

REPORT OF THE BOARD OF ADMINISTRATIVE APPEAL RELATING TO THE COMPLAINT BY TOKEN LIMITED AGAINST A DECISION OF THE PLANNING AND ENVIRONMENT COMMITTEE

**Presented to the States on 14th September 1999
by the Special Committee to Consider the Relationship
between Committees and the States**



STATES OF JERSEY

STATES GREFFE

140

1999

R.C.33

Price code: C

BOARD OF ADMINISTRATIVE APPEAL

Report submitted to the Special Committee to Consider the Relationship between Committees and the States relating to the complaint by Token Limited against a decision of the Planning and Environment Committee

1. A Hearing was held on 25th November 1998 to consider a complaint by Mr. P.B. Higgins against a decision of the Planning and Environment Committee to reject an 'in principle' application made by him, through Token Limited, in September 1997 to construct three single-storey bungalows on Field 248A, Le Mont Gras d'Eau, St. Brelade.

The Board requested that the case be reconsidered by the Planning and Environment Committee and for it to seek a States decision on the rezoning of Field 248A before 31st March 1999. A copy of the Board's Findings is attached as an Appendix.

2. In a letter dated 25th January 1999 the then Assistant Director - Development Control to the Greffier of the States stated "The Committee decided to accept the findings of the Board and has requested the Department to prepare an appropriately worded report and proposition for consideration by the States. The Committee while aware of the time limit placed upon it by the Board wished it to be recognised that the actual timing of the debate was a matter for the States and was not a matter within the Committee's control."
3. The Chairman of the Board on 18th June 1999, met the President of the Planning and Environment Committee, the Chief Executive Officer and the Director of Planning, together with the Greffier of the States and the Deputy

Greffier, and was advised that the Committee had approved a draft report and proposition which, under Standing Order No. 18(4) was referred to the Bailiff for direction by the Greffier of the States. The proposition was approved subject to the report being amended as it was not consistent with the letter, dated 25th January 1999, from the Assistant Director.

4. The Director of Planning, in a letter, dated 20th July 1999, to the Chairman, stated -

“You will recall that we discussed the Bailiff’s direction on this matter [Token Limited - Field 248A, Mont Gras d’Eau, St. Brelade] at our meeting.

The Committee accepted the findings of the Board in this case. It noted that ‘The Board makes no recommendation at this stage with regard to an actual development of the site as to whether any building or what amount of building should take place.....’.

The Committee considered that it was entitled to take a different view as to the suitability of the site for development than its predecessor in 1987, but accepted that an undertaking had been given to the owner to take a proposition to the States by the Committee in 1987 and that it was bound to honour that undertaking.

The Committee produced a draft proposition asking the States to change the designation of the site from ‘Green Zone’ to ‘Built-up Area’. However, in the accompanying report the Committee made it clear that it could not support the proposition.

As you know, the Bailiff has directed that the projet be returned to the Committee as it cannot be accepted.

The Committee thus finds itself on the horns of a dilemma. It accepts the justice of the Board’s finding, but for procedural reasons it is unable to comply with the Board’s recommendation.”

5. The Board finds the stance taken by the Planning and Environment Committee in this case to be unsatisfactory, especially bearing in mind that in its Findings -

- (i) the Board had quoted an extract from a letter, dated 17th September 1987 from the then Assistant Director of Planning to Mr. Higgins advising that “the Island Development Committee, having visited the site, would not oppose in principle the development for housing purposes of Field 303A and the southern part of Field 248 as shown on the drawing appended to your letter of 5th June 1987.

Clearly at this late stage it is not possible to include the site as part of the “built-up area” on the Island Map, which hopefully will be approved later this month. However, the Committee would be prepared to recommend the re-zoning of the land to the States at a later date as intimated in Mr. Pator’s letter to you of 24th July.” [paragraph 5.2 of the Findings]

- (ii) The Board had noted a letter of 4th December 1996 from Her Majesty’s Solicitor General to the Planning and Environment Committee setting out previous precedents and on which the Committee appeared to have made its decision to reject the application. But the Board also noted the last paragraph of that letter, which read -

“As against that, it appears from the papers that the Committee, having adopted one stance in 1987 and communicated it to Mr. Higgins, has now adopted the contrary view. The arguments as to infill, access and drainage all appear, in the absence of any contrary argument, persuasive and there is no explanation as to why the Committee rejects them. It may be that the Committee had good reason for changing its viewpoint since 1987, as it appears to have done, and for now deciding that Field 248A must remain Green Zone, but if so that reason is not disclosed on the papers. In the circumstances I do not feel able to assure the Committee that it would be sure of success if it refused an application for planning or development permission and the company appealed against that refusal.” [paragraph 5.4 of the Findings]

6. The Board maintains its recommendation that the Committee should honour the undertaking to take the Green Zone proposal to the States of Jersey. This would give an opportunity for a public hearing and for the neighbours and residents to make their views known.

7. The Board is also concerned at the considerable delay in progressing this matter and the further unnecessary hardship to the applicant. Accordingly, and in accordance with Article 9(4) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board has decided to present a report to the Special Committee to Consider the Relationship between Committees and the States, which Committee shall refer the matter to the States.

Signed and dated by -

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

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Jurat G.C. Allo

.....
Mrs. L. Jean King, M.B.E.

25th August 1999

BOARD OF ADMINISTRATIVE APPEAL
25th November 1998

Complaint by Token Limited against a decision of the Planning and Environment Committee
Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982

1. Present -

Board Members

R. R. Jeune C.B.E., Chairman
 G. C. Allo
 Mrs. L. Jean King M.B.E.

Complainant

Token Limited represented by Mr. P. B. Higgins
 Advocate M. M. G. Voisin, Legal Representative

Committee

Deputy E. M. Pullin, Planning and Environment Committee
 G. D. Smith, Assistant Director, Development Control
 R. T. Webster, Senior Planner

States Greffe

Miss. T. J. Audrain, Acting Committee Clerk
 Mrs. P. Evans, States Greffe

The Hearing was held in public in the Committee Room, St. Brelade's Parish Hall.

2. Summary of the dispute

The Hearing had been convened to consider a complaint by Mr. Peter Beardsley Higgins against a decision of the Planning and Environment Committee to reject an 'in principle' application made by him, through Token Limited, in September 1997 to construct three single-storey bungalows on Field 248A, Le Mont Gras d'Eau, St. Brelade.

The Chairman, having opened the hearing, adjourned the meeting to conduct a site visit to view the property and its environs. The Hearing reconvened at St. Brelade's Parish Hall.

3. Summary of complainant's case

- 3.1 The Board heard that Field 248A, St. Brelade, had been included in the Green Zone when the Island Plan was approved by the States in November 1987. Advocate Voisin, representing Mr. Higgins, contended that this had been an error. He suggested that the land had been included in the Green Zone because, at the time, the then Island Development Committee believed that it was in the same ownership as Field 248 to the north. He also argued that, as the Committee of the day did not visit the site, the zoning was only arbitrary. Furthermore Field 248A intruded into what was an otherwise built-up area and should have been included in that designation.

Mr. Higgins had sought to develop Field 248A in 1987 and had asked the Island Development Committee to consider removing it from the Green Zone to facilitate this. He received a reply dated 17th September 1987 from Mr. Peter Thorne, Assistant Director of Planning at the time, confirming that the Committee would be prepared to support rezoning of the field and the subsequent development for housing. This was considered by Mr. Higgins to be a clear and unequivocal statement by the Island Development Committee of its support. He believed it was tantamount to agreeing that permission would be given. However, a proposition was never taken to the States to rezone Field 248A.

- 3.2 Eight years later, on 1st November 1995 Mr. Higgins made a renewed request, through the intermediary of his legal consultant at the time, Mr. Vernon Tomes, to have the field taken out of the Green Zone. On 8th October 1997, having considered the advice of H.M. Solicitor General, the Committee refused permission for the following reasons -

- (a) the proposal was contrary to the approved Island Plan policy for the Green Zone, in which there was a

presumption against all forms of new development for whatever purpose;

- (b) it would adversely affect the established spacious character and appearance of the neighbouring residential area; and
- (c) further residential development in this area, with the associated increased traffic generation on the existing sub-standard private access road would cause unacceptable loss of amenity to existing residents.

3.3 Advocate Voisin believed that the Planning and Environment Committee had given undue weight to the objections of neighbouring residents when it was not required by the Island Planning (Jersey) Law 1964 to give regard to their views at all. He put forward the following points -

- (a) the argument that three extra bungalows would suburbanise the area did not have merit because there were already 28 homes and two hotels served by the road;
- (b) a row of conifers planted along the northern boundary of Field 248A would provide a natural boundary along the Green Zone and would limit visual impact of the development from La Route des Genets;
- (c) the increase in traffic brought by three bungalows would be minimal compared to the volume already using the road.

Advocate Voisin reminded the Board that the same objections had been raised by residents in 1995 when Mr. Higgins built three bungalows on Field 303A directly opposite. In this case, the Committee had granted planning permission. He argued that the Committee was required by law to apply consistency in its approach and to honour the decisions of a previous Committee unless it had good reasons to do otherwise.

3.4 Advocate Voisin argued that Field 248A was not a truly viable piece of land for agricultural purposes and was not cultivated except for an occasional crop of hay. He suggested that it was the duty of the Planning and Environment Committee to consider housing for the site in view of the severe accommodation shortage in the Island. He felt Field 248A was ideal for the development of Category B or 'demand' housing. It was an obvious infill site, being surrounded by buildings on three sides and possessing easy connections to all the major utilities.

3.5 The Board was advised that there had been no material change in circumstances on the site between 1987 and 1997, when the applications were made, but that the initial favourable decision had been reversed without explanation. Furthermore, in a letter dated 4th December 1996, the Solicitor General had been unable to advise that the Committee would not be bound by a previous decision. Advocate Voisin therefore concluded that rejection of the application to build three bungalows on Field 248A had been unreasonable.

4. Summary of the Planning and Environment Committee's case

4.1 On behalf of the Planning and Environment Committee, Mr. Roy Webster, Senior Planner, stated that there was no evidence to suggest Field 248A had been included in the Green Zone by mistake. On the contrary, it had been identified as a valuable open space in a built-up area. Therefore, the refusal of the application was in line with the existing policy which presumed against any new development in the Green Zone. The Committee's representatives explained that land use consultants had walked the boundaries of the built-up areas during the preparation of the Island Plan and that the zones had been defined by surveyors and landscape architects and therefore could not be described as arbitrary. The designations had not been influenced by any questions of ownership.

4.2 Mr. Webster argued that, although Mr. Thorne's letter of 17th September 1987 was a clear statement of intent, it in no way constituted the granting of planning permission. Furthermore, the rezoning did not automatically mean that planning permission would be granted because the Committee would still take into account the impact of the development on its environs.

4.3 There had been a change of Committee since Mr. Higgins' first application in 1987 and greater weight was now afforded to residents' objections in line with a policy of public consultation. The Committee also considered that the content of the residents' comments constituted material planning considerations rather than being a not-in-my-backyard mentality. The Committee did not regard Field 248A as an infill site and maintained that the proposed development would adversely affect the character of the surrounding residential area. Additionally, the row of conifers could not be taken into account because it was not a permanent feature or an official boundary.

4.4 The Planning representatives pointed out that although a development of three bungalows had been approved for

Field 303A, directly opposite, the Committee had expressed serious concerns at the time about the road, the amenities and the impact on the character of the area. Field 303A had been zoned in the “Built-Up Area” but the Committee had felt that any further development on Field 248A would exacerbate existing problems. It had therefore rejected an application to build a house in the grounds of an adjacent property known as “The Pines”.

During consideration of Mr. Higgins’ request in 1995, the Committee had made a site visit and sought the advice of H.M. Attorney General. It was, therefore, argued that it had taken reasonable action in dealing with the case.

5. The Board’s findings

5.1 The Board of Administrative Appeal would not normally deal with matters concerning land or buildings in the Green Zone because the line of demarcation had been fixed by the States of Jersey upon a recommendation of the Planning and Environment Committee. Any alterations to this line or exceptions to be made to building within the Green Zone are taken to the States of Jersey by the Planning and Environment Committee for approval or otherwise. This is in conformity with the terms of the Amendment to the ‘Island Plan - Volume 2: Plan and Policies (P.126/87, Amendment’ lodged in October 1987 and approved by the States of Jersey in November 1987.

5.2 However, in the case under review, the applicant had produced correspondence from the Committee of the day which caused the Review Board to respond differently. Critical to this was a letter dated 17th September 1987 from the then Assistant Director of Planning, Mr. Peter Thorne, who was now the Department’s Director. In the letter, he expressed an undertaking on behalf of the Committee to support not only rezoning of Field 248A but also the subsequent redevelopment of the site for housing. The following is the text of the letter from Mr. Thorne to Mr. Higgins-

“Further to your recent correspondence with this Department, I write to advise you that the Island Development Committee, having visited the site, would not oppose in principle the development for housing purposes of Field 303A and the southern part of Field 248 as shown on the drawing appended to your letter of 5th June 1987.

Clearly at this late stage it is not possible to include the site as part of the ‘built-up area’ on the Island Map, which hopefully will be approved later this month. However, the Committee would be prepared to recommend the re-zoning of the land to the States at a later date as intimated in Mr. Paton’s letter to you of 24th July.”

In 1997 the Committee reversed this decision and turned down both the rezoning and the development without giving an explanation to the applicant.

5.3 The Board was concerned that the case had been so protracted and believed that Mr. Higgins’ application had not been well-handled. He was particularly unfortunate that there had been a combination of inefficiencies in the Departments dealing with the matter. The Board, therefore, suggested that a system should be put in place to ensure that cases were highlighted at the Planning Department if they had not been resolved after a certain period of time.

5.4 The Board noted a letter of 4th December 1996 from H.M. Solicitor General to the Planning and Environment Committee setting out previous precedents and on which the Committee appears to have made its decision to reject the application. But the Board also noted the last paragraph of that letter, which reads -

“As against that, it appears from the papers that the Committee, having adopted one stance in 1987 and communicated it to Mr. Higgins, has now adopted the contrary view. The arguments as to infill, access and drainage all appear, in the absence of any contrary argument, persuasive, and there is no explanation as to why the Committee rejects them. It may be that the Committee had good reason for changing its viewpoint since 1987, as it appears to have done, and for now deciding that Field 248A must remain Green Zone, but if so that reason is not disclosed on the papers. In the circumstances I do not feel able to assure the Committee that it would be sure of success if it refused an application for planning or development permission and the company appealed against that refusal.”

The Board recommends that the Committee should honour the undertaking to take the Green Zone proposal to the States of Jersey. This would give an opportunity for a public hearing and for the neighbours and residents to make their views known. The Board makes no recommendation at this stage with regard to an actual development on the site as to whether any building or what amount of building should take place thereon.

5.5 In conclusion and in line with Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board is of the opinion that the decision of the Planning and Environment Committee in this case was contrary to the generally accepted principles of natural justice and could not have been made by a reasonable body of

persons, and that the Planning and Environment Committee should honour the undertaking of its predecessor Committee. The Board, therefore, requests that the case of Field 248A, Mont Gras d'Eau, St. Brelade, be reconsidered by the Planning and Environment Committee and for it to seek a States decision on the rezoning of Field 248A before 31st March 1999.

Signed and dated by -

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

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G.C. Allo Esq.

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Mrs. L. Jean King, M.B.E.

15th December 1998