.7 With regard to natural justice it had been a pity that Mr. and Mrs. Ratel had been out of the Island at the time of the site visit. The Review Board noted that the Planning Law does not require the advertisement of planning applications; it only required the keeping of a register of applications. In addition there is no right of appeal on behalf of third parties. Nonetheless, in the public interest the Committee does advertise planning applications. There are only 2 parties in an application, the applicant and the Committee.

5.8 The applicant has a right to know the grounds which will be taken into account by the Committee when it considers an application. Representations are copied to the Committee, although this is not necessary, and are considered. However, counter-representations could be endless. The applicant has a right to respond to representations. The Committee therefore did not deny Mr. and Mrs. Ratel's right to natural justice as they did not have a role in the application. Mr. and Mrs. Ratel had been advised that there would be a site visit but the dates were unknown. The Committee did view the site from Mr. and Mrs. Ratel's first-floor balcony, but Deputy Farnham was not present for the decision. This was taken when the Committee was back in the Committee room, as there was a deliberate policy not to make decisions on site. Mr. Thorne believed the decision was reasonable in all the circumstances. It took into account the 2002 Island Plan, material considerations, the Committee exercised its duty under the Law, and while the decision was not one with which Mr. and Mrs. Ratel or the Principal Planner agreed, it was lawfully taken. The issue of financial viability was not a matter for the Committee, it was irrelevant as the Committee has the obligation to deal with a matter as a planning matter only. The Committee did take into account wider views across the bay.

5.9 In relation to the Court case, there were no guarantees that the Committee would have won the appeal.

6. The Board's findings

6.1 The Board, having taken into account all the arguments put forward both orally and in writing by the Complainants and having regard to the actions taken by the Committee, did not consider that the Committee's procedures were inappropriate. The Committee was clearly swayed by the arguments put forward on behalf of the Tourism Industry and by the retention of South View. The Board did not believe that the Committee took financial viability into account. The Board noted that the Committee was not duty bound to hear Mr. and Mrs. Rate's representations at a site visit and therefore, rejected the contention that the decision of the Committee was contrary to the generally accepted principals of natural justice.

6.2 However, having considered the relevant policy for Tourist Destination Areas, Policy TR2, the Board is of the view that the decision to accept the Le Sueur plan could not have been made by a reasonable body of persons after proper consideration of all the facts. The Board noted that, in accordance with Policy TR2, proposals for new tourist accommodation and support facilities would normally be permitted in the tourism destination areas provided that the development complied with a number of criteria. The Board considered that the following criteria had not been met –

(The development ...)

(i) will not unreasonably affect the character and amenity of the area;

(ii) will not have an unreasonable impact on neighbouring uses and the local environment by reasons of noise, odour, visual intrusion or other amenity considerations;

(iii) will not have an unacceptable impact on a site of special interest, building of local importance or conservation area;

(iv) will not lead to unacceptable problems of traffic generation, safety or parking;

(vii) is appropriate in scale, form, massing, density and design to the site and its context.

The Board feels strongly that criteria 1(i), (ii), (iv), and (vii) of Policy TR2 have not been met, and arguably (iii) has not been met either. The Board is mindful that the Garner plan appears to satisfy the criteria of Policy TR2 however the Le Sueur plans, are inappropriate in the Board's view.

Signed and dated by –

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

..... Dated:.....
Mr. T.S. Perchard

..... Dated:.....
Mrs. M. Le Gresley

APPENDIX D

BOARD OF ADMINISTRATIVE APPEAL

16th February 2004

Complaint by Mr. and Mrs. J.P. Marett-Gregory and Mrs. P. Callec (represented by Deputy G.C.L. Baudains) against a decision of the Environment and Public Services Committee

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

1. Present –

Board Members

Mrs. C.E. Canavan– Chairman.
Mr. J.G. Davies
Mr. P.G. Farley.

Complainants

Deputy G.C.L. Baudains (representing the Complainants)
Mr. J.P. Marett-Gregory
Mrs. N. Marett-Gregory.

Environment and Public Services Committee

Deputy J.A. Hilton, Vice-President
Mr. R. Webster, Principal Planner, Planning and Building Services
Mr. D. St. George, Traffic Engineer, Public Services Department.

States Greffe

Mr. P. Monamy, Senior Committee Clerk.

The hearing was held in public at St. Clement's Parish Hall on 16th February 2004.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. and Mrs. J.P. Marett-Gregory and Mrs. P. Callec (represented by Deputy G.C.L. Baudains) against a decision of the Environment and Public Services Committee to reject an application for the construction of a parking area in front of Nos. 16 and 17, Beach Crescent, St. Clement.

3. Site Visit to 'Nos. 16 and 17 Beach Crescent, St. Clement'

3.1 After the formal opening of the hearing at St. Clement's Parish Hall the parties went together to visit the site.

3.2 At Nos. 16 and 17 Beach Crescent, St. Clement' the Board was shown the proposed location of the parking area. The Board noted that the Complainants wished to form an access/parking area to the front of their houses which would involve removing a roadside granite wall and rebuilding it further back towards their existing garden wall but separated by an existing 3' 6" wide public footpath.

3.3 The Board noted that the western end of the site (in the ownership of No. 16 Beach Crescent) abutted the garage at No. 15 Beach Crescent and was wider than the eastern end (in the ownership of No. 17 Beach

Crescent).

4. Summary of the Complainant's case

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

4.2 The Board, having viewed photographs and a plan of the site and the adjacent area, was informed by Deputy Baudains that no parking was available to serve the properties, with the nearest public parking being at Green Road and the nearest public car parks at La Route du Fort and Plat Douet Road St. Saviour. It was suggested that the need for the owners of Nos. 16 and 17 Beach Crescent to driv around the vicinity looking for a parking space was not helpful or conducive to protecting the environment. It was further contended that the proposal would not result in a hazardous situation for either the owners of Nos. 16 and 17 Beach Crescent whilst exiting the site, or passing motorists, as there was clear visibility for both, the properties being situated on the outside of a long curve in the road. It had been verified by the Parish that there was no history of accidents at that location, despite the neighbouring properties having garages which gave out directly onto the main road. Whilst the Complainants recognised that the Public Services Department preferred to see an exit that was at a 90 degree angle to the road, it was considered that this was too inflexible (and more suited to a housing estate setting) and that the Department had indicated in its undated report (page 7) on behalf of the Environment and Public Services Committee that "the 'slip road' proposed is not in itself a problem, except that if the owners parked facing west, then it would be dangerous to exit." Consequently, it was apparent that in the event that vehicles were to exit only to the east, the Public Services Department would not be averse to allowing the 'slip road' arrangements proposed. Deputy Baudains outlined the outcome of an exercise' he had conducted on-site designed to estimate the driving position and visibility line of a driver exiting from the position of the proposed parking area. The suggestion by the officers of the Public Services Department that high-sided vehicles (in particular) stopping on the road to the west would severely obscure visibility from the proposed parking area was rejected as an unlikely hypothetical scenario. Overall, the Committee's refusal of the application was considered to be unreasonable in the circumstances, given the 30 mph speed restriction along that stretch of road and the numerous exit points from the developments which had been undertaken along the other side of the road directly opposite Nos. 16 and 17 Beach Crescent. It was recognised that examples which had been cited by the Complainants of other locations where similar considerations might apply were not directly comparable with the present application.

5. Summary of the Committee's case

5.1 The Board had received a full written summary of the Committee's case before the hearing and the written submissions were amplified by Messrs. Webster and St. George. Mr. Webster emphasized that th Committee's refusal of the application was entirely in conformity with the Law and that all appropriate procedures had been followed correctly. The reason for the refusal of the application was based on highway considerations, with the Committee being obliged to consult the relevant highway authority – in this case the Public Services Department which, although reporting to the Environment and Public Services Committee, remained a separate entity. In this case, the highway authority had objected to the application on highways grounds. It was confirmed that the whole Committee had not visited the site during the period of consideration leading up to the refusal of the application. Mr. St. George indicate that the space available within the proposed parking area would be extremely limited and that there would be occasions when vehicles would inevitably be required to reverse in order to park. In addition, and particularly in relation to No. 17 Beach Crescent, there would be barely sufficient room to alight from a vehicle in safety. Whilst it was recognised that the proposed arrangement might work for vehicles exiting the site to the east (in that they would be doing so in the direction of the nearest traffic stream), it could not be guaranteed that the current owners of Nos. 16 and 17 Beach Crescent would always move off in that direction, and no such requirement could be imposed upon future owners of the properties. La Greve d'Azette was known to be a road with traffic volumes in excess of 1,400 vehicles an hour at peak times and was designated as a "high" category road. In the Department's guide (published in 2003) a level of 400 vehicles at the busiest times was considered to be the appropriate level for a road to be categorized as "high." The guide also indicated that parking should provide sufficient space for a vehicle to turn within a

site. This was the situation with regard to the various exits onto the road opposite Nos. 16 and 17 Beach Crescent, where there were large communal areas which enabled vehicles to manoeuvre adequately. It was considered that visibility westbound would not be sufficient to enable vehicles to exit the site in the manner proposed. Perpendicular exiting (i.e. at 90 degrees) would be the safest option, unless a one-way road was involved. It was emphasized that parking in the proposed western bay would restrict visibility from the eastern parking bay. In addition, the western parking bay would itself be obscured by the edge of the garage at No. 15 Beach Crescent. In answer to a question posed by the Chairman, Mr. Webste confirmed that the neighbours to the west of No. 16 Beach Crescent enjoyed an "established use" as regards exiting from their garages directly onto La Greve d'Azette, which pre-dated the Island Planning (Jersey) Law 1964 and would not be permitted under current legislation. It was also indicated that the Environment and Public Services Committee would generally not over-rule a departmental recommendation made on highway grounds in view of its potential exposure to liability. However, whilst there might be limited circumstances whereby such over-ruling would occur in order to improve an existing situation, this was not the case in relation to Nos. 16 and 17 Beach Crescent where highway safety was the primary issue for the Committee. Mr. St. George emphasized that the Committee did nc wish to see a general lessening of safety considerations, which would inevitably tend to lead towards a proliferation of 'worsening' situations and, as common sense would dictate, could result in a higher number of accidents. The important factor for the Committee was that the exiting vehicles must be able to clearly see oncoming traffic. In response to a question posed by Mr. Davies, the Board noted that other examples which had been referred to in the Committee's submission (where front walls had been removed to allow parking to be created) related mainly to pre-Island Planning Law situations; or had been granted 20 or 30 years previously; or related to improvement issues, and could not be cited as valic precedents. Mr. St. George suggested that, even if the vehicle count for La Greve d'Azette had been less than 400 an hour, other factors would have led the Committee to refuse the application in respect of Nos. 16 and 17 Beach Crescent. However, it was clear that "visual amenity" issues were considered to be secondary considerations to highway concerns. Perpendicular (90 degree) exiting represented best practice and, in cases where the vehicle count exceeded 400 an hour, then the ability for a vehicle to turn on site would also be required. The delegations, having been thanked by the Chairman for their attendance, then withdrew from the meeting.

6. The Board's findings

6.1 The Board recognised that, whilst it was understandable that a property-owner would wish to seek to create at least one parking space on his property, it had to be recognised that this could only be achieved if there was a sufficient area of land available. It was clear to the Board that the 2 parking spaces proposed would have little room available for manoeuvring vehicles, particularly as regards the eastern space, and that it was inevitable that a vehicle would at some stage need to reverse into one of the spaces (particularly if the other was already occupied) at considerable risk to the vehicle and, potentially, other road users. It was accepted by the Board that it would be impossible for vehicles to safely exit the proposed site to the west and, given that it would not be possible to enforce any voluntary agreement or undertaking not to move off from the site in that direction (and bearing in mind too that it is human nature often to adopt the easiest course of action), such a situation would be untenable. The Board considered whether the courtesy of other road-users could be relied upon in order to minimise the hazards which could be presented by the proposal, but recognised that such would not be case at this location. The Board concluded that the narrowness of the site would preclude two vehicles being accommodated adequately and safely, in view of the proximity of the relatively narrow site to such a busy main road.

Signed and dated by –

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

..... Dated:.....
Mr. J.G. Davies

..... Dated:.....
Mr. P.G. Farley

APPENDIX E

BOARD OF ADMINISTRATIVE APPEAL

13th May 2004

Complaint by Mr. M. Dun and Mrs. A. Picot against a decision of the Environment and Public Services Committee

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

1. Present –

Board Members

Mrs. C.E. Canavan, Chairman
Mr. N.P.E. Le Gresley
Mr. P.E. Freeley

Complainant

Mr. M. Dun
Mrs. A. Picot

Environment and Public Services Committee

Deputy J.A. Hilton
Mr. G. Hutchison, Director of Architecture, Public Services Department

States' Greffe

F.G. Le Maistre

The hearing was held in public in the Halkett Room at Morier House, St. Helier, on 13th May 2004.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. M. Dun and Mrs. A. Picot against a decision of th Environment and Public Services Committee concerning the refurbishment of the Royal Court/States Building.

3. Site Visit

3.1 After the formal opening of the hearing at Morier House, the Board and the parties visited the site to view the refurbishment work that had been carried out to improve access to the Royal Court/States Building from the Royal Square. The Board was reminded that the plans for the new public entrance, granite podium and access ramp to the north side of the Royal Court/States Building (immediately adjacent to the Royal Square) had been set out in P.119/2000 – Royal Court House/States Building; approval of drawings (lodged *au Greffe* by the then Public Services Committee on 4th July 2000), which had been approved by the States on 19th July 2000. It was noted that, for the purpose of this hearing, the complaint related specifically to the design and detail of the completed building works in respect of the new public entrance and to access issues for those with a disability.

4. Summary of the Complainants' case

4.1 The Board had received a written summary of the Complainants' case in advance of the hearing and

Mr. Dun and Mrs. Picot elaborated on the written case at the hearing. They also highlighted a number of thei concerns during a lengthy site visit.

4.2 The Complainants alleged that the failure to ensure proper standards of access unfairly discriminated against persons with a disability or visual impairment. Furthermore, they claimed that the building works failed to comply with "modern good practice" and the statutory requirements of the Building Bye-Laws (Jersey) 1996, most especially Technical Guidance Document 7 (Stairs, Ramps and Protective Barriers) and Technical Guidance Document 8 (Access and Facilities for Disabled People). Mr. Dun also claime that not all of the conditions of the development permission had been complied with and felt that too much consideration had been given to the aesthetic features of the building at the expense of improvements necessary to meet the disabled access requirements. He was also critical of the decision to open the building in early 2003 prior to completion of the work on the new access facilities.

4.3 During the site visit, Mr. Dun drew the Board's attention to the lack of signage in the precincts of the Royal Square. He explained that not all visitors could be assumed to know the way to the new public entrance to the Royal Court/States Building (the building) and argued that directional signage should be introduced to signpost the route. This was especially important for visitors who needed to use the access ramp as this could only be accessed from the east side of the Royal Square (the Halkett Place end). He and Mrs. Picot also stressed the need for some form of barrier running along the outer perimeter edge of the access ramp to prevent wheelchairs or buggies from slipping or running off the access ramp. They also recommended that the outer perimeter edge be "highlighted" with colour or fluorescent strips to make it easier for the visually impaired to recognise. The Board was also apprised of the difficulties of manoeuvring along certain sections of the ramp, where it was too narrow for 2 wheelchairs to pass, and of the poor quality of the external lighting in this area.

4.4 Mr. Dun addressed the Board on the measures he felt were required to improve the safety and accessibility of the main steps leading from the Royal Square to the entrance lobby of the building. He pointed out that the rise (the height) of each step exceeded the height of 150 millimetres (150 mm) whic was specified in the technical guidance documents issued to ensure compliance with the Building Bye-Laws (Jersey) 1996. This meant the steps were steeper than would be recommended. The Complainants also felt that the handrails on the main steps were too short and should be extended from the top and bottom to provide more support for users who could experience difficulty in climbing or descending stairs. A further omission was the lack of tactile warning strips at the top and bottom of each set of stairs and the use of colour contrasting nosings on each step to assist users who were visually impaired.

4.5 The Board was also advised of the potential danger caused by the water discharged from an existing rainwater pipe which currently collected in a small pool at the top of the steps to the west of the main entrance podium. Concern was expressed by the Complainants at the lack of a hand rail on these steps and the introduction of tactile warning strips (to signify a change in levels) and colour contrasting nosings were again requested. They also proposed the use of safety glass in the unprotected window to the right of these steps, to reduce the risk of injury in case of an accident.

4.6 The Board, having entered the building and inspected the entrance lobby, noted the difficulties that might face a wheelchair user, such as Mrs. Picot, who was attempting to enter the building through the 2 sets of heavy double doors. In particular, it was recognised that the limited width of these doors made such access difficult for wheelchair users (although they met minimum width requirements) especially as the inner doors opened outwards into the small space behind the first set of double doors. The Board noted that a bell had been installed inside the first set of doors for persons seeking assistance but recognised that in cold weather, when one of the outer doors was likely to be kept shut, the single door access space was too small for some wheelchairs. As a result, the Complainants were suggesting that a further doorbell be located at the bottom of the main steps, which would enable visitors to request assistance at an early opportunity.

5. Summary of the Committee's case

5.1 The Board had received a written summary of the Committee's case before the hearing and the written

submissions were enlarged upon by Mr. Hutchison. He also addressed a number of the issues that had been raised during the site visit. These were also covered in his written response to the access audit diagram that had been submitted by Mr. Dun.

5.2 Mr. Hutchison, having apprised the Board of the background to the refurbishment of the building accepted that the rise of the steps in front of the main entrance did not meet the statutory requirement of 150 mm (they were 159 mm high) but explained that the going (the depth) of each step exceeded th required standard and that, consequently, they were the required pitch or steepness.

5.3 Mr. Hutchison advised the Board that care had been taken to ensure the handrails on the main steps did not extend beyond the top and bottom of the steps for safety reasons. However, consideration had been given to the introduction of tactile paving or warning strips at the top of the main steps, at a cost of approximately £1,200. It was noted that the technical guidance documents did not recommend their use at the bottom of a set of steps. Furthermore, it was accepted that the introduction of directional signage should be introduced.

5.4 Having regard to the existing double doors into the entrance lobby, the Board was reminded that the inner and outer doors were original features and that the Committee had had to work within the constraints placed upon it by the designation of the building as a Site of Special Interest (SSI). The Board noted that the Guidance Manual on Access and Facilities for All, issued by the then Island Development Committee in July 1992, recognised that there were "circumstances" when the recommendations for ensuring full accessibility for all "may prove to be unreasonable and a compromise will have to be reached".

6. Discussion

6.1 The Board discussed with the parties the measures that could be taken to improve access to the building. It was noted that disabled groups had been consulted from the earliest design phase of the refurbishment project but that the retention of the existing building had militated against a number of possible improvements. It was further noted that the priority attached to the various refurbishment works that had been proposed meant that certain access improvements could only be undertaken if there were sufficient funds remaining in the contingency for this project. However, it was agreed by Mr. Dun that the level of the entrance threshold was now acceptable and that access to the granite podium from the ramp to the east had been improved by relocating the refuse bin. Mr. Hutchison advised the Board that the current three month defects period expired at the end of June 2004, at which time the Committee would review the existing schedule and remaining budget.

6.2 The Board recognised that public access to the building was required during normal working hours and that the reception desk in the entrance lobby was manned at all times. However, although the two outer doors of the entrance lobby were supposed to be kept open, to improve access through to the inner swing doors, this was not always the case. Nevertheless, it was noted by the Board that records kept by the officers on reception showed that wheelchair users had accessed the building on just six occasions since it had re-opened in early 2003.

7. The Board's findings

7.1 The Board, having taken into account all the arguments put forward by the Complainants, and having regard to the actions taken by the Committee, accepted that the Complainants had made a number of valid points. It agreed that the Committee should consider erecting directional signage and that safety could be improved by installing railings along the outer perimeter of the access ramp, with gaps to allow access to the various entrances on this side of the building. It also noted that consideration had already been given by the Committee to the use of tactile warning strips at the head of the steps and the Board recommended that this work be carried out, subject to the necessary funds being available. The Board did not agree that it was necessary to extend the existing railings over the top and bottom of the stairs. It was also of the opinion that, due to the restraints of dealing with a Site of Special Interest, the Committee could not alter the entrance doors. Insofar as the complaint related to possible discrimination against disabled persons, the Board considered that the aforementioned safety issues were of a general nature and were not

restricted to disabled persons. Nevertheless, the Board was surprised at the low priority given to a number of measures which had been proposed for improving disabled access. Accordingly, it agreed that the decision to complete the refurbishment without greater consideration being given to these proposed works could not have been made by a reasonable body of persons after proper consideration of all the facts. Therefore, **the Board has decided to uphold the complaint on the specific points raised in this paragraph**.

7.2 In reaching its decision, the Board did not feel it needed to explore the technical arguments put forward by each side because of the more general principles that had been put forward. It also recognised that the Committee was having to work within the constraints of the existing building and with financial restraints.

7.3 The Board requests the Environment and Public Services Committee to reconsider the application taking into account all the specific issues covered in paragraph 7.1 and to inform the Board within a period of two months of the steps which it has taken to reconsider the matter and the result of that reconsideration.

Signed and dated by –

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

..... Dated:.....
Mr. N.P.E. Le Gresley

..... Dated:.....
Mr. P.E. Freeley

APPENDIX F

BOARD OF ADMINISTRATIVE APPEAL

3rd June 2004

Complaint by Mr. and Mrs. Philip Gray (represented by Deputy T.J. Le Main) against a decision of the Environment and Public Services Committee

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

1. Present –

Board Members

Mr. N.P.E. Le Gresley, Chairman
Miss C. Vibert
Mr. P.G. Farley

Complainants

Deputy T.J. Le Main (representing the Complainants)
Mr. Philip Gray
Mrs. Gray

Environment and Public Services Committee

Connétable P.F.C. Ozouf of St. Saviour
Mr. R.T. Webster, Principal Planner.

States Greffe

Mrs. Anne Harris, Deputy Greffier of the States

2. Summary of the dispute

The Board was convened to hear a complaint by Mr. and Mrs. Philip Gray (represented by Deputy T.J Le Main) against a decision of the Environment and Public Services Committee to approve an application 'in principle' to construct a small cottage in the grounds of Meadowvale, Les Grands Vaux, St. Helier.

3. Site Visit

The parties visited the site in question after the opening of the Hearing and viewed drawings of the proposals. The Panel conducted a thorough site visit, approaching the application site via the northern private roadway to the north of Les Grands Vaux Primary School, this lane having been developed 4 years ago. The Panel entered onto the application site, and also viewed the site from a number of vantage points namely from midway along the lane leading south to Les Grands Vaux, from a point adjacent to a building on the Jersey New Waterworks Company Limited land, from the end of the lane where it joins Les Grands Vaux, and from the layby to the south-east of the property on Les Grands Vaux. The Panel then walked up the lane to the north of Grands Vaux Primary School to view development which had been permitted up to within approximately 10 metres of Meadowvale. The Panel noted that from the southern vantage points and with the benefit of summer foliage the proposed cottage would not be seen.

Mr. Gray advised the Panel that many objections had been raised to the development along the lane and that, as part of that development, the paving over of the lane to Grands Vaux had been carried out at the

expense of the developer despite the fact that the developer did not own the lane, which was a private lane in the ownership of person(s) unknown. When on the application site, the Panel noted that the land was below the level of the property Sous les Arbres. The height of the ridge of the proposed cottage would stand 17 feet from the base of the conservatory of Sous les Arbres. It was noted that the occupiers of Sous les Arbres had not complained about the proposals.

4. Hearing – summary of the Complainants' case

Deputy Le Main advised the Panel that Sous les Arbres was constructed in 1992 on land that previously belonged to Meadowvale before it was purchased by Mr. and Mrs. Gray. It is a single dwelling with an area of garden. Approximately 4 years ago significant development had taken place on the lane to the north of Grands Vaux Primary School where land occupied by small cottages had been replaced by large, town-development-style dwellings abutting the lane. The developer had obtained permission for the gardens to the rear to be cut into the côtil which was situated in the Green Zone. In addition, although garages were included in the design, considerable on street parking occurred with the generation of increased traffic. The size and scale of these dwellings appeared to be out of character in this area and visually appeared as one continuous block of dwellings reaching to within 10 metres of Meadowvale. The application submitted by Mr. and Mrs. Gray was for a small cottage in the Built-Up zone to the east of Meadowvale which would not interrupt the façade nor interfere with Sous les Arbres. The Complainants could not understand how such significant development could be allowed immediately to the west of their property, that development being out of character with the area and the subject of numerous representations, while a small dwelling to the east of Meadowvale which had attracted no adverse comment was considered by the Environment and Public Services Committee to "adversely affect the character and amenity of the area". The Complainants were unable to comprehend how the development of the length of the lane to the north of the school could be allowed, while a small cottage screened by trees could be said to adversely affect the character and amenity of the area.

Deputy Le Main advised the Board that the application had been an 'in principle' application only, and that any detail of design, scale, location, etc. would be the subject of subsequent negotiation. The Complainants had not been asked to produce plans that would show a design that was not detrimental to the area in the Committee's view.

It was also noted that no objection had been received from the neighbours, nor from the property Sous les Arbres, or from La Société Jersiaise, and that this was unusual, as most applications attracted at least one objection.

The Panel heard that officers had given advice to the Complainants during the planning process in the form of pre-application advice which did not discourage Mr. and Mrs. Gray from continuing with the submission of an application. The advice indicated that, because of the location, there was no 'in principle' objection to the construction of a new dwelling on site, although there were constraints relating to Meadowvale (which had been added to the register of historic buildings) and to the proximity of both Meadowvale and Sous les Arbres and normal standards on parking space and garden area. In addition the department's Historic Building section did not consider that a new dwelling in this location would have a detrimental impact on Meadowvale, particularly given the presence of an existing boundary wall. The planning officer had sought and received a revised set of accurately scaled drawings which were deemed to be sufficiently accurate for proper assessment.

Mr. and Mrs. Gray had not been invited to attend the site visit at which their application was refused in order to give them the right of representation or to explain or answer any questions.

Deputy Le Main advised that the proposals for a small cottage to the east of Meadowvale adjacent to Sous les Arbres fell within the policies of the Environment and Public Services Committee and that the application had been rejected on a subjective basis only, without having given Mr. and Mrs. Gray the opportunity to either explain their proposals or to adapt the design so that it would be acceptable. This decision was inconsistent with the decision to construct an entire row of dwellings close to one another along the lane to the west up to the curtilage of Meadowvale.

Deputy Le Main showed the Board a copy of a letter, dated 24th May 2004, from the Managing Director and Engineer of the Jersey New Waterworks Company, advising that Mr. and Mrs. Gray were model neighbours and that the Company had agreed in principle that shrubs and trees may be planted on the Company land in the area of the boundary of Meadowvale at Mr. and Mrs. Gray's expense, the number and exact location of trees and shrubs to be agreed with the Company following consultation during the design of landscaping. While it was understood that the Environment and Public Services Committee might not feel able to place a condition on a development which required landscaping on land not owned by the applicant, the appellants made the case that the access road from the development to the north of Grands Vaux primary school leading to Grands Vaux road had been paved by the developer at the time of the development, notwithstanding the fact that he did not own the land on which that lane was situated.

5. Summary of the Environment and Public Services Committee's case

Mr. R.T. Webster recapped on the Committee's written submission, and reminded the Board that the Committee's decision to refuse the application was lawful and that one of the purposes of the Island Planning (Jersey) Law 1964 was to preserve and improve the environment. The application site was in the Built-Up area and therefore policies HO8 and GO2 applied, however the proposals should not "unreasonably affect the character and amenity of the area".

Mr. Webster explained that there was not an automatic right to build when an application site was situated in the Built-Up area. He showed to the Board a newspaper clipping from the time when the Island Plan was adopted. Extracts from that article read as follows –

> 'Planning yesterday outlined those restrictions in particular Policy GO2. This requires applicants to demonstrate that their proposals, will not unreasonably affect the character and amenities of the area, and that they will also not have an unreasonable impact on neighbouring uses and the local environment by visual intrusion or other considerations.'
>
> 'the fact that they are on the Built-Up area means that there is some flexibility, so some category E homes can be delivered – but it is not carte blanche for development.'
>
> 'landowners are being warned that there is "no automatic presumption in favour of developments" in the Built-Up area of the Island Plan.'

The Committee's view was that, in the particular context of the application and the location on the very edge of the Built-Up area and the Green Zone, the development would have detracted from the character and amenity of the area. Mr. Webster agreed that this was a subjective view. The officer at the time felt that the proposals complied with planning policies. However the Committee decided that it would spoil the character of the area.

Mr. Webster explained that the development on the lane to the north of Grands Vaux primary school was in the Built-Up area, with an encroachment into the Green Zone behind them, and the application site was a domestic garden in front of 2 buildings in a green valley immediately adjacent to the boundary with the Green Zone. The 2 sites were different and not comparable.

On the matter of officer advice it was noted that decisions of the Committee which were against officer recommendation were the exception rather than the rule. In this particular instance, the officer recommended approval, but also advised that a site visit should take place. He would not have recommended that a site visit be carried out of it was a totally clear-cut case. Also, in giving pre-application advice to Mr. and Mrs. Gray to submit an application he made it clear that this was without prejudice to the Committee decision. It was also to be noted that in cases where discretion could be exercised, then it followed that more than one reasonable conclusion was possible. The Committee came to a different conclusion to the officers, but this was not necessarily unreasonable. It was noted that there had been 3 site visits to Meadowvale –

- firstly, the initial Planning Sub-Committee (comprising 3 members) had visited the site and had rejected the application by majority;

- secondly the full Committee (comprising 7 members) considered a request for reconsideration and visited the site and rejected the application by majority; and

- finally the matter was referred to the newly constituted Committee (comprising 7 members) which visited the site and the application was rejected by majority.

Mr. Webster turned to the 2 sites which had been quoted by Deputy Le Main as comparable. Both site had been on restrictive areas and were now within the Built-Up area. While the Committee had initially refused applications for development on these sites it had later changed its position. They both involved much larger areas of land and the approvals subsequently given related to reduced schemes.

With regard to the screening of the application site using landscaping, the Sub-Committee had been mindful that the level of screening depended upon the time of year.

The Board noted a final comment from Mr. Gray at his disappointment that the proposed application had according to officers, passed the test of planning policies on an objective basis, but the application had failed based on a subjective appraisal. When viewed alongside all of the development that had taken place along the lane to the north of Grands Vaux primary school, which appeared more like a town development rather than one which was permissible on a country lane, the refusal was very ironic. He considered that the Committee has not been consistent as the houses on the lane would never be surrounded by trees and there had been many objections to that development. The proposed cottage could be hidden away by existing and proposed landscaping and no objections had been made.

The Board thanked the parties for attending and they then withdrew.

6. The Board's findings

In accordance with Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended the Board, while appreciating the difficulties that both the Committee and the Sub-Committee had faced and having regard to the overdevelopment in the neighbourhood and the fact that the site was not readily visible from anywhere, felt that the decision to refuse an 'in principle' application to build a small dwelling at Meadowvale was contrary to the generally accepted principles of natural justice (Article 9(2)(e) of the Law).

In accordance with paragraph (iv) of Policy HO8, it expressed its concern and hope that any development would not unduly detract from Meadowvale and its garden. In making this decision the Board was aware that a planning permission constituted an "in principle" decision only, and the Committee would have continuing opportunities to control the scale and design and landscaping so as to comply with its Policy H8(vii).

The Board accordingly asks the Environment and Public Services Committee to reconsider the application taking all the facts into account, including the development in the area and the previous history of this site, and to inform the Board within a period of 3 months of the steps which had been taken to reconsider the matter and the result of that reconsideration.

Signed and dated by –

..... Dated:.....

Mr. N.P.E. Le Gresley, Chairman

..... Dated:.....
Miss C. Vibert

..... Dated:.....
Mr. P.G. Farley

APPENDIX G

AHH/VNL/1.9.04 **1386/2/1/2(250)**

BOARD OF ADMINISTRATIVE APPEAL

19th July 2004 at St. John's Parish Hall

Complaint by Mr. D. Pallot against a decision of the Environment and Public Services Committee not to approve a permit to allow the use of a trailer mounted/mobile asphalt coating plant for more than 21 days in any consecutive period of 12 months

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

1. Present –

Board Members

Advocate R.J. Renouf, Chairman.
Mr. T.S. Perchard
Miss C. Vibert

Complainant

Mr. D. Pallot
Mrs. Pallot Snr.

Environment and Public Services Committee

Connétable P.F. Ozouf
Mr. R.T. Webster, Senior Planner

States Greffe

Mrs. A.H. Harris, Deputy Greffier of the States

The hearing was held in public at 9.30 a.m. on Monday 19th July 2004.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. David Pallot against a decision of the Environment and Public Services Committee to reject an application to allow the use of a trailer mounted/mobile asphalt coating plant for more than 21 days in any consecutive period of 12 months.

3. Site Visit

3.1 The Chairman opened the hearing and immediately adjourned it for a site visit to McQuaig's Quarry. The Board visited the site, which had been a quarry and storage for builders' materials and workshops until 1973, when the use was changed to the storage of plant hire machinery and equipment and building materials. It was noted that the site was very private, and could not be seen save, perhaps, by the neighbouring property to the North. The Board noted that Mr. D. Pallot had applied to keep permits already held for McQuaig's Quarry and to extend the exemptions as set out in Article 4 of the Island Planning (Movable Structures) (Jersey) Order 1965 to permit the use of a trailer mounted/mobile asphalt coating plant for more than 21 days in any consecutive period of 12 months. Mr. Pallot had left a piece of asphalt-making equipment running, which was similar to but older than that which he wished to acquire, in order to give an indication of any potential noise and air quality implications. Neighbours from nearby

properties were on site and addressed comments to members of the Board, which also viewed the road leading to the Quarry and the situation of nearby properties.

3.2 The Board reconvened at St. John's Parish Hall to hear the parties.

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 (together with associated correspondence) he had made.

4.2.1 Mr. Pallot began by explaining that his current operation consisted of road maintenance and that he carried out road maintenance and repair of potholes for 3 Parish authorities. He used a small, manoeuvrable machine and was able to offer very competitive rates. For longer projects, he was keen to provide an alternative to the existing monopoly run by Ronez and in this he was supported by Parish authorities. The equipment that he wished to purchase to develop his business, and which he wished to site at McQuaig's Quarry, could either be sited in one place, with aggregate and bitumen being brought to the site, or it could be used as a mobile unit, in which case it would return to the Quarry daily. Mr. Pallot wished to be able to operate the equipment at McQuaig's Quarry, although it was likely that for bigger jobs it would be taken to where the asphalt was required. The Board also noted that this machine was capable of recycling old tarmac as well as using fresh materials.

4.2.2 The Board noted that the Committee had a particular concern relating to traffic and, in order to gauge the quantities of raw materials used, and to assess the number of vehicle movements that would be required, the Board was advised of the capacity of the new equipment. The maximum output was of the order of 18 tons of asphalt per hour and asphalt could be stored in hot boxes which were mobile, and which would keep for 2 to 3 days. Even at top capacity, it was highly unlikely that the mobile plant would run for more than 4 hours a day because the asphalt needed to be hot. In 4 hours, 72 tons of asphalt could be made which would consequently mean 72 tons of materials leaving the site, with equivalent deliveries to the site of raw materials. In 10 ton trucks this would mean 7 loads, sufficient to lay a long stretch of road.

4.2.3 The Board noted that for a typical day patching roads, half a ton of asphalt was required. In the case of reinstatement work possibly 3 to 4 tons a day would be made, which was about a small lorry load. In terms of other vehicle movements, the Board noted that bitumen would be delivered once a month and there would be 30 to 35 tons per container. Fuel was kept in a storage tank and would be delivered once a month. Aggregates would be delivered to the site. Mr. Pallot did not propose to run the machinery every day, but certainly more than 21 days a year.

4.2.4 Mr. Pallot explained that the equipment was unlikely to be run for more than 2-3 hours a day on average as there was insufficient business to warrant longer hours of operation.

4.2.5 The Board noted that under the existing use for storage in the Quarry, Mr. Pallot was allowed to bring goods in and out daily and there were currently no restrictions at all on traffic movements.

4.2.6 The Board was advised that there had been long running discussions about what could and could not occur on the site. The Board was advised that as a quarry there had been a number of uses on the site before, including the manufacture of bricks. The change of use consent to storage granted in 1973 had removed this manufacturing aspect. In addition concrete had been made at the site during the 1960s. Mr. Pallot advised that in the 1960s the area was classified as a purple industrial zone and this had changed in 1974, a year after the change of use was granted, to green zone. Bearing in mind the Pallot family had acquired the site on the recommendation of the then Chief Officer of the Planning Department, the subsequent imposition of a new zoning meant effectively that it was not possible for the site to evolve.

4.2.7 Mr. Pallot brought to the attention of the Board the Island Plan Review prepared by Professor McAusland dated November 2001 paragraph 8.5.1 which stated–

"It is convenient here to consider R82 dealing with the McQuaig's Quarry. The site has a history as

tangled and confused as is the site itself. Originally, as its name implies, a quarry, it is now used for a variety of purposes none of which have a connection with quarrying, the combined effect of which however is to leave the site in, quite simply, a mess. The issue between the present owners and the Committee is whether the present uses are legal or if they are not, they should be legalized by a permission and in the context of the present draft Plan, as zoning of the land as an industrial site which would facilitate the granting of the necessary planning permission."

4.2.8 The Board noted that a number of businesses not owned by Mr. Pallot rented land in the former quarry, with the following approximate vehicle movements –

Mercury Construction – 4-5 small trucks per day;
J. André – 3-4 times a day;
Reg's Skips – a number of skips twice a day;
C. Le Quesne– a number of movements on one day a week, plus use of a crane and hoist to move containers.

5. Summary of the Committee's case

5.1 Mr. Webster explained that in 1973 the use of the Quarry had been changed to the storage of plant hire machinery and building materials. While there had been some confusion early on about the uses of the Quarry, during the last 20 years the Committee had been consistent. Any of the uses associated with the running of a quarry had disappeared in 1973 with the application for storage. The Island plan was reviewed every 10 years and in the recent Island Plan the area had been designated as green zone.

5.2 The background to the Island Plan Review carried out in November 2001 was that the 1987 Island Plan was being reviewed, and the Committee produced a draft Island Plan which it sent out for consultation. Representations had been invited from the public and Professor McAusland had been appointed to review the representations received. Where the Committee agreed with comments made by the public, then the draft Island Plan was modified; where the Committee did not agree with those comments then it maintained its position. Mr. M. Dun, who was advising Mr. N. Pallot, the applicant's father, had requested in 1993 that the Quarry be zoned as industrial land. The relevant extract from the Island Plan review reads as follows –

"8.5.2 Not for the first time, I must reiterate that my brief does not extend to development control and this is pre-eminently a development control and enforcement matter. That said, I do not believe that an impartial reading of the material contained in this representation would produce any other conclusion than that there has been a sad lack of consistency and clarity on the part of relevant States Committees with respect to this site for very many years and that this state of affairs needs to be rectified as soon as possible.".

5.3 Mr. Webster explained that Professor McAusland was not recommending that a new permit be granted in respect of the site. He considered any unauthorized uses to be an enforcement matter. He also did not recommend that the site be rezoned. The Committee accepts that there may be other uses for the Quarry, but does not support asphalt making. The Committee was also concerned to avoid an intensification of use.

5.4 The Chairman asked what issues were "live" at the time the McAusland Report was written. The Board noted that at that time one of the Companies to which an area of the Quarry was sublet had been running a ready-mix business from this site. The company had been advised that it was able to use the site for storage but not as a ready-mix base. It was able to take materials in and out of the site without restriction.

5.5 It was also noted that Mr. A. Townsend from the Planning and Building Services Department had offered pre-application advice in connection with an application to prepare asphalt on site and he had sent information to the Environmental Services Section for comment. However no application had been received from Mr. Pallot for a period of 12 months. The pack of information which had been sent to the Department by Mr. Pallot on the Environmental side of the process had been forwarded to the

Environmental Services section and their comments had been referred back to Mr. Townsend, who had written to Mr. Dun to state that a number of issues needed to be clarified before pre-application advice could be given. The advice when given was that an asphalt plant was not appropriate in this particular location. The Department, in its letter dated 6th February 2004 to Mr. D. Pallot, had stated that "the Committee were not unsympathetic to your business proposals, but simply felt that they were inappropriate for this site. If you consider any alternative sites, or if you have any other proposals for this site, then we will be happy to offer you our informal advice prior to submitting an application…"

5.6 The Board noted that the application for a trailer-mounted asphalt plant at McQuaig's Quarry was refused because "the site lies within the Green Zone wherein there is a presumption against development. The proposal would extend and alter activities on the site in a manner which would be detrimental to the rural character of the area and the amenities of adjoining properties through the operation itself and the likely increase in traffic movements to and from the site. For these reasons the proposal is considered to fail to meet the requirements of policies C5 and G2 of the Jersey Island Plan 2002". The following issues had been taken into account in reaching that decision –

(a) The site was on the approach to Bonne Nuit Bay;

(b) The rural character and appearance of the entrance to the site;

(c) Although the site is visibly hidden away, there would be an impact from heavy goods vehicles on this area;

(d) There would be an impact of the vehicles on neighbouring properties, and in particular on the property owned by Mr. Le Marquand adjacent to the site;

(e) There was a concern with the inevitable noise, smell and dust which would be created by the plant.

5.7 The Board was advised that, had the issue just been one relating to noise, smell and dust then the application probably would have undergone a full environmental impact study. However because of the problems relating to traffic, the Committee had a fundamental problem with the application. This particular area is quiet, and the noise, not just of the equipment itself, but also the noise of loading the equipment with materials, the dust which would arise at the time of loading and the smell of hot bitumen would all be an issue.

5.8 Mr. Webster confirmed that the Committee was not able to control the number of vehicles entering and exiting the site under the current permit but could only control new processes. Under the terms of the existing permit the mobile unit could be stored on site but leave the site each day in order to produce asphalt. It was unclear whether the fact of the mobile unit entering and leaving the site on a daily basis would be an intensification of use under the Island Planning Law and whether an application would be required for this activity. It was noted that if neighbours complained about the traffic to and from the site for uses currently approved by the Committee then those neighbours could not take action. However, the Board took note of Mr. Webster's point that if there were a significant intensification of use of the site which was so material then there could be a requirement for a new permission.

5.9 The Board noted the recycling of asphalt would not affect the amount of traffic to the site, as the use of recycled material would mean that less aggregate and bitumen would be required, that is, it would replace goods coming in, not supplement them. The Board noted Mr. Pallot's point that agricultural farms were receiving permits for new uses and achieving industrial status, however in the case of a former Quarry previous uses had been removed at the time the change of use was agreed in 1973 and uses relating to construction work were not being allowed.

5.10 Mr. Pallot asked whether it would be possible to add conditions to a permit to limit the number of days per week or hours per day that equipment could be used. It was recognized that conditions must be reasonable and there should not be so many conditions that the permit should not have been granted in the first place. Mr. Webster confirmed that a manufacturing process requires a planning permission and that

the preparation of asphalt could be undertaken at the roadside when the mobile unit was used in connection with an adjacent reinstatement or road laying.

5.11 Mr. Webster advised that the Green Zone Policy gives a high level of protection against new developments. It recognizes the existing uses of land and lists activities that may be acceptable development. The starting point for the Green Zone Policy is Policy C5 which states that areas within the Green Zone will be given a high level of protection and there will be a general presumption against all forms of new development for whatever purpose. It also states that there will be a presumption against the approval of extensions to commercial properties other than extensions to tourist accommodation and tourist attractions.

5.12 Policy IC12 relating to new industrial development in the countryside states that there will be a presumption against new development for industrial purposes in the countryside. Policy G2 (General Policies) relates to general development considerations and sets out a series of 16 criteria which all applications must satisfy. Most importantly in this case this requires that any development will not unreasonably affect the character and amenity of the area, will not have any unreasonable impact on neighbouring uses and the local environment by reason of visual intrusion or other amenity considerations, and will not have an unreasonable impact on public health, safety and the environment, by virtue of noise, vibration, dust, light, odour, fumes, electromagnetic fields or effluent.

5.13 The Board thanked the parties for attending and they then withdrew.

6. The Board's findings

6.1 After consideration, the Board agreed that the decision not to allow the mobile asphalt plant to be sited at McQuaig's Quarry was based partly on a mistake of fact (Article 9(c) of the Administrative Decisions (Review) (Jersey) Law 1982) and could not have been made by a reasonable body of persons after proper consideration of all the facts (Article 9(d) of the Law). The Committee had refused the application on two grounds: (1) the operation itself and (2) the likely increase in traffic.

6.2 The grounds for refusal given by the Environment and Public Services Committee were that the proposed application would be detrimental to the amenity of the area, not only because of traffic implications, but also through the operation itself. The Board noted that the Environmental Health Officer (EHO) was ambiguous about this and expressed the view that it may be acceptable if certain controls are introduced. According to the Committee's report, the EHO had stated –

> "The operation of a trailer-mounted asphalt plant has the potential to cause nuisance from noise, smell and dust to neighbouring properties". "However, it is not possible to predict the extent to which such nuisance might occur. It would depend on the location of the plant within the Quarry, the amount of time the plant is used, the time of day the plant is used, and the time of year".

The Committee should not have rejected the application on this ground without ordering an environmental assessment.

6.3 On the second ground that there would be likely to be an increase in traffic –

(a) It could not be said that the traffic movements to the site would be greater if the mobile plant were located within the Quarry than if the mobile plant were stored at the Quarry and relocated on a daily basis. It was noted that the mobile plant could be stored at the Quarry and taken off the site daily without hindrance. Any increase in traffic movements associated with the existing use, or traffic associated with moving the mobile unit in and out of McQuaig's Quarry, could lead to an increased level of traffic which would also impact on the neighbours' enjoyment of their properties.

(b) The Board was mindful that there is an existing commercial storage use for the site which has implications for traffic which the Committee cannot control and which could increase in

connection with existing uses. There are already 5 businesses using the site and it is not impossible to conceive that some businesses will generate significant traffic even if operating within the existing storage use. The Board was of the opinion that it was not reasonable to refuse the application purely on the ground of intensification of traffic because, in the light of the Committee's lack of control of present traffic movements to and from the site, it cannot be said that the traffic generated by the use of the proposed equipment would be detrimental to the character and amenity of the adjoining properties.

(c) The Board considered that Mr. Pallot's assessment of traffic implications was reasonable. In this connection Mr. Pallot calculated that assuming maximum use of the proposed equipment, there would be 14 truck movements onto and off the site daily in connection with this application. In addition there would be vehicles driven by additional staff to be employed by Mr. Pallot and deliveries of materials on a monthly basis. All of this would be mitigated to some extent if one of the existing businesses ceased to use the site in order to provide space for the proposed equipment (as Mr. Pallot informed the Board). The Board felt that this amount of traffic was not unreasonable in the context of a commercial site and would not necessarily be detrimental to the amenities of the surrounding area, except to an extent to the property immediately to the north of the Quarry. The Board expressed the opinion that in the heyday of the tourism industry there were probably a great number of coaches using the road to Bonne Nuit on a daily basis and that before the recent contraction of the farming industry there were likely to be significant movements of agricultural vehicles and machinery in the area. The Board also noted that according to Policy G2 any development must not "unreasonably affect the character and amenity of the area". The Committee's notice of refusal stated that Mr. Pallot's application would be "detrimental to the rural character of the area and amenities of the adjoining properties". However the test to be applied by the Committee is one of reasonableness as an application may be detrimental in some extent to neighbouring properties without being unreasonable. Use of the word "detrimental" suggested that only the amenities of neighbours have been considered without also considering the reasonableness of the application in the context of the existing commercial use of the site.

(d) the Board felt that the Committee had not given adequate consideration to the use of the extensive powers it had to control the proposed operation under the Island Planning (Movable Structures) (Jersey) Order 1965. Firstly, in accordance with Article 2(4) of the Island Planning (Movable Structures) (Jersey) Order 1965, the Committee could attach conditions to a licence, including the total number and type of movable structures to be erected or stationed at any one time, the positions in which movable structures were sited, the taking of any steps for preserving and enhancing the amenity of the land, including (but not limited to) the planting and replanting of trees and bushes and for limiting the duration of the licence. This power would appear to enable the Committee to place conditions which would control noise etc. The Committee also has the ability, under Article 3 of the Order, to amend or impose new conditions on the permit. Article 3 states –

"Power to modify conditions attached to a licence

3.(1) The Committee may at any time modify the conditions attached to a licence, whether by the variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods, but before exercising that power, the Committee shall afford to the holder of the licence an opportunity of making representations.

(2) Any modification of the conditions attached to any licence shall not have effect until after such period (being a period not less than twenty-eight days) as shall be specified in the notification of the modification to the holder of the licence."

The Committee is therefore able to control the hours of operation especially as the Applicant is prepared to accept such control. It is clear that the control of hours of operation would also as a consequence control the number of vehicle movements to and from the site. It was noted that an environmental review had not taken place, however subject to the Committee being satisfied on the environmental impact, it appeared

possible for the Committee to adequately control a static operation.

6.4 The Board decided to request the Environment and Public Services Committee, in accordance with Article 9(2) and (3) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, to reconsider the matter, namely –

(a) to review the traffic implications of the application;

(b) to carry out an environmental impact assessment of the proposed operation;

and to inform it within a period of 2 months from the date of this report of the steps which have been taken to reconsider the matter and the result of that reconsideration.

Signed and dated by –

..... Dated:.....
Advocate R.J. Renouf, Chairman

..... Dated:.....
Mr. T.S. Perchard

..... Dated:.....
Miss C. Vibert

APPENDIX H

BOARD OF ADMINISTRATIVE APPEAL

26th July 2004

Complaint by Miss J. Riggall (represented by Deputy R.G. Le Hérissier of St. Saviour) against a decision o the Environment and Public Services Committee

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

1. Present –

Mr. N.P.E. Le Gresley, Chairman
Mrs. M. Le Gresley
Mr. T.S. Perchard

Complainants

Deputy R.G. Le Hérissier of St. Saviour
Miss J. Riggall
Mr. J.W. Godfrey, Chief Executive, Royal Jersey Agricultural and Horticultural Society
Mr. P. Gallagher, Planning Consultant.

Environment and Public Services Committee

Deputy J.A. Hilton, Vice-President
Mr. R.T. Webster, Principal Planner.

States Greffe

Mr. P. Monamy, Senior Committee Clerk.

The hearing was held in public at St. Martin's Public Hall on 26th July 2004

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Miss Jenni Riggall (represented by Deputy R.G. Le Hérissier of St. Saviour) against a decision of the Environment and Public Services Committee t reject an application for the construction of a new dwelling and formation of a sheep farm on land at Fields Nos. 24 and 26, La Rue de la Vignette, St. Saviour.

3. Site Visit to Fields Nos. 24 and 26, La Rue de la Vignette, St. Saviour

3.1 After the formal opening of the hearing at St. Martin's Public Hall, at which the Chairman outlined the nub of the complaint and explained the Board's requirements under Article 9 of the Administrative Decisions (Review) (Jersey) Law, the parties went together to visit the sites of both Miss Riggall's existing holding (2/3 vergées of land at Le Vieux Ménage, St. Saviour); and also Fields Nos. 24 and 2 St. Saviour/St. Martin.

4. Summary of the Complainant's case

4.1 Miss Riggall indicated that, having conformed to the requirements of the current (2002) Island Plan in relation to building in the Countryside Zone by submitting a suitable proposal for Agricultural Diversification (namely, the construction of a new dwelling and formation of a sheep farm on land at

Fields Nos. 24 and 26, La Rue de la Vignette, St. Saviour), she was concerned that her application remaine rejected, despite having been appealed.

4.2 Miss Riggall considered that the proposal would undoubtedly have benefits to the Island in terms of agriculture (diversification), education (hands-on experience for children) and also for tourism (visitor attraction).

4.3 Deputy Le Hérissier outlined in broad terms the concerns felt by Miss Riggall in relation to the comments which the Environment and Public Services Committee had made in relation to her written submissions and evidence. In particular, it was emphasized that the current proposal had developed over a period of some four years and balanced the need for the continuation of Miss Riggall's existing part-time occupation as Radiographer (in order to provide her with adequate income) with the needs of the proposed farm. It was underlined that the application was not a cynical ploy to achieve a new dwelling for Miss Riggall in a countryside setting. The business plan which had been presented was an honest and serious appraisal of the venture, with the capital elements involving the sale of her existing house because of the absence of an alternative source of capital funding. It was confirmed that Miss Riggall was in nc doubt as to the rigours of farm work and the added difficulties associated with juggling this with ongoing part-time employment. The need to live on-site in close proximity to the livestock (especially the sheep) was a prime requirement, particularly in the six-week lambing season. In summary, Deputy Le Hérissier commented that the application represented a remarkable attempt from someone energetic and enthusiastic enough to wish to diversify into agriculture, with all the issues this raised being wider than merely 'planning matters' and so very closely inter-related with those contained in the Island Plan 2002. For her part, Miss Riggall was eager to design the proposed small dwelling, which she considered would be sufficient for her long-terms needs, in whatever way might be considered appropriate in order to meet the requirements of the Law.

4.4 The Chairman sought and received clarification regarding the support of the Department of Agriculture and Fisheries to subsequent applications that might be forthcoming to rent additional land adjacent to Fields Nos. 24 and 26, St. Saviour. It was also confirmed that Miss Riggall was deemed to be a *bona fide* agriculturalist for the purposes of the Law. Miss Riggall indicated that, as based on advice received from the Department of Agriculture and Fisheries, it was envisaged that she would be able to be self-sufficient from the proceeds of the farm once her existing mortgage had been settled in approximately 10 years' time. It was confirmed that Miss Riggall had factored into her business plan the need for additional assistance from time to time, although her background in sheep farming was considered to be a significant factor in the likely success of the venture. It was ascertained that the existing supply of meat from the current undertaking was provided on a private basis, although a local meat producer had indicated that he would be prepared to purchase all the meat to be produced from the proposed larger venture.

4.5 Mr. Gallagher outlined his involvement as adviser to Miss Riggall on planning matters and confirmed tha he had no hesitation in supporting Miss Riggall's honest, detailed and well-presented application. Mr. Gallagher was in no doubt that the proposed enterprise would be sustainable, as evidenced by the support from the States Veterinary Officer, the Economic Development Committee and others. It was suggested that the proposals also had a wide measure of public support. Given that Miss Riggall had wide experience of the industry in which she wished to participate and was by no means a newcomer with simply a bright idea, Mr. Gallagher contended that the guidance on planning policies which was provided to assist applicants positively supported the application, rather than opposing it. Whilst it was recognised that the negative philosophy of Policy C6 (Countryside Zone) was that "there will be a general presumption against all forms of new development for whatever purpose", Mr. Gallagher suggested tha this had to be subservient to the overall positive policies expounded by the Island Plan 2002. Thus it was that Policy C6 listed ten types of development which might be permitted where the scale, location and design would not retract from, or unreasonable harm the character and scenic quality of the countryside.

4.6 In relation to Policy C17 (New Agricultural Buildings and Extensions), Mr. Gallagher contended that i was only the Environment and Public Services Committee which considered that Miss Riggall had not demonstrated that the proposed dwelling would be "essential to the proper function of the farm holding", as it was evident that the relevant agricultural professionals did. It was suggested that, in fact, the

application met all the relevant criteria and that the conclusion of the Committee that its "decision to refuse permission is not unreasonable having regard to all the circumstances of the case" was simply to cover the Committee in the event that the matter were to proceed to the Royal Court. From Miss Riggall's perspective, the conclusion was that her application positively encouraged diversification and that, if the Committee was not prepared to support her application, given the thorough and detailed work which had gone into the formulation of the submission, then what hope was there that any applicant would ever satisfy the Committee's requirements under the relevant policies.

4.7 Mr. Godfray emphasized that the Island's countryside required a better level of protection than hitherto, and contended that such improved protection would ultimately only be achieved through the success of agricultural ventures. If it were to be considered that Miss Riggall's application did not prove "essentiality" for the purposes of the Committee's policies, it was asked what application possibly could. It was important, of course, that such ventures should be economically viable, but this too had been demonstrated by the States' Agricultural Advisers. Diversification throughout the Island's agricultural and horticultural industries was undoubtedly the key to the future, and, although such a process might only now be in its infancy, it was clearly the way to go; and a greater emphasis was already being seen as regards the need to supply the local produce market. Mr. Godfrey suggested that whilst "precedent" appeared to be the Committee's greatest fear, approval of Miss Riggall's unique proposals in her particular circumstances were unlikely to form the basis of a precedent for another applicant. It was contended that the extensive planning which had preceded the application exceeded that undertaken in respect of any other application to develop a new farm, with the level of effort required to be devoted to the proposed undertaking unlikely to be forthcoming from any other applicant.

5. Summary of the Committee's case

5.1 Mr. Webster offered the apologies of the Committee and the Planning Department regarding additional information which had been received subsequent to the application for the present Hearing. Whilst additional information had been received from the States Veterinary Officer in support of Miss Riggall's application and had been presented to, and considered by, the full Committee on 7th June 2004, the outcome of such deliberation had not, in error, been conveyed to the applicant and/or her representatives, which was regretted. This was noted and accepted by Miss Riggall.

5.2 Mr. Webster indicated that the Environment and Public Services Committee fully supported the 'farm' elements of Miss Riggall's application, but confirmed that it was the proposal to establish a dwelling on the site that represented the stumbling block to its approval. Rather than concentrate upon the specific requirements and detail of the relevant policies (C4 and C17 in this case), it was necessary to consider the wider purpose of the Island Planning (Jersey) Law 1964, as amended, namely "to protect the natural beauty of the landscape of the countryside." It was the protection of the Island's countryside that was considered to be a major achievement of successive Committees, with the policies under the 1987 and current (2002) Island Plans recognising the value of agriculture to the Island. In particular, agricultural building were considered to be a special case and the requirement for them to be "essential" was the starting point for any consideration by the Committee. Whilst it was clear that the types of new development which "may" be permitted were set out in detail, this was on the basis that it could be demonstrated to the satisfaction of the Committee that such development was essential to meet agricultural needs and could not reasonably be met within the built-up area or from the conversion/modification of an existing building. Mr. Webster cited a number of recent examples where similar considerations had applied.

5.3 Mr. Webster went on to ask whether Miss Riggall might not be able to purchase an existing house in another location and rent such land as would be necessary for her needs in establishing the sheep farm proposed. It was confirmed that it was part of the Committee's rationale to gauge the viability of any unit to be created so as to obviate a need in the future to remove such agricultural conditions as might be imposed. The Committee was aware that the officers of the Department of Agriculture and Fisheries tended (as might be expected) to support the majority of applications to develop agricultural units and, whilst the Environment and Public Services Committee certainly took such views into account in its deliberations, it had to take a somewhat wider view of the potential effect of applications. In Miss

Riggall's case, the Committee was aware that the States' Livestock Adviser had indicated that the undertaking proposed would be viable, but only if the present level of part-time employment continued in order to provide an adequate level of income. The advice received by the Committee had been that between 400-500 sheep would be considered as a minimum number to enable a unit to be self-sufficiently viable. As regards the "essentiality" for a dwelling to be sited within the boundaries of the land to be farmed, the Livestock Adviser has indicated that this would only be a requirement for the six weeks of the lambing season, although it would also clearly be desirable at other times as it would be easier if sited close to hand. It was accepted that recent advice from the States Veterinary Officer indicated that constant supervision of poultry was essential, given events which had occurred, although it was recognised that other poultry operations in the Islands did not presently operate under such conditions.

5.4 Mr. Webster confirmed that the Environment and Public Services Committee supported the concept of diversification, but only in circumstances where this could be demonstrated as being viable. The Committee was well aware of the potentially disastrous effects on the countryside of allowing non-viable units to be established, which would inevitably be detrimental to the Island as a whole. Whatever view might be taken by the applicants, the Committee considered that approval of Miss Riggall's application would inevitably provide a precedent for the future. The difficulty for the Committee was to ensure consistency and fairness in its decision-making, and an important consideration was the cumulative effect of potentially 'poor' decisions. In the Committee's view, Miss Riggall's case was not proven to its satisfaction.

5.5 Deputy Hilton confirmed that the relevant Island Plan policies relating to applications for new housing in the Countryside Zone were Policies C6 and C17. Policy NR2 was also relevant to Miss Riggall's application because of the location of the site being in the Water Safeguard Area, although it was accepted that because the proposed development was intended to be connected to the foul sewer, Policy NR2 was not at issue in this case. The Deputy endorsed the comments which had been made by Mr. Webster and added that, although the Committee's submission had indicated that Miss Riggall's request for the matter to be re-considered by the Committee had been determined on 25th March 2004 by 4 members (including the 2 members who had participated in the original Planning Sub-Committee decision of 14th January 2004), the decision to maintain refusal of the application had subsequently been determined by the full membership of the Committee (all seven members) on 7th June 2004.

5.6 Deputy Le Hérissier, in summary, confirmed that Miss Riggall's application did not relate to a small holding with "just a few chickens", but represented a fully-researched, detailed and complete business case which indicated that the sheep and other livestock would provide the basis for a viable undertaking. It was suggested that subtle comparisons" with large United Kingdom holdings were not appropriate and that the continuing need for the benefit of income to be derived from ongoing part-time employment was an integral element of the business plan, at least until such time as the existing mortgage had been repaid. Deputy Le Hérissier emphasized the care with which the business and application had been formulated and commented that the structural changes which were presently underway within the Island's agricultural industry demanded a different way of thinking as regards the potential use of land. The basis of Miss Riggall's application was underlined as being its potential for both education and tourism, and it was suggested that the need for the Environment and Public Services Committee to give greater credence to such a different way of thinking was paramount. It was suggested that the present opportunity afforded by Miss Riggall's application should not be missed.

6. The Board's findings

6.1 The Board having given careful consideration to the provisions of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, recognised that it was constrained as to the matters which it might take into account in considering the present complaint.

6.2 Whereas the Board was clear that the provisions of the Island Plan 2002 were that the burden was firmly on Miss Riggall to persuade the Committee to deviate from the general policy laid down in the Island Plan, and not as positive as contended by Miss Riggall and her representatives, it was also aware of the significant weight which was associated with planning precedents.

6.3 The Board considered that, whereas its findings might be different if not fettered by constraints of the Law, it was undoubtedly bound to abide by the provisions of Article 9. For its part, the Board acknowledged the desirability of diversification within the agricultural industry and would like to have been made aware to what extent the Committee had taken into account the proximity of a nearby large agricultural holding, and the recent construction of a large modern dwelling to the north-west thereof - just a stone's throw from the applicant's proposed site. The Board doubted whether an area amounting to just 23 vergées would be sufficient to enable an adequate income to be derived, let alone provision for a pension upon retirement. The Board concluded that Miss Riggall's present accommodation, being within walking distance of the proposed farm, would enable her to provide a reasonable level of security of her livestock.

6.4 The Board accordingly, and reluctantly, agreed that it could not uphold Miss Riggall's complaint against the Environment and Public Services Committee. It had no doubt in Miss Riggall's ability to operate the smallholding proposed, indeed it was most impressed with the presentation put forward.

Signed and dated by –

..... Dated:.....
Mr. N.P.E. Le Gresley, Chairman

..... Dated:.....
Mrs. M. Le Gresley

..... Dated:.....
Mr. T.S. Perchard

APPENDIX I

1386/2/1/2(252)

BOARD OF ADMINISTRATIVE APPEAL

2nd September 2004

Complaint by Mr. T. Renouf against a decision of the Environment and Public Services Committee to reject an application to construct a farmhouse dwelling in Field 96, La Grande Route de Rozel, St. Martin

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

1. Present –

Board Members

Mrs. C.E. Canavan, Chairman
Mrs. M. Le Gresley
Mr. J.G. Davies

Complainant

Mr. T. Renouf
Deputy F.J. Hill, B.E.M.
Mr. A.W. Hoban, Architectural Planning and Building Services Limited

Environment and Public Services Committee

Deputy J.A. Hilton
Mr. R.T. Webster, Senior Planner, Planning and Environment Department

States' Greffe

F.G. Le Maistre

The hearing was held in public at St. Martin's Public Hall on 2nd September 2004.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of Mr. T. Renouf against a decision of the Environment and Public Services Committee to reject an application to construct a farmhouse dwelling in Field 96, Le Gro Rocher, La Grande Route de Rozel, St. Martin.

3. Site Visit

3.1 After the formal opening of the hearing at St. Martin's Public Hall, the Board and the parties visited the farmstead at Le Gros Rocher to view the site of the proposed new dwelling. It also inspected the triangular site at the top (and to the west) of Field No. 93, adjacent to the existing farm outbuildings, on which Mr. Renouf wished to construct a new agricultural shed, subject to his application for the farmhouse being approved. The Board was reminded that the Environment and Public Services Committee had suggested that this triangular site could accommodate a new dwelling, which would negate the need for the development of Field No. 96. However, it was noted that the site was quite restricted, especially as the covenant on Field No. 93, which precluded any development, included that

part of the existing track running along the top of Field No. 93. The Board then toured the existing farm buildings on the site before relocating to the harbour at Rozel to view Field No. 96 from the pier. En route to Rozel Harbour, the Board also stopped on the eastern side of Le Mont de Rozel, to ascertain whether any part of the farmstead or its neighbouring properties could be seen from this side of the valley. The Board and other parties, having visited Rozel Harbour, then returned to St. Martin's Public Hall

4. Summary of the Complainants' case

4.1 The Board had received a written summary of the Complainants' case in advance of the hearing and Deputy Hill and Mr. Renouf elaborated on the written case at the hearing.

4.2 The Board was advised that the triangular piece of land adjacent to the existing outbuildings at the top of Field No. 93 was not suitable for a residential dwelling because, in addition to the physical constraints, it would be contrary to health and safety guidelines as it would be in close proximity to where machinery and chemicals were stored. The movement of farm vehicles and machinery along the track immediately in front of this site would also pose a danger to any children occupying such a dwelling. Furthermore, the land was owned by Mr. Renouf's parents who were only prepared to grant permission for the development of an agricultural shed on this site.

4.3 The Board was reminded that the Environment and Public Services Committee was supportive of the development of an agricultural dwelling at the farmstead at Le Gros Rocher but was opposed to the proposal to construct a dwelling in Field 96 as it was in an isolated and sensitive Green Zone site located away from the existing farm complex. However, it was noted that the issues relating to the access to the site, via La Grande Route de Rozel, had now been resolved.

4.4 Deputy Hill referred the Board to Policy C5 of the 2002 Island Plan, which provided for "new development on an existing agricultural holding which is essential to the needs of agriculture and which is in accordance with policies C16 and C17". He argued that it had been demonstrated that the proposed new dwelling was essential to the proper function of the farm holding, as evidenced by the comments in correspondence received from such bodies as the Jersey Farmers' Union and the Royal Jersey Agricultural and Horticultural Society, and could not be provided within the boundary of the built-up area on the site or within, or adjacent to, the existing buildings at the farmstead (as per the requirements of policies C16 and C17). The Deputy also contended that the proposed agricultural dwelling met all the other relevant criteria and that the argument for an exception to be made under these policies was strongly supported by the owners of neighbouring properties and relevant industry bodies.

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 heard further submissions from Deputy Hilton and Mr. Webster.

5.2 The Board was reminded that the Committee had refused permission for an agricultural dwelling on Field No. 96 because, while it wished to support cases where a genuine agricultural need had been demonstrated, it had not been convinced that there was justification to warrant making an exception to policies C5 and C17 of the Island Plan by allowing development of such an isolated and elevated site. In particular, the Committee considered that the impact of the proposal to create a new building on Field No. 96 would be harmful to the character of the area and the Island's designated Green Zone, contrary to Policy C5 of the Island Plan. Instead, it had been suggested that an application to build a new dwelling in the immediate vicinity of the existing farm buildings would have been more in keeping with the terms of Policy C17.

5.3 Mr. Webster explained that areas designated as Green Zone were given a high level of protection and that there was a general presumption against all forms of new development for whatever purpose. Furthermore, Policy C5 of the Island Plan stated that exceptions "may be permitted" but did not commit the Committee to having to make an exception to policy.

5.4 It was emphasized that the general thrust of Policy C5 was to prevent sporadic development which would affect the open character of the countryside. Moreover, Policy C17 of the Island Plan required the applicant to demonstrate that a new building could not be provided by "rearranging, subdividing or extending an existing building" on the farm holding or could not be located within or adjacent to the existing farmstead or other buildings on the holding. The Committee felt this had not been demonstrated and that there was scope for the existing farm buildings to be reorganised so as to provide for an additional unit of residential accommodation on the site. It was recognised that Mr. Renouf did not own any of the existing buildings, however, they were in his family's ownership, and so the onus was on him to resolve any issues relating to the future use of these buildings.

5.5 The Board was advised that there appeared to have been a misunderstanding over the size of the plot available for the construction of a new dwelling on the triangular parcel of land to the north of the existing agricultural shed. Deputy Hilton expressed concern that the Committee had made its decision in the mistaken belief that the land available for development had included the farm track running along the top of Field Nos. 93, 94 and 95. However, as a result of that morning's site visit, it had been established that the section of the track adjacent to the triangular piece of land was also subject to the covenant on Field No. 93 which precluded any form of development. As such, it had become apparent that the area available for the construction of a new agricultural dwelling was significantly smaller than the Committee had realised. Therefore, Deputy Hilton undertook to take the matter back to the Committee for reconsideration in the light of this new evidence. She also undertook to apprise the Committee of the health and safety issues in respect of the residential development of the aforementioned piece of land.

6. Proposed way forward

The Board, having recognised that Deputy Hilton had undertaken to take the matter back to the Committee for reconsideration in light of new information, agreed to defer making a decision pending a further review of the application by the Committee.

7. Conclusion/the Board's findings

7.1 On 9th September 2004, the Committee had reconsidered the application but, although it had accepted that the triangular area to the west of the existing farm track and Field No. 93 was unsuitable for a dwelling, it had decided to maintain its previous decision to refuse permission for the application. In doing so, the Committee remained of the view that there was scope to provide a new dwelling within the existing building group and had suggested that one possible way of achieving this was to convert the existing potato store. As such, it remained supportive of the need for Mr. Renouf to have a dwelling close to the farm holding and had indicated that it would be prepared to look at other possible alternative sites within the vicinity, to include land within the ownership of the Renouf family.

7.2 The Board recognised that, despite a further review of Mr. Renouf's application, the Committee's decision to maintain a refusal of the application meant that he remained in the same position as he had been when it had deferred making its decision on 2nd September 2004. Accordingly, on 10th September 2004, the Board reconvened to consider its findings.

7.3 The Board, having considered the oral and written submissions made by each party, recognised the difficulty faced by the Committee in seeking to determine the application. In particular, it had regard to the Committee's wish to support young farmers such as Mr. Renouf and to the need to square this with its statutory responsibility to protect the natural environment. Nevertheless, the Board was of the view that, in this particular case, the agricultural arguments outweighed the environmental considerations and believed that Mr. Renouf should be permitted to construct a farmhouse dwelling in Field 96, St. Martin subject to him carrying out such works as were considered both reasonable and necessary to further limit the visual impact of such a development. The Board noted that assurances had been given by the Complainant's architectural adviser that the design of any new building would have particular regard to the sensitive character and scenic quality of the area in question.

7.4 In reaching its decision the Board had regard to the body of correspondence that had been received from

the agricultural industry in support of Mr. Renouf's application which, it was felt, underlined the need for Mr. Renouf to live on the site of his farming operation. It was noted that the comments/advice of the agricultural industry had not been challenged by the Committee. The Board also had regard to the wording of Policies C16 and C17 which provided for the development of new agricultural dwellings in the countryside, subject to them meeting certain criteria (as outlined in these policies). In respect of Policy C16, the Board was of the view that Mr. Renouf had demonstrated that the proposed new dwellin was essential to the needs of agriculture and could not be met in existing buildings elsewhere on the site because these buildings were not in his ownership. Furthermore, having viewed the site from all angles, it did not consider that the proposed development would unreasonably affect the character and amenity of the area nor have an unreasonable impact on neighbouring uses or the local environment. Indeed, the Board noted that there was considerable support for the proposed development from the owners of neighbouring properties. It also recognised that, in the light of Mr. Renouf's conservation work, there was a much higher chance of the surrounding countryside being maintained if Mr. Renouf was able to continue in agriculture

7.5 The Board agreed with the Committee in accepting that the triangular area to the north of the existing agricultural shed was not suitable for the construction of a new dwelling. It also recognised that the Committee was prepared to look at other possible sites within the vicinity of the farm should this land be made available to Mr. Renouf.

7.6 In summary, the Board felt that, based on the facts presented, a compelling case had been made for the construction of a farmhouse dwelling on the site of Mr. Renouf's farm and that, as a result of the restrictions on the other land that might be available, this could only be achieved by constructing such a dwelling in Field 96, St. Martin.

7.7 The Board felt that the refusal of the application to construct a farmhouse dwelling in Field 96, St. Martin could not have been made by a reasonable body of persons after proper consideration of all the facts. Therefore, it decided to uphold the complaint.

7.8 As a result of its decision, the Board requests the Environment and Public Services Committee to reconsider the application and to inform the Board within a period of two months of the date of this letter of the steps which it has taken to reconsider the matter and the result of that reconsideration.

Signed and dated by –

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

..... Dated:.....
Mrs. M. Le Gresley

..... Dated:.....
Mr. J.G. Davies

APPENDIX J

1386/2/1/4(86)

BOARD OF ADMINISTRATIVE APPEAL

21st June 2004

Complainant 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

Mrs. C.E. Canavan, Chairman
Advocate R.J. Renouf
Mr. P.E. Freeley

Complainant

X
Deputy F.J. Hill, B.E.M.

Housing Committee

Deputy D.L. Crespel, Vice-President
Mr. E.H. Le Ruez, Chief Executive Officer, Housing Department
Mrs. F. Ferris, Finance Director, Housing Department

States' Greffe

Mr. F.G. Le Maistre

The hearing was held *in camera* in the Halkett Room at Morier House, St. Helier, on 21st June 2004. The President of the Housing Committee, Deputy T.J. Le Main, attended as an observer.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint of X against a decision of the Housing Committee to refuse to grant her rent rebate.

3. Summary of the Complainant's case

3.1 The Board had received a full written summary of the Complainant's case in advance of the hearing and Deputy Hill elaborated on the written case at the hearing.

3.2 The Board noted that X had been permanently resident in the Island for over 16 years and had resided at the property in question since 1992. In June 2003, she had gained her residential housing qualifications and, in October 2003, had visited the Housing Department with a view to applying for rent rebate. On this occasion, she had been advised that, as she was residentially qualified, she was eligible for rent rebate. Accordingly, X had completed the relevant application form, providing her rent book as evidence of occupancy. However, in note 4 on the front of the application form, it stated –

3.3 "Housing consent must be granted before Rent Rebate can be paid. If you are unsure whether or not you have been granted consent for your accommodation, you should contact the Law and Loans Section in order to minimize delay of your Rebate payment. Please note that you are required to complete a separate Housing Law form to gain Housing Consent for your accommodation."

3.4 The Board recognised that this requirement had created a problem for X because she had never had a lease. This was also the case with a fellow tenant who resided in separate accommodation at the same premises. However, the landlord did not wish to give either tenant a lease because, as lodgers, they had no security of tenure. Furthermore, by giving them a lease he would be creating additional a-h units of accommodation and he feared that this could cause difficulties when he came to sell the property.

3.5 Deputy Hill felt that X was being discriminated against by virtue of being a lodger because it was his view that, in Jersey terms, the definition of "lodger" was someone without residential housing qualifications. He also submitted that there was little difference between a verbal agreement to occupy property and a written agreement and claimed that there no was definition laid down within existing housing policy or legislation as to what the difference was between a lodger and tenant. As it was accepted that X resided at the property in question and it was accepted that she paid rent for her accommodation, the Deputy considered the requirement for her to submit written proof of this to be unnecessary. The situation was further complicated by the fact that X did not want her landlord to know she was applying for rent rebate.

3.6 Deputy Hill also questioned the legal basis on which current housing policy was being applied. The Board, having regard to the report and proposition setting out the terms of the rent rebate scheme for private sector tenants (P.150/1989 – lodged *au Greffe* by the Housing Committee on 28th November 1989), recognised that this only gave authority to the then Housing Committee to prepare the necessary legislation to introduce a rent rebate scheme based on the proposals set out in the report. No such legislation had yet been brought forward and, as such, Deputy Hill argued that there was no legal basis for the operation of the private sector rent rebate scheme and, therefore, all rent rebate payments were discretionary.

3.7 The Deputy suggested that the Housing Committee might wish to consider exempting X from the requirement to hold a lease as exceptions could be made to the normal criteria for special hardship cases. She had applied for rent rebate following a serious operation on her spine, which had left her unable to work, and, as a result, she was suffering financial hardship. Deputy Hill accepted that X could seek to relocate to another property, where she would automatically be eligible for rent rebate. However, due to her age and poor health, she wished to remain in her current accommodation because of the friendliness and care shown by the residents and neighbours she had grown to know over the previous 12 years. He claimed that it was unlikely she would be able to afford the additional cost of moving, especially if this required her to purchase furniture and fittings as well as the cost of relocation. It was also debatable whether she would be able to afford a suitable property. Furthermore, the stress of moving could be injurious to her health. Deputy Hill pointed out that her financial circumstances were such that, should she apply to be housed by the Housing Department, she would be deemed to be a priority. By remaining in private sector accommodation she would free up a place on the housing waiting list for other deserving applicants.

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 heard further submissions from Deputy Crespel and Mr. Le Ruez.

4.2 Deputy Crespel reiterated the requirement for someone applying for rent rebate to provide written confirmation of the terms of their tenancy. He reminded the Board that the rent rebate scheme for private sector tenants had never been intended to provide subsidy to help residents, whether residentially qualified or not, to pay for accommodation which was available to non-residentially qualified persons.

4.3 It was accepted that the Committee had not brought forward the necessary legislation to introduce a rent

rebate scheme, partly because the advice received was that such legislation would be extremely complex, but, following the introduction of a trial scheme (on the same lines as that proposed in P.150/1989), the changes to policy in respect of this scheme (and the rent abatement scheme) had still been subject to the approval of the States. Deputy Crespel explained that, because the rent rebate scheme was not governed by legislation, it allowed the Committee to exercise its discretion when an applicant did not meet all the criteria for acceptance.

4.4 The Board was reminded that the Committee had already considered whether to exercise its discretion but, although sympathetic, did not consider that X was tied to her accommodation by reasons of special hardship and saw no reason why she could not ask her landlord for a short lease or move to alternative accommodation, especially as her requirements for a one-bedroom flat, or bedsit, were not difficult to accommodate in the current housing market. The Committee was of the view that, to make an exception to its policy, could invite claims from, among others, adult children over 25 years of age who were still living at home with their parents as well as other residentially qualified lodgers. In conclusion, the Committee could find no good reason why it should grant rent subsidy to an occupant of a dwelling which was free of housing control and offered by the landlord, under licence, at a premium to similar properties under housing control.

5. Discussion

5.1 The Board sought clarification as to whether the accommodation occupied by X required housing consent as some of the correspondence on this matter had suggested that this unit of accommodation should be subject to '(a)-(h)' occupancy restrictions.

5.2 The Board was advised that X occupied a bed-sitting unit within a private house. There was a door from the main house through to the unit but there was also an independent point of access to the unit which would allow for it either to be occupied without reward or, if let, by persons with residential qualifications. The house, which also contained two other lodging units, was occupied by the owner's daughter, to whom X paid her rent. However, X considered her landlord to be the owner of the property even though he now lived in an adjacent property. The Housing Department had originally questioned whether the unit occupied by X should be subject to housing consent but had subsequently decided not to pursue the matter. Nevertheless, as the accommodation was suitable for classification as '(a)-(h)' accommodation, the Committee decided to propose that *pro tem* the landlord should create a tenancy for this particular unit, on the existing terms and conditions, on the understanding that the Committee would allow it to revert back to lodging accommodation once X's tenancy had expired. This was subject to the Committee clarifying who was the actual or recognized landlord of the property in question as it had never been advised of the change of occupancy from the owner to his daughter. Both parties then left the hearing.

6. Proposed way forward

6.1 The Board, having recognized that the Complainant was prepared to consider the Committee's proposal, agreed to defer making a decision in order to allow further discussion to take place between the 2 parties with a view to resolving the situation to the other's satisfaction.

6.2 The Board recalled that X had yet to approach her landlord to request a tenancy although it was subsequently advised that she had prepared a draft rental/tenancy agreement for him to sign. The Board decided to recommend that she submit this to the Housing Committee to ensure that the information being requested from her landlord would meet the Committee's requirements. Then, once the Committee had identified the "correct" landlord, the onus would be on her to obtain the necessary information, namely a signed confirmation of the terms of her rental agreement and a signed application for consent to occupy the property. This would, in turn, allow the Committee to process her application for rent rebate.

6.3 The Board, having recognised that there was a possible way forward which would save it from having to determine the dispute on the information so far received, decided to request the Housing Committee to report back by 21st July 2004on the progress that had been made in resolving this matter to the mutual

satisfaction of the two parties.

7. Conclusion/the Board's findings

7.1 On 20th July 2004, Mr. Le Ruez wrote to the Board to advise it that the Housing Department was i receipt of an application for housing consent for X to lease the bed-sit she currently occupied at the property in question. Unfortunately, one or 2 details, including the commencement date for the tenancy had not been completed but, according to Mr. Le Ruez,"it is anticipated that consent will be able to be granted in the near future". It was noted that, once consent had been granted and X's outstanding rent rebate application processed, the rebate would be payable from a date to be agreed with the Parish of St. Martin. This was because the Parish was currently assisting X with her rent and she would not be eligible to receive this contribution and rent rebate at the same time.

7.2 However, on 27th August 2004, the Director of Housing Control wrote to the Board to advise it that the lease that had originally been offered to X had recently been withdrawn although she was still able to occupy her existing accommodation as a lodger. The Board acknowledged that, despite the best efforts of both parties, X remained without a tenancy agreement and, therefore, was in the same position as she had been when it had deferred making its decision on 21st June 2004. Accordingly, on 20th September 2004, the Board reconvened to consider its findings.

7.3 The Board was of the opinion that the Housing Committee had acted reasonably and in accordance with established policy in refusing X's application for rent rebate as she did not have a tenancy agreement and, therefore, did not meet the necessary criteria.

7.4 It was also of the view that, as X was residentially qualified, she was not prevented from occupying category (a)-(h) accommodation or from securing a tenancy agreement which would allow her to claim rent rebate. As such, it did not consider there were sufficient "special circumstances" to justify the Housing Committee making an exception to its current policy. Moreover, it was noted that, should X become eligible for rent rebate at the property in question, she would no longer receive financial assistance from the Parish of St. Martin in respect of a contribution towards her rent.

7.5 The Board also accepted that, despite the absence of any legislative framework, the private sector rent rebate scheme has been operating for the past 15 years in accordance with the original wishes of the States. Nevertheless, it suggests that the Housing Committee might wish to reconsider whether the relevant legislation should be introduced.

7.6 The Board considers that the Housing Committee, and its officers, has acted reasonably in determining X' application for rent rebate and does not feel the Committee's decision –

- was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
- could not have been made by a reasonable body of persons after proper consideration of all the facts; or
- was contrary to the generally accepted principles of natural justice.

7.7 Therefore, the Board rejects the complaint.

Signed and dated by –

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

..... Dated:.....
Advocate R.J. Renouf

..... Dated:.....
Mr. P.E. Freeley

APPENDIX K

AHH/VNL/314 **1386/2/1/9(8)**

BOARD OF ADMINISTRATIVE APPEAL

14th October 2004

Complaint by Mr. and Mrs. X (represented by Deputy J.A. Bridge of St. Helier) against a decision of the Health and Social Services Committee

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

1. Present –

Board Members

Advocate R.J. Renouf, Chairman
Mr. D.J. Watkins
Mr. T.S. Perchard

Complainant

Mr. X
Represented by Deputy J.A. Bridge of St. Helier

On behalf of the Committee

Senator Stuart Syvret, President
Mr. M. Pollard, Chief Executive Officer, Health and Social Services Department
Mr. Richard Jouault, Director of Corporate Planning and Performance Management

States Greffe

Mrs. A.H. Harris, Deputy Greffier of the States

The hearing was held in public at 9.30 a.m. on Thursday 14th October 2004.

2. Summary of the dispute

2.1 Advocate R.J. Renouf opened the hearing which had been convened to investigate a complaint by Mr. and Mrs. X, represented by Deputy J.A. Bridge of St. Helier, against a decision of the Health and Social Services Committee to charge them £12,000 for Mrs. X's recuperation in Glanville Home, St. Helier and it was confirmed that Mr. X wished the omission of the Health and Social Services Department to place his wife in the Care of Barking, Havering and Redbridge Hospitals ("Romford") to be taken into account as one of the factors leading to the charge being made.

3. Summary of the Complainant's case

3.1 The Board had received a written summary of the Complainant's case and additional papers submitted by Mr. X prior to the hearing and had taken note of the submissions made on his behalf.

Placement at Glanville Home

3.2 Deputy J.A. Bridge summarized the complaint of Mr. and Mrs. X and explained that the Xs we

aggrieved at a decision of the Health and Social Services Committee to charge £12,000 for Mrs. X's care at Glanville Home ("Glanville") and at the omission of an officer or officers of the Committee to ensure that Mrs. X was on the waiting list at a specialist unit at Romford. Deputy Bridge advised that the Xs had every belief that Mrs. X was on the waiting list for a specialist unit in the U.K. where her care would be paid for under the reciprocal health agreement. Having failed to ensure Mrs. X was on the waiting list for the specialist unit, she was then moved to Glanville Home as a direct referral from Overdale Hospital. At this point the officers applied a policy designed for the needs of the elderly rather than the needs of younger people with families, mortgages etc. This decision having been upheld at an appeal to the Committee had caused the Xs extreme stress and, in the event that they would need to find £12,000, they would also experience financial problems.

3.3 Deputy Bridge advised that the Committee's submission stated that Mr. and Mrs. X decided that Mrs. X needed residential care pending her proposed admission to a U.K. specialist unit for an assessment of her condition, and this implied that the Xs had a range of options and the costs clearly laid out before them. This had not been the case, however, and what Mrs. X had wanted was to move to Lakeside Residential Home ("Lakeside") where her friend Y had offered her a free place. It was noted that at Lakeside there was a nurse with experience in M.E., who had previously worked at Romford. The officers involved had advised Mrs. X on 21st October 2003 that they would not refer her to Lakeside because they could not send occupational therapists there to treat her. In the event, the occupational therapists did attend on Mrs. X at Glanville despite this being a private home.

3.4 There seemed to be an implication that residential care wasn't necessary but just a decision of the Xs. This suggestion does not tally with the letter from Mr. W. Stead, Manager of Glanville dated 11th February 2004 which described Mrs. X as a direct referral from Overdale Hospital and he recalled no correspondence to counter the principal verbal agreement that the Health and Social Services Department would pay the bill.

Financial assessment

3.5 Deputy Bridge advised the Board that Mr. X had agreed to be financially assessed and had a genuine expectation that he might have to pay some of the cost but had no idea that in, in accordance with the Heath and Social Services (HSS) policy, which was primarily aimed at elderly people, he could expect to pay all of the bill. Mr. X had found out only in October 2004 that Mrs. X had received Attendance Allowance from the Employment and Social Security Department and as soon as he was aware of this he expected that the money from the Employment and Social Security Department would have to go towards the cost of her care.

3.6 Mr. X advised that it had been difficult for him to assess the family's financial position. Mrs. X used to do all of the family finances. He had not been aware of all of the income or outgoings, there being a split between a number of bank accounts and when his wife fell ill with M.E. she could only concentrate for about 30 seconds at a time, so it took him weeks to obtain all of the financial information and this was the reason for his late submission. He offered to give access to all of his banking information. Mr. X added that had he been told that the care at Glanville Home would cost £12,000 he would have paid for staff and cared for her at home. Mr. X went on to advise that initial medical advice had been unhelpful– the Specialist disputed the existence of M.E. to begin with and when the doctor had decided that Mrs. X did have M.E., he agreed to refer her to Romford. Mrs. X thought she had been put on a waiting list but 8 months later she discovered that she had not been put on the waiting list. If Mrs. X had been put on the waiting list at that time, she would have gone to Romford sooner and would not have been transferred to Glanville at all. Had she gone to the Romford, that stay would have been paid for under the reciprocal health agreement.

3.7 Deputy Bridge advised the Board that when Mrs. X was referred to Glanville, contrary to the detail in the Health and Social Services Committee report, costs were not discussed. It had been expected that it was a temporary transfer pending her move to the United Kingdom where her care would be paid for in full. As a direct referral from Samarès Ward at Overdale Hospital to Glanville, Deputy Bridge was surprised that Mrs. X would be asked to pay for her care when she was transferred to Glanville.

3.8 Mr. X advised that the first that he knew of the cost of the room of £370 a week was after she had left Glanville in June 2004. He would not have agreed to pay this amount and instead would have recruited a specialist M.E. nurse from the U.K. Glanville Home in his view was inappropriate as Mrs. X is only 52.

3.9 Mr. Stead of Glanville was not told until February 2004 that the Health and Social Services Committee would not be paying the bill for Mrs. X while she was in his care.

3.10 Deputy Bridge stated that she believed the decision of the Committee to be unjust and oppressive because of the omission to place Mrs. X on the waiting list between October 2002 and October 2003 she had lost an opportunity for treatment at Romford at an early stage, and she had incurred a bill at Glanville.

3.11 In addition, the policy being applied to Mrs. X was the policy concerning long-term residential care for the elderly. Deputy Bridge expressed the hope that the Committee could pay the £12,000 as an ex gratia payment in this case.

3.12 Mr. X explained that he had looked after his wife for 18 months while keeping a full-time job and did not ask for help from the States. In addition he obtained a loan to improve the house so that she could return home, and he had not sought financial help from the States for this. His wife had researched and looked at the unit into Romford for M.E. The whole matter had placed enormous pressure on all of the family and Mr. X was now doing 2 jobs in order to keep up with the financial situation.

4. Discussion following the presentation of the Complainant's case

4.1 The Board members sought clarification on a number of points, and noted that Mrs. X had been admitted to Overdale because they live in a 1960s bungalow with poor insulation and damp, and sufferers of M.E. are super-sensitive to variations in temperature, so she was not making any progress. In winter, there are variations of temperature with central heating, etc. which exacerbate the condition. The placement at Overdale was supposed to be temporary to provide occupational therapy and physiotherapy as there were no homes for Mrs. X's condition in Jersey. Although she had initially improved at Overdale, when winter came, it became cold, it was noisy, there was light disturbance and Mrs. X's condition deteriorated. Mrs. X had thought that she should move from Overdale so that she could improve, possibly to Lakeside However there had been a problem with the licence as Lakeside only had a licence for elderly persons, and not for someone aged 52. Mrs. X had raised the possibility of going to Glanville as they lived near there. With the improvements Mr. X had carried now out at home, the conditions were now suitable for Mrs. X. The Board noted that Mr. Richard Jouault had been helpful to Mr. X throughout, and it was possible that a grant would be available towards the home improvements for this purpose.

4.2 Deputy Bridge advised that Mr. W. Stead of Glanville Home in a letter to Mrs. Mair Hutt says in respect of the decision not to fund the placement "I find this decision to come as a complete surprise to myself as I have received no previous correspondence or communication from yourself or any other member of your Department regarding any detracting from the principal verbal agreement of funding for Mrs. X's placement at Glanville Residential Home being met by Health and Social Services". He continued "May I remind you at this point that Mrs. X was a direct referral from Samarès Ward at Overdale Hospital and at no point was any indication given that Mrs. X would be totally funding her own placement. Therefore no individual service agreements were entered into or even accepted by Mrs. X as the issues laid outside her hands or jurisdiction". Deputy Bridge stated that while one might understand why a very ill member of the public and their stressed husband might struggle to understand the implications of what was happening and the procedures and forms they were required to fill in she could not understand how the Manager of Glanville who must have dealt with numerous referrals from hospital to Glanville, misunderstanding the situation. Mrs. X moved in on 14th November 2003, Mr. Stead believed Mrs. was a direct referral and the Committee would be picking up the bill, and he was not made aware until 3 months later by letter of 11th February 2004 that the Committee would not be paying the bill.

4.3 The Board noted that the undated application form for financial assessment had called for details of Mrs. X's financial position only, and had not requested details of the family income, and while Mr. X had

completed the detail on the form, his wife had signed it in November 2003. The reason he had completed the form was that Mrs. Mary Campfield, the Senior Social Worker, had brought the form up to him in Novembe 2003 at his place of work and he had filled in the details required of Mrs. X's income, Mrs. Campfield had completed the section relating to his relationship to Mrs. X, and the form was then taken to Mrs. X t sign.

4.4 Some time later, Mr. X was asked to give details of his income in a letter dated 26th February 2004 from Mary Campfield, Senior Social Worker. Mrs. Campfield had listed the family's financial commitments and income in the above letter addressed to Mrs. M. Hutt, Services Manager, Services for Older People Mr. X was not aware of the contract, or costs of Glanville at that time that he was asked to give details of his income. Mrs. X had been at Samarès Ward for 4 months, and there had been no charge.

4.5 Mr. X confirmed that initially he worked as a teacher part-time at Beaulieu, part-time at Highlands College and part-time at the J.E.P. This arrangement had worked well so that he could prepare lunch for his wife. In order to raise the funds to prepare improvements to the Home he needed to have an income of £42,000 per annum. Accordingly since September 2003 he worked full-time at Beaulieu School, and weekends and two to three evenings per week at the J.E.P. in addition to caring for the children.

4.6 Deputy Bridge considered that the detail in Mr. Anton Skinner's report to the Health and Social Services Committee about how an elderly person is assessed is inappropriate as Mrs. X is not elderly. By applying a policy that is designed for the elderly, Deputy Bridge believed that the Committee's decision had been unjust and oppressive towards this family. In addition, by omitting to ensure that Mrs. X was on the waiting list for Romford, Mrs. X had lost the opportunity to be cared for and rehabilitated between October 2003 and October 2004 in the best possible way and as a consequence of that omission, the X's now faced a bill for £12,000.

5. Summary of the Committee's case

5.1 The Board had received a written summary of the Committee's case before the hearing and the written submissions were amplified by Mr. Jouault who advised that he would focus on Mr. and Mrs. X's ability to pay the fees, and he would then cover the points raised by Deputy Bridge and the additional papers submitted by Mr. X prior to the hearing. Having reviewed the case notes and submissions of Mr. and Mrs. X, Mr. Jouault stated that he could find no evidence of inappropriate application of Health and Social Services Committee policy and procedures or actions that were contrary to law. Independent consideration of all the facts by the Health and Social Services Department senior officers concluded that the decisions taken based on the facts available at that time could not be considered improperly discriminatory. Therefore should the Board wish to find in favour of the Complainants, there would need to be demonstrable evidence that the case could be viewed as exceptional so as not to set a precedent. Mr. Jouault tabled a number of papers in order to respond to the documentation recently submitted by Mr. X. In response to those papers, Mr. Jouault continued that there was some discrepancy over Mr. X's belief that he should pay for care. In Mr. X's letter to the Board dated 12th August 2004 Mr. X had stated that "Neither then, nor now, did I expect to receive a bill for my wife's tenure at Glanville" and later stated "It is not as if I feel I shouldn't pay towards Mrs. X's care ……. I accept that I or we should pay something towards Mrs. X's time at Glanville". Mr. X had attended the Health and Social Services Committee in order to appeal against the decision and his attendance had followed Mr. X's special request to do so.

5.2 Mr. Jouault stated that Mrs. X had referred to being "entitled" to the treatment and recommendations as suggested by" "the experts in the field". On the matter of the referral to Romford, Mr. Jouault quoted from a letter dated 27th September 2002 from the CFS (Chronic Fatigue Syndrome) Centre, Romford which stated "As you present with severe CFS with many factors involved, an in-patient admission ……. may be the best way forward". Mr. Jouault advised that this was no longer the recommendation of the CFS Centre: recent assessment by the team from Romford in June 2004 suggested that Mrs. X appears to be suffering from post-chronic fatigue syndrome with an underlying personality disorder. Furthermore they did not believe that a move to the Romford Unit would be in her best interests. Mr. X suggested that errors had occurred on behalf of the Health and Social Services Department regarding

Mrs. X's placement at Romford. However Mrs. X herself reported that visiting experts from the unit in 2002 told her that she was on their waiting list. This same information was given to the Jersey team. Subsequent attempts to clarify the situation by telephone had proved unsuccessful and written correspondence was found to be the only reliable way of communicating with the unit. Correspondence showed that Health and Social Services were always rapid with their response for communication, whilst Romford often failed to respond in writing for up to 2 months at a time.

Financial assessment

5.3 Mr. Jouault advised that financial assessment was based on submissions made by Mr. and Mrs. X with the assistance of their social worker. Mr. X suggested that this was incorrect. However his more recent submission was incomplete having no information regarding income. If Mrs. X were to have paid the home privately, the full amount of her care would have been £1,480 per month. Mrs. X's income included benefit and pension of £1,530 per month with additional benefit of £379.83 for Attendance Allowance and these together would have been more than adequate to cover the fees with about £400 surplus, without the need to consider Mr. X's income. The Board was informed that Mr. and Mrs. X had been in receipt of an attendance allowance from 14th October 2003 to 13th October 2005 during her stay in Samarès Ward and Glanville, despite having paid no fees in respect of the latter. This was paid directly to their [Mrs. X's] account on 1st August 2004. They were therefore currently doubly subsidized for residential care fees. It was incumbent upon the claimant to inform the Employment and Social Security Department of any changes to their circumstances that might affect entitlement. Regarding Mrs. X's stay at Glanville, no fees had been repaid as yet to the Health and Social Services Department by Mr. and Mrs. X. However their claim form had not been updated nor officers informed at Employment and Social Security. Mr. Jouault advised that the Board should consider whether this was in breach of the Attendance Allowance (Jersey) Law 1973 and confirmed that the information had been accessed in accordance with Article 33 of the Data Protection (Jersey) Law 1987, as amended. Mr. Jouault also invited the Board to consider whether some items of the X's outgoings were necessary, for example the £101 per month on charitable contributions.

5.4 Mr. Jouault advised that while on Samarès Ward Mrs. X got the best attention by staff. The quality of care available at Samarès was very high and possibly better than the care available at Romford. The decision to move to Glanville was Mrs. X's decision. He supported the move to Glanville and arranged for payment of fees, expecting to deal with the matter of the financial assessment later.

5.5 The question was whether Mrs. X was able to pay and an offer had been made to Mr. X to allow repayment of £30 a week to the Health and Social Services Committee until such time as the bill was extinguished.

5.6 Senator S. Syvret, President of the Health and Social Services Committee, advised that Mr. X had contacted him. He had accordingly asked Richard Jouault to make sure that the Department was doing everything in order to be reasonable. The President had established that everything had been done within policy and the law. He had spoken to Mr. X again who had decided that he would like to come to the Committee to appeal against its decision. It was not the style of the Committee to be "tough". Having looked at all of the information the Committee feels it has come to the correct conclusion. It had asked Richard Jouault to make every effort together with the Social Worker to do everything they could to ensure that the Xs had assistance in claiming their entitlements from the Employment and Social Security Department and in seeking assistance from charities or the Parish in order to help them. They had stretched the policy in order to request only £30 per week in repayment of the fees. From the income of Mrs. X alone, setting aside Mr. Xs income, the amount of £30 a week was not considered unreasonable.

5.7 The Chief Executive Officer of Health and Social Services advised that the Romford Unit was for an area with a catchment of some 4 million people. He advised the Board that the service in Jersey for the size of population is remarkable. In this case, having tested Richard Jouault and the paperwork, he felt that things were as near perfect as one was going to find.

6. Discussion following presentation of the Committee's reply

6.1 The Board explored elements of the Health and Social Services Committee's presentation with the delegation and noted that the question of the Attendance Allowance may have come as a surprise as it had been discovered just 3 or 4 days ago that this had been paid to Mrs. X. Mr. X stated that he had bee unaware of this matter until that time.

6.2 The Chairman asked what the policy of the Committee was in respect of the care of the under 65s. Mr. Jouault advised that the policy procedures had been designed for the over 65s and this was why the policy regarding payment for the under 65s had been referred to the Solicitor General for confirmation that the Committee was acting lawfully. The charging policy related to the residential care that the Health and Social Services Committee provides. However Glanville Home provides private care and in the event that a person fell below the threshold of capital stipulated by the policy (£6,500 for a single person and £10,000 for a married couple) then the Parish would provide assistance for native residents and the Health and Social Services Committee would provide assistance for non native residents. The policy procedures related to those persons with pensions. They did not provide for persons with a flowing income. The Department has to work with what it has. The policy does not specify age, but one can see from the language that it is designed for older patients.

6.3 Senator Syvret added that the policy was for long-term care. Acute care is provided by the States of Jersey and if the care required is not acute, then this goes beyond what the States should provide. When a pensioner is assessed, the Committee takes into account the value of the home. The Committee has not done this in this case so it has been more generous.

6.4.1 Mr. Jouault stated that the decision was that Mrs. X had enough income of her own, even before learnin that Mrs. X had also claimed Attendance Allowance.

6.4.2 In relation to long term residential care, Mr. Anton Skinner's report dated 14th May 2003 says –

> "As I would understand the longstanding policy that has existed in the Island the States of Jersey provides most hospital treatment, both inpatient and outpatient, free of charge at the point of service delivery, as this is funded through taxation. Continuing care, whether residential or nursing care, has always been a charge against the recipient although the States or Parishes will assist if the individual cannot meet the full cost of care."

6.5 Mrs. X was not in receipt of inpatient hospital treatment during her stay at Glanville although she was ir receipt of community based input from Hospital staff and these services were provided free of charge.

6.6 In Mr. Jouault's letter dated 15th October 2004 it confirmed that the Committee has "an inherent right to charge" whatever it deems reasonable with respect to any care it provides to individuals other than that deemed to be medical care which is provided free. The legitimacy of the Committee's inherent right to charge has been confirmed on several occasions by the Law Officers. The letter goes on to say that "normal policy was followed in this case i.e. the family income was assessed to determine the level of subsidy". It also advises that "our normal practice would have been to pay Glanville's bill and receive Mrs. X's pensions as Health and Social Services income".

6.7 There are 2 policies outlined in the above– firstly the Committee's right to charge for non medical care, and secondly the policy relating to the recovery of charges. In the latter case, the policy refers to the elderly, and this is confirmed again in the statement that the normal policy would have been to pay the bill and receive Mrs. X's pensions as income.

6.8 The Chairman sought clarification as to whether, for younger persons, the Committee applied the same rules regarding the amount of capital etc. The Senator advised that it was appropriate to assess States' benefit on the basis of patient's income only. It was not possible for the States to step in just on the basis of a patient's outgoings. The Committee did not generally take into account the patient's outgoings. Notwithstanding this, the Committee also took into account the income of a partner. Mr. Jouault advisec that the Department had taken the outgoings into account and had set the repayment at £30 a week.

Leaving aside pensions, Mrs. X was receiving £1,100 a month from the Employment and Social Security Committee in benefits and the Health and Social Services Committee was asking for £120 a month and this could not be said to be unreasonable.

6.9 Senator Syvret drew a comparison with the financial assessment for IVF. In that case the Department takes all matters into account. The basis principle is to look at the income of the family unit, not to assess an individual on the basis of outgoings.

6.10 Mr. Jouault added that if one were to look at the position of a pensioner with a State pension and £10,000 capital, the Department would ask them to pay for their care until they reached the threshold of £6,500 capital before the Health and Social Services Department would pay for care. The income of the Xs was significantly over £42,000 per annum and he contended that it could not be right to take money from the pensioner but pay for the care of Mrs. X. The Department had taken the financial situation of the family into account in setting the low repayment.

6.11 The Board explored whether the policy had been approved by the States and whether it should be publicized so that people would know what they could expect to pay if they fell ill. Senator Syvret advised that it had not, but this was well known and documented. The public knew that they had to pay for their care until their assets fell to the threshold. This was evident from correspondence in which people had said to him that they should not have to sell their family home. This point showed that the public were clear about the requirement to pay.

6.12 The Chairman referred to Mr. A. Skinner's written assertion that Mrs. X had enough funds in order to pay for her care. He asked whether Mrs. X would have been told at the time of completing the financial assessment form in November 2003 that she had earned enough money to pay for all of her care. Mr. Jouault did not respond directly, but advised that the Social Worker is an advocate of the individual and does not deal with the financial side of the case. The Social Worker assists in obtaining information from the patient, but this information is passed to the finance office. Mr. Jouault confirmed that the person assessed is the patient. However with a married couple the spouse may be assessed. Primarily the assessment is of the assets of the individual but the Department has the power to go beyond the individual.

6.13 The Board noted that Samarès Ward was for rehabilitation care. The Board asked when this care ended and payment would start. Mr. Jouault advised that this would occur when someone starts to plateau Mrs. X felt she needed to rest. The decision to change care is a joint decision between the patient and the medical team. Lakeside is not registered to take someone under the age of 65 so it was clear that Mrs. X could not go to Lakeside. The Board asked whether it was clear that the change of care signalled the beginning of the need to pay. The Board explored whether the Xs had been advised how much the care at Glanville would cost and Mr. Jouault explained that this was not a matter for the Health and Social Services Committee, the cost at Glanville was quite clear as it was displayed on the premises. He reiterated that the Social Worker acted as the agent of the individual and would not know about the financial assessment. The Department did not have evidence of whether Mr. and Mrs. X had been told what they might have to pay in the worst case scenario, or a sliding scale of payments alongside incomes. Mr. Jouault went on to explain that no agreement had been drawn up by Glanville, as the Home felt it was a direct referral from Samarès Ward and the fees were paid by Health and Social Services Committee until such time as a financial assessment had been completed.

6.14 The Chairman noted that respite care was paid for by the Health and Social Services Committee although it was not a form of treatment. Mr. Jouault explained that during respite, reassessment of care can also occur and this would be the reason for non-charging of fees. Respite care can also be private and therefore paid for. In addition a respite period was usually for about 10 days, not for a period of 5 months.

6.15 The Board recalled that the letter dated 13th November 2003 prepared by Mary Campfield for Mrs. Xs signature stated "I am aware I will be financially assessed …..". The Chairman queried how far Mr. X could be required to contribute if he were not named in that letter. Senator Syvret advised that this principle had been covered by other Committees, for example, the Housing Committee in respect of

housing which assessed the family unit.

6.16 Mr. X explained that the outgoings of the family, and particularly the mortgage, had been established when Mrs. X had been earning between £26,000 and £30,000 a year as a teacher. Her current income was much lower and he had needed to take out a loan to improve the home for her return, contributing to the financial difficulties.

6.17 Mr. Watkins stated that he found the form relating to financial assessment to be not particularly helpful The patient was required only to include details of his/her income without any details of outgoings. In most cases people in hospital still had financial commitments relating to the family home. Mr. Watkins was advised that the forms were designed for older people but he noted that the older people did not have a home to maintain. Mr. Jouault advised that the form was just used for sifting. The offer of £30 a week repayment based on Mrs. X's income alone was not unreasonable. The process had possibly not been perfect on both sides but on balance Senator Syvret felt that the outcome had been reasonable.

6.18 The Board thanked the parties for attending and they then withdrew.

7. Issues considered by the Board

7.1 The Board considered the following points of concern –

(1) Mrs. X had first of all been an in-patient at St. Saviour's Hospital, Jersey General Hospital, then at Overdale Hospital before being transferred to Glanville. From the outset, did Mrs. X sufficiently appreciate the difference between the 4 locations and expect to pay for her period of residence in the fourth?

(2) Had the Health and Social Services Department a responsibility to advise Mrs. X of their policy to require persons to pay for the costs of residential care, and the continuing financial liability? If so, what were the implications for Mrs. X? Had the Health and Social Services Department made the Xs' ultimate liability adequately clear?

(3) The Health and Social Services Department was using a policy relating to the over-65s and which was not relevant to under-65s with a flowing income.

(4) Given the application of a charging policy in this case which was designed for the over-65s, was the request for full payment reasonable having regard to the need to maintain the family unit?

7.2 The Board reconvened following a period of adjournment and received papers in response to its questions of the Health and Social Services Department, and a further letter dated 17th October 2004 from Mr. C X.

The Board reconsidered –

7.3 (1) The expectation of payment.

In November 2003, prior to entry into Glanville Home, Mrs. X had signed a financial assessment form. The form had been completed with Mrs. X's financial details only and not Mr. X's income, and although Mr. Jouault had stated in his letter dated 15th October 2004 responding to the further enquiries of the Board that "normal policy was followed in this case i.e. the family income was assessed to determine the level of subsidy", the form containing only Mrs. X's income was not queried. This would give the impression that the financial assessment form had been accepted with Mrs. X's income only and that details of Mr. X's income were not relevant and were not required. In addition, the Health and Social Services Department, in discussion with the Manager of Glanville, decided that the Home would send their invoice for Mrs. X's fees to the Health and Social Services Department and during the initial 3 months, the Xs did not receive any invoices A conscious decision was made by the Health and Social Services Department not to forward

invoices to Mr. and Mrs. X at the time, and the reason given by the Health and Social Services Department for nc dispatching invoices to Mr. X was that they were awaiting completion of a financial assessmen of Mr. X's income and their joint outgoings, as the original financial assessment form signed by Mrs. X was for sifting only. Bearing in mind the family had their income reduced when Mrs. X was forced to give up teaching, and then Mr. X took out a loan of £10,000 in order to refurbish 2 rooms of their house so that Mrs. X could return home, with the attendant financial worr associated with this, Mr. and Mrs. X clearly believed that they would not be expected to pay th full amount for her care at Glanville Home. While the need for Mrs. X to complete a financia assessment form made it clear that some payment could be anticipated, they had no information on which to base a judgment as to how much that commitment might be.

7.4 (2) Had the Health and Social Services Department made it clear that charges would be levied?

The Board agrees with Mr. Jouault's comment that the department had no responsibility for arranging placement in a private home. In order to be helpful to Mr. and Mrs. X, the Departmen had assisted the Xs by making contact with Glanville, sending their social worker to Mrs. X while she was at Glanville, and this may have led both to Mr. and Mrs. X believing it was part of th continuing care being made available to Mrs. X, and to the management of Glanville believing that this was a direct transfer. Accordingly Glanville did not make an individual service agreement with Mrs. X and put normal billing procedures in place.

7.5 The Department did not make it clear to Mr. and Mrs. X that by transferring to Glanville Home there was a clear change from medical care to residential care. Secondly it did not appear adequately to explain to Mr. and Mrs. X that in general terms public funding was not available for residential care. The Committee should have made it clear that a subsidy would only be provided to those who fall below a certain income threshold, and it should also have been made clear from the outset how the income threshold was calculated, namely by assessing the combined income of spouses. Finally, and importantly the level of fees and other terms and conditions of the home should have been clearly stated to the Xs by the Health and Social Services Department, which arranged the placement (and agreed with the Home to cover fees until the potential liability of the Xs was calculated) and the Xs should have been informed in unambiguous terms of the maximum amount that they might be required to pay.

7.6 If the income limit for subsidy is assessed on gross income, then it is a relatively simple task to determine at the outset whether a subsidy is likely to be available. Everyone is aware of what their basis earnings are and income from pensions and benefit would have been relatively simple to establish. While the finer detail could have waited until later, Mr. X's income added to his wife's pensions and allowances would have given rise to a simple calculation regarding the Xs' liability. Instead there was correspondence over several months between the Department and Mr. X which included details of outgoings which gave the impression that the outgoings would be taken into account.

7.7 (3) Policy relating to residential care.

In the report submitted to the Committee by Mr. Anton Skinner [dated 14th May 2003] it states that "the difficulty arises because our assessment criteria and policy is designed to deal with the age group which normally access continuing care, the elderly. The standard assessment for older people is usually fairly straight forward based on cash at bank balance as there is normally a modest pension, a sum of cash in the bank and perhaps property which we ignore for the purposes of assessment unless it generates income for the individuals assessed". The report goes on to explain in more detail the policy relating to the elderly. Mr. Skinner's report acknowledged that Mr. and Mrs. X's circumstances were quite different in that there was a flowing income, in addition to benefits, allowances and there was a partner in employment, children to be cared for and a house to run. The report refers again to the policy relating to the elderly and confirms that there isn't an exact comparison between the Xs' position and the older clientele.

7.8 The policy to charge was lawful, but because the Committee was acting under inherent powers, nothing was written down about procedures and therefore it was even more incumbent upon the Committee to

have documentation to make it crystal clear to recipients what charges might be levied on them. The situation may be contrasted with the Housing and Employment and Social Security schemes where there are published guidelines and the forms are detailed and informative.

7.9 (4) Did Mr. and Mrs. X have sufficient income to pay the charges?

The Health and Social Services Department, in Mr. Skinner's report, made it clear that Mrs. X's income alone, comprising invalidity benefit, a teacher's pension and disability transport allowance, amounting to £1,530 a month, would have been sufficient to meet the fees for her residential care at £1,496 a month. Mr. X's income amounted to £42,000 a year which included income from a lodger in the family home and it had latterly been discovered that attendance allowance of £4,557 a year was also being received. Mr. X had recently been required to satisfy the bank that he had an income of £42,000 in order to enable him to secure a loan to refurbish 2 rooms of the family home for Mrs. X. While it is acknowledged that Mrs. X has particul dietary needs, and a loan had been taken out for improvements, this is not a low income. Had the Xs been given sufficient information in November 2003 as to what their liability might be when Mrs. X was transferred to Glanville, they could have made an informed choice whether to pursue the transfer or whether to explore alternatives, or whether to bring Mrs. X home.

7.10 The Board recognizes that the Health and Social Services Department went out of its way to be helpful to place Mrs. X and agreed to pay the bills at Glanville until the financial assessment was complete. This appeared to differ from the policy relating to the elderly, where the experience of members of the Board was that the issue of payment was always resolved before a person was transferred into residential care. Regardless of the assessment, there was a failure to discuss with the Xs and to advise them that they were changing to a new régime, that they would need to pay for residential care from a given date and that at worst, the amount would be the full charge levied by Glanville, stating what this amount was. The assessment was not completed swiftly enough. Despite commencing the financial assessment in November 2003, a bill of £8,000 has accumulated before the financial assessment was completed.

7.11 The Board agreed that it had been difficult to obtain a full picture from either party in connection with this complaint. The Board recalled that the complaint was against a decision of the Committee to charge Mr. and Mrs. X £12,000 for Mrs. X's recuperation at Glanville Home and certain omissions as one of the factors leading to the charge being made. The Board agreed that it did not wish to comment on the matter of the referral of Mrs. X to Romford. It was clear that not only did Mr. and Mrs. X believe that Mrs. was on a waiting list to Romford, but the Health and Social Services Department likewise believed that Mrs. X was on the same waiting list. It had made efforts to establish this in writing, having found telephone communication unsatisfactory and that by the time it had been discovered that Mrs. X was not on the waiting list, and a further assessment took place, it was then decided that Romford was no longer the correct place for Mrs. X to be.

7.12 The issue relating to the referral to Romford was not part of the original complaint and some information relating to the referral came to light as part of the complaint relating to charges. Neither the parties nor the Board anticipated consideration of this issue as part of the present review, and the evidence on this matter is therefore currently incomplete. At the conclusion of the hearing Deputy Bridge agreed, in view of the uncertainty over the facts relating to Mrs. X's placement at Romford, that she would not pursue this matter for the time being. The Board has therefore disregarded the issue of referral to Romford, which must be dealt with separately if the Complainant wishes.

8. The Board's findings

8.1 On the matter of the payment of charges, the Board found that the decision of the Committee to recover the full amount of £12,000 was unjust in accordance with Article 9(b) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, for the reason that the Department had not made it clear at the time that Mrs. X was changing to a new care régime, that the Xs would need to pay for residential care from a given date and could be liable for the full charge levied by Glanville, and the amount of such liability. The assessment took too long to complete, and although the financial assessment had begun in

November 2003, a bill of £8,000 had accumulated before there was clarity on the Xs' liability. The Board considered that it was unfair to make arrangements for Mrs. X's care in another place without informing her or her husband of their potential liability.

8.2 The Board is of the view that the Health and Social Services Department should bear the responsibility for payment of the charges for the period of placement commencing 11th November 2003 until 11th February 2004, namely the period during which the Xs were unaware of the liability. Thereafter, from 12th February 2004, that is from the date at which the Xs were fully aware of the weekly commitment and yet did not remove Mrs. X from Glanville, until the end of the period of residential care, the Xs should refund the fees to the Committee.

8.3 In view of the Committee's earlier decision to assist the Xs by allowing sensitive repayment terms, the Board expressed the hope that the question of repayment of fees would continue to be handled sensitively. The Board also noted that some adjustment would be required in relation to payment of an Attendance Allowance which Mr. X had only recently discovered was being claimed by his wife.

8.4 In accordance with Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board requests the Health and Social Services Committee to reconsider the matter and to inform it within 2 months of the steps which have been taken to reconsider the matter and the result of that reconsideration.

Signed and dated by –

..... Dated:.....
Advocate R.J. Renouf, Chairman

..... Dated:.....
Mr. D.J. Watkins

..... Dated:.....
Mr. T.S. Perchard