# STATES OF JERSEY

# ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE APPEALS PANEL FOR 2005

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**Presented to the States on 8th May 2006**
**by the Privileges and Procedures Committee**

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**STATES GREFFE**

# REPORT

## Foreword

The Privileges and Procedures Committee is pleased to present the report of the Administrative Appeals Panel for the 2005. As is customary, 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, in 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 carried out a review in 2004 of the Administrative Appeals system and presented its report R.C.20/2004 in which 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. The Draft Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 200- was lodged 'au Greffe' on 13th September 2005 and was approved by the States, with amendments, on 14th February 2006. These amendments will be brought into force once approved by Privy Council and registered in the Royal Court.

The purpose of the Committee's amendments is to –

(a) to change the names of the Panel and the Boards under the Law to States of Jersey Complaints Panel and States of Jersey Complaints Boards;

(b) to give to the Chairman or a Deputy Chairman of the Panel the role of deciding whether to refer a matter to a Board (without changing the role of the Greffier of the States as preliminary investigator in cases not concerning the States Greffe);

(c) to make it clear that the Greffier should perform the role of investigator with the least possible delay;

(d) to make it clear that the Chairman or Deputy Chairman may attempt to resolve the matter of a complaint by informal means before deciding to refer it to a Board;

(e) to require the Chairman or Deputy Chairman to give reasons for any decision not to entertain a complaint;

(f) to clarify Article 6 of the 1982 Law;

(g) to add a reference to a time limit of one month for responding to a request from the Greffier or a Board for documents when the Greffier or Board is investigating a complaint and to widen the reference to documents so that it includes information in general;

(h) to require a copy of the response of a Minister, Department or person to a Board decision to be forwarded to the Privileges and Procedures Committee;

(i) to require a copy of that response, and a copy of any report of a Board on a failure to act on its findings, to be presented to the States;

(j) to require the annual report of the Panel (also presented to the Privileges and Procedures Committee and then to the States) to include a segment on matters informally resolved under the new procedure.

The purpose of the further amendments put forward by the Deputy of St. Martin is to provide as follows–

1. a right of appeal against the Chairman, in the event that he or she decides that the circumstances do not justify review by a Board. The appeal is made to the Deputy Chairmen, who will review the Chairman's decision. Should the Deputy Chairman consider the decision to be unreasonable, the matter would be referred to a Board;

2. that the Administrative Appeals Panel, through the Greffier, should issue procedural rules on the manner and timescale in which the parties should submit documentation to the Board and the manner in which hearings will be conducted.

3. for another person to act when the Chairman or a Deputy Chairman has a personal interest in a matter. If the conflict is such that the actions that the Chairman or Deputy Chairmen are required by Law to do cannot be undertaken, the Greffier is able to appoint a member of the Panel to act on behalf of the Chairman or Deputy Chairmen.

4. that Appeal Bodies including Boards of Administrative Appeals are able to direct their own affairs with sufficient flexibility to ensure that neither the complainant nor the defendant is denied natural justice.

These improvements will serve to further enhance the system of administrative review.

Connétable of St. Clement
Chairman
Privileges and Procedures Committee

**Foreword by the Chairman of the Administrative Appeals Panel**

Dear Mr. Chairman,

I have pleasure in forwarding to you the report for 2005, which includes the resolution of matters outstanding as at the end of 2004. 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* |
|---|---|---|---|---|---|
| d forward from | 2 | | 2 | | 1 |
| | | 1 | 1 | 3 | |
| views processed, 5 incomplete | 2 | 1 | 3 | 3 | 1 |
| Note: | 5 applications were being processed and were incomplete at the end of 2005 | | | | |

One area which has been increasingly perplexing is whether to allow an appeal to continue when there is no reasonable prospect of success. For example, where a third party appeal has been submitted to review a planning permission for a property adjacent to his own, where a permit has been issued in accordance with procedures, and where the said property is already under construction – any reversal of such a decision could incur hardship to the person developing the site or the prospect of significant compensation for the States. Should the Law be amended so as to rule out those appeals where there is ‘no reasonable prospect of success’? I say this not as a political comment, which is not within my remit, but because more than one application has fallen into this category in 2005.

I would like to place on record my thanks to the Connétables of the Parishes in which we have conducted reviews in 2005 for allowing us to use their Parish Halls for the hearings. The locations are ideal to provide familiar surroundings to complainants and, where appropriate, practical venues near to the site of a property in relation to which a review is being held.

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,
3rd May 2005

The following is a summary of the outcome of the complaints which were outstanding in the 2003 and 2004 Annual Report and of new complaints received in 2005 –

**Outcome of complaints that were outstanding at the end of 2004 and which were referred to in the Annual Report for 2003 and 2004 (R.C. 19/2005) –**

*Environment and Public Services Committee*

(a) 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 accordingly commenced reconsideration and requested environmental information from the Complainant.

The Board's findings and the response of the Complainant were considered by the Committee on 3rd March 2005. The information submitted by the Complainant was not sufficient for the Committee to overturn its decision, and the Committee decided not to press for a proper Environmental Impact Statement as this would have been unnecessarily expensive, as, based on the merits of the scheme, the relationship with adjoining properties, and the fact the site lies in the Green Zone, the Committee was not minded to change its decision.

**Copy of findings attached at Appendix A.**

(b) Statement of further complaint against refusal of permission to start a sheep farm and construct a cottage on Fields 24 and 26, La Rue de la Vignette, St. Saviour

Hearing held on 23rd May 2005. The Board requested the Committee to reconsider its decision to refuse the construction of a small dwelling on agricultural land to ensure that it had been properly made and to expand on certain statements. Having re-considered the matter, the Committee maintained its decision.

**Copy of findings attached at Appendix B.**

(c) 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 and other matters relative to the site.

The Greffier determined that the complaint justified an appeal and a hearing was arranged. The request for a hearing was subsequently withdrawn and the case is closed.

(d) 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.

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

(e) 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 complaint was disallowed as falling outside the terms of the Administrative Decisions (Review)

(Jersey) Law 1982 as amended.

**New complaints received in 2005**

*Environment and Planning Committee*

(f) Statement of complaint received on 18th July 2005 regarding the refusal of consent for the development of the properties known as Mont de la Rocque Hotel and Clos des Pins. Following receipt of the department report at the end of September and agreement that a hearing should be held, several unsuccessful attempts were made to convene a hearing before the close of 2005.

The case was under consideration at the end of 2005.

(g) Statement of complaint received on 28th February 2005 concerning an objection to the statement of the Committee that 'some limited and appropriate development could be accommodated on the site' of Field 621, La Route de Noirmont, St. Brelade. This application was initially withdrawn as it was noted that Deputy J.A. Hilton of St. Helier was to lodge a report and proposition (P.33/2005) relating to this site, the purpose of which was, inter alia, to re-zone from Built up Area to Green Zone Field 621. This matter was debated on 20th April 2005, but the debate came to an unexpected end.

The application was later resubmitted on 16th December 2005 to the Minister for Planning and Environment.

The case was under consideration at the end of 2005.

(h) Statement of complaint received on 1st April 2005 regarding a refusal to permit construction of 2 dormer cottages on part of Field 263A, Grouville. The matter reviewed by the Committee on 26th May 2005 and was approved. The case was accordingly resolved between the parties without recourse to a hearing.

(i) Statement of complaint received on 21st April 2005 that the Committee had taken more than 6 months to process an application relating to Fairfield House, La Rue de Hurel, Trinity. This application was refused. A further complaint was received on 25th July 2005 regarding failure to compensate for the delays. This, of itself, was not capable of being reviewed by a hearing unless the Committee had made a decision not to compensate the complainant, and the application was accordingly refused. The complainant, having referred the matter to the Committee for a decision, and on 21st December 2005 submitted a further complaint that the Committee had failed to compensate his client for the delays in determining an application.

The case was under consideration at the end of 2005.

(j) Statement of complaint received on 23rd May 2005 against the Committee for refusal to grant an *ex gratia* payment in respect of alleged structural damage to 'Karenza', La Commune de Pontac, St. Clement.

A hearing was held on 9th August 2005 and the Board upheld the Committee's decision.

**Copy of findings attached at Appendix C.**

(k) Statement of complaint received on 25th April 2005 against the decision of the Committee refusing the demolition of existing redundant staff buildings on Part Field 609, Brookvale, La Rue St Julien, St.

Martin and the construction of two 3 bedroom 1.5 storey dwellings.

A hearing was held on 29th July 2005 and the Board upheld the Committee's decision.

**Copy of findings attached at Appendix D.**

(l) Statement of complaint received on 12th October 2005 against the refusal of an application to construct 1 x 3 bedroom dormer dwelling within the garden area of residence 'Le Clos Ami'

The case was under consideration at the end of 2005.

(m) Statement of complaint received on 7th November 2005 against the Committee's Notice served on the Complainant to connect her property's foul drainage to a new patent 'grp' cesspool or alternatively, to make a connection to the main sewer available in La Rue des Pallières.

The case was under consideration at the end of 2005.

*Housing Committee*

(n) Statement of complaint received on 12th July 2005 against decision of the Committee to refuse rent abatement.

A hearing was held on 26th September 2005, and the Board upheld the Committee's decision.

**Copy of findings with names removed attached at Appendix E.**

*Home Affairs Committee*

(o) Statement of complaint received on 19th July 2005 against decision of the Committee relating to the cessation of sickness pay to an officer.

A hearing was held on 13th October 2005 and the Board requested the Home Affairs Committee to reconsider its decision to ensure that it was satisfied that it had been properly made.

The outcome of that reconsideration was outstanding as at the end of 2005.

**APPENDIX A**

**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 three 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 two to three days. Even at top capacity, it was highly unlikely that the mobile plant would run for more than four hours a day because the asphalt needed to be hot. In four 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 seven 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 re-instatement 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 ten 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 b 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 stat 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 five 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 taker 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 B**

PM/161.05

**BOARD OF ADMINISTRATIVE APPEAL**

**23rd May 2005**

**Complaint by Ms. J. Riggall (represented by Deputy F.J. Hill, B.E.M. of St. Martin) against a decision of the Environment and Public Services Committee**

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

**1386/2/1/2(251)**

**1. Present –**

Mrs. C.E. Canavan (Chairman)
Mr. D.J. Watkins
Mr. P.G. Farley

**Complainants**

Ms. J. Riggall
Represented by Deputy F.J. Hill, B.E.M. of St. Martin

Mr. J.W. Godfrey, Chief Executive, Royal Jersey Agricultural and Horticultural Society
Mr. N.N. Martin, Veterinary Surgeon.

**Environment and Public Services Committee**

Connétable R.E.N. Dupré of St. John
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 23rd May 2005.

**2. Background and summary of the dispute**

2.1 The Board was convened to hear a complaint of Ms. Jenni Riggall (represented by Deputy F.J. Hill, B.E.M. of St. Martin) regarding the decision of the Environment and Public Services Committee ("EPSC") made at its meeting on 3rd March 2005 to maintain a previous decision made on 14th January 2004 when permission was refused for the construction of a new dwelling and ancillary buildings necessary for a sheep farm on Fields Nos. 24 and 26, La Rue de la Vignette, St. Saviour.

2.2 The decision of EPSC made on 14th January 2004 had been the subject of a Hearing by a Board of Administrative Appeal on 26th July 2004. The Board had decided that it could not uphold Ms. Riggall's complaint.

2.3 The decision of EPSC on 3rd March 2005 to maintain the refusal followed the submission of a revised business plan submitted on behalf of Ms. Riggall together with other supporting documentation.

## 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 the parties went together to visit the sites of both Ms. Riggall's existing holding (2/3 vergées of land at Le Vieux Menage, St. Saviour) and also Fields Nos. 24 and 26, St. Saviour/St. Martin.

## 4. Summary of the complainant's case

4.1 Ms. Riggall indicated that she had been attempting for a period of 10 years to establish a new farm for the production of local lamb and eggs. Ms. Riggall confirmed that she had been seeking to identify a suitable farm holding for purchase and had placed public advertisements to this end, but had been unsuccessful. Ultimately, it had become apparent that the only option would be to secure agricultural land and to develop a new farm holding. In 2003, advice had been sought from the States' Technical and Development Officer, the States' Livestock Adviser, the Director of Planning and 2 members of EPSC. Following initial encouragement and positive feedback enquiries had been made to numerous farmers and landowners, both directly and through estate agents, resulting in one response from the owner of the land which is the subject of this present Hearing.

4.2 Miss Riggall outlined her response to the findings which had emanated from the previous Board of Administrative Appeal. Whereas that Board had doubted the viability of the proposed unit, the area of land had since been extended and the size of the flock increased, with the resultant viability having been approved by the Economic Development Committee ("EDC"). Ms. Riggall's response was that the additional security of her established income from another source positively ensured that the proposed farm would remain both viable and sustainable. With most of the Island's farmers reputed to have an additional source of income, given that currently only 7 farmers were under the age of 40, it was suggested that it was unrealistic to expect a new entrant to enter the industry on the basis of farming alone.

4.3 The previous Board had commented on the fact that Ms. Riggall might not be able to provide herself with a pension. Ms. Riggall confirmed that she currently had pension provisions which would adequately meet her needs.

4.4 Whereas the previous Board had considered that Ms. Riggall's present accommodation was close enough to provide a reasonable level of security for the livestock, it was emphasised that sheep had very different welfare needs to cattle. Ms. Riggall indicated the likelihood that the lambs which had been lost in the current year could have survived had she been on site. The States Veterinary Officer and the Livestock Adviser had confirmed in writing that it was essential during lambing for someone to be permanently on site. In particular, the larger scale of the present application rendered it essential for Ms. Riggall to live on site all the time, as the lambing period would be increased to 48 weeks of the year as opposed to the 6 week period which had been envisaged in the application in 2003/2004. The Board was apprised that the financing of the enterprise would be facilitated by the sale of Ms. Riggall's present dwelling.

4.5 It was suggested that the previous Board had been aware of the significant weight associated with planning precedents. However, it was emphasised that setting-up a new sheep farm required exceptional dedication and extensive knowledge of animal welfare, veterinary skills, breeding controls and other skills. Ms. Riggall suggested that less sincere applicants would soon be identified through the rigorous planning processes and that, perhaps, there would be merit in requiring such applicants to demonstrate their practical application by keeping sheep for a period of years prior to being allowed to construct a dwelling on the site of their business, as she herself had been doing for 6 years.

4.6 Ms. Riggall was aggrieved that, despite her endeavours to produce all the evidence required by EPSC to justify an exception to the general presumption against development in the Countryside Zone, the principal reason for the latest refusal of her application had been that the case presented had been based on a business not yet in operation, something which had not be raised previously and which was not specifically mentioned in any of EPSC's explanatory literature. Whereas she was expected to demonstrate prior to building a dwelling on the site that the business was successful and had expanded, this was not

possible without being able to live on site. Ms. Riggall was aware that 3 members of EPSC had supported her application and had registered their dissent from the refusal.

4.7 Ms. Riggall considered that too much emphasis had been placed on her absence from the business due to her part-time work (27 hours a week). Miss Riggall made the point that there were occasions when commercial farmers were required to be absent from their holdings for equivalent periods of time and, in any event, she would have an employee to provide cover. It was put to the Board that there is an urgent need to encourage new entrants to the agricultural industry, particularly because of the apparent absence of interest amongst existing farmers towards agricultural or veterinary education. Ms. Riggall emphasised her enthusiasm to introduce young children for educational purposes to agriculture and, in particular, the production of eggs, lamb and apples, and underlined her belief that if permitted to establish her business it would undoubtedly succeed and she would eventually become employed in farming on a full-time basis.

4.8 Deputy Hill meticulously addressed the points which had been made in EPSC's written submission in response to Ms. Riggall's complaint against its decision.

## 5. Summary of the Committee's case

5.1 Mr. Webster outlined that the Planning Law required permission to be sought for buildings and not for keeping sheep or for planting orchards. In Ms. Riggall's case, EPSC did not consider that an adequate case had been made under the Countryside Policy (C6) to enable a dwelling to be allowed in the Countryside Zone. It was emphasised that that Zone had a high level of protection with a general presumption against all forms of new development for whatever purpose. However, it was apparent from the policy that EPSC recognised that, within the Zone, there were many buildings and established uses so that to preclude all forms of development would be unreasonable. Consequently, the policy set out the types of development which might be permitted where the scale, location and design would not detract from, or unreasonably harm the character and scenic quality of the countryside.

5.2 It was noted that paragraph (f) of Policy C6 indicated that applications for the development of new dwellings amongst existing buildings would not normally be permitted "**unless** (this Board's emphasis") it is demonstrated, to the satisfaction of the Committee, that the development is essential to meet agricultural needs **and** cannot reasonably be met within the built-up area or from the conversion/modification of an existing building".

5.3 Mr. Webster indicated that EPSC's main consideration of paragraph (f) centred on (i) essentiality and (ii) the reasonableness of meeting agricultural needs within the built-up area. Consequently, the reasoning for the rejection of Ms. Riggall's application was based on (a) viability– to avoid a subsequent request for the removal of agricultural conditions, and the reliance upon outside part-time employment; (b) essentiality– the need to live on site permanently was not considered to have been adequately demonstrated; (c) precedent– concern that future applications might look at a permit in this case as a precedent; and (d) the proximity of the existing accommodation.

5.4 It was confirmed that EPSC had considered Ms. Riggall's revised business plan, as well as all letters of support which had been provided. The EPSC had, in particular, taken into account the views expressed by the Livestock Adviser. Of particular concern was the proposed siting of the dwelling in a field in the middle of open countryside where there were no existing buildings nearby. The EPSC considered that the relatively small existing undertaking provided insufficient evidence that a much larger operation would be successful. It was noted that diversification within agriculture is encouraged under the proposed Rural Economic Strategy (currently out to public consultation) and that once implemented that Strategy would support current *bona fide* agriculturalists and encourage new entrants into the agricultural industry.

5.5 With regard to the contention that the 'goal posts' had been moved during the successive consideration of Ms. Riggall's application, Mr. Webster conceded that EPSC's decisions could have been more clearly set out, although it was suggested that certain aspects of the application had changed and developed so that EPSC's views had adjusted accordingly. It was emphasised, however, that considerable importance had been placed upon the desirability for proven viability.

5.6 The point was made that not all planning considerations were listed in the Island Plan. The EPSC had taken into account the support of EDC in the reconsideration of the proposal and also the potential benefits from a tourism point of view, but EPSC still reached the decision in this particular instance that these opinions or proposals did not outweigh the wider environmental/countryside policies aimed at protecting the open countryside from new building development.

5.7 Deputy Hill said that whilst it was accepted that Ms. Riggall's original application had not made out an adequate case, this was no longer the situation in relation to the current (revised) application. Mr. Webster indicated the possibility that the weight/balance of the case might shift following the implementation in due course of the Rural Economic Strategy such that EPSC might determine the application differently. Ms. Riggall commented that, once again, advice from the Committee's officers appeared to have changed. Mr. Webster confirmed that the need for Ms. Riggall to live on the site of a sheep farm had been accepted by EPSC.

5.8 Connétable Dupré added that he personally was in favour of Ms. Riggall's proposals to establish a smallholding but he could not support the application to construct a property on this particular site, that is on open fields in the middle of the countryside.

## 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 It is essential to consider the content of Policy C6(f), namely "applications for the development of new dwellings will not normally be permitted unless it is demonstrated, to the satisfaction of the Committee, that the development is essential to meet agricultural needs and cannot reasonably be met within the built-up area or from the conversion/modification of an existing building." The criteria are quite simple – (a) the Committee must be **satisfied** (no-one else's opinion is relevant); (b) the development must be **essential** for the needs of agriculture; and (c) there is no other alternative building available.

6.3 The Board considers that it is important to look carefully at the various decisions made in relation to Ms. Riggall's application and the reasons given for those decisions in the light of Policy C6(f).

6.4 From the minutes of the Planning Sub-Committee meeting held on 14th January 2004 it is noted that –

(i) the site was considered to be subject to Policy C6 and therefore the criteria in 6.2 above had to be considered;

(ii) Miss Riggall had not satisfied EPSC that the dwelling was essential and therefore it was not necessary to go on to see if there was a viable alternative to a new development;

(iii) whilst much has been made since this initial decision about Ms. Riggall's continued employment (whether full-time or part-time), it is interesting to note that in these minutes the "Sub-Committee noted that whilst the applicant would be financially buoyant as regular, full-time employment would be continued, it could not be considered as a planning matter."

(iv) it is clear therefore that the decision was made, according to the minutes, solely on the basis of the fact that EPSC was not satisfied that it was essential for someone to live permanently on site (and could not therefore be deemed to be an exception to the policy) and not because of the viability or otherwise of the scheme.

6.5 Having made its initial decision on 14th January 2004, EPSC, on 25th March 2004, reconsidered its decision. Having discussed the matter with the applicant, it was considered that the need for accommodation on the site had not been proven, particularly as the applicant intended to continue in her

existing occupation on a part-time basis. Accordingly, EPSC, whilst noting the passion and enthusiasm of the applicant, decided to maintain refusal. The viability or otherwise of the scheme was still not given as a reason for the refusal.

6.6 On 7th June 2004, EPSC, notwithstanding having noted support from the States Veterinary Officer for the need for an appropriate responsible adult to be present at the proposed farm at all times for reasons of animal welfare and security, again decided to maintain refusal.

6.7 After the unsuccessful Board of Administrative Appeal in July 2004, Ms. Riggall revisited her scheme and a revised business plan was presented to EPSC and discussed by it on 3rd March 2005. The main differences between the two schemes were the increased size of the flock, the increase in the number of fields available and the increase in the lambing season to 48 weeks each year. The EPSC was addressed on that day by Deputy Hill, Mr. Godfrey and Ms. Riggall and all of the letters and documentation in support of the application were presented. The minutes of the meeting show that –

(i) it was noted that the Rural Economy Strategy was not yet in effect and was therefore of no assistance to Ms. Riggall;

(ii) EPSC considered that the business plan and the development application were sound;

(iii) the planning system was not designed to allow people to enter into agriculture in this manner;

(iv) the precedent set in this case could allow less dedicated applicants to construct dwellings in the Green Zone. (It was accepted at the Hearing that this reference to the Green Zone was an error and should have been a reference to the Countryside Zone);

(v) EPSC noted the support enjoyed by Ms. Riggall but "was not of the opinion that this was a planning concern";

(vi) EPSC was reluctant to allow a person not primarily involved in commercial agriculture to construct a new dwelling in the Countryside Zone;

(vii) although EPSC was deeply sympathetic to Ms. Riggall the application was refused but it was stated that a further application would be welcomed once the Rural Economic Strategy was in place and planning policies had been amended.

6.8 The Board has the following comments to make on the content of the minutes as detailed in 6.7 above (using the same numbering) –

(i) the Board accepted this point;

(ii) the acknowledgement that the business plan was sound must mean that EPSC accepted that the lambing season would be increased from 6 weeks to 48 weeks each year and that the plan was viable;

(iii) this was a confusing statement and begs the question "if the planning system is not designed to allow people to enter into agriculture in this manner (whatever those last 3 words might mean) how is anyone new ever going to get into agriculture?".

(iv) whilst the Board accepts the concerns of EPSC with regard to precedents, each application must be considered on its own merit. An application must not be refused purely and simply on the basis that it will form a precedent and the fact that one application is granted on merit does not mean that all subsequent applications of a similar nature will be granted;

(v) the Board cannot agree that in this case, the support received by Ms. Riggall should not have been taken into account. The support included, for example, opinions from experienced veterinary

surgeons and sheep keepers that permanent accommodation on the proposed smallholding would be essential, a point which goes to the heart of the consideration of an application falling within C6(f);

(vi) the Board understood this position.

It must be noted that no reference whatsoever was made to residence on site or the viability of the scheme. There is no reference at all in the minutes or in the reasons for the refusal to policies C6(f) or C17.

6.9 It is also necessary to examine the letter dated 3rd March 2005 from Mr. A. Farman, Assistant Senic Planner to Ms. Riggall notifying her of the decision. In that letter he stated that –

(i) the refusal was maintained for the same reasons as given on 14th January 2004. It was noted that the minutes do not say this;

(ii) "The Committee were not convinced that it had been demonstrated that the proposed dwelling was essential to the proper function of the farm holding as required by policy C17." The Board has the following comments –

(a) the necessity to reside at the premises, or not, is not mentioned in the minutes;

(b) the Board was surprised that EPSC was not wholly satisfied at its meeting on 3rd March 2005, having been provided with Ms. Riggall's revised business plan together with all the supporting documentation, that a dwelling on site was indeed essential to the business (and also to meet the requirements of the Animal Welfare (Jersey) Law 2004);

(c) it does not appear from the minutes of the meeting that consideration was given to Ms. Riggall's attempts to find an existing farm unit or a more suitable site adjacent to existing buildings;

(d) EPSC was unable to sanction the construction of a dwelling on the basis of a business that was not yet in operation. This was certainly not mentioned in the minutes and this letter was the first time that this criterion had been mentioned;

(e) in the penultimate paragraph Ms. Riggall is advised "to expand the plan to such a degree whereby the Committee can be convinced of the need for the dwelling". Ms. Riggall is there being encouraged to go further but for different reasons than appear in the minutes.

6.10 In addition to the inconsistencies between the minutes and the letter dated 3rd March 2005, the Board noted that the minutes appeared to be inconsistent with EPSC's current stance and contradictory in a number of respects. Whereas the minutes stated that the construction of a dwelling on the site would be contrary to Policy C6 – 'Countryside Zone', NR2 – 'Foul Sewerage Facilities', and C17 – 'New Dwellings for Agricultural Workers' of the Island Plan 2002, the Board was aware that it had been accepted at this Hearing that Policy NR2 was no longer an issue (as drainage and services could be installed to the site). In addition, EPSC was prepared to accept the need for Ms. Riggall to live on the site of a proposed sheep farm, but not on this particular site. Although the minutes stated that the support which the applicant enjoyed was not a planning concern, Mr. Webster confirmed that it was indeed a matter which the Committee was required to take into account.

6.11 The Board expressed concern at the mixed messages emanating from EPSC in relation to advice to Ms. Riggall in connection with her application in respect of Field Nos. 24 and 26, La Rue de la Vignette, St. Saviour. Whereas, on the one hand, the Committee had endeavoured to be sympathetic and supportive of the concept of establishing a sheep farm so as to encourage diversification within the agricultural industry, it had also put in place various hurdles at successive stages which the applicant appeared to have overcome but which had still not achieved a successful result.

6.12 The Board was of opinion that –

(i) everyone, including the members of EPSC who had refused the application, feel that Ms. Riggall has made an impressive case for sheep farming and that she has the dedication, drive and knowledge to make it successful. As a niche market there would be a demand for lamb and it would add diversity to Jersey's agricultural scene;

(ii) the nub of the question is whether Ms. Riggall should be allowed to build a dwelling on that particular site;

(iii) it cannot substitute its own opinion for that of EPSC;

(iv) referring to Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, the decision made by EPSC on 3rd March 2005 does not fall within the categories set out in Article 9(2)(a) (b), (c) or (e);

(v) the Board could not go so far as to say that the decision of EPSC fell into the category of Article 9 (2)(d) but because of the inconsistent and, at times, conflicting advice given to Ms. Riggall and in the reasons for the refusal of her application and the different information provided at the Hearing, the Board is not satisfied that EPSC reached the decision it did after having regard to all matters to which it should have had regard and having disregarded matters which ought not to have been taken into account.

6.13 The Board, whilst totally accepting the fact that EPSC might reach the same decision, would request EPSC to reconsider its decision to ensure that it is satisfied that it has been properly made by asking itself the following questions, even if it might feel that the questions or some of them have already been asked and answered –

1. Is it accepted by EPSC that a residence and appropriate outbuildings are essential for the running of the type of smallholding proposed by Ms. Riggall in her business plan [C6(f)]?

2. Is EPSC satisfied that Ms. Riggall has made all reasonable attempts to find an alternative solution and that no alternative is available [C6(f)]?

3. If (1) and (2) are answered in Ms. Riggall's favour, then EPSC should ask itself if the application satisfies any of the criteria set out in Policy C17 particularly in the light of the support received from EDC?

4. If (3) is answered in Ms. Riggall's favour, then EPSC must finally ask itself would this development, suitably landscaped (with surrounding trees/large shrubs as camouflage) detract from or unreasonably harm the character and scenic quality of this particular area of the countryside.

Finally, the Board would ask EPSC to expand on the reasoning behind the statement in the minutes of 3rd March 2005 that EPSC "would welcome another application from Ms. Riggall once the Rural Economy Strategy was in place and planning policies had been amended."

6.14 The Board requests EPSC to reconsider its decision within a period of 3 months and to report back to the Board on the outcome of such reconsideration.

Signed and dated by –

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

Mrs. C.E. Canavan, Chairman

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

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

**APPENDIX C**

PM/227.05

**BOARD OF ADMINISTRATIVE APPEAL**

**9th August 2005**

**Complaint by Mr. W.G. Prouse against a decision of the Environment and Public Services Committee**

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

**1386/2/1/2(264)**

**1. Present –**

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

**Complainants**

Mr. W.G. Prouse
Mrs. J.M. Prouse

**Environment and Public Services Committee**

Senator P.F.C. Ozouf, President
Mr. J. Rogers, Director, Waste Management

**States Greffe**

Mr. P. Monamy, Senior Committee Clerk.

The Hearing was held in public at Morier House on 9th August 2005.

**2. Background and summary of the dispute.**

2.1 The Board was convened to hear a complaint of Mr. William Graham Prouse and Mrs. Joan Mary Prouse regarding the decision of the Environment and Public Services Committee ("EPSC") made at its meeting on 22nd April 2004 that (a) it would not consider the claim for compensation in respect of structural damage to the property "Karenza", La Commune de Pontac, St. Clement, alleged to have occurred as a result of drainage works undertaken during 1969, in view of the opinion which had been received from H.M. Solicitor General that any claim for compensation, either on a statutory or legal basis, was out of time; and (b) that it was not prepared to agree to the claim for an *ex gratia* payment as there was insufficient evidence to indicate that the damage to "Karenza" had been caused, or contributed to, by the sewer works in the roadway in 1969.

**3. Site Visit to "Karenza", La Commune de Pontac, St. Clement.**

3.1 After the formal opening of the Hearing at Morier House the parties went together to visit the site

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

4.1 Mr. Prouse, together with his wife, Mrs. J.M. Prouse, outlined the background to the complaint. It was

recognised that the property “Karenza”, a detached 2-storey house, had been constructed on the northern side of a private roadway (formerly the line of the Eastern Railway track). The house was built on sand with strip foundations and included a damp-proof course and solid 6 inch block walls (i.e. not cavity walls) Mr. Prouse confirmed that he had purchased the house in January 1963.

4.2 The Meeting noted that, in April 1968, the then Sewerage Board had written to give advance notice of its intention to construct an extension to the main sewer to Gorey, which was to include a branch sewer in Pontac Common, with Holdyne Structures (Jersey) Limited being the contractor. Formal letters, dated 5th and 20th August 1968, were received from the Greffier of the States, on the Board’s behalf, which outlined the Board’s powers under Article 2 of the Sewerage (Amendment) (Jersey) Law 1953 and which enclosed the required statutory Notices. The Greffier’s letter of 5th August 1968 also drew attention to the Article in question conferring a right to recover compensation from the Board where, in consequence of the exercise of its powers, the value of the land was diminished or damage was sustained by disturbance in the enjoyment in or over land. Mr. Prouse emphasised that none of the correspondence he had received referred to the necessity for any claims to be submitted to the contractor, or that there was a 3-year time limit for the institution of any legal proceedings.

4.3 Mr. Prouse indicated that on 12th June 1969 a pre-works property condition survey had been undertaken by Messrs. S.O. Woodward and Partners, Quantity and Building Surveyors, on behalf of the Sewerage Board. The Administrative Appeal Board noted that the resultant 6-page report had stated by way of general comment that “The property appears to be in fair condition but lack of general maintenance is apparent throughout.” However, it was recognised that the report had recorded prominent external cracks in both gable walls. The Board noted that the report had not been made available to Mr. Prouse until April 2004.

4.4 Having noted that the sewerage works at Pontac Common had been undertaken during the period July to September 1969, the Board recognised that “Karenza” was the closest property to the line of the sewer. The relevant measurements were noted, although it was recognised that the sewer records indicated that the bay window and the main south face of the house were some 3 to 4 feet further away from the centreline of the sewer than had been understood by Mr. Prouse. Mrs. Prouse confirmed that she had been present for the majority of the work undertaken during the daytime and that, upon progression of the works as far as “Karenza”, she had discussed with the General Foreman her concerns for the safety of her home. It was suggested that this had led to the Foreman agreeing not to shore-up the trench immediately in front of “Karenza” so as to ensure that the pile-driving vibration did not damage the property. In the event, the excavator being used to excavate the trench immediately in front of the property had fractured the mains water pipe and this proceeded to scour the side of the 2-3 foot trench such that the foundations of both the garden wall and the bay window wall were exposed and became unsupported. Both Mrs. Prouse and a neighbour, Mrs. Wilmett, witnessed the trench fill with water and the sides collapse.

4.5 Mr. Prouse indicated that by about March 1970 (approximately 9 months after the trench collapse prominent cracks were noticed in both of the gable walls of “Karenza”, although their significance was not immediately apparent. On 18th March 1971, Mr. Prouse wrote to the Sewerage Board’s Chief Engineer to report structural damage to “Karenza” and to give notice of his compensation claim – acknowledgement of which was received dated 29th March 1971. The following day Messrs Woodward and Partners carried out a second survey, although the resultant report had not been made available to Mr. Prouse until April 2004. It was noted that the 1971 survey recorded new defects, but that the pre-existing cracks were in much the same condition as they had been at the time of the original survey. The report concluded that “we are unable to state categorically that the new defects can be attributed to the drainage works.”

4.6 Whilst a copy of Mr. Prouse’s written report and claim was sent to the Commercial Union Assurance Company Limited (coincidentally, both the Contractor’s and Mr. and Mrs. Prouse’s insurers), it appeared that no further action was taken by the company until, when in April 1975, the Claims Superintendent wrote to Mr. Prouse to say that “we do not consider that our Insured are in any way liable for any cracks which have appeared in the roof and walls of your house. …we are not able to consider any claim which you are making.” Mr. Prouse was then precluded from taking legal action against the Sewerage Board as

the 3-year limit for the institution of legal proceedings for the tort of negligence had already expired a year earlier (in March 1974). It was not until May 1990 that Mr. and Mrs. Prouse were able to fund the commencement of partial remedial works to their property, supervised by Messrs. David O. Reynolds and Associates, Corporate Building Surveyors, at a cost of £22,663.

4.7 Mr. and Mrs. Prouse suggested that there had been departmental maladministration in 1969 on the part of the then Greffier of the States and also the Sewerage Board's Chief Engineer. This had later been compounded by the action taken in 2004 by the Director of Waste Management when the alleged erroneous and misleading information had been conveyed to the complainant. Mr. and Mrs. Prouse considered that EPSC had reached its decision not to make an *ex gratia* award partly on the basis of mistakes of fact, and that this had been prejudiced by its failure to take into account the surveyor's remarks in his 1971 report and by giving unjustified credence to the rejection of the claim by Commercial Union Assurance.

4.8 The Board noted that the complainants, having felt aggrieved by EPSC's decision, had felt justified in taking action by way of a public protest. To this end, they had in April 2004 temporarily closed a short length of private sewer in their common ownership (in respect of which no statutory notice had ever been served). Written and verbal warnings of such action had been given in advance to the Committee's Director of Waste Management, and consequently an Injunction had been served on Mr. Prouse, which he considered to be wrongful and unjust.

**5. Summary of the Committee's case**

5.1 Mr. Rogers explained that EPSC had received correspondence from Mr. and Mrs. Prouse in January and March 2004 in which they claimed compensation for damage to their property "Karenza" which they alleged had occurred as a result of work undertaken as part of a drainage contract in 1969.

5.2 Having sought legal advice, H.M. Solicitor General had opined that any claim for compensation, either on a statutory or legal basis, was out of time.

5.3 Senator Ozouf confirmed that the Committee had nevertheless given detailed consideration to the claim for an *ex gratia* payment, but had concluded that there was insufficient evidence to indicate that the damage to "Karenza" had been caused, or contributed to, by the sewer works which had taken place in the private roadway in 1969.

5.4 Mr. Rogers outlined the methods which would have been adopted in 1969 for the type of sewer work undertaken at Pontac Common. It was confirmed that good records had been maintained and that contemporaneous diary entries and file notes recorded the incident involving the damaged pipe adjacent to "Karenza." These indicated that, whereas the use of inter-locking sheet piling had ceased at the adjacent property, 'manual' shuttering had been put in place, though possibly not at the time when the mains water pipe had been fractured.

5.5 In arriving at its decision, the Committee had taken account of the 2 survey reports arising from the pre-works and post-works inspections of the property. Whereas the second survey report had concluded that deterioration of the property had taken place since the earlier inspection, the surveyor was unable to state categorically that the new defects could be attributed to the drainage works. Indeed, it had been indicated that the cracks were in much the same condition as they had been at the time of the original survey. The later survey report had referred to the comment in the initial inspection report regarding the lack of general maintenance that had been apparent throughout the property, stating that the defects which had occurred since the initial inspection could well have been a continuation of the gradual deterioration. Mr. Rogers suggested that if major defects had been present in the building, these would have become apparent within the 15 month period between the 2 surveys.

5.6 Mr. Rogers indicated that the issues arising from the correspondence with Commercial Union Assurance had not been considered by the Committee until copies of that correspondence had been provided by Mr. Prouse.

5.7 Senator Ozouf commented that the delay of just over 3 months in responding to Mr. Prouse's letter of 8th January 2004 had arisen from the Committee's wish to obtain further legal advice and to undertake research into the statutory Notices served in relation to the drainage works at Pontac Common. It was emphasised that the Committee's decision was based on consideration of all the evidence available to it – the burden of proof being on the complainant.

**6. The Board's findings**

6.1 The Board was appreciative of the meticulous approach which had been adopted by the complainants in presenting their case and for the clarity of the documentation provided.

6.2 It was evident that the Board was unable to consider the question of compensation arising from the events which occurred in 1969 as this matter was clearly out of time.

6.3 However, the Board did take the background to those events into consideration when dealing with the complaint against EPSC regarding its rejection of the complainants' request for an *ex gratia* payment.

6.2 The Board, having given careful consideration to the provisions of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, recognised the EPSC, and its officers, had acted reasonably in determining Mr. and Mrs. Prouse's application for compensation and did not feel that the Committee's decision:

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

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

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

7.7 Therefore, the Board rejected the complaint.

Signed and dated by –

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

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

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

**APPENDIX D**

PM/215.05

**BOARD OF ADMINISTRATIVE APPEAL**

**29th July 2005**

**Complaint by Mr. and Mrs. E. Brown (represented by Deputy F.J. Hill, B.E.M. of St. Martin) against a decision of the Environment and Public Services Committee**

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

**1386/2/1/2(265)**

**1. Present –**

Mrs. C.E. Canavan (Chairman)
Miss C. Vibert
Mr. D.J. Watkins

**Complainants**

Mr. and Mrs. E.W. Brown
Represented by Deputy F.J. Hill, B.E.M. of St. Martin

**Environment and Public Services Committee**

Deputy G.W.J. De Faye
Mr. R.T. Webster, Principal Planner
Mrs. S. Marsh, Case Officer

**States Greffe**

Mr. P. Monamy, Senior Committee Clerk.

The Hearing was held in public at St. Martin's Public Hall on 29th July 2005.

**2. Background and summary of the dispute**

2.1 The Board was convened to hear a complaint of Mr. and Mrs. Edgar Brown (represented by Deputy F.J Hill, B.E.M. of St. Martin) regarding the decision of the Environment and Public Services Committee ("EPSC") made at its meeting on 17th February 2005 to maintain a previous decision made on 2nd November 2004 to refuse permission to demolish 2 existing redundant staff buildings (chalets) on part of Field No. 609, Brookvale, La Rue St. Julien, St. Martin and to construct 2 x 3-bedroom 1½ storey dwellings, which had been the subject of an 'in principle' application. The Board noted that EPSC had directed the Planning Sub-Committee "to consider the matter and to offer 'without prejudice' advice as to what might be considered a more acceptable application."

2.2 The Board further noted that the Planning Sub-Committee had visited the site on 9th March 2005, together with Mr. and Mrs. Brown and Deputy Hill. Whilst the Sub-Committee had supported the view that the construction of 2 dwellings was inappropriate, it had been prepared to support the construction of one dwelling on the site, subject to the submission of an acceptable design which was in keeping with the rural character of the area.

2.3 It was recognised that Deputy Hill had, on 30th March 2005, written to the Case Officer in order to explain that Mr. and Mrs. Brown wished to achieve a dwelling for each of their 2 children, and also to enquire whether a single dwelling could be semi-detached with 2 units of accommodation, provided that they were kept within the footprint of the existing structures and of a design acceptable to the Planning Department. The question was also asked as to whether such a property could be of 1½ or even 2 storeys. The Case Officer responded on the same date explaining that the Committee's advice was clear – that only one unit of accommodation could be considered, on the basis that it would be almost impossible to achieve 2 units out of the footprint of the two existing chalets, unless they were to be 'bedsits' or one-bedroom units. It was confirmed that the property should be single storey with room in the roof space (i.e. 1½ storeys).

**3. Site Visit to Brookvale – part of Field No. 609, La Rue St. Julien, St. Martin**

3.1 After the formal opening of the Hearing at St. Martin's Public Hall the parties went together to visit the site

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

4.1 Deputy Hill, on behalf of Mr. and Mrs. Brown, outlined the history regarding the placing of the chalets on the site in 1940 and their subsequent use as accommodation for agricultural workers until 1995. It was clear that Brookvale was no longer in use as the base for an agricultural holding and that the 2 chalets were no longer required to accommodate staff. Whereas the chalets had been (under the previous Island Plan) in the "Agricultural Priority Zone", it was recognised that under the 2002 Island Plan they were currently in the "Green Zone." Although it was accepted that there was a presumption against development in the Green Zone, Deputy Hill emphasised that current policy allowed for conversions of existing buildings to appropriate and non-intrusive residential uses.

4.2 The Meeting noted that the Committee's notice of refusal for permission in principle, dated 2nd November 2004, referred to the proposed development (the demolition of existing redundant staff buildings and the construction of 2 x 3-bedroom 1½ storey dwellings) being contrary to policies G15 ("Replacement Buildings"), C5 ("Green Zone") and G3 ("Quality of Design") of the Island Plan 2002. Deputy Hill contended that the application was compliant with Policy C18 ("Change of Use and/or Conversion of Traditional Farm Buildings").

4.3 Deputy Hill suggested that the refusal of consent under Policy G15 was unreasonable and incorrect, and that the application was compliant with that policy. It was contended that the definition of "conversion" also covered "new build" and that EPSC was being too restrictive in its interpretation. In relation to Policy G3, the applicants were surprised that the proposed design should be cited as a reason for refusal as it had been made clear that the drawings submitted were rough drafts intended simply to show how 2 dwellings could be positioned on the site; the actual design was to have been in line with whatever advice came to be offered by EPSC following 'in principle' consent. Deputy Hill commented that no reason had subsequently been given as to why one dwelling was to be allowed (subject to the agreement of design details) but not 2 dwellings.

4.4 Deputy Hill meticulously addressed the points which had been made in EPSC's written submission in response to Mr. and Mrs. Brown's complaint against its decision. In addition, a number of examples were cited of what were contended to be properties which had been developed in 'similar' circumstances.

4.5 Reference was made by Deputy Hill to an e-mail, dated 9th December 2004, which he had received from the Case Officer which confirmed the floor area of the 2 existing chalets ("huts") as 732 square feet and 434 square feet respectively and which suggested that this was roughly equivalent to one 3-bedroom house. It was noted that in that e-mail, the Case Officer had suggested that it was unlikely to be possible for EPSC to consider two units of accommodation on the Brookvale site unless the Brown's were prepared to offer some further incentive to the Committee, such as the removal of the existing commercial use (in an adjacent redundant agricultural storage shed). Deputy Hill outlined the various plans covering a number of options which had been submitted with the application, and these were viewed by the meeting.

## 5. Summary of the Committee's case

5.1 Mr. Webster explained that EPSC could only have regard to the precise details of any particular application and that it was not appropriate to make comparisons with other sites where the circumstances would undoubtedly be different in each case. The presumption against development in the Green Zone was emphasised; and also the exceptional nature of any development allowed being as a result of the exercise by EPSC of a degree of discretion. In the case of Mr. and Mrs. Brown's application, EPSC had ultimately decided to exercise discretion so as to allow one house on the narrow ground of the enhancement of the site which would result.

5.2 Having covered a number of general points in relation to the application, Mr. Webster confirmed that all procedural requirements had been followed and that EPSC's decision to refuse the application had been made in pursuance with Article 6 of the Island Planning (Jersey) Law 1964, as amended, with the refusal of consent for 2 dwellings being in accordance with States' agreed policy. It was emphasised that there was a general presumption against all new development in the countryside and the 'Spacial Strategy' restricted re-development to existing groups of buildings. Whilst conversion of buildings might be allowed, demolition and new-build was not. Not only did EPSC consider the buildings being applied for, but also that which was associated with such development (i.e. provision for car parking, the domestication of gardens, etc.), which in this case would inevitably detract from the character and appearance of the 'Green Lane' setting of the Brookvale site.

5.3 Mr. Webster confirmed that the removal of 2 unsightly sheds and their replacement with one reasonably-sized dwelling was justifiable under current policy and that refusal of 2 dwellings was reasonable. It was emphasised that Policy G3 was not only concerned with the physical appearance of the houses, but also dealt with issues relating to scale, siting and relationship to existing buildings. Consequently, it was these latter aspects which had been considered to be inappropriate in the context of the surrounding area – hence the inclusion of the Policy G3 ground for refusal.

5.4 Referring to the examples which had been introduced at the hearing by Deputy Hill and Mr. and Mrs. Brown as being properties which had been developed in 'similar' circumstances, Mr. Webster emphasised that in the event that such issues were to be raised it would be helpful if this could be done well enough in advance of the hearing so as to enable the Department to research the background to each case.

## 6. The Board's findings

6.1 The Board viewed the various drawings and sketch plans which had formed part of Mr. and Mrs. Brown's application. Is was concluded that it would not be necessary to ask EPSC to research the background to the examples of properties contended by the complainants as representing 'similar' circumstances to the application in respect of Brookvale.

6.2 The Board, having recalled that it had been confirmed during the hearing that neither of the 2 dilapidated wooden chalets had ever been formally registered as units of accommodation, considered that it would normally be unreasonable to contemplate their replacement with one or more dwelling units, especially in such a rural location. However, it was recognised that EPSC had belatedly agreed that it would be prepared to use its discretionary powers in order to allow one dwelling (subject to acceptable design details – use of traditional form and materials and siting close to the existing building group) on the basis that the removal of the chalets would improve the character and appearance of the 'Green Lane' setting of the Brookvale site.

6.3 The Board considered that the complainants' insistence that 2 dwellings should be allowed on the basis of the removal and 'replacement' of the 2 dilapidated chalets was unrealistic, particularly as there appeared to the Board to be alternative areas within the Brookvale site to which consideration could be given, For example, it was noted that the adjacent redundant agricultural storage shed (in respect of which permission for a 'change of use' had been granted, and which was presently the subject of a lease for 'dry storage' – with a period of 5 years remaining) could – as had been suggested by the Case Officer – be

offered as the site for one of the dwellings sought, in exchange for the removal of the existing commercial use. Thus, the second dwelling, could be that intended to 'replace' the 2 wooden chalets and sited "close to the existing building group nearby."

6.4 The Board, having given careful consideration to the provisions of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, recognised the EPSC, and its officers, had acted reasonably in determining Mr. and Mrs. Brown's application and did not feel that the Committee's decision:

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

– 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.

6.5 Therefore, the Board rejected the complaint.

Signed and dated by –

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

Mrs. C.E. Canavan, Chairman

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

Miss C. Vibert

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

Mr. D.J. Watkins

APPENDIX E

# BOARD OF ADMINISTRATIVE APPEAL

**26th September 2005**

**Complaint by XY against a decision of the Housing Committee**

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

## 1. Present –

Advocate R.J. Renouf (Chairman)
Mr. P.E. Freeley
Mrs. M. Le Gresley

**Complainants**

XY
Deputy G.P. Southern

**Housing Committee**

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

**States Greffe**

Mr. I. Clarkson, Committee Clerk.

The Hearing was held in public in Le Capelain Room, States Building on 26th September 2005.

## 2. Background and summary of the dispute

2.1 The Board was convened to hear a complaint of XY regarding the decision of the Housing Committee, made on 11th March 2005, to discontinue the provision of rent abatement on the grounds that the complainants had deliberately impoverished themselves by disposing of capital assets in order to maintain their rental subsidy.

## 3. Summary of the complainant's case

3.1 Deputy G.P. Southern addressed the Board on behalf of X. He explained that the complainants had been employed within the Island as agricultural workers for almost 50 years. The complainants had, some 30 years previously, suffered the both the loss of their employment with one particular farmer. In turn this resulted in the loss of their home and the subsequent relocation of their four year old daughter to La Préférence children's home for a period of time. Having eventually found new employment elsewhere, the complainants were accommodated in a tower with no running water or other facilities. They later applied for States accommodation and were housed at Nicholson Park, St. Saviour in 1975. Deputy G.P Southern contended that the difficulties experienced by the complainants prior to 1975 had caused them to concentrate upon saving sufficient funds to prevent any member of their family from being made homeless in future.

3.2. Deputy G.P. Southern explained that by 2003, the applicants had managed to save a considerable sum. Y added that her husband had been taken ill in March of that year and had been admitted to hospital. This incident had prompted Y to discuss with her daughter possible future housing arrangements. It was decided that the complainants would use a large proportion of their savings in order to assist their daughter to purchase a one-bedroom flat. Y had contacted Deputy G.P. Southern before transferring any funds with a view to determining whether this plan would be affected by the decision of the States to adopt P.74/2003, as amended, entitled, 'Public and Private Sector Housing Rental Subsidy Schemes'. She had elected not to approach the Housing Department directly on account of a perception, based both on her previous experience in dealing with the Department and experiences reported to her by friends and associates, that she was more likely to receive correct and timely advice with the assistance of a States member.

3.3 Deputy G.P. Southern advised the Board of his recollection of a telephone conversation, on an unknown date in 2003, with the Chief Executive Officer of the Housing Department. He claimed that he had requested specific advice on the complainants' case. Although he had not revealed the complainants' names to the Chief Executive Officer, in accordance with an instruction from Y, he claimed that he had given particularly specific details of the case, including the value of the proposed transfer of funds and the motive for making the transfer. Deputy G.P. Southern contended that he had received an assurance from the Chief Executive Officer that 'depending on the circumstances, it would probably be alright'. He considered that both he and the complainant were entitled to rely on that oral statement on the basis that the Deputy had been specific as to the circumstances of the case. Notwithstanding the foregoing, Deputy G.P. Southern agreed that, with the benefit of hindsight, he would have insisted on a written response from the Chief Executive Officer. In any event, on 29th September 2003 the complainants transferred £90,000 to their daughter's account and on 11th December 2003 the complainants' daughter paid out £136,000 for the purchase of a one-bedroom flat.

3.4 Turning to the matter of Committee policy, Deputy G.P. Southern recalled that the Rent Rebate Scheme had originally been introduced in 1990 with a provision that applicants should not have savings in excess of £10,000. This savings cap had later been removed although a new limit of £50,000 was introduced in 2004. A letter, dated 27th June 2003 and signed by the President of the Housing Committee, had been sent to all States tenants advising of the proposed changes; however, Deputy G.P. Southern submitted that the letter failed to include either a direct reference to the disposal of assets or a request for tenants who might be affected by the changes to contact the Department. A further letter, sent to all States tenants ir October 2003, had outlined the proposed changes in more detail; however, this had been sent out after the complainants had transferred the relevant funds and the policy it referred to was not formally introduced until 1st January 2004. In short, Deputy G.P. Southern considered that the Housing Committee and its officers had exercised an arbitrary and unreasonable use of discretion in passing judgement on the matter of whether the complainants had been overly generous. He suggested that the Committee had been unreasonable in failing to recognize that the amount of savings held by the complainants was insufficient to allow them to purchase even a modest property, and also in failing to acknowledge the fact that the complainants' actions had effectively removed the need for the States to provide financial support for the complainants' daughter. Deputy Southern also submitted that the Department had evidently decided on 1st April 2003, being the date of their most recent rental assessment, that the complainants' savings were, in the circumstances pertaining to the family, insufficient to allow them to house themselves. It was alleged that XY were in effect being penalized financially for having lived an unusually frugal lifestyle for entirely honourable reasons.

3.5 During the course of his submission, Deputy G.P. Southern made representations concerning the Human Rights (Jersey) Law 2000. Although the Deputy acknowledged that the Human Rights (Jersey) Law 2000 had not yet been brought into force, he maintained that all departments of the States were expected to operate in accordance with the provisions of that Law. Deputy G.P. Southern added that he had obtained legal advice on behalf of the complainants. Having considered the advice received, the Deputy had concluded that the decision of the Committee involved a disproportionate limitation on the complainants' rights. In particular, he contended that the Committee was applying a policy retrospectively, in possible contravention of Article 7 of the Law, and that the decision contravened Article 1 of the First Protocol of the Law, which served to clarify that every natural person was entitled to the peaceful enjoyment of his

possessions.

3.6 In summary, Deputy G.P. Southern contended that the decision of the Housing Committee to maintain the withdrawal of rent abatement contravened Article 9 (2) (a), (b), (c) and (d) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended.

## 4. Summary of the Committee's case

4.1 The Chief Executive Officer apprised the Board of the purpose and the history of the Rent Rebate Scheme. He clarified that policy decisions of the States formed the basis of the scheme, which had originally been introduced with a defined savings cap of £10,000. This cap had been removed several years later. In 2003, the Housing Committee had been required to submit proposals for a 5 per cent reduction in expenditure. As two-thirds of the Committee's expenditure comprised rent abatement and rent rebate (the latter applying in respect of properties rented in the private sector), it was necessary to find some way of reducing the cost of rent subsidies. A policy decision was taken to re-introduce a savings limit, this time set at £50,000, on the basis that a tenant with savings of £50,000 was considered to be in a relatively comfortable financial position. This measure formed part of Projet No. P.74/2003 which was subsequently adopted by the States on 16th July 2003. It was therefore submitted that the policy decision to introduce a savings cap was appropriate, reasonable and had been sanctioned by the States Assembly.

4.2 The Chief Executive Officer explained that the facts concerning the background to the complainants' case, and their actions in transferring the sum of £90,000, were largely accepted. He further agreed that he had taken a telephone call from Deputy G.P. Southern concerning a relevant hypothetical case. Nevertheless, the Chief Executive Officer contended that his recollection of the telephone conversation with Deputy G.P. Southern differed in certain key respects. He contended that he had no recollection of being advised of the proposed transfer of £90,000. Indeed, he suggested that any mention of such a transfer would immediately have alerted him to the fact that the case involved a very significant change in personal circumstances that would almost certainly have implications for the tenant. In any event, the Chief Executive Officer argued that the statement 'depending on the circumstances, it would probably be alright' could not reasonably be treated as a basis on which to make such an important financial decision.

4.3 On the matter of Committee policy, the Chief Executive Officer explained that the Committee and its Department were sympathetic to parents wishing to assist their children to find a deposit for the purchase of a house. In this particular case, however, the Committee had been obliged to take into account the fact that the complainants' daughter was employed and had savings of some £59,000. The £90,000 transfer had exceeded the amount required for a deposit by a considerable margin. As a result, the daughter had been able to purchase a property without requiring a mortgage, leaving the taxpayer with a request to subsidize the complainants' rent. The Chief Executive Officer asserted that the proposed changes to rent abatement policy were publicized well in advance of the States decision and the subsequent implementation of the changes. Moreover, he advised the Board that all States tenants in receipt of rent abatement had been obliged to report any change in circumstances to the Department immediately. New guidelines for tenants had been issued on 17th August 2004 and these contained a paragraph advising tenants that if they were planning to dispose of capital to bring their assets below £50,000 they should contact the Department for advice.

4.4. In arriving at its decision, the Committee had taken account of an opinion of H.M. Solicitor General, dated 7th February 2005. A copy of the opinion was presented to the Board.

4.5 The Director of Finance reminded the Board that the complainants had the option of coming into the Department and asking for advice. It was understood that Y claimed to have experienced difficulties in obtaining appropriate advice from the Department; however, the Director of Finance confirmed that she would have been entitled to be accompanied and assisted by Deputy G.P. Southern on any such visit to the Department.

4.6. In closing, Deputy D.L. Crespel advised the Board of his concern that the case had clear implications for

officers who had previously tried to be helpful in giving hypothetical advice in response to non-specific questions. He also clarified that the Rent Abatement Scheme was operated on the basis of policy decisions taken by a Committee that sought to provide effective assistance to those that required help. The Committee had, in the absence of a statutory requirement to provide a specific level of financial support, tried to make best use of the available funds. It considered that an obligation to provide rent abatement in cases such as that of the complainants would leave the way clear for other tenants to dispose of their capital to relatives. In turn, this would leave the Committee with little choice but to make such schemes less generous across the board in order to address the inevitable shortfall in funds.

## 5. The Board's findings

5.1 The Board recognised that during 2003, the States had required the Housing Committee to reduce its expenditure, and as a result the operation of the Rent Abatement Scheme was carefully scrutinised. The Board believes that the Committee's decision to propose the reintroduction of a savings limit was reasonable having regard to its duty to balance the economic interests of the Island against the interests of those who are considered to be deserving of financial assistance under the Rent Abatement Scheme. It is noted that the proposal to reintroduce a savings limit was sanctioned by the States Assembly.

5.2 The Board noted that the Rent Abatement Scheme is a discretionary scheme and is not established within a statutory framework as, for example, benefits payable under the Social Security system. Therefore the Scheme does not therefore give rise to legal rights enforceable as an entitlement, and so the Committee must exercise its discretion and proper judgment to administer the Scheme fairly impartially and consistently.

5.3 The Board believes that if the Rent Abatement Scheme had been statutory, regulations would have been drafted to introduce the savings limit, which would have incorporated various transitional arrangements, exemptions and other circumstances that could be expected to arise in the implementation of such change of policy. One such circumstance would be a disposal of an applicant's savings in order to bring his or her assets below the savings limit. In the absence of a statutory basis for a rent subsidy, the Board considers it reasonable that the Committee should examine disposals of assets by its tenants prior to the introduction of the savings limit and thereafter. This is a sensible and fair administration of policy in that the Committee is attempting to ensure that public funds are not used to subsidise persons who may have deliberately or unnecessarily impoverished themselves.

5.4 XY chose to give away approximately 90% of their savings so that their daughter was able to purchase a flat outright, without recourse to any mortgage funding. They did so in the knowledge that the Committee was proposing a savings limit for the Rent Abatement Scheme, having received a letter from the Housing Committee President dated 27th June 2003 explaining the proposals. Having regard to their subsequent approach to Deputy Southern to act on their behalf, the Board finds that XY must have been aware that their proposed gift could have ramifications for their eligibility for rent abatement. The Board considers the Committee were entitled to find that, as XY felt they were in a financial position to give away £90,000, they should not thereafter be able to claim a subsidy funded by taxpayers.

5.5 The Board does not criticise XY for assisting their daughter and is confident that they did so from the best of motives. The Rent Abatement Scheme does not prevent States tenants from using their savings in whichever way they think best, but if they choose to give away a significant proportion of those savings, tenants should not expect their rents to be subsidised by public funds.

5.6 The Board went on to consider whether Deputy Southern's telephone conversation with Mr Le Ruez during 2003 created a legitimate expectation on the part of XY that their proposed gift would have no effect on the rental subsidy they were enjoying. If the conversation had given rise to such an expectation, then it may have been unreasonable for the Committee to refuse the application for rent subsidy in those particular circumstances. There is a divergence of views over the detail that was discussed during that telephone conversation, and the Board is not in a position, and does not find it necessary, to resolve that difference. Both parties accept that Mr Le Ruez qualified his words with the phrase *"depending on the circumstances, it would probably be alright"*. This should have at least indicated to XY that there was a

need to take their enquiry further and ask the Committee to make an informed decision on the basis of a full disclosure and explanation. XY should not have made an assumption on the basis of Deputy Southern's informal discussion with an officer of the Committee on a 'no names basis'. If they had wished to achieve certainty as to their position, there was no reason why the matter could not have been dealt with on a more formal footing. Officers of States Departments are often asked to give informal or hypothetical advice and guidance and it is helpful to members of the public and politicians to have access to such assistance. It would be a great shame if officers were deterred from giving such assistance because their committees became bound by general indications given in the course of impromptu conversations without the opportunity for proper research and consideration of the full facts and circumstances of each case.

5.7 The Board declines to make any findings in relation to the alleged breach of XY's human rights. It considers that it would be improper to do so, firstly, because the relevant law is not yet in force and, secondly because the Board's task is limited to reviewing the Committee's decision in light of all the material placed before the Committee. The specific breaches of human rights alleged by Deputy Southern have not been raised before the Committee and accordingly, the Committee has not had an opportunity to consider them or seek legal advice concerning them. Furthermore, the complainants' written submission to the Board did not deal with human rights and therefore the Committee's written response is also silent as to the issue. Although it is true to say that Committees of the States should act in accordance with the principles expounded in the European Convention on Human Rights, it is an altogether different matter to suggest that the Committee has breached specific provisions of the Human Rights (Jersey) Law 2000 which has not yet come into force. It follows that if XY consider there has been an infringement of their human rights, they are free to take matters further should they so wish.

5.8 Having given careful consideration to the provisions of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board, for the reasons stated above, does not find that the Housing Committee decision on XY's application for rent abatement –

(a) 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
(b) was based wholly or partly on a mistake of law or fact; or
(c) could not have been made by a reasonable body of persons after proper consideration of all the facts; or
(d) was contrary to the generally accepted principles of natural justice.

5.9 Therefore, the Board rejects the complaint.

5.10 Notwithstanding the foregoing, the Board was disappointed to note that the details of the proposed changes to the Rent Abatement Scheme sent to Housing Department tenants did not contain specific advice cautioning tenants not to dispose of capital assets without referring to the Committee for guidance on the effect on any rent subsidy.

5.11 Notwithstanding that the Board finds in favour of the Committee, it requests the Committee to keep XY's circumstances under review. The Board noted that the Committee is sympathetic to parents wishing to make reasonable provision for their children and therefore the Committee should determine and advise XY of the sum which it feels they could reasonably have provided to assist their daughter with the purchase of a flat. XY should be given an opportunity to address the Committee on that issue if they so wish. Having made that decision, the Committee should treat XY as being left with notional savings. In the event that the notional savings are assessed at more than £50,000 the Committee should reduce those notional savings from time to time, if it is the case that XY might reasonably have drawn upon their savings to pay the rental for their flat. If and when the notional savings fall below £50,000 (or the savings limit applicable at the relevant time) the Committee should be prepared to consider a fresh application for rent abatement from XY.

5.12 The Board is pleased to note that the existing rent abatement and rent rebate schemes are likely to be replaced in due course by an income support scheme established on a statutory basis.

Signed and dated by –

.......................................................................................... Dated:...........................
Advocate R.J. Renouf (Chairman)

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

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