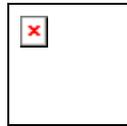


**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS AMENDED: REPORT OF THE
ADMINISTRATIVE APPEALS PANEL REGARDING COMPLAINTS RECEIVED BETWEEN 1ST JANUARY
AND 31ST DECEMBER 2000**

**Presented to the States on 20th February 2001
by the Special Committee to consider the relationship between Committees and the States**



STATES OF JERSEY

STATES GREFFE

150

2001

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**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW
1982, AS AMENDED: REPORT OF THE ADMINISTRATIVE
APPEALS PANEL REGARDING COMPLAINTS RECEIVED
BETWEEN 1ST JANUARY AND 31ST DECEMBER 2000**

The Special Committee to Consider the Relationship between Committees and the States is pleased to present to the States the Annual Report of the Administrative Appeals Panel for 2000.

The Committee wishes to place on record its sincere appreciation of the work undertaken by the Chairman of the Panel, Mr. R.R. Jeune C.B.E., who, together with the Deputy Chairmen and members of the Panel, dedicates many hours of his time to the work of the Panel without any form of remuneration.

The Committee is concerned to note that the Chairman of the Panel has considered it necessary to refer in his foreword to the delays that can occur when States Departments are requested to provide information to the Greffier of the States to enable her to investigate a complaint. The Committee believes it is essential that the necessary information is provided within the period specified by the Greffier so that complaints can be dealt with in a timely fashion. The Committee has requested the Greffier to notify it if any undue delays occur in the future so that it can address the matter with the Committee concerned.

In the coming months the Special Committee will be considering the recommendations of the recently published Report of the Review Panel on the Machinery of Government in Jersey which include a suggestion that the present system of Administrative Appeals should be replaced by the appointment of an Ombudsman. The Committee has not yet given detailed consideration to the proposal but believes that it will be necessary to assess carefully the advantages and disadvantages of any change, including the costs, before asking the States to make changes to the present system which offers citizens the opportunity to have complaints against the States administration reviewed by a Board chosen from a Panel of independent persons.

Foreword by Chairman of the Administrative Appeals Panel

Dear Mr. President,

I have pleasure in forwarding to you the report for the year 2000.

During the year fifteen complaints were dealt with. Three applications were refused by the Greffier. Two were withdrawn. Six hearings were held and of these appeals three were upheld and three rejected by the respective panels. One has now been referred to a Board and three were under active consideration at the year end. However, since that date, of these three, a Hearing by a Board is due to be held quite soon in one case and, in another, the Committee has agreed to reconsider its decision and the result is awaited from the Committee.

I wish to thank the Deputy Chairman Mrs. Carol Canavan for her assistance and the various members who comprise the Boards for the Hearings. In addition I would thank the Greffier of the States, the Deputy Greffier and the Greffe staff who have participated for their efficient assistance at all times.

The present system of appeal tribunals is now working smoothly and without undue delay, although we would still wish for a speedier response from the Committees and Departments involved as this can lead to delay at a time when the Greffier is making every effort to process cases as speedily as possible.

On 2nd January 2001, the Policy and Resources Committee presented to the States a report containing concluding observations of the Human Rights Committee of the United Nations International Covenant on Civil and Political Rights, and I am pleased and proud to quote from it, as follows -

“The Committee welcomes the Administrative Decisions (Review) (Amendment) (Jersey) Law 1995 which provides for a system of administrative appeals against decisions of committees, departments and officials of the States of Jersey to an independent review board (Arts. 2 and 14).”

At the time of writing, the Report of the Review Panel on the Machinery of Government has just been published, and that Report recommends changes to the system of Administrative Appeals. I nevertheless believe strongly that the system we have in Jersey is generally a good one and that citizens welcome hearings by fellow citizens all of considerable experience in the Island of Jersey, held as they are in public, unless requested otherwise by the applicant. However I would be pleased to discuss the matter with your Committee to see if there are particular improvements which ought to be considered.

Yours sincerely,

R.R. Jeune CBE
Chairman

The following is a summary of the outcome of the complaints which were outstanding in the 1999 Annual Report, and of new complaints received in 2000 -

Complaints referred to in 1999 report (R.C. 5/2000) -

Planning and Environment Committee

- (a) Statement of complaint about a decision of the Committee to grant permission for the demolition of the existing buildings on the site of Tremont House, Tremont Villa and the adjoining La Motte Ford Garages Site at Grouville and to replace them with 17 houses.
Hearing held on 12th June 2000 and the Board upheld the Committee's decision.
Copy of findings attached at **Appendix A.**
- (b) Statement of complaint about the rejection of a retrospective application for the erection of mirrors in the sand school at Field 691, St. Brelade (Little Yard Livery Stables).
Hearing held on 18th May 2000 and the Board upheld the Committee's decision.
Copy of findings attached at **Appendix B.**
- (c) Statement of complaint about the refusal of consent for change of use of a shed from agricultural use to dry storage use.
Hearing held on 13th June 2000 and the Board upheld the Committee's decision.
Copy of findings attached at **Appendix C.**
- (d) Statement of complaint received concerning the rejection of an application to demolish a double garage and construct a dormer style dwelling in the garden of Cosy Nook, Popin Farm, St. Brelade.
Hearing held on 5th June 2000 and the Board upheld the complaint. The Committee subsequently accepted the findings of the Board and agreed to invite the Applicant to submit a new application. The Committee further agreed to waive the application fee for the Applicant in these circumstances.
Copy of findings attached at **Appendix D.**

Finance and Economics Committee

- (e) Statement of complaint received concerning a licence granted under the Regulations of Undertakings and Development (Jersey) Law 1973, as amended, to a United Kingdom company known as 'Midland Marble' to carry out works at the Atlantic Hotel.
Hearing held on 18th April 2000 and the Board upheld the complaint.
Copy of findings attached at **Appendix E.**

Housing Committee

- (f) Statement of complaint received concerning the refusal of permission for a manageress to live in a guest house (a-h accommodation)
The matter was resolved to the satisfaction of all parties and the application was withdrawn.

Public Services Committee

- (g) Statement of complaint received concerning the procedures followed in licensing the Town "Hoppa" Bus service.
Hearing held on 16th November 2000 and the Board upheld the complaint.
Copy of findings attached at **Appendix F.**

Complaints received in 2000

Planning and Environment Committee

- (h) Statement of complaint received on 2nd February 2000 concerning the refusal of a retrospective application to fit uPVC window frames at the Complainant's home in St. James Street.
The Greffier of the States agreed that the matter should be referred to a Board but the application was withdrawn after agreement between the Complainant and the Committee on the replacement of the uPVC windows with timber frames.
- (i) Statement of complaint received on 11th April 2000 concerning decisions of the Committee regarding the

development of the site of the former Grouville Bay Hotel.

Application refused as the matter had been considered by the States Assembly.

- (j) Statement of complaint received on 21st July 2000 concerning the refusal of permission for the demolition of a shed and the construction of a one-and-a-half storey, one-bedroom dwelling.
Application refused as the Greffier of the States considered there were no grounds for a hearing.
- (k) Statement of complaint received on 18th October 2000 concerning the refusal of the Committee to allow the demolition of a building classified by the Committee as a "Building of Local Interest".
Board to be convened to hear the complaint in early 2001.
- (l) Statement of complaint received on 2nd October 2000 concerning the refusal of permission for the removal of a shed and the construction of approximately three new dwellings.
The Committee reconsidered and granted consent.
Application withdrawn.
- (m) Statement of complaint received on 1st November 2000 concerning the imposition of conditions on a house and store.
Under investigation at the end of 2000.

Public Services Committee

- (n) Statement of complaint received on 27th November 2000 concerning refusal of consent to establish a vehicular access to a property via a slipway which was administered by the Committee.
Under investigation at the end of 2000.

Employment and Social Security Committee

- (o) Statement of complaint received on 10th May 2000 concerning the Committee's decision not to include a proprietor of a small enterprise on the Employment Forum, established by the Committee.
Application refused.

Education

- (p) Statement of complaint received on 11th December 2000 concerning the refusal of an educational grant for the complainant's daughter's university education.
Under investigation at the end of 2000.

Findings of the Review Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint against the Planning and Environment Committee to grant consent for the demolition of buildings on the site of Tremont House, Tremont Villa, Grouville and the adjoining La Motte Ford Garages site and to replace them with four two-bedroomed houses and thirteen three-bedroomed houses.

1. The Review Board was composed as follows -

Mr. R.R. Jeune, C.B.E.
Mr. P.E. Freeley
Mr. T.S. Perchard

The parties were heard in public at Grouville Parish Hall on 12th June 2000.

The complainants, Mrs. C.E. Canavan, Mr. G.T. Corrigan, Mrs. C. Brett, Mr. R.M.G. Coppell were represented by Mrs. C.E. Canavan.

The Planning and Environment Committee was represented by Deputy J.B. Fox, Mr. P.C.F. Thorne, Director Planning and Building Services, Mr. A. Townsend, Senior Planner and Mr. M. Stein, Senior Planner.

The parties noted the advice of the Greffier of the States that the fact of developing the site could not be argued because it was a decision of the States. Therefore, the only complaint could be against the volume, height and design of the buildings on the site. The current position was that the application submitted by the Housing Committee had full planning permission and work could commence on the basis of those plans. The application for a Review Board hearing had been held in abeyance pending a decision being made on the height of the dwellings.

The parties visited the site in question after the opening of the hearing, and viewed drawings of the proposals, and a pole which demonstrated the relative heights of the proposed development of the site against the height of existing neighbouring buildings and a proposal that had been rejected on the intervening land.

2. Hearing.

Summary of the complainant's case

The Board received the submissions of the complainants and took the documents as read.

The Board noted the oral representation of Mrs Canavan, and the particular following salient points:

The basis of the complaint was not the principle that planning permission had been granted but rather that the design and height of the properties were inappropriate, and that there were inconsistencies in the treatment of private developers and the Housing Committee, in particular as neighbouring properties had not been permitted to be developed to the same height in the past. The dwellings proposed by the Housing Committee were all two-storey, and relative to other dwellings/applications in the area -

Property	Height	Difference relative to Willows	Year	Zone at the time
The Willows single-storey (application for two-storey refused)	4.1 m.		1984	Green
Rear of La Chaumine Application A	10.3 m.	+6.2 m.	1985	
Application B (application for two-storey refused; property never built)	8.5 m.	+4.4 m.		
Island Plan proposals publicised			1986	
approved			1987	

Housing	8.65 m.		
(including difference in levels)	1.017 m.	+6.5 m.	1997/8

It was acknowledged by the complainants that the development rear of La Chaumine had been refused on the grounds that it was backland development, that the access would be inadequate, and it would be prejudicial to neighbouring properties.

While the complainants were content that the number of dwellings proposed for the site had been reduced from 27 to 17, they believed there had been an important inconsistency in the Committee's application of restrictions on the height of dwellings in the area, and that similar restrictions should have been placed on the housing development as had been placed on the Willows and other properties in the period 1984 to the present.

The complainants had asked J.J. Design to draw up alternative plans to show a development of the same number of units and rooms, but with a mix of two, one and one-and-a-half storey dwellings, for consideration by the authorities, and these had been passed to the Senior Planner.

The complainants commented on various other, such as boundaries with the marsh which had been altered following cession of land to the States, sight-lines from the main road, and in particular the proximity of the gable end of one of the proposed dwellings to the boundary line, and loss of vegetation.

The complainants believed that the Committee had been inconsistent on the matter of heights of the dwellings, and the mix of heights which did not reflect the mix of heights elsewhere in the vicinity. The decision was inconsistent both with the decision relating to the height of the Willows and the height of the proposed dwelling rear of La Chaumine. In addition, both the Willows property and the Housing Committee properties to the north of the site would be adjacent to the marsh which is a sensitive area, and it was felt should have been treated in the same way.

The complainants felt that, despite the passage of time, the site remained the same, and all applications for this area should have been treated consistently.

Summary of the Planning and Environment Committee's case

The Board noted the responses prepared by the Planning and Environment Committee and took the documents as read.

The role of the Planning and Environment Committee was to consider applications placed before it. The Housing Committee was responsible for the design of the scheme. The Committee had not received an application for the scheme proposed by J. Design, because applications had to be submitted by, or with the consent of, the owner.

The Senior Planner had indicated that, in his professional opinion, the J. Design plans would be acceptable in planning terms, but they could only be properly considered if an application was made. He had, however, passed the J. Design plans to the Housing Department so that the owner of the site could take them into account. The Housing Committee decided not to proceed with the alternative (he was aware that each property was of the order of ten square metres smaller) and put forward their own plans as before. The Planning and Environment Committee found the plans as submitted acceptable. It was noted that it would be possible for two different schemes to have been accepted by the Committee, but it could only deliberate on properly and legally submitted applications.

While the application for Willows, then in the Green Zone, considered in 1984 before the Island Plan was approved, the La Motte Ford Site was considered in 1987, on a site that had been designated, and purchased, for the development of Category 'A' housing. The site was wedge shaped, one short boundary of a large site being adjacent to the marsh, and within housing, while the Willows was on the edge of development with one of its four roughly equal sides of the property adjacent to the marsh.

The consideration sequence was as follows -

- 1992 The States purchased the site.
- 1996 The States purchased Tremont House and Tremont Villa.
- 1996 First application was withdrawn because the Senior Planner was not satisfied with it and was not prepared to submit it to the Committee.

September 1996	Second application also withdrawn for the same reason.
March 1997	The Committee conducted a site visit prior to considering the application, and, having seen all the objections, the Committee approved the plans in principle.
September 1997	The Committee approved the layout but not the height and design of the dwellings.
April 1998	Development approval was given, subject to resolution of certain discrepancies with the planning (in principle) approval.
June 1999	Following a Site visit, the Applications Sub-Committee under delegated powers approved the Housing Committee scheme, having been advised orally by the Senior Planner of the J. Design proposals, which included both single and one-and-a-half storey dwellings.

It had taken a period of 18 months of negotiation to achieve improvements in the scheme, including a reduction from three to two storeys, and from 21 houses to 17 houses.

The officers of the Planning and Environment Committee could not confirm whether the J. Design plans had been considered by the Housing Committee.

The Committee refuted categorically the claim that it treated the applications of a Committee differently to the way in which it treated private applications.

3. The Board's findings

The Board noted that the J. Design plans had not been seen by the Planning and Environment Committee or the Applications Sub-Committee. The detail of the J. Design application had however been advised orally to the Applications Sub-Committee. The Board felt that bearing in mind the reduced size of each dwelling which the J. Design plan would have meant, made it unlikely that the Housing Committee would have supported these plans in any event. It was clear that the Senior Planner had been very helpful to the complainants over the period of the Housing Committee application and had assisted them in any way he could.

The Board did not consider that it was possible to sustain the argument regarding consistency, bearing in mind the lapse of time between the various applications. However, in the interests of natural justice, the Board decided to write to seek clarification on whether the J. Design plans had been considered by the Housing Committee prior to submitting its own designs.

The Board received a letter dated 20th June 2000 from the President of the Housing Committee, confirming that the plans prepared by J. Design were received by the Housing Department's Estates Manager in April 1998 and that these plans had been referred to the Committee's Architects for comment. The Committee's architects were already working on the instructions of the Housing Committee to revise existing proposals and these were presented to the Housing Committee on 7th August 1998. The minute of that meeting confirms that the Housing Committee approved the overall design of the revised scheme prepared by the Committee's architects but does not record whether or not the J design scheme was viewed. The President of the Housing Committee went on to say that clearly, the Committee was satisfied with its own architects' scheme, which was the one it wished to pursue, and the scheme had now been refined to the point where the Committee and the Jersey Homes Trust were nearly ready to invite tenders for the building contract.

The Board noted that the alternative plans prepared by J. Design had been sufficiently considered by both the Housing Department officers and the Housing Committee's architects. The Board finds that the claim of inconsistency cannot be supported, and accordingly there is no case to answer.

Signed and dated by

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

P.E. Freeley, Esq.

T.S. Perchard, Esq.

**Findings of the Review Board constituted under the
Administrative Decisions (Review) (Jersey) Law 1982, as amended,
to consider a complaint by Mrs. P. Honey against a decision of the
Planning and Environment Committee**

1. The Review Board was composed as follows -

Mrs. C.E. Canavan, Chairman
Mr. P.E. Freeley
Mr. D.J. Watkins

The parties were heard in public at St. Brelade's Parish Hall on 18th May 2000.

The complainant, Mrs. P. Honey, was represented by Mr. M. Le Brocq. The Committee was represented by Depu J.B. Fox, Mr. R.S. Fell, Assistant Director, Design and Development and Miss E.J. Clapshaw, Assistant Planner.

The complaint concerned the refusal of the Planning and Environment Committee of the retrospective application to erect mirrors in Field 691, St. Brelade to serve the sand school.

The Board and parties visited Field 691, St. Brelade and resumed the hearing following this visit. The Board took the papers, which had been previously circulated, as read.

2. Hearing

Summary of the complainant's case

Mr. M. Le Brocq drew the Board's attention to the papers previously submitted and reiterated the following salient points -

- (a) the Road Safety Officer had advised that everything possible should be done to ensure ponies and horses were prepared for road use, and fully supported the use of mirrors for this purpose;
- (b) the reason for refusal of the planning application for the mirrors had been that they were an inappropriate development in the countryside. In the interests of training for road safety, Mrs. Honey contended that the mirrors should remain;
- (c) Mrs. Honey believed the mirrors were not prominent, and could not be seen from the north because they were in the shadow of the Portelet Heights apartment building;
- (d) an offer had been made to modify the size of the mirrors and to introduce planting and trellis to soften the effect. Such landscaping would also give shelter to the sand school;
- (e) Field 961, St. Brelade had been used as a sand school since 1986, and one smaller mirror, for which planning permission had not been granted, had been in place for many years. It had not been realised therefore that planning permission was necessary. In addition, a number of other riding schools as described in the papers had mirrors as a training aid. Mrs. Honey had been greatly impressed with the value of mirrors in training, and had therefore installed them in the least obtrusive part of the field.

Summary of the Planning and Environment Committee's case

Deputy J.B. Fox, on behalf of the Planning and Environment Committee, advised that as a former Community Policing Officer, a rôle which included safety in respect of horse riding, he was familiar with the current situation. The decisions of the Planning and Environment Committee were restricted by the Island Planning (Jersey) Law 1964, as amended, and the approved Island Plan. Policy CO2 of the Plan states "In the Green Zone there will be a presumption against all forms of new development for whatever purpose. However, special consideration will be given to cases of proven agricultural need where a farmer owns land only in the Green Zone." In accordance with the Island Plan, the Assistant Planner had rejected the application under delegated powers as an inappropriate and unacceptable form of development in a prominent site in the Green Zone.

Mr. R.S. Fell, Assistant Director, Design and Development, referred the Board to Sections 7 and 8 of the Planning and Environment Committee's submission, which set out the legal parameters within which the Committee could act. He summarised the sequence of events for the planning applications, and advised that the retrospective application relating to the use of the land as a sand school was approved, as this was seen as a benign use of land. The retrospective application for the mirrors, measuring two metres high by approximately nine metres in length, had been rejected as described. Consideration was given to the effect of modification of the mirrors, but it was felt that the modification proposed would not have a material effect on the visual intrusion of the mirrors in the present location. It was noted that the matter had first been considered by the department under delegated powers, and twice by the Committee.

Mr. Fell referred to the seven main points raised by Mrs. Honey, appended to her letter dated 10th January 2000 and advised as follows in relation to those that covered planning matters (not 2 and 5) -

- (1) the Committee did consider the application fully;
- (2) -
- (3) the Committee considered that the mirrors were in a prominent area. While individuals were not normally 'entitled' to a view, the tenants of Portelet Heights, which was constructed in the Green Zone, could reasonably expect in accordance with the Island Plan that there would be no development at all in the area, and therefore that their views, which were not normally a right, would be protected;
- (4) the Committee had considered the proposed modification carefully, and had agreed that it would not improve the situation;
- (5) -
- (6) with regard to screening, Mr. Fell advised that bad development should not be permitted on the grounds that trees could be planted. Trees grew slowly and very sparsely in this area. Trellis would be inappropriate in the setting as it was an urban feature and would add to the problem, rather than detract from it;
- (7) the actual height of the mirrors at two metres was well documented and not disputed.

Mr. Fell affirmed that the Committee, in considering a retrospective application, had to consider the mirrors as constructed, and could not, as with normal planning applications, give advice on alternative siting etc. It had considered the matter fully while in possession of all the facts, and had acted correctly in all areas.

3. Further statements

Mr. Le Brocq added that the main question was how visually intrusive the mirrors were. They were only visible from Portelet Heights, and Mrs. Honey intended in any event to plant trees along the side of the field adjacent to Portelet Heights, regardless of whether the mirrors were removed, in order to offer protection to the sand school. Under Article 9(d) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, Mrs. Honey wished to dispute that the Planning and Environment Committee had given sufficient consideration to the safety use of the mirrors.

Mr. Fell advised that, with regard to paragraph 9(d), the Committee had considered every piece of correspondence from Mrs. Honey, and considered the use of the mirrors, before making its decision. With regard to tree planting, he felt that if tree planting was being considered to screen an activity then this would be a planning matter. He would seek legal advice if required as to whether planning permission would be required to plant trees in this location. Certainly the creation of banks in the Green Zone would require permission.

Mr. Freeley, Board member, asked a question about the other riding schools which had mirrors, and was advised that the Assistant Planner had considered these, and had advised the Committee that there were no direct comparisons.

The parties then withdrew.

4. The Board's findings

The Board appreciated and agreed with the importance of training riders in road safety. However, the Board agreed

that the Planning and Environment Committee had considered the application fully prior to making its decision, and had determined the application in accordance with its legal responsibilities. Therefore, the Board accordingly decided not to request the Committee to reconsider the matter.

The Board was mindful that it had not been possible for the Committee to consider other locations for the mirrors or other structural modifications because the application was a retrospective one, and in the light of the good relationship which continued to exist between the parties, felt that it might be possible for an amicable agreement to be reached on a solution which the Committee could sanction.

Signed and dated by

Mrs. C.E. Canavan, Chairman

P.E. Freeley, Esq.

D.J. Watkins, Esq.

Administrative Decisions (Review) (Jersey) Law 1982**REVIEW BOARD:** Mr. J.P. A'Court in respect of Longfields, La Rue de la Trappe, St. Ouen**Public Hearing held on 13th June 2000
at St. Ouen's Parish Hall**

Members present -

Mr. R.R. Jeune, C.B.E. (Chairman)
 Mr. W.J. Morvan
 Mr. D.J. Watkins
 Mr. P. Monamy, Senior Committee Clerk

Senator J.A. Le Maistre, representing Mr. A'Court
 Mr. J.P. A'Court- complainant

Senator N.L. Quérée, President, Planning and Environment Committee
 Mr. R. Webster, Senior Planner, Department Planning and Building Control
 Mrs. E. Clapshaw, Applications Supervisor, Department of Planning and Building Control

1. The Hearing had been convened to consider a complaint against a decision of the Planning and Environment Committee to refuse an application for the change of use of an agricultural farm building ("shed") at Longfields, La Rue de la Trappe, St. Ouen to non-agricultural dry storage.
2. The Chairman, having convened the Hearing, adjourned the meeting to conduct a site visit to view the site. The Board noted the agricultural farm building in question, and also a similar adjacent building.
3. **Summary of the complainant's case**
- 3.1 The Board heard that Mr. A'Court's application for change of use had been refused by notice dated 28th May 1998. Mr. A'Court had been involved in the agricultural industry since leaving school and in 1978, having purchased a farm from his uncle, he had applied for and obtained permission from the then Island Development Committee to construct the agricultural farm building which is the subject of this complaint. Mr. A'Court worked the farm until 1997, in partnership with his brother - who had a farm base at L'Etacq. During the course of 1997 it became evident that considerable re-investment would need to be made in the farms in order to meet the high standards demanded by their supermarket produce buyers. The brothers concluded that the necessary investment could not be justified and the decision was taken to let both farm units. Unfortunately, the tenant did not require the use of the agricultural farm building which is the subject of this complaint.
- 3.2 The Board noted that Mr. A'Court had advertised the availability of the agricultural farm building in March 1998 through the Jersey Evening Post, but that he received no response. Mr. A'Court had then approached the Department of Agriculture and Fisheries for advice and the Agricultural Land Sub-Committee of that Committee had suggested that an approach should be made to a farmer who might potentially have been interested in using the building. In the event, this arrangement did not transpire and the Sub-Committee indicated to Mr. A'Court in May 1998 that it would not object to a temporary change of use to dry storage purposes for a period of two to three years. Despite the Sub-Committee's support, the Planning and Environment Committee refused Mr. A'Court's subsequent application for change of use.
- 3.3 Mr. A'Court re-advertised the availability of his vacant agricultural farm building in July 1998 and, once again, received no response. Mr. A'Court contacted the Department of Agriculture and Fisheries to seek further advice, in response to which the Committee directed him to re-advertise the building, this time more prominently, in the hope that a response from growers might be forthcoming. Mr. A'Court followed this advice, and also continued to seek a tenant by other means, with further advertisements being placed in the Jersey Evening Post in December 1998 which this time generated two responses. However, one of these related to use in connection with horses (for which purpose the building was considered by the respondent to be unsuitable); and the other was from a landscape gardening contractor who failed to pursue his initial enquiry.
- 3.4 During this time, the Planning and Environment Committee had decided to maintain its previous decision not to grant consent to the change of use requested as it "considered that it could not support the loss of the shed to agriculture as it may well be that it could be required in the future as farming changes." (letter dated 5th October

1998 refers). Having appealed again, Mr. A'Court felt that he had no other option (other than an appeal to the Royal Court) than to approach the Administrative Appeals Panel because of his belief that the Committee's decision was contrary to the generally accepted principles of natural justice. This was particularly so as it was known to the applicant that permission had indeed been granted for a change of use in respect of other agricultural farm buildings - some of which had had an agricultural condition imposed at the time of their construction, which had not been the case with his premises. Senator Le Maistre emphasised that he had initiated his support of Mr. A'Court's application to the Administrative Appeals Panel as a private member and was not, therefore, representing Mr. A'Court in his subsequent role as President of the Agriculture and Fisheries Committee.

3.5 Senator Le Maistre outlined in some detail the circumstances surrounding a number of examples where permission had been granted for the change of use of redundant agricultural buildings. These related to L'Abri Farm, La Grande Route de Faldouet, St. Martin (1967 to 1995); Barette and Gruchy Limited in respect of Fields Nos. 781, 783 and 785, La Route du Mont Mado, St. John; and Field No. 1421, La Rue de Dielament, Trinity.

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

4.1 The Planning and Environment Committee considered that the decision to refuse permission for change of use of an agricultural storage building to non-agricultural dry storage was entirely in accordance with its existing policies regarding the change of use of farm buildings. The proposal was "contrary to Policy C030 of the approved Island Plan which requires that the change of use/conversion of farm buildings to other uses shall not occur at the expense of the existing or anticipated long term requirements of farming."

4.2 The President of the Planning and Environment Committee indicated that Longfields lay within the Agricultural Priority Zone, where there was a presumption against new development being allowed unless essentially required in connection with agriculture. In addition, permission for an alternative use would not be given where it could be shown that there was likely to be an agricultural need for such buildings in the future. Senator Quérée emphasised that his Committee's policies regarding the change of use of farm buildings were further supplemented in "Planning Policy Note No. 4- Modern Agricultural Buildings" which had been prepared in consultation with the Agriculture and Fisheries Committee and the agricultural industry (Jersey Farmers' Union) and published in May 1996. Paragraph 9.1 of this document stated that: "Where large modern agricultural sheds fall into disuse, they will not generally be regarded as redundant to the existing anticipated long term requirements of the agricultural industry and conversion to alternative uses will not normally be permitted." The accompanying rationale and appendices for this policy indicated that "the applicant will normally be expected to demonstrate that he or she has advertised the building (under a box number) for sale or rent, at a value related to the agricultural industry's ability to pay, for at least 5 years. If there are no takers after 5 years the Agriculture and Fisheries Committee will review the position in consultation with other farming organisations and advise whether the building could then or in the future be used for agricultural purposes. A lack of interest from other farmers over the 5 year period will not necessarily mean there will always be no interest and only where the building is proven to have no potential use for agriculture will it be deemed to be fully redundant for the purpose."

4.3 The Senior Planner confirmed that the Longfields site lay in a rural area where there had been and remained a strict policy against new development being allowed unless related to agriculture. The only reason why a building of the size of the agricultural farm building in question (7,200 square feet) had been allowed at this location was because it had been essentially required for agricultural storage. It was clear that the Planning and Environment Committee would not have allowed a building of that size in that location for any other purpose. Approval for a change of use of the building out of agriculture would be contrary to Policy C030 of the States approved Island Plan and to the supplementary policies outlined in Planning Policy Note No. 4. The building was a large modern farm building which had only been constructed in the late 1970s. The Planning and Environment Committee considered that, because of its size and nature, it remained suitable for use for modern agricultural purposes and that such buildings should not be lost to agriculture even though they might be redundant to that particular owner. This was especially relevant since the building was not dissimilar in size to many of the new sheds currently being applied for and developed. It was emphasised that, in assessing change of use applications, the Committee differentiated between the smaller, more outdated agricultural buildings and the larger buildings which were still considered suitable for modern farm storage. The Committee was concerned that approval for change of use of the agricultural farm building at Longfields could also set a precedent for allowing change of use of other large farms buildings and prejudice the Committee's approved countryside policies. It was noted that the existing approved policies were to be examined as part of the current Island Plan Review. This would need to take into account the changes in agriculture in the Island in recent years, but until the Review had been completed, the Planning and Environment Committee was committed to strictly maintaining the existing policies.

4.4 Senator Quérée confirmed that, although the description on the permission granted for the construction of the farm storage shed referred solely to "outbuilding", it had to be recognised that this was in association with the existing use of the land for farming. Consequently, the permitted use of the building was for agricultural storage and, irrespective of whether any conditions were attached to the permit or not, the proposed use of the building for any non-agricultural storage purposes would constitute a material change of use requiring permission under the Island

Planning (Jersey) Law 1964.

4.5 The Senior Planner indicated that Mr. A'Court had first advertised the availability of the agricultural building to let in March 1998. It was reiterated that the policies outlined in Planning Policy No. 4 (which had been published in May 1996) stated that an applicant would normally be requested to demonstrate that he or she had advertised the building for sale or rent, at a value related to the agricultural industry's ability to pay, for at least five years. Consequently, it was contended that the Committee's decision to refuse consent was clearly in accordance with the Committee's published policies. Moreover, it was suggested that any alleged injustice to Mr. A'Court in having to temporarily retain an empty shed needed to be balanced against the implications of granting change of use in terms of the resultant pressures to allow change of use of other large agricultural farm buildings in the countryside, including not only those farm sheds where permission had been refused for alternative uses in recent years, but a potential further increase in the number of change of use applications as farmers viewed their sheds as potential sources of increased income. This, in turn, raised the wider issue of the cumulative impact of allowing commercial uses throughout the countryside, in terms of the effect on the character and appearance of the countryside, especially over a period of time.

4.6 Senator Quérée suggested that his Committee had been entirely consistent as regards the examples which Senator Le Maistre had raised relating to three specific cases where permission had been granted for change of use of other agricultural sheds for non-agricultural purposes. The circumstances of each example were outlined in turn, together with an indication as to how the policy which had been agreed with the Agriculture and Fisheries Committee and the Jersey Farmers' Union had been applied sensibly and logically.

5. The Board's findings

5.1 The members of the Board appreciate both the problems of the Planning and Environment Committee and the concerns of the applicant in this matter. However, they find that there is inadequate knowledge of the exact position relating to agricultural farm buildings as it is at this time. They are surprised that the Planning and Environment Committee's information is so lacking and also that there was no official input as to the considered view of the Agriculture and Fisheries Committee. If there are vacant agricultural buildings, why should there be applications for further buildings of a similar nature, particularly taking into account the relatively short distances from farms on a small island? How many agricultural farm buildings are unlet and how many new ones are under consideration? Are the relative costs of leasing existing agricultural farm buildings against the cost of agricultural loans to construct new purpose-built facilities a significant factor?

5.2 The Board was unanimous in rejecting Mr. A'Court's application as it felt that the decision by the Planning and Environment Committee had not yet reached the stage of being unreasonable, particularly as it was based on published policy on redundant farm buildings which had been agreed by the Planning and Environment and Agriculture and Fisheries Committees with the Jersey Farmers' Union only two years prior to the Committee's initial refusal to grant consent to the change of use requested. It is contended that the Island's agricultural industry has changed since that time and the Board would be willing to reconsider a fresh approach from Mr. A'Court depending on the result of the further study by the Planning and Environment Committee and what is hoped will be a full policy statement from the Agriculture and Fisheries Committee.

Signed and dated by

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

W.J. Morvan, Esq.

D.J. Watkins, Esq.

**Findings of the Review Board constituted under the
Administrative Decisions (Review) (Jersey) Law 1982
to consider a complaint from Mr. Stephen Le Marquand
against a decision of the Planning and Environment Committee.**

Public Hearing held on 5th June 2000 at the Parish Hall, St. Brelade

Members present -

Mr. R.R. Jeune, C.B.E., Chairman
Mrs. M. Le Gresley
Mr. P.G. Farley

Deputy S.M. Baudains, representing the complainant
Mr. S. Le Marquand
Mrs. L. Donnelly
Miss F. Malzard

Deputy J.B. Fox, Planning and Environment Committee
Mr. G. Smith, Assistant Director, Policy and Projects, Department of Planning and Building Control

1. The Hearing had been convened to consider a complaint against a decision of the Planning and Environment Committee to refuse consent for an application from Mr. Steven Le Marquand for permission to demolish an existing double garage and construct a new dormer-style dwelling in the garden area of the property Cosy Nook, Popin Farm, La Rue de la Sergente, St. Brelade.
2. The Chairman, having convened the Hearing, adjourned the meeting to conduct site visits to view the property, Cosy Nook, St. Brelade, and the other properties on the Popin Farm site, including the Garden of Les Arbes D'Or. It noted that the farm lands had been sold for development in 1930 with the main farm buildings being retained for use by the family of its owners, the Le Brocq Family. A visit was also made to the Garden of Goblins Glade where development permission had been granted in March 1994 for the construction of a dwelling. The Board was advised that, subject to the matter of principle being overcome, it would be possible to identify a design solution for the proposed development.
3. **Summary of the complainant's case**
 - 3.1 The Board heard that on 11th May 1998 the Planning and Environment Committee had refused consent for the proposed development at Cosy Nook on the grounds that -

the proposal was contrary to the approved Island Plan policy for the Sensitive Landscape Area of the Agricultural Priority Zone in which there was a presumption against any non-agricultural development;

the proposal would result in the over-development of the site, in a matter detrimental to the amenities of the area;

and that, following two subsequent appeals, the decision had been maintained. The Board noted that no representations against the proposed development had been received by the Planning and Environment Committee.
 - 3.2 Deputy S.M. Baudains highlighted the fact that non-agricultural developments had and were still taking place in the gardens of nearby properties which were also within the Sensitive Landscape Area of the Agricultural Zone and stressed that the proposed development would have a less detrimental impact on the amenities of the area. In fact, it was suggested that the proposed development would enhance them, in particular because the visual impact of the existing site would be improved and also because it was intended to extend the mains drainage to the site. It was ascertained that the proposed buildings would in no way intrude on the privacy of any of the residents on the site and that the immediate neighbour was supportive of the proposals.
 - 3.3 The Board heard that the property Cosy Nook was part of the Poplin Farm family complex, with each property having been inherited through family links and that it was intended that Mr. Le Marquand and his brother would

eventually inherit it jointly. The property was currently owned and occupied by their grandmother, who was fully supportive of the proposed development and who had indicated a willingness to allow an earlier extension to her property to be removed to reduce the density and facilitate the development.

3.4 The Board was reminded that the decision to refuse consent had been made by the Planning and Environment as previously constituted and noted that the full Committee had not visited the site.

3.5 In summary, Deputy Baudains stressed that, because the applications were similar, the policy exception granted to the development at Goblins Glade should also apply to the proposed Cosy Nook development. She reminded the Board of the obligation to be consistent which was included in the Code of Practice of the Planning and Environment Committee and submitted that that Committee's refusal of the application was unjust.

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

4.1 The Assistant Director, Policy and Projects, Department of Planning and Building Control, reminded the Board that the site of the proposed development was situated within the Sensitive Landscape Area of the Agricultural Priority Zone which had been agreed by the States in November 1987. In this Zone there was a presumption against new development being allowed unless essentially required in connection with agriculture to prevent further piecemeal/sporadic development in the countryside. He advised that it was for this reason and because it was considered that the proposal would result in the over-development of the site in a manner detrimental to the amenities of the area that the application had been refused by the Planning and Environment Committee on 16th June 1998.

4.2 The Board noted that, in a letter, dated 12th August 1998, an appeal against this decision had been submitted on the grounds that -

- (a) although located in the Sensitive Landscape Area of the Agricultural Priority Zone, the proposal constituted a logical infill within an existing group of houses and did not involve the loss of agricultural land;*
- (b) the proposal would result in environmental health improvements because the foul sewer connection would also allow the two neighbouring properties to connect to mains drains;*
- (c) the decision to refuse consent was not consistent with the decision to allow new dwellings in the garden areas of nearby properties at Goblins Glade and Les Arbres D'Or.*

This appeal had been considered by the Planning and Environment Committee on 1st October 1998, when it had been concluded that the circumstances did not justify making an exception to the approved Island Plan policies. This decision had been re-affirmed following two further requests for reconsideration which had included a site visit by some members of the Committee as previously constituted.

4.3 The Assistant Director outlined details of the planning circumstances of the other sites where new dwellings had been approved which had been noted by the Planning and Environment Committee during its consideration of the appeal. That Committee, whilst aware of the precedents, had not considered that benefits would be gained by the development of Cosy Nook. The Director highlighted, in particular -

The Garden of Les Arbres D'Or

The application for the erection of a new dwelling on this site had been submitted in October 1987, prior to the approval of the Island Plan, and had, therefore, been determined in the context of the previous planning policies.

The Garden of Goblin Glade

Consent had been granted for the erection of a dwelling on this site in March 1994. The Planning and Environment Committee had considered the application to be a suitable policy exception on the basis that the proposed development formed part of an existing building group and included provision of a new sewage holding tank/pumped sewer connection to the mains drains to also enable three neighbouring dwellings to connect to the mains drains and overcome acute drainage problems in the area.

4.4 The Board noted that, whilst the current Members of the Planning and Environment Committee had not visited the site, they had been apprised of the proposals and had confirmed that exceptions to the policy needed to be fully justified by adequate grounds. This did not include submissions in relation to the circumstances of the applicants.

4.5 In conclusion, the Assistant Director emphasised that the Island Plan Review would be completed within the next 18 months and submitted that the Planning and Environment Committee had been consistent in maintaining the existing policies in its dealings with other recent applications and appeals for the construction of new dwellings in the countryside.

The parties withdrew from the Hearing.

5. The Board's findings

5.1 The Board accepted the difficulties faced by the Planning and Environment Committee in the implementation of its policies, but considered that in this particular case it had already granted an exemption to its policy in relation to a similar development in the Sensitive Landscape Area of the Agricultural Priority Zone of the approved Island Plan. The building, which was in the course of construction at the Garden of Goblins Globe, was almost adjacent to the Cosy Nook site. The Planning and Environment Committee had granted permission for the erection of a dwelling on this site on the grounds (*inter alia*) that the proposed development formed part of an existing building group.

5.2 The Board was mindful that the site at Cosy Nook was out of sight of the main road and contained an indifferent building which was currently used as a garage. It also formed part of an existing building group. The proposal was to demolish the building and construct a new dwelling with dormer windows and to connect the property and the adjacent bungalow to the mains drainage system. No objections had been forthcoming from the adjoining owners.

5.3 The Board feels, therefore, that it would have been more appropriate for the full Planning and Environment Committee to have visited the site prior to the decision being made to reject the application. In particular because no representations had been received; there was no impact on neighbouring properties; the neighbours supported the application and there were benefits to be gained in relation to the extension of the mains drainage system to the site.

5.4 The Board unanimously was of the opinion that the Planning and Environment Committee had acted in contravention of its agreed Code of Practice in relation to consistency in refusing consent for the construction of a dwelling at Cosy Nook, St. Brelade. It therefore decided, in accordance with the provisions in Article 9(2)(b), (d) and (e) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, that a continuing refusal would be unjust and contrary to the generally accepted principles of natural justice.

5.5 The Board therefore recommends that the Planning and Environment Committee should reconsider this application within a period of three months from the date of these findings.

Signed and dated by

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

Mrs. M. Le Gresley

P.G. Farley, Esq.

Findings of the Review Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by the Jersey Monumental Company (1963) Limited against a decision of the Finance and Economics Committee

**Public Hearing held on 18th April 2000 in the Old Library,
States Building, Royal Square, St. Helier**

Members present -

Mr. R.R. Jeune, C.B.E., Chairman
Mr. D.J. Watkins
Mr. T.S. Perchard
Mrs. R. Heald, Senior Committee Clerk

Advocate M. Thompson, representing the complainant
Mr. B. Reynolds, Managing Director, Jersey Monumental Company (1963) Limited

Deputy M.E. Vibert, Finance and Economics Committee
Mr. W. Gallichan, Manager, Regulation of Undertakings
Mr. N. Philpott, Development Director, Jersey Tourism.

1. The Hearing had been convened to consider a complaint against a decision of the Finance and Economics Committee to grant a licence under the terms of the Regulation of Undertakings and Development (Jersey) Law 1973, as amended, (Regulation of Undertakings Law) to an English company, Midland Marble Limited, Heartlands, Birmingham.

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

Advocate Thompson outlined the concerns of his client at the decision of the Finance and Economics Committee to grant a licence on 21st May 1999 to a United Kingdom company, Midland Marble Limited (Midland Marble), to carry out a contract to supply and install marble at the Atlantic Hotel, Le Mont de Pulente, St. Brelade. Also the conclusion of that Committee on 20th September 1999, following consideration of an appeal against this decision, that there were no grounds upon which to revoke the licence. He submitted that these decisions were in breach of all provisions in Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended.

The Board noted the background to the application which had been submitted by Midland Marble Limited on 12th January 1999. On 19th January 1999, the Regulation and Undertakings Office advised the Contractor for the project, A.C. Mauger Limited, of the Finance and Economics Committee's policy in respect of applications from United Kingdom Contractors, namely that the applicant was required to provide evidence that -

- (a) *either it was providing a specialist service not capable of being provided satisfactorily by an existing local undertaking; or*
- (b) *it was at least five per cent cheaper after a level playing field assessment involving local firms.*

That Office had identified that Jersey Monumental 1963 Limited (Jersey Monumental) was the only local firm which could undertake this work and had insisted that this company be asked to work on one bathroom at the hotel to enable the owners to ascertain whether the standard of workmanship adhered strictly to the specifications they had set (confirmed in a letter, dated 15th December 1999, from the Regulation of Undertakings Office to the Deputy Greffier of the States). This work was duly undertaken and Jersey Monumental was paid in full for the work. Advocate Thompson stressed that at no time was any criticism received by his client regarding the work, and that at no time had the company been asked to return to the hotel to undertake remedial work.

However, in a letter, dated 18th May 1999, to the Regulation of Undertakings Office, the Project Co-ordinator for the refurbishment had advised that, sadly, the results of the marble installation carried out by Jersey Monumental did not meet his quality standards and fell short of the level of expertise required for a major project. He was of the view that there was grave doubt that a local firm would be able to meet the quality standards or have sufficient manpower available to meet the contract programme. He was, therefore, seeking assistance in the provision of a licence to

Midland Marble to carry out the marble work during the project, thus protecting the investment and ensuring that the standards set were achieved. This licence was granted on 21st May 1999.

Advocate Thompson advised that this statement was not accepted by his client and submitted that it was the duty of the Finance and Economics Committee to review any assertion made by an applicant seeking a licence. He advised that his client had been invited to undertake further work in the room which had not been of a remedial nature and that no indication in relation to the quality of the workmanship had been given. Indeed, when he had asked to attend at the hotel to re-examine the finished room he had been advised that this would be inconvenient because the room was constantly in use.

In considering the appeal against its decision to grant a licence to Midland Marble on 20th September 1999 the Finance and Economics Committee had received a letter, dated 17th July 1999, from the Development Director, Jersey Tourism, confirming that at the request of the proprietors of the Atlantic Hotel he had visited the site and had pointed out to him the alleged shortfalls in the sample bathroom. At that time he had been advised that the Hotel was not prepared to proceed with the refurbishment if the United Kingdom Company was not able to undertake the work.

The comprehensive concerns of Jersey Monumental had been outlined in a letter, dated 4th August 1999, from Ogier and Le Masurier to the Regulation of Undertakings Department and in a response, dated 13th August 1999, the Senior Regulation of Undertakings and Development Law Officer had advised that, on the advice of the Law Officers' Department, he was unable to disclose any information to third parties on the grounds of confidentiality. In that letter he had also stated that no complaint had been received by his Office in relation to the work of the Jersey Monumental Company.

Advocate Thompson submitted that this statement was misleading because the comments of both the Project Co-ordinator and the Development Director, Jersey Tourism had been available to the officer at the time of writing. He considered that this was an unfair and unjust way to proceed, in particular as his client had a proven work record in the Island and was fully capable of undertaking projects of this nature. Details of the recent contracts completed by Jersey Monumental were tabled for information, which included amongst other prestigious buildings, Morier House. Despite submitting a request to attend the meeting of the Finance and Economics Committee on 20th September 1999 to present the case for his client, this had been refused. A letter, was, therefore, sent on 15th September 1999 to all members of that Committee outlining the concerns. A response, dated 16th September 1999, from the Vice-President, Finance and Economics Committee, was considered by the Board, in which he had indicated that the standard of workmanship was entitled to be dictated by the person paying the bill. Advocate Thompson maintained that this was in contravention of the policy of the Finance and Economics Committee.

In relation to the decision of the Finance and Economics Committee on 20th September 1999 to reject the appeal, Advocate Thompson was of the view that this decision had been made without sufficient evidence being provided. He stressed that the Committee had a duty under the provisions of Article 5(2) of the Regulations of Undertakings and Development (Jersey) Law 1973, as amended, to obtain full evidence on whether the specialist skills required were available in the Island. He submitted that in accepting the assurances of the Atlantic Hotel at face value, the Committee had failed properly and fairly to apply its policy under the Law.

3. Summary of the Finance and Economics Committee's case

The delegation advised that, in considering the application from Midland Marble, the Regulation of Undertakings and Development Office had insisted that Jersey Monumental should be involved, and that it was only later when the results of that Company's assessment had been received and confirmed by the Development Director, Jersey Tourism, that the licence had been issued. A report dated 17th November 1999 from the Office was considered, which outlined in detail the policy of the Finance and Economics Committee as follows -

"Where applications are received from non-local contractors/sub-contractors to undertake building work within the Island, the Committee will continue to have regard for the need to secure a viable local construction industry to support essential public and private investment, and for the fact that this viability calls for a degree of continuity of work of a varied nature. The Committee will also seek to protect the long term employment and training of Island residents. At the same time the Committee will continue to take into account any cost saving arising from the granting of a licence to a non-local firm."

"The general policy of the Committee is to grant licences to non local contractors where the work is specialist in nature and evidence is provided that the work cannot be undertaken by local firms. Licences also will be granted to non local contractors and sub-contractors when there is a significant price advantage over local firms (currently in excess of 5 per cent). Before responding to such a price advantage the Committee will

require evidence that local firms have been invited to quote on a level playing field basis and receive information on the individual quotes obtained.”

The Board was advised that the Finance and Economics Committee had accepted the decision of the Project Co-ordinator in relation to the standard of work required, following its confirmation by the Development Director, Jersey Tourism. It was stressed that, in the sample bathroom the edges of the tiles had been sharp and that the marbling edges were not properly finished. At that time the Hotel had stressed that the work would not proceed if the United Kingdom Company could not be appointed, as this standard of finish had not been considered to be in the best interests of the tourism industry. Mr. Philpott reported that his involvement had been at the request of the Hotel and that he had responded in an attempt to progress the project. He confirmed that he had considered that the workmanship he had seen was not in the interests of the safety of the guests. However, the delegation confirmed that the integrity of the work done by Jersey Monumental had not been examined by a competent professional adviser.

In this connection, the Managing Director, Jersey Monumental, advised that these faults had been caused by the design, not the fitting. He also reported that, in undertaking the work, he had been required to use the marble supplied by Midland Marble, which was not his usual supplier.

It was ascertained that the Finance and Economics Committee had made the decision on the professional evidence placed before it, and that it had been mindful that the quotation from Midland Marble had been higher than the one submitted by Jersey Monumental. This, it was contended, highlighted the desire of the Hotel to obtain the highest level of workmanship to enable it to maintain its membership of the “Small Luxury Hotels of the World”. The Manager, Regulation of Undertakings, confirmed that it was not the policy of the Finance and Economics Committee to receive presentations when considering appeals against decisions made under the Regulation of Undertakings Law, and that this information had been conveyed to Advocate Thompson on 14th September 1999. Advocate Thompson had also been advised by the Vice-President of the Finance and Economics Committee, on 16th September 1999, that the Committee made every effort to ensure that work which could be undertaken on the Island was so undertaken.

The Manager, Regulation of Undertakings, also disputed the allegations contained in paragraphs 15 and 16 of the letter, dated 4th August 1999, from Ogier and Le Masurier, and confirmed that a complaint regarding the workmanship had never been received, only an indication that the work was not of the standard required for a top hotel in the world. He confirmed that he was satisfied that the company had been given every opportunity to compete for this contract and stressed the importance of the project to the tourism industry in the Island. It was accepted that there had possibly been a breakdown in communication between the Hotel and Jersey Monumental.

In conclusion, the delegation stressed that the Finance and Economics Committee had made every effort to ensure that licences were not issued when it was clear that the work could be undertaken by local contractors to the required specifications. Also, that when licences were granted for specialist work it was in no way implying that the work of the local contractors engaged in similar types of work was substandard. It confirmed that the Committee had given detailed consideration to this application and that, mindful of its duty under Article 5(2) of the Regulation of Undertakings Law, was “protecting the integrity of the Island “ in ensuring that the highest standard of workmanship was provided to one of the premier hotels in the Island. It was stressed that this work - at a value of £180,000 - was the only part of the £3.5m contract to be contracted outside the Island.

4. The findings of the Board

The Atlantic Hotel is one of Jersey’s leading hotels and, indeed, since its refurbishment has been awarded a Five Sun grade by Jersey Tourism. It is also a member of “The Small Luxury Hotels of the World”. One can understand its wish to achieve the highest standard of workmanship in its refurbishment programme and its request to employ a contractor from the United Kingdom in areas where the work concerned was of a special nature - such as the marble tiling in the 40 bathrooms. It was the wish of the hotel, through its professional advisers, for this work to be carried out by the United Kingdom Company, Midland Marble.

On receipt of an application from Midland Marble on 12th January 1999 “to supply and install marble in the Atlantic Hotel refurbishment” the Finance and Economics Committee had advised the main contractor for the project, A.C. Mauger Limited, of its general policy on the employment of United Kingdom contractors. Namely that it only granted licences when the work involved was of a specialist nature with evidence provided that it could not be undertaken by a local firm, or when there was a significant price advantage over local firms. Jersey Monumental was subsequently invited to undertake marble work in one of the bathrooms.

The Board was informed that no complaints had been made to Jersey Monumental on the work by the Project Co-

ordinator, the Contractor or the Hotel. The account for this work had been paid in full, subject to the usual retention which was subsequently paid. Jersey Monumental was also asked by A.C. Mauger to do extra work in the bathroom, namely shelving, but no remedial work was requested. At some stage, Mr. Nigel Philpott, Development Director Jersey Tourism was asked to attend at the Hotel and was shown the bathroom refurbished by Jersey Monumental by the Managing Director of the Hotel and the Project Co-ordinator. At this time he had been made aware of what they considered to be shortfalls in the workmanship and had relayed this information by telephone to the Regulation of Undertakings Office. The Office did not respond to an invitation to visit the Hotel to confirm this information. The Finance and Economics Committee then issued a Licence to Midland Marble on 21st May 1999.

The Finance and Economics Committee has an important and difficult task to perform in the administration of the Regulation of Undertakings Law. This Law is designed to control the carrying out of undertakings and to regulate further development. Under Article 5 of this Law, the Committee may grant a licence either unconditionally or subject to such conditions as it considers appropriate, or may refuse the grant of a licence. In deciding whether to grant a licence, or impose conditions on a licence, the Committee has a statutory duty to have regard to the need to regulate and manage demand on the resources of the Island and to protect the integrity of the Island in commercial and financial matters. The Board finds that the Finance and Economics Committee was aware of the responsibilities it faced in applying its policies in relation to the employment of United Kingdom contractors, and that it made every effort to ensure that licences were not issued when it was clear that the work could be undertaken by a local specialist contractor. In a letter, dated 16th September 1999 to Advocate Thompson, the Vice-President of that Committee had advised *"we do make every effort to ensure that work that can be undertaken in the Island is so undertaken"*. The Regulation of Undertakings and Development Manager had also stated, in a letter dated 21st September 1999 that *"The Committee is always aware of the difficulties it faces in applying its policy relating to U.K. contractors. It makes every effort to ensure that licences are not issued when it is clear that the work can be undertaken by local contractors to the required specification. However, the Committee has to accept that Jersey, because of its limited size, is not always able to provide the degree of specialism that is seen as appropriate and which some situations require. In such instances when the Committee grants licences to a non-local contractor it is in no way implying that the work of local contractors engaged in similar types of work is sub-standard"*.

Now did that Committee discharge its duty under the Law and under its declared policies? The Board is unanimous in its opinion that this was not completed fairly or in an objective manner. The Committee had relied on the owner, the advisers of the owner and the Development Director, Jersey Tourism, who accepted that he was not an expert, but was passing on the findings on what he had contended had been pointed out to him on the site. In such a case it would have been seen to be fair and just had the other party involved, Jersey Monumental, been invited to comment in the light of the information held by the Committee.

The Board is of the opinion that the Committee has a duty to act fairly and justly in its assessment of such applications. It considers that the Committee, through its officers, did not ascertain all the facts to obtain a fair and objective assessment of the work of the local contractor.

Whether the complaint of workmanship was valid or not we shall never know, because the bathroom in question no longer exists. We realise that there is nothing more that can be done at this late stage to remedy the matter under consideration, but the Board does recommend that the Industries Committee, which has now replaced the Finance and Economics Committee in the administration of Law, should take careful notice so that a similar application in the future will be more properly and fairly processed.

The Board, therefore, considers that the decision to grant a licence to Midland Marble could not have been made by a reasonable body of persons after proper consideration of the facts and was contrary to the generally accepted principles of natural justice.

Signed and dated by

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

D.J. Watkins, Esq.

T.S. Perchard, Esq.

BOARD OF ADMINISTRATIVE APPEAL

16th November 2000

**Complaint by Mr. Michael Dun against
a decision of the Public Services Committee**

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

1. Present -

Board Members

Mr. R.R. Jeune C.B.E., Chairman
Mrs. M. Le Gresley
Mr. T.S. Perchard

Complainant

Mr. M. Dun
Miss G. Curtis, M.B.E.

Public Services Committee

Deputy A.S. Crowcroft of St. Helier, President
Dr. C.A. Swinnerton, Chief Executive Officer
Mr. A. Muir, Principal Engineer

States Greffe

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

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

2. Summary of the dispute.

The Board was convened to hear a complaint of Mr. Michael Dun concerning the licensing of the Town 'Hoppa' Bus Service in June 1999. The complaint was in two parts, namely -

- (i) that the correct procedures were not followed by the Public Services Committee when licensing the service; and
- (ii) that the Committee was not sufficiently impartial when acting as the licensing authority because of the financial subsidy given to the 'Hoppa' Bus service by the Committee and because of the rôle of Deputy A.S. Crowcroft (the current Committee President) and the Connétable of St. Helier in other Committees and organisations involved with the establishment and promotion of the service.

3. The grant of road service licences

- 3.1 The Board noted from the papers presented to it that the legislation governing the procedure relating to the grant of road service licences for bus services is contained in the Motor Traffic (Jersey) Law 1935, as amended, and the Motor Traffic (Road Service Licences) (Jersey) Order 1965, as amended. Article 22 of the Law specifies that no motor vehicle may be used on any route as an omnibus except under, and in accordance, with a road service licence granted by the Public Services Committee. If a motor vehicle is used as an omnibus without a road service licence the operator is liable to a fine not exceeding one hundred pounds.
- 3.2 Every applicant for a road service licence must make an application to the Committee in the specified form at least three weeks before the date on which the service is to commence.

- 3.3 Within seven days of the receipt of such an application the Committee must publish, on three occasions, a notice in the Jersey Gazette -
- (i) setting out the particulars of the application and the date on which it is to be considered by the Committee;
 - (ii) specifying that any person who objects to the application should, not later than seven days from the date of the notice, deliver to the Committee a statement in writing of the grounds of his objection and, if he so wishes, a statement of his intention to be heard at the meeting at which the application is to be considered.
- 3.4 The Committee must make available for inspection by the public a copy of every application received.
- 3.5 Not less than seven days before considering an application the Committee must -
- (i) inform in writing the applicant, and every person who has given notice of his intention to be heard, of the date, time and place at which the application will be heard;
 - (ii) provide the applicant with copies of any written objections and a list of persons who wish to be heard.
- 3.6 When considering an application the Committee must -
- (i) hear the applicant or his representative;
 - (ii) hear any person who has given notice of his intention to be heard;
 - (iii) take note of any written objections made.
- 3.7 In considering whether or not to grant any application the Committee is required to consider, in particular -
- (i) any representation made by the Connétable of any Parish in which any part of the proposed route is situated;
 - (ii) the suitability of the routes on which a service may be provided under the licence;
 - (iii) the extent, if any, to which the needs of the proposed routes or any of them are already adequately serviced;
 - (iv) the extent to which the proposed service is necessary or desirable in the public interest;
 - (v) the needs of the Island as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services and the provision of remunerative services);
 - (vi) any objections or representations made in accordance with any relevant Order under Article 24 of the Law.
- 3.8 The consideration of the application by the Committee shall be in private and the decision of the Committee shall be served on the applicant and on every person who was heard in relation to the application.
- 3.9 In addition to the procedure set out above for the consideration of applications for road service licences the Board noted the provisions of Article 22(2) of the Motor Traffic (Jersey) Law 1935, as amended, which provides that the Committee “*may by Act exempt from the requirements of the said paragraph 1 [the requirement to hold a road service licence] any particular journey or series of journeys to be made by a motor vehicle*”.

4. Summary of the complainant’s case concerning the first aspect of the complaint.

- 4.1 The Board heard from Mr. Dun that in the Spring of 1999 he had learnt from media reports that an experimental Town ‘Hoppa’ Bus service was under consideration by the Centre Ville Group. Mr. Dun referred the Board to an article in the Jersey Evening Post dated 15th May 1999 under the headline “*Hoppa Bus service to start next month*” in which it was stated that a £65,000 six-month trial service was to start on 1st June 1999 and be funded by the Public Services and Planning and Environment Committees and the Centre Ville Group. The same article explained that during the trial period, buses would operate every ten minutes from 9.30 a.m. to 4.30 p.m. at a flat fare of 20p. The service would be operated by electric buses (purchased especially by the Jersey Electricity Company) with back-up diesel buses from the Jersey Bus fleet being used if necessary.

- 4.2 Following the press reports, Mr. Dun contacted Deputy P.J. Rondel (his Parish Deputy) and Deputy A.S. Crowcro (both of whom served on the Public Services Committee) seeking confirmation that the correct licensing procedures for the new service would be followed. He also spoke to officers of the Public Services Department. Mr. Dun claimed that those he had spoken to had variously advised that a licence was not required, that the service was only an experiment, that the application had been mislaid or that the Committee had passed a 'temporary Act' to regularise the proposed service.
- 4.3 Although no licensing application had been publicised, the 'Hoppa' Bus service started as planned on 1st June 1999. Mr. Dun referred the Board to an article in that day's Jersey Evening Post showing Connétable C.J. Hinault, the then President of the Public Services Committee, together with representatives of the Centre Ville Group and other interested parties on the maiden voyage of the new service.
- 4.4 On 2nd June 1999 Mr. Dun hand-delivered a letter to H.M. Attorney General, complaining that the service was unlicensed and therefore illegal. In the letter he pointed out that the operators had had ample time to make a proper application as required by law and suggested that the illegal service should be withdrawn. On the same day the Jersey Evening Post reported Mr. Dun's objections to the service under the headline "*Campaigner tries to put a stopper on the Hoppa*".
- 4.5 On 7th, 8th and 9th June 1999 an official notice dated 3rd June 1999 was published in the Jersey Gazette stating that the Committee had received an application for a road service licence from Centre Ville Group Limited to operate a service from 1st June 1999 to 30th November 1999. As well as setting out details of the route and fares, the notice informed members of the public that the application could be inspected at the States' Greffe Reception, Morier House and further stated that any person who wished to object or submit representations should, by 17th June 1999, deliver a statement in writing of their intention to be heard at the meeting of the Committee which would be held on 21st June 1999 in the Old Committee Room, States Building.
- 4.6 Following publication of the Gazette notice, Mr. Dun inspected the original application form and noted that it was dated 28th May 1999 and signed by Mr. R. Henkhuzens as a Director of Centre Ville Group Limited.
- Mr. Dun reminded the Board that this was only four days before the service commenced and that the service was already operating by the time the official notice was published in the Jersey Gazette.
- 4.7 On 14th June 1999 Mr. Dun wrote to the Committee in pursuance of the Gazette notice to advise of his intention to attend the meeting on 21st June 1999. His letter was acknowledged on 16th June 1999 and he duly attended the meeting on 21st June 1999 when the application was considered. At the meeting he set out the procedural irregularities he perceived in the procedure and further claimed that the Committee was not a sufficiently impartial body to determine the merits of the application.
- Mr. Dun explained to the Board that by the time the licence application was considered it had become apparent that the electric buses that formed part of the original proposal for the trial had been withdrawn from service as they had been shown to be unfit for use on the route.
- 4.8 On 22nd June 1999 the Committee issued a press release announcing its decision to grant the licence. Although Mr. Dun did not receive a copy of the press release (and wrote to the Greffier of the States on 28th June 1999 to enquire why he had not been informed of the Committee's decision) he was informed of the decision in a letter from Mr. Alan Muir, Principal Engineer, dated 30th June 1999.
- 4.9 On 14th October 1999 H.M. Attorney General wrote to Mr. Dun setting out his response to Mr. Dun's allegation that the service had operated illegally. H.M. Attorney General pointed out that the road service licence was issued on 21st June 1999 and, in his opinion, the service was clearly legal from that date. H.M. Attorney General further stated that his enquiries had revealed that the Committee had exercised its power to grant an exemption to the service under Article 22(2) of the Law (see paragraph 3.9 above) on 3rd June 1999. The only period when the service had operated illegally was, therefore, between 1st June 1999 and 3rd June 1999 when no licence, and no exemption, had been in place. Although this breach of Article 22(1) of the Law rendered the operator, Centre Ville Group Limited, liable to a fine of up to £100, H.M. Attorney General concluded that he did not believe it was in the public interest to prosecute the company for this breach of Article 22(1).
- 4.10 Mr. Dun informed the Board that it was clear that the Committee were fully aware that a licence was needed for the service but was so keen for the service to operate, because it was one of the financial sponsors of the trial, that it allowed it to proceed even though there were serious defects in the licensing procedure.

5. Summary of the Committee's case concerning the first aspect of the complaint.

- 5.1 In setting out the Committee's response, Deputy A.S. Crowcroft, President of the Public Services Committee explained that the Committee accepted that the full statutory procedures had not been followed by the Committee when considering the application. The Board also noted the contents of a letter from Dr. Clive Swinnerton, Chief Executive, to the Deputy Greffier of the States dated 24th May 2000 in which it was stated that "*.....it is accepted fully that the procedures followed did result in that service operating without a properly issued licence for the period from the 1st June 1999 to the grant of the exemption on the 3rd June 1999.*" The President nevertheless explained that the Committee had been placed in a difficult position as the application had been submitted late (only four days before the service was due to start). In the circumstances the Committee had done its best to comply with the Law and the service had been granted a temporary exemption in accordance with Article 22(2) of the Law on 3rd June 1999 following a telephone meeting of the Committee. The letter from H.M. Attorney General had confirmed that the operator had only been in breach of the law for a period of two days.
- 5.2 Deputy Crowcroft explained that the Public Services Committee had been charged by the States to promote a sustainable transport strategy. Furthermore, there had been considerable public support for the concept of a 'Hoppa' Bus and, in dealing with the application, the Committee had been attempting to respond to pressure from the Centre Ville Group, the Jersey Electricity Company and others to start the service as planned on 1st June 1999. The Committee accepted that the service as proposed was not ideal as it was not, for example, accessible to the disabled, but the Committee felt that it was still a useful experiment. The Committee had complied with the 'spirit' of the law even if it had not strictly followed the letter of the law. The President further pointed out that the Committee recognised that the 1935 Law was in need of revision and law drafting time was available to enable that revision to take place in the near future.
- 5.3 Mr. Alan Muir, Principal Engineer, set out in more detail the Committee's consideration of the application. When the trial was first proposed, the Committee had intended to make an Order under the Motor Traffic (Experimental Routes) (Designation) (Jersey) Order 1988 to legalise the service but, having issued instructions to the Law Draftsman to draft the necessary Order, was informed by the Law Draftsman that there was some doubt over the *vires* of proceeding in this manner. As a result the Committee had suggested to the Centre Ville Group that an application for a road service licence should be made in the usual way. Although the Committee had reminded the applicant on several occasions of the need to submit an application, Mr. Muir reminded the Board that the Committee was at the behest of the applicant who had only submitted the application on 28th May 1999. As this date fell before a Bank Holiday, the application, which is submitted to the States Greffe, was not received by the Committee until 1st June 1999, the day on which the service started.
- 5.4 Because of the extensive publicity that had taken place before the start of the service, Mr. Muir claimed that the Committee's view was that much of the legal requirement for consultation and objection had been fulfilled before the formal licensing procedure had been undertaken.
- 5.5 Mr. Muir informed the Board that the fact that the electric vehicles were withdrawn was of no relevance to the application procedure, as the diesel buses that were actually used were all correctly licensed by the Driver and Vehicle Standards Department, which was responsible to the Home Affairs Committee for the licensing of the vehicles themselves. The electric buses had never been unsafe or unlicensed, they were merely mechanically incapable of operating the routes.

6. Summary of the complainant's case concerning the second aspect of the complaint

- 6.1 Having heard the submissions of both parties on the first aspect of the complaint, the Board considered the second aspect of the complaint, namely that the Committee had a conflict of interest when considering the application.
- 6.2 Mr. Dun stated that he accepted that the Committee was in a difficult position as the Law gave the Committee the statutory responsibility to license bus services in the Island. It was nevertheless essential that this function was undertaken in such a way as to ensure that licensing applications were dealt with in a fair and independent manner, and the Committee should not therefore become involved in promoting bus services or providing financial subsidies.
- 6.3 Mr. Dun referred the Board to a list he had prepared showing the membership of the various bodies involved with the 'Hoppa' Bus service in June 1999. He pointed out, in particular, that Connétable R.L. Le Brocq, in addition to his rôle as Parish Constable, was a member of the Public Services Committee and the Centre Ville Group. Deputy A.S. Crowcroft, as well as being a parish Deputy for St. Helier, was also a member of both bodies, as well as being a member of the Planning and Environment Committee which had assisted in the funding of the trial through the environmental fund. Officers of both the Public Services and Planning and Environment Committees were

involved in the Centre Ville Group.

- 6.4 Mr. Dun informed the Board that it was apparent that the Public Services Committee was negotiating with the Centre Ville Group many months before the service started, and it was therefore apparent that the Committee could not deal with the application in a fair and impartial manner when the actual application was eventually submitted.

7. Summary of the Committee's case on the second aspect of the complaint

- 7.1 The President of the Public Services Committee stated that the Committee had a multitude of rôles and it was sometimes necessary in a small jurisdiction such as Jersey for politicians to undertake a number of different rôles that could, on occasions, be perceived as being in conflict with each other. He pointed out to the Board that he had not personally been present at the Committee meeting on 21st June 1999, when the application was considered. Furthermore, he was aware that the Committee had discussed whether or not the Connétable of St. Helier should participate, because of his membership of the Centre Ville Group, but had concluded that he could.

- 7.2 The President informed the Board that the Committee were hoping to promote changes in legislation to take the licensing of bus routes away from the Public Services Committee. If this responsibility was transferred to another body, the Committee could concentrate on the responsibilities it had been given by the States for transport policy including the promotion of sustainable and environmentally-friendly options. As a former member of the Industries Committee, the President was aware of the proposal of that Committee to establish a new body to regulate local utility companies, and he was hopeful that the remit of this new regulatory body could, in due course, be expanded to cover the licensing of public transport.

8. The Board's findings

- 8.1 Before setting out its detailed findings, the Board wishes to make it clear that it is satisfied that the Public Services Committee genuinely believed that it was acting in the public interest, and in response to demands made by the States and the general public, when dealing with the establishment of an experimental 'Hoppa' Bus service in June 1999. The Board noted from the media reports and the submissions of the Committee that the experiment was judged to have made a useful contribution to improving public transport in the town area for both local residents and visitors.

The Board nevertheless notes that the Committee conceded during the hearing that the correct statutory procedures were not followed when the application for a road service licence was submitted by Centre Ville Group Limited. The Board therefore **upholds** the first aspect of Mr. Dun's complaint, but does not intend to comment in detail on the various flaws in the procedure followed. In particular, the Board does not intend to comment on the complainant's assertion that, because of the procedural irregularities, the service was never properly licensed, and the Board is content to rely on the opinion of H.M. Attorney General that the operator only operated the service illegally from 1st June 1999 to 3rd June 1999.

The Board notes that the Motor Traffic (Jersey) Law 1935, as amended, and the Motor Traffic (Road Services Licences) (Jersey) Order 1965, as amended, set out clearly the procedures and timescales that are to be observed by the applicant, the Committee and any objectors (see Section 3 above), and is satisfied that, following this hearing, the Committee will ensure that the statutory procedures are followed for any future applications. The Board was concerned to note that certain aspects of the statutory procedures (for example the requirement that objectors must submit representations to the Committee in writing) appear to have been ignored by the Committee for many years and reminds the Committee that, for as long as the present legislation is in place, it must be observed. It is inappropriate for a Committee of the States to claim to have observed the 'spirit' of the law, and the Board wishes to make it clear that no such concept exists when a statutory procedure is to be followed.

- 8.2 In considering the second aspect of the complaint, the Board is encouraged to note that the President of the Public Services Committee recognises that an independent regulator should be established to deal with the licensing of bus services in the Island. The Board concurs with this view. The Board recognises that, at present, the Public Services Committee is required by law to exercise this function, but the Board nevertheless believes that the Committee, knowing that it would have to exercise a licensing rôle, failed to take sufficient steps to deal with the Hoppa Bus trial in an impartial way. It is clear to the Board that the Committee took an active rôle in promoting the service, encouraging its establishment and providing a subsidy. Whilst the Committee was acting in good faith in so doing, responding to the duty placed on it by the States to promote public transport initiatives, such activities were incompatible with its statutory rôle as a licensing authority. Furthermore it was inappropriate for the Connétable of St. Helier, as a member of the Centre Ville Group, to have taken part in any Committee meetings dealing with the application, in particular the meeting on 21st June 1999 when the application was granted. The Board therefore

upholds the second aspect of Mr. Dun's complaint that the Committee was not sufficiently impartial when considering the application made by Centre Ville Group Limited.

8.3 As the experimental service has now finished, the Board, despite upholding the complaints, cannot request the Committee to reconsider the matter in accordance with Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended. The Board nevertheless reminds the Committee of its current obligations when considering road service licence applications, and urges the Committee to bring forward amendments to the current legislation as swiftly as possible to remove the licensing rôle from the Committee. In the interim, the Committee must ensure that it takes all possible steps to avoid any conflict of interest when dealing with such applications.

Signed and dated by

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

Mrs. M. Le Gresley

T.S. Perchard, Esq.