

STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: REPORT 2006

**Presented to the States on 12th March 2007
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

The Privileges and Procedures Committee is pleased to present the report of the Administrative Appeals Panel for the year 2006. This has been quite a busy period for the Panel and the Committee would like to place on record its thanks to the Chairman, Deputy Chairmen and all of the members of the Panel (listed below) for their tremendous hard work in an honorary capacity dealing with a wide variety of complaints during this period.

Chairman

Mrs. C.E. Canavan

Deputy Chairmen

Mr. N.P.E. Le Gresley

Advocate R.J. Renouf

Members

Mr. P.E. Freeley

Miss C. Vibert

Mr. D.J. Watkins

Mr. J.G. Davies

Mr. P.G. Farley

Mr. T.S. Perchard

Mrs. M. Le Gresley

As indicated in my report for 2005, the Committee has now reviewed the Administrative Appeals system, and the Law was amended with effect from 1st December 2006 as follows –

- (a) to change the names of the Panel and the Boards under the Law to ‘States of Jersey Complaints Panel’ and ‘States of Jersey Complaints Boards’;
- (b) to give to the Chairman or a Deputy Chairman of the Panel the role of deciding whether to refer a matter to a Board (without changing the role of the Greffier of the States as preliminary investigator in cases not concerning the States Greffe);
- (c) to make it clear that the Greffier should perform the role of investigator with the least possible delay;
- (d) to make it clear that the Chairman or Deputy Chairman may attempt to resolve the matter of a complaint by informal means before deciding to refer it to a Board;
- (e) to require the Chairman or Deputy Chairman to give reasons for any decision not to entertain a complaint;
- (f) to clarify Article 6 of the 1982 Law;
- (g) to add a reference to a time limit of one month for responding to a request from the Greffier or a Board for documents when the Greffier or Board is investigating a complaint and to widen the reference to documents so that it includes information in general;
- (h) to require a copy of the response of a Minister, Department or person to a Board decision to be forwarded to the Privileges and Procedures Committee;
- (i) to require a copy of that response, and a copy of any report of a Board on a failure to act on its findings, to be presented to the States;

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

It is hoped that over the course of the first year of operation of the new system, improvements will be readily seen.

Derek Gray
Chairman, Privileges and Procedures Committee

Dear Mr. Chairman,

I have pleasure in forwarding to you the report for 2006, which includes the resolution of matters outstanding as at the end of 2004. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

	<i>Application rejected</i>	<i>Application deferred pending further action</i>	<i>Matter resolved before hearing held</i>	<i>Complaint upheld</i>	<i>Minister's decision upheld</i>	<i>Withdrawn</i>
Carried forward from 2005	2	1*	2	1	0	0
2006	7	2	2			
Total: 17 reviews processed, plus 1 incomplete	9	3	4	1	0	0
Note: 1 application was being processed and was incomplete at the end of 2006.						

* subsequently withdrawn

The year 2006 was a year of change for the Administrative Appeals Panel, which gained a new title 'States of Jersey Complaints Panel' to describe its function more clearly. The Panel developed a new Complaints procedure in accordance with the amendments to the Law, written in plain English, and this was distributed on 1st December 2006 when the amendments came into force. It is replicated for information at Appendix B.

A disappointing number of complaints were rejected, that is, I decided that a hearing should not be held. In these cases, either the matter was out of the jurisdiction of a Board, or there was little prospect of success, rendering a hearing meaningless.

The work of the Panel in 2006 was a little different in that only one hearing was actually held. The amended Law enables the Chairman or Deputy Chairman to attempt to resolve the matter of a complaint by informal means before deciding to refer it to a Board. In fact, Ministers required little persuasion in 2006, as the statistics above show. Four of the 17 complaints, that is, almost 25% were resolved satisfactorily without the need for a hearing.

Mrs. C.E. Canavan,
Chairman, Complaints Panel

The following is a summary of the outcome of the complaints which were outstanding in the 2005 Annual Report and of new complaints received in 2006 –

Outcome of complaints that were outstanding at the end of 2005 and which were referred to in the Annual Report for 2005 (R.C.39/2006) –

Minister for Environment and Public Services

- (a) Statement of complaint received on 20th January 2005 regarding the refusal of consent for the development of the properties known as Mont de la Rocque Hotel and Clos des Pins.

A hearing was held on 19th April 2006 and the Committee's decision was upheld.

Copy of findings attached at Appendix A.

- (b) Statement of complaint received on 28th February 2005 concerning the applicant's contention that there should be no development on Field 621 St. Brelade. While the Planning and Environment Committee had refused planning permission for 2 houses on Field 621, La Route de Noirmont, St. Brelade, it had indicated that "some limited and appropriate development could be accommodated on the site".

This application for a hearing was initially withdrawn as it was noted that Deputy J.A. Hilton of St. Helier was to lodge a report and proposition (P.33/2005) relating to this site, the purpose of which was, inter alia, to re-zone from Built up Area to Green Zone Field 621.. This matter was debated on 20th April 2005, but the debate came to an unexpected end.

The matter was held in abeyance pending an appeal to the Royal Court which was held on 10th August 2006. Following that appeal, the Minister reconsidered the matter on 23rd August 2006, and refused the application. The application for a hearing was then taken to be withdrawn.

- (c) Statement of complaint received on 21st April 2005 that the Planning and Environment Committee had taken more than 6 months to process an application relating to Fairfield House, La Rue de Hurel, Trinity. This application was refused, and a further complaint was received regarding compensation for the delays.

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

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

Application refused as the Chairman considered that there were no grounds for a hearing.

The complaint was disallowed on the basis that the application had been considered carefully on several occasions by the Planning and Environment Committee, was clearly against policy and the reasoning given in the Committee's report was clear. It was not considered therefore that a review under the Administrative Decisions (Review) (Jersey) Law 1982 as amended would be productive.

- (e) Statement of complaint received on 7th November 2005 against the Committee's Notice served to require the applicant to connect Groenendaal, La Petite Rue, St. Ouen foul drainage to a new patent 'grp' cesspool or alternatively, to make a connection to the main sewer available in La Rue des Palliers.

Following the decision to hold a hearing, the matter was resolved to the satisfaction of all parties and the application was withdrawn.

Minister for Home Affairs

- (f) Statement of complaint received on 19th July 2005 against decision of the Committee to reduce an employee to zero salary with effect from 6th July 2005 as he had exhausted his sick leave after more than 3 years since being injured by a fellow staff member during a training session in April 2004.

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

The matter was resolved to the satisfaction of all parties and the application was withdrawn.

New complaints received in 2006

Minister for Planning and Environment

- (g) Statement of complaint received on 6th February 2006 concerning the refusal of the Minister for Planning and Environment for planning permission for a proposed Cattery and 4 bedroom house, Field 900, Rue du Saut Falluet, St. Peter.

The application was rejected on the grounds that the circumstances did not justify a review of the matter by a Board. There was no reasonable prospect of success as the former Committee had followed its policies and the application had not fallen within any of the exceptions to the policies.

- (h) Statement of Complaint received on 21st March 2006 concerning a planning application to convert existing building to form a single bedroom dwelling.

Upon notification that an application had been received, the matter was referred back to the Minister for reconsideration.

The Minister decided to grant permission in respect of an amended scheme and the application for a review was withdrawn.

- (i) A Statement of complaint was received on 21st March 2006 against a decision of the Minister for Planning and Environment to grant a permit to construct a dwelling facing directly into La Petite Genée, Rue des Landes, St. Ouen and overlooking the garden of the SSI property.

The application was rejected on the grounds that the circumstances did not justify a review of the matter by a Board as there was no reasonable prospect of success, the offending dwelling already having been built. The applicant was advised to forward the papers to the Environment Scrutiny Panel, so as to inform the scrutiny review of the planning process, in order to improve future procedures.

- (j) A Statement of complaint was received on 16th May 2006 against a decision of the Minister for Planning and Environment to refuse a retrospective temporary change of use of an area of land at Southfork, La Rue du Trot, St. Saviour from agricultural to commercial storage of builder's materials. The report of the department was received on 6th July 2006.

The Chairman refused the request for a hearing on two grounds. Firstly, the applicant was not prevented from storing his own building materials, and secondly, that commercial storage was clearly contrary to Policy CO6, and the complaint therefore had no reasonable prospect of success.

- (k) Statement of complaint received on 28th July 2006 concerning the refusal of planning permission to demolish glasshouses etc. and erect new dwelling at Pommier Vineries, La Rue d'Aval, St. Martin.

The Minister reconsidered the case in November 2006 and granted permission before the case was referred to a Board.

- (l) A Statement of complaint was received on 16th November 2006 against a decision of the Minister for Planning and Environment to refuse planning permission to redevelop First Tower Hotel, La Route de St. Aubin, St. Helier.

Consideration of the complaint was deferred pending the outcome of an Appeal under Part 7 of the Planning and Building (Jersey) Law 2002 to the Royal Court, due to be held on 27th February 2007.

- (m) A statement of complaint was received on 20th December 2006 relating to a decision of the Minister for Planning and Environment to refuse permission for development plans for La Briqueterie and Cherry Wood.

The case was under consideration at the end of 2006.

Minister for Housing

- (n) A statement of complaint was received on 2nd August 2006 relating to a decision of the Minister for Housing to refuse to permit continued vehicular access to Graham Lodging House via De Quetteville Court.

The application was refused on the grounds that this matter was not appropriate to be dealt with by a Board of Administrative Appeal, and that there was no reasonable prospect of success. The former Housing Committee had taken reasonable action over a protracted period.

- (o) Statement of complaint dated 4th September 2006 against the Minister for Housing concerning rent arrears.

The application was rejected on the grounds that the circumstances did not justify a review of the matter by a Board, as there was no reasonable prospect of success, it not being possible to establish whether an individual letter from within a batch had or had not been sent or received.

- (p) Statement of complaint received on 18th September 2006 against a decision of the Population Office not to grant residential qualifications on the grounds of incomplete paperwork.

The application was deferred until the complainant had exhausted the department's internal procedures to enable a final decision to be taken.

Minister for Treasury and Resources

- (q) Statement of complaint received on 26th May 2006 concerning alleged unfair treatment with regard to the duty being charged for the propulsion of vehicles on public roads and the use of cranes.

The application was refused as the complainant no longer had a sufficient personal interest in the subject matter of the complaint.

Minister for Home Affairs

- (r) A statement of complaint was received on 2nd July 2006 relating to administrative failures in connexion with the seizure in December 2004 of certain firearms held by the complainant.

Application refused as the matter was under consideration by the Jersey Police Complaints Authority.

PM/142.06

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BOARD OF ADMINISTRATIVE APPEAL

19th April 2006

Complaint by Mont de la Rocque Holdings Limited (represented by Mr. K.R. Manning) against a decision of the former Environment and Public Services Committee

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

1. Present –

Board Members

Advocate R.J. Renouf, Chairman.
Mr. D.J. Watkins
Miss C. Vibert

Complainant

Mr. K.R. Manning, Solicitor, K.R. Manning & Co.
Mr. M.W. King, Mont de la Rocque Holdings Limited
Mr. P.L. Gallaher, Hewitt Gallaher Partnership
Mr. J. Gallaher, Hewitt Gallaher Partnership

On behalf of the Committee

Connétable R.E.N. Dupré of St. John, Chairman, Planning Applications Panel
Mr. R. Webster, Principal Planner, Planning and Environment Department

States Greffe

Mr. P. Monamy, Senior Committee Clerk

The hearing was held in public at St. Brelade Parish Hall on 19th April 2006. During the course of the morning the Board attended on site together with the parties.

2. Summary of the dispute.

2.1 The Board was convened to hear a complaint of Mont de la Rocque Holdings Limited (represented by Mr. K.R. Manning) against a decision of the former Environment and Public Services Committee refusing consent for the development of the properties known as Mont de La Rocque Hotel and Clos des Pins, St. Brelade.

3. Summary of the Complainant's case.

3.1 The Board had received a full written summary of the Complainant's case before the hearing and had taken note of the submissions made on its behalf.

3.2 The Board noted that Mr. M. King had purchased the property 4 years previously, after a lengthy search for what he considered to be an appropriate site, and that he wished to achieve an aesthetically pleasing scheme of luxury high-class apartments to replace the existing hotel which was becoming somewhat

dilapidated in a number of respects. Whereas the hotel could accommodate up to 100 guests – and with the restaurant open to the public for functions, up to 200 people could be using the facilities at any one time – the proposed apartments, intended for “comfortably well-off” persons, probably in the region of age 50-plus with no children, would be home to a maximum of 70 persons. Consequently, it was contended that there would be a significant reduction in the usage of the site.

3.3 Mr. Manning outlined the 5 sets of plans which Mr. King had been required to produce over the 4-year period, with successive versions having to be amended each time in order to accommodate the seemingly ever-changing requirements of the officers of the Planning and Environment Department. There had been many delays in the process; and some significant surprises for the owner - including Tree Preservation Orders made within a short period of time and misinformation regarding the demarcation of the revised Green Zone ultimately included in the Island Plan 2002.

3.4 The Board, having recalled that the guidelines under Policy G2 of the Island Plan 2002– “General Development Considerations” – referred to the need for applicants to demonstrate that their proposed development would not “unreasonably” affect the character and amenity of the area, noted Mr. Manning’s contention that it remained unclear precisely what “amenity” meant and that in any event what was proposed for the site could not be considered “unreasonable”, given the enhancement that would occur to the existing buildings. There would be less intensive use of the site following the removal of the restaurant and it was considered that residents of the new accommodation would soon become involved in the village life of St. Aubin.

3.5 It was suggested that the reference in the Notice of Refusal to the “height, mass, scale” etc. having an unacceptable visual impact was incorrect given that the new building would be no higher than the existing hotel. It was contended that, consequently, the “scale” of the new development would not be any different: the overall skyline would be no different and the ‘footprint’ of the new building would not be significantly greater. Original proposals to develop 46 apartments had been reduced to the 33 flats which were the subject of the refused application. As regards one of the reasons for refusal being that the proposal included development within the Green Zone wherein there was a presumption against development, Mr. Manning indicated that there were many examples of such development. Overall, in the absence of a ‘level playing field’ by which consideration of the proposals had been undertaken, it was contended that the decision to refuse the development had been oppressive and discriminatory.

3.6 Mr. P. Gallaher outlined the pre-application advice which had been sought and received from the Planning Officers on a number of occasions and which had led to the final application which, it was believed, took into account the Committee’s requirements. As regards the views expressed on mass, height and scale, etc., Mr. Gallaher indicated that the design for the proposed apartments had carefully taken into account existing covenants over the site; thus the height of the hotel had not been exceeded. It was suggested that the reference to “scale” was incorrect and could be considered to be a misnomer.

3.7 Of particular concern to the owner had been the inconsistencies demonstrated by the Planning Officers in indicating where precisely the line of the Green Zone ran in relation to the hotel and Clos des Pins site. It was indicated that 4 different drawings had been provided by the Planning Officers showing the alleged position of the Green Zone. Ultimately, a Planning Officer involved in the revision of the 1987 Island Plan had visited the site and had indicated the line that would be drawn in the final version of the revised Island Plan. The owner had proceeded with further revised plans on the basis of the information which had been provided, but it subsequently transpired that that information had been incorrect. Although the new Island Plan Proposals Map had been printed showing the Green Zone as had been indicated by the Planning Officer, a subsequent erratum slip had been issued to correct the mistake and the States went on to approve the Island Plan 2002 showing the Green Zone at the site in a different position to that originally indicated by the Planning Officer. Thus the owner had relied upon misinformation for a period of at least 2½ months and had acted under a misapprehension regarding the line of the Green Zone over his property. Consequently, it was contended that it was unreasonable for the Committee to have included ‘encroachment’ into the Green Zone as a reason for refusal.

3.8 Mr. Manning referred to the reference by the Committee in its Notice of Refusal to “loss of existing

vegetation” and a Tree Preservation Order (TPO) which had been imposed on a number of substantial trees on the site. Mr. Manning suggested that the TPO had been made in haste (following the intervention of a neighbour) and had been ill-considered. The owner had commissioned 3 expert opinions on the trees concerned and it was emphasized that, in relation to the 2 Monterey Pines on the western corner of the site, the removal of the lower limbs had been recommended on safety grounds. Further, the insurer of the hotel had declined to renew insurance cover until such time as these 2 trees had been removed. Mr. Manning also contended that the TPO was invalid as a matter of law on the basis that Article 16 of the Island Planning (Jersey) Law 1964 provides that a TPO shall not apply to trees which have become dangerous.

3.9 The suggestion by the Committee that the proposal represented an overdevelopment of the site was refuted by Mr. Manning, who indicated that it was considered that the parking provision policy of one car parking space per bedroom was unnecessary for the development, given the nature of the prospective residents (who would predominantly be over the age of 50). In addition, Mr. Manning outlined the “substantial area of amenity space” that would be available within the new facilities, including some balcony areas - although the Committee requirements for a minimum of 30 square metres per balcony was considered to be excessive. It was confirmed at the Hearing that the Planning Department would be prepared to accept the amenity considerations of the development proposals in the event that the other aspects of the reasons for refusal could be satisfactorily resolved.

3.10 Mr. Manning suggested that it had been clearly demonstrated on-site that the Committee’s claim that the proposed development would cause an unacceptable loss of privacy to neighbouring residents was unfounded, given that all the properties to the south of the site faced south and that the rear of those premises comprised predominantly garages and/or parking areas and obscured glazing. It was further suggested that there would not be an overbearing impact upon those properties as the existing expanse of granite wall would be replaced with the base of the new development, which would be a high quality building with landscaping to improve the present situation. It was considered that the Committee had failed to take this aspect of the application into account.

3.11 As regards the apparent failure to satisfy the Committee’s requirements for the disposal of excavated material and building rubble, Mr. Manning confirmed that no details were yet available as a contractor had not been selected. Once a contractor had been appointed, an appropriate plan for the disposal of excess material from the site would be prepared, and it was confirmed that Planning Officers had indicated that this aspect of the proposal was unlikely to be problematical.

3.12 In summary, Mr. Manning, on behalf of the owner, acknowledged the sensitivity of the area but emphasized that the aim was to bring improvements through the redevelopment of the site. There was no objection from Jersey Tourism with regard to the loss of the hotel to the industry, and it was accepted that the industry was in decline. Mr. King was frustrated by the length of time it was taking to achieve planning permission and with the difficulties he had encountered over the 4-year period of discussion with the Planning and Environment Department, particularly with the apparent ‘moving of goalposts’ which had occurred on a number of occasions. It was considered that the Tree Preservation Orders had been made in suspicious circumstances and that they might be wrong in law. The difficulty associated with establishing the correct line of the Green Zone across the property had been another episode in a long catalogue of events associated with the site.

4. Summary of the Committee’s case.

4.1 The Board had received a full written summary of the former Committee’s case before the hearing and the written submissions were amplified by the Principal Planner.

4.2 The Board heard from Mr. Webster that although much had been said about the problems associated with the Tree Preservation Orders and the precise position of the Green Zone, the main concern of former Environment and Public Services Committee had been that too much development was proposed on such a small and prominent site, which would have a deleterious impact on the amenities of the locale and the overall St. Aubin area. It was considered that the large mass proposed, involving a major excavation into

the hillside, would have the effect of pushing the buildings closer to the road, thus making it over-dominant - a 'wall of development' with only small gaps in between. In addition, the loss of established vegetation at the site was a problem. Overall, although the proposed building would not be higher, it would be a much greater mass. The repetition in design across the site further accentuated the feeling of a 'block of development' and a more fragmented approach would be preferred. From the Committee's viewpoint, it was suggested that the existing policy envisaged developments fitting into sites rather than a site being changed to fit the development. Island Plan policy G15 dealt with "scale, mass and design" in respect of replacement buildings, and this policy envisaged that there would be an enhancement of a site. In view of the complexities arising from the proposed development, which touched on a number of planning disciplines, a number of Planning Officers had examined the scheme and all had felt that the development proposal would not enhance the character of the area. This had also been the consensus of agreement among nearby residents and the National Trust for Jersey.

4.3 Mr. Webster suggested that whereas it had been contended that the 'goal posts' had changed, the available evidence appeared to lead to a contrary conclusion. Concern about the apparent scale and mass of the development had been highlighted in a letter dated 11th December 2002 from the Principal Planner, but it appeared that the Architect had not abided by such advice. Consequently, it was evident that the Committee's advice had been entirely reasonable in relation to its first reason for refusal.

4.4 In relation to the effect of the Green Zone on the development of the site, the Hearing was reminded of the requirements of the Island Plan 1987 and the Green Zone boundary with the Green Backdrop Zone therein, which policy required emphasis to be placed on "green" areas. Following the adoption by the States on 11th July 2002 of the Island Plan Proposals Map, some reformatting of those proposals had been required. It was explained that during this exercise, an approach from the Architect had prompted the Planning Officer concerned to re-examine the proposed development. In a letter to the Architect from the Planning Officer, dated 24th September 2002, it was pointed out that there was an anomaly in the way the boundary had been drawn on the draft Island Proposals Map. In a further letter, dated 11th December 2002, the Principal Planner emphasized that part of the site remained in the Green Zone. This letter predated the formal application submitted in February 2003. Whilst it was accepted by the Planning and Environment Department that an error had been made, it was apparent that the applicant could only have remained misinformed for a period of 11 weeks from 24th September to 11th December 2002. It was noted that the reformatted Island Plan 2002 (with erratum) was not published until the end of April 2003 (some 9 months after adoption by the States). Meanwhile, the draft Island Plan would have been available to the Architects and, in particular, between July 2002 and April 2003 the draft Island Plan was available at the Planning Department for the public to view. It was further noted that a Chief Officer Review, undertaken by the Chief Executive Officer, Environment and Public Services, had concluded that the Island Plan drawing No. 1/02/FINAL DRAFT as presented to and adopted by the States on 11th July 2002, showed the area in question to be in the Green Zone. The meetings and discussions which took place between the Architect and the Planning Officer responsible for the Green Zone in the period up to 24th September 2002 (when the Planning Officer had written to the Architect) would still have presumed that the site was in the Green Zone. It was conceded by the Chief Executive Officer that in the period between 24th September 2002 and consideration of the proposed development by the Applications Sub-Committee on 9th December 2002, there could have been a presumption on the part of the Architect that the area in question was going to be re-designated as a built-up area at some time in the future. However, it was considered that it became clear at that time that the Green Zone was going to be an issue and that the Architects were duly alerted to the problem, by letter dated 11th December 2002.

4.5 Mr. Webster outlined the Committee's advice which, irrespective of the position of the trees on the site, was that the proposed building should be set further back into the site and 'stepped' rather than remaining 'flat' as shown. In addition, Policy G14 clearly related to protected and other significant trees. It was accepted that it was unfortunate that the issue in relation to the trees had not been raised in the pre-application advice, but this was just one among a number of more significant issues affecting the scheme. It was indicated that it had been following the submission of a formal application, and subsequent advertising, that the issue of the amenity value of the trees had been raised and Tree Preservation Orders recommended by the States' Arboriculturalist. He had suggested that while the whole trees were not dangerous, the lower limbs might well be. Mr. Webster emphasized that none of the consultants had

suggested that the trees in their entirety were dangerous. H.M. Solicitor General had indicated in correspondence with Mr. Manning that the elimination of any danger which might be associated with the lower limbs of the trees was not prevented by the TPO as the trees could still be pruned.

- 4.6 In relation to car parking, Mr. Webster outlined the Committee's policy which was that there should be one parking space per bedroom in any proposed development. It was accepted that on some occasions that the Committee had considered it appropriate to relax its policy requirements, but this was not considered an appropriate case. The property was situated on top of a hill, at some distance from a bus stop and local amenities, and most trips were likely to take place by car.
- 4.7 Mr. Webster concluded by summarising the reasons for the Committee's refusal of the application. The Connétable of St. John indicated that the proposals indicated a significant overdevelopment of a restricted site, and also confirmed that the parking provision required by the Committee was considered reasonable in the circumstances.
- 4.8 In response, Mr. Manning confirmed that 85 parking spaces were provided for in the scheme, representing 2 per unit plus one in 3 visitor spaces. The approach to the design proposed was outlined, and Mr. J. Gallaher indicated that the owner was anxious to eliminate on-street parking and any parking which would be visible from the road. Mr. P. Gallaher commented that some of Mr. Webster's comments had been taken out of context and that there were various inconsistencies throughout the Committee's case. Mr. Manning suggested that the involvement of several Planning Officers during consideration of the application might have resulted in poor internal communication within the Planning and Environment Department.

5. The Board's findings.

- 5.1 The Board is aware that it is not its role to substitute its opinion for that of the statutory planning authority, but rather to ensure that the decision was arrived at by the Environment and Public Services Committee lawfully and after proper consideration of material facts.
- 5.2 The Board is of the opinion that there are reasonable grounds for the Committee to take the view that the proposed development, by reason of its position, height, mass and scale, would have an unacceptable visual impact upon the character and amenities of the area. In relation to the position, the development was proposed for a prominent site and it was right that the Committee should consider its appearance in the context of the surrounding private properties and public areas around St. Aubin. As to height, whilst the height of the proposed new buildings would be no greater than the existing hotel, the Committee was not unreasonable in forming the view that the buildings would appear taller because the proposed excavation of the site would mean that the construction of the buildings would start at a lower level.
- 5.3 As to mass and scale, the Board believes it was reasonable for the Committee to form a view that the proposed development would constitute a wall of development, running along virtually the entire length of the site and continuing around the bend of the roadway with few gaps in between the buildings. This factor, together with the lack of design variance, would give an overall impression of an overbearing mass which would be unacceptable on the site.
- 5.4 Each of these factors could properly be taken into account by the Committee and therefore the Board considers that the Committee did not act unreasonably in refusing the application on the ground of the position, height, mass and scale of the proposed development. The Complainant holds a different view to the Committee, believing that the proposed development enhances the site. Inevitably, there is a subjective element in assessing the impact of any proposed development, but the Board has not been persuaded that the Committee's refusal on this ground could not have been reached by a reasonable body of persons after proper consideration of all the facts. Neither does the Board find any evidence to suggest that the refusal was contrary to law, unjust, oppressive or improperly discriminatory or contrary to the generally accepted principles of natural justice.
- 5.5 The Board has considered the circumstances surrounding the apparent confusion in relation to the precise

line of the revised Green Zone, but considers that the position should have been known to the Architect during the public consultation period leading to the Island Plan 2002. Although an error on the part of a Planning Officer concerned has been admitted, the Board does not believe that the Complainant could reasonably have remained misinformed for more than a period of 11 weeks (24th September to 11th December 2002), with this period being before the submission of a formal application in February 2003. The Board does not consider that the error on the part of a Planning Officer was a sufficient reason to relax the Committee's policy with regard to Green Zone development.

- 5.6 It is considered that the Committee acted appropriately, lawfully and in good faith in seeking and acting upon the States' Arboriculturalist's expert opinion. The pre-application advice which was provided by the Planning and Environment Department "without prejudice" was intended to assist the applicant and the Committee should not be criticized for its omission to alert the Complainant at that time to the amenity value of the trees. The difficulties for the Department associated with the provision of advice in advance of a formal application were outlined during the hearing, and it is noted that pre-application advice is no longer being provided. Although omitted from the pre-application advice, the issues about the trees were of a relatively minor consideration given the other factors associated with the overall development proposals. The Board does not accept the Complainant's opinion that the amenity value of the trees would necessarily be destroyed by lopping their lower branches in accordance with the advice given to the Complainant. The Committee considers that even if such lopping were to take place, the trees would retain an amenity value and thus the TPO would still be justified. The Board believes that there are valid reasons for the Committee to hold this view and has therefore acted reasonably in citing the loss of the trees as a reason for the refusal of the application. The Complainant made great play about the apparent danger associated with one of more of the trees on the site but the Board believes the Complainant should give greater consideration to resolving its concerns by carrying out work to their lower branches as suggested by the Complainant's experts and in legal advice given by H.M. Solicitor General. If such work were to be undertaken, any danger might be removed and it might be possible to regain insurance cover.
- 5.7 The Board considers the parking provision required under the Committee's current policy to be reasonable, and that it was not unreasonable for that standard to be applied to the Mont de la Rocque Hotel and Clos des Pins site. It is apparent to the Board that increased traffic would impinge upon the amenities of the surroundings.
- 5.8 Although the Complainant may consider that the immediate neighbours to the south of the site would not suffer a high degree of loss of privacy from the proposed redevelopment, the Board believes that the existence there of roof gardens, some clear-glazed windows and the possibility of some redevelopment of those dwellings in the future renders it appropriate for greater consideration to be given to the likely effect of what might eventually be constructed overlooking them.
- 5.9 The Board commends the owner and the Architects in their stated endeavour to put together a scheme which is, overall, sensitive to the location of the site and its surroundings. However, whilst the commercial considerations of developing such a large and valuable site whereby the owner will clearly wish to maximise development opportunity are not lost upon the Board, it is evident that the scale of the present proposals – despite consistent advice about what would be expected by the Committee – do not represent a scheme appropriate for that location and would need to be considerably reduced in order to meet the Committee's (and now the Minister's) requirements.
- 5.10 There is, inevitably, a natural tension between the planning authority and a potential developer. The Board accepts that, ultimately, some redevelopment of the Mont de la Rocque Hotel and Clos des Pins premises will be needed as they are reaching the end of their useful life. The Board also feels that in order for this to be acceptable the potential developer will need to consider more closely the stated requirements of the planners regarding the overall size, mass and scale of the redevelopment.
- 5.11 Having considered all the facts and circumstances, and having given careful consideration to the provisions of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Board recognises that the Environment and Public Services Committee, and its officers, acted reasonably in determining the application by Mont de la Rocque Holdings Limited and do not feel that the

Committee's decision:

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

5.12 Therefore, the Board rejects the complaint.

Signed and dated by –

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

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

..... Dated:
Miss C. Vibert

COMPLAINTS



How to complain to the States of Jersey Complaints Board

The States of Jersey Complaints Board is established under the Administrative Decisions (Review) (Jersey) Law 1982, as amended, to look into complaints by members of the public into any matter of administration by any Minister or department of the States, or by any person acting on their behalf.

The Panel of persons who are appointed by the States to become the Chairman, Deputy Chairmen or members of the Panel (from which Boards are constituted) are not States members, and are all completely independent, and give their services on a voluntary basis. If the Chairman, Deputy Chairmen or members of the Panel find that they have a conflict of interest, they will not participate in a Board. In this way, the public can be sure that all Board members are completely unbiased and impartial.

This booklet explains the procedure for submitting a complaint to the Board, and gives an outline of how the complaint will be handled. A copy of the Law may be obtained from the States' Bookshop, Morier House, Halkett Place, St. Helier, JE1 1DD or viewed on the Jersey Legal Information Board website.

How to complain – what you need to do

Send in a letter explaining the problem. This will concern a decision, an act, or an omission by any Minister or department of the States, or by any person acting on their behalf. It should have happened no more than 12 months ago, unless there are special circumstances, in which case you are asked to explain the reasons why you have not taken action within the 12 month period.

The address to send the complaint to is Mr. M.N. De La Haye, Greffier of the States, States' Greffe, Morier House, Halkett Place, St. Helier, JE1 1DD.

Attach any relevant papers, and if you know of any cases that you think are similar, point them out now. It is important that you provide any papers relating to the complaint early on, including any photographs or location maps, technical reports etc, before the Chairman considers whether or not to hold a hearing. You will not be able to add any more papers or details of other similar cases later on, or at the hearing.

Advise the Greffier who will represent you, such as a States' member or other person. You may represent yourself if you wish. If you think you will require a technical adviser at the hearing, such as an architect, then you should say so as soon as possible.

Advise the Greffier of the States of any dates in the next 3 months that you are not available.

NOTE – Before sending in a complaint, you should have endeavoured to go through the department's internal appeal procedures to try and resolve the problem. You should feel you have taken all action possible to reach a satisfactory conclusion. The only exception is when the decision/act/omission happened nearly 12 months ago and there is a risk that if you don't complain now, it will be too late because of the 12 month rule.

What happens when a complaint is received?

The Greffier will check the papers supporting the complaint, to check that everything seems to be there. He may ask for more papers from you, if he thinks something relevant is missing.

The Greffier will forward the papers to the Minister and department concerned and ask for a brief response to the case which is sufficient for the Chairman to decide whether or not a complaint should be considered by the Board. This response will be treated as confidential. The Minister/department must provide this response within 2 weeks. The Greffier will also ask the department to confirm for information that the department has dealt with the complaint as far as it can under its own complaints procedure.

The Chairman or Deputy Chairman will review the papers sent in by you and the response or appeal report submitted by the Minister/department. On the basis of these, she/he will decide whether the circumstances justify a review by the Board.

If the Chairman or Deputy Chairman considers that the circumstances justify a Board, before holding a hearing, she/he may first attempt informal resolution of the complaint. This could involve telephone calls or letters being sent in the first instance. It is possible that some complaints can be resolved more quickly and simply in this way.

If informal resolution is not appropriate or has failed, the Chairman will refer the matter to a Board and a hearing date will normally be set for 6 weeks later The Greffier will be instructed to seek a full report in response to the complaint from the Minister/department, which shall be submitted within 4 weeks in accordance with the Law. If there are any relevant drawings or photographs, they should be included at this stage. The report will contain an adequate policy explanation, that is, a description of the policies under which the decision was made. If no report is presented within 4 weeks, then the hearing will proceed without a report. It will not be possible to circulate papers later, or table papers at the hearing.

The Chairman may ask you to produce further papers within 2 weeks, and the Minister/department will be directed to file a response to those papers, if necessary. After this time, no further papers can be presented, or reference made to cases or premises not already notified.

Any hearing should normally be held within 14 weeks of the receipt of the complaint.

The decision by the Chairman 'that the circumstances justify a review by the Board' does not indicate what the outcome of the hearing might be. It only means that there is merit in holding a hearing.

The Chairman may decide that the circumstances of the case do not justify a hearing if there is no

reasonable prospect of success.

What can I do if my application for a review has been turned down?

If your application is refused, the Greffier will advise you of the reasons why it has been refused.

You may appeal this decision within one month, and ask for the decision to be reviewed.

If the Chairman refused the application, then both of the Deputy Chairmen will consider the appeal. If one of the Deputy Chairmen refused the application, then the other Deputy Chairman and the Chairman will review the decision.

If the two Chairmen reviewing the appeal do not agree with the original decision, then the process will move first to informal resolution if appropriate, and if not resolved in this way, then to a hearing, as above.

NOTE: If any complaint is made about the Greffier of the States or the States Greffe, then such a complaint will be immediately referred to the Chairman without enquiring into the facts of the matter, for direction.

Arrangements for the hearing

You should notify the Greffier at least 2 weeks before the hearing of the name of the person(s) who will be attending on your behalf and who will be speaking at the hearing, and any special needs requirements, such as disabled access.

The papers are sent out to the appointed members of the Board, complainants, representatives, Minister and department officers 10 days before the hearing. These papers will contain all of the papers submitted by you including any further papers requested by the Chairman, and the report prepared by the Minister/department, and any appendices.

The hearing is often held at a Parish Hall. A room is set out with 3 Board members at a table, facing another table with you and your representative at one side, and the Minister and officer(s) at the other side. There are chairs set out for the public and the media to attend (an example layout is shown at the end of this paper). There may be a notice board for plans, etc. if required. (Please advise the Greffier if you need this.)

Who can I bring with me? If you and another person, such as a spouse or co-habitee, are joint complainants, then you may both attend, and also the representative and a technical adviser, if required, whose names you have given to the Greffier. A technical adviser may not present new information, but may answer questions of a technical nature on the documents that were circulated as part of the complaint. It is important, therefore, that if there are technical reports which are important, they should be submitted with the initial complaint. Any unavoidable changes should be notified as soon as possible.

The Minister may bring an officer and a technical adviser, if required, whose names have been notified to the Greffier two weeks in advance of the hearing. (also see previous paragraph) Any unavoidable changes should be notified as soon as possible.

The Board may ask for specific persons to attend to answer questions.

No other person will be allowed to speak or to sit at the table with you or with the Minister, but may attend as a member of the public.

What will happen during the hearing?

All hearings should be open to the public. For personal matters, in borderline cases, members of the media will be asked not to mention names or identifying material in their media reports. At the Chairman's discretion, a hearing may be held in private. The report of any hearing held in private will have any names deleted. Any concerns relating to whether a hearing should be held in private should be raised when the complaint is submitted.

At the beginning the Chairman will declare the meeting open.

All of the papers will be taken as read. None of the papers should be read out during the hearing.

The purpose of the hearing is to reiterate points made in the complaint, and in the report presented in response to the complaint by the Minister/department, and for the Board to ask questions of both parties to help them reach their conclusions about the complaint.

You or your representative will explain to the Board the most important points of your complaint. You may refer to the papers, drawings, photographs etc that have already been circulated. No new papers may be tabled.

The Minister or officer of the department will explain the salient points of the position of the Minister and may also refer only to documents that have already been circulated.

There will be a question and answer period during which members of the Board will ask questions on the papers which have been taken as read, and any other questions the members of the Board wish to ask. With the permission of the Chairman, you may ask a question of the Minister/officer concerned and vice versa. However, there will not be a general debate, and the Chairman will draw such discussion to a close when the Board is satisfied that it has heard all it needs to hear. If there has been a failure to present a report at the appropriate time in the procedure, it will not be possible to present all of the information it would have contained orally.

The hearing will then close, and the Board will consider its findings in private.

What happens where a site visit is necessary?

For matters relating to property, there will generally be a site visit. After the Chairman has declared the meeting open, there will follow brief introductions and possibly a very brief statement giving information that will be useful on the visit. The meeting will then be adjourned to make the site visit. The Board, Minister and Complainant will travel to the site which is the centre of the complaint.

The Board members will decide when sufficient time has been allowed to view the site.

You may briefly explain at the site the problem you have, but no new papers may be presented at the site, and no other cases for comparison may be offered either at the site or en route to/from the site. This is to ensure everyone has had sight of all the relevant papers, and has had time to prepare thoroughly for the hearing.

The Minister/department may briefly describe the position of the Minister.

The parties will return to the Parish Hall/venue for the hearing. The hearing will be re-convened and continue as above.

What happens after the hearing?

The Board considers its findings. The findings are typed, and the Board may have a business meeting to discuss the draft findings before they are signed and issued.

The findings will be sent to you, your representative, the Minister, the department and the Privileges and Procedures Committee. A copy of the findings is also sent to the media, which may publish extracts in the press.

Grounds for upholding a complaint: if the Boards finds that the decision, act or omission which was the subject matter of the complaint –

- “(a) was contrary to law;
- (b) was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
- (c) was based wholly or partly on a mistake of law or fact;
- (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or
- (e) was contrary to the generally accepted principles of natural justice,

the Board, in reporting its findings thereon to the Minister, Department or person concerned, shall request that Minister, Department or person to reconsider the matter.”

Where a Board requests that a decision be reconsidered, it shall also request the Minister, Department or person concerned to inform it within a specified time of the steps which have been taken to reconsider the matter and the result of that reconsideration. The Board will receive copies of the Minister’s reconsideration.

Where a Board requested reconsideration of any matter, the Board may, if it considers that its findings have been insufficiently considered or implemented, **prepare a further report on the matter,** and this will also contain the Board’s original findings and the response of the Minister Department or person concerned, **which it will first forward to the Minister,** Department or person concerned **for information. The Board must send this comprehensive report to the Privileges and Procedures Committee, which must then** present a copy of this report to the States, which means it will be published, and copies will also be sent to all States members. It is a matter for the Committee or any individual member to bring a proposition to the States in relation to the decision, act or omission that was the subject of the complaint.

Copies of the Board’s findings will also be forwarded to the Customer Services Contact Centre at Cyril Le Marquand House, Parish Secretaries, the States of Jersey Library, Broad Street and Central Market Post Offices and the Citizen’s Advice Bureau, and held in the States’ Bookshop, Morier House, Halkett Place, St. Helier JE1 1DD. Any report presented to the States will be available on www.statesassembly.gov.je.

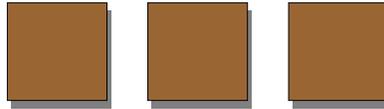
What if I am not satisfied with the outcome?

You may, within one month of the information being provided, request the Board to consider reconvening. If requested, the same Board may reconvene, either of its own accord, or following a request from you, if it considers that this is justified. If so, it can require further papers or hear any person.

Once the Board has completed its findings, and if you are not satisfied, you may approach a States member or a legal representative to pursue alternative remedies.

Typical layout of a hearing

(example given – Parish Hall)



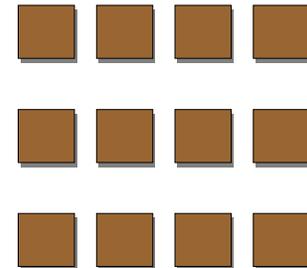
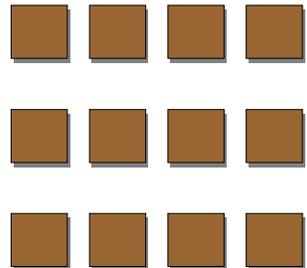
SOJ Complaints Board



Complainant(s) and representative



Minister, Department or person concerned



Public and media