
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE DEVELOPMENT OF FIELD 268, LES CROIX, LA RUE DU TAS DE GEON, TRINITY

**Presented to the States on 28th August 2009
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 as amended, the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for Planning and Environment regarding the development of Field 268, Les Croix, La Rue du Tas de Geon, Trinity.

Connétable J. Gallichan of St. Mary,
Chairman, Privileges and Procedures Committee.

STATES OF JERSEY COMPLAINTS BOARD

6th July 2009

Findings of the Complaints Board constituted under the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint by Mr. and Mrs. Minihane (represented by Mr. R. Shenton) against the Minister for Planning and Environment regarding the development of Field 268, Les Croix, La Rue du Tas de Geon, Trinity

1. Present –

Board Members

Advocate R.J. Renouf, Chairman
Mrs. M. Le Gresley
Mr. T.S. Perchard

Complainants

Mrs. D. Minihane
Mr. R. Shenton

On behalf of the Minister

Connétable P.F.M. Hanning of St. Saviour – Planning Applications Panel
Mr. R. Webster, Principal Planner (Appeals)

States Greffe

Mrs. L. Hart, Assistant Greffier of the States

The Hearing was held in public at 2.30 p.m. on 6th July 2009.

2. Summary of the dispute

2.1 The Board was convened to hear a complaint by Mr. and Mrs. T. Minihane against a decision of the Minister for Planning and Environment to reject an application for the construction of a new dwelling in Field No. 268, Les Croix, La Rue du Tas de Geon, Trinity.

3. Site Visit to Field 268, Les Croix, La Rue du Tas de Geon, Trinity

3.1 After the formal opening of the Hearing at Trinity Parish Hall the parties went together to visit the site.

- 3.2 At Field 268, 'Les Croix' the Board was shown the proposed location of the development and the surrounding area. The Board noted that the Complainants wished to construct a single-storey dwelling of approximately 2,700 square feet in an area currently used as part of the domestic curtilage of 'Les Croix', the applicant's property. It was proposed to construct a bungalow, purpose-built to accommodate a disabled person and a carer. The Principal Planner displayed a site plan and drawings of the proposed scheme.
- 3.3 The Board was advised that the existing access would be widened and would be shared by the existing house and the proposed new dwelling. The Board was also shown the garden area to the east of the site, which had been suggested as an alternative location for development, and was informed that the greater part of this area was also within the Green Zone.

4. Summary of the Complainants' case

- 4.1 The Board had received a full written summary of the Complainants' case before the Hearing and had taken note of the submissions made on their behalf.
- 4.2 Mr. Shenton outlined the circumstances of his involvement in the Complainants' appeal. He had offered to support Mr. and Mrs. Minihane, given his experience as a former States Member and, indeed, President of the Island Development Committee (IDC). He acknowledged that there were inherent difficulties in determining Planning applications, and rules and regulations needed to be applied to ensure a fair approach, but he considered that there were certain cases where the welfare of the community should take precedence over policies.
- 4.3 Mr. Shenton advised the Board that he had been disappointed with the limitations of the Planning Applications Hearing, particularly the time limit imposed upon his submission to the Panel on Mrs. Minihane's behalf. He also expressed concern that the papers supporting the Panel's agenda were only available electronically and this effectively disempowered the elderly, who tended not to have access to the Internet. He had not felt that the application had been given a fair hearing and questioned the composition of the Panel and the withdrawal of certain members from participating in the consideration of the case due to supposed religious 'conflicts'. He had therefore encouraged Mr. and Mrs. Minihane to pursue a Complaints Board. Mr. Shenton opined that permission seemed to have been readily given by the Planning Applications Panel for the construction of a number of large residential properties in the Island in the Green Zone by wealthy individuals, and he cited by way of example the application which had been considered prior to the Minihanes' at the Planning Applications Panel meeting on 19th February 2009, for the redevelopment of the former Sunset Nurseries site.

- 4.4 Mr. Shenton emphasized that the Minihanes were an aging couple who simply wished to remain in their home of 35 years. They wanted to take responsibility for caring for themselves, rather than relying upon the States to look after them as their health failed. Mr. Shenton advised the Board that during his time as IDC President it was common for amendments to the Island Plan to be taken to the States Assembly in order to rezone land and reflect the needs of individuals within the community. He argued that the boundary demarcating the Green Zone appeared to have been arbitrarily drawn to include Field No. 268 and he suggested that the Minister for Planning and Environment should reassess the zoning areas as a matter of urgency. Mr. Shenton was of the view that the needs of individuals should be an important consideration in planning matters and that the Minihanes' case merited a review. He stated that the decision to refuse the couple's application could not have been made by reasonable persons, and urged that the Planning Applications Panel should be strong enough to support not just speculators and wealthy developers, but those Islanders who could not afford to hide their extensions behind high walls and had to follow the planning applications process.
- 4.5 Mr. Shenton considered that a review of the Green Zone Policy was required and he argued that worthy cases should be presented to the States to decide whether exceptions to the Policy were justified. He rejected the suggestion of the Chairman that the Applications Panel was bound by existing policies and any exceptions would set precedents, and he maintained that it was not right to refuse a worthy application purely to avoid setting a precedent.
- 4.6 Mrs. Minihane highlighted the fact that when the initial application was considered by the Panel in June 2008, two members had supported the principle of some form of development on the site, whilst two had opposed on policy grounds. The Chairman of the Applications Panel, who had also been unable to support the application as presented, had suggested that consideration might be given to reducing the footprint of the proposed dwelling. Mrs. Minihane advised that she had been led to believe that a revised set of plans would be looked upon favourably by the Panel, but they had also been rejected. She opined that older people were being encouraged to remain in their own homes for as long as practicable, and that she and her husband wished to remain in the area they loved, living in their own home with family close by. Mrs. Minihane explained that Les Croix was an old property with narrow doors and staircases, with the latter not suitable for stair lifts. The application site had never been farmed in all the years that the Minihanes had lived at the property, and the land was not considered to be of prime agricultural use. The couple proposed to build an environmentally- and ecologically-friendly dwelling which could accommodate a live-in carer for Mr. Minihane. It was noted that both the Ministers for Health and Social Services and Housing were keen for elderly people to remain in their own homes where possible; yet this appeared to Mrs. Minihane to conflict with the approach adopted by the Minister for Planning and Environment. She reiterated that she and her husband were trying to do what the States wanted by making every effort to stay together in their own home, and they wished to

construct a dwelling which could be used by other disabled people in the future.

- 4.7 Mrs. Minihane maintained that her application should have been given special sympathetic consideration. The land in question was not of great agricultural quality, and the suggestions made by some members of the Panel to extend the existing property and create an annexe were not feasible or acceptable in her opinion. She advised that she and Mr. Minihane had been married for 52 years and she was not prepared to put him 'out' in an annexe. Building on the southern end of the site was also not an option as it would take away the garden from the existing house and, as the site was smaller, it would not accommodate a bungalow and would therefore have to be a two-storey structure. The couple had looked into the possibility of purchasing a bungalow-type property elsewhere in the Island, but had found nothing which could suitably accommodate the needs of a disabled person, such as wide door frames, low kitchen units and so on.
- 4.8 Mr. Shenton considered that the legal advice which had been received by the Planning Applications Panel had been extremely unsympathetic. He reminded the meeting that there had been exceptions made in the past to allow developments in the Green Zone and Mrs. Minihane highlighted that a field had recently been rezoned for a First-Time Buyer development just around the corner from her property. Mr. Shenton, mindful of the aging population, warned that it was imperative that society looked after the elderly and showed compassion. Mr. Shenton reiterated his view that the existing Green Zone policy should be reviewed by the States and he maintained that the public would be supportive of revisions to the boundaries if it was to benefit worthy cases.

5. Summary of the Minister's case

- 5.1 The Board had received a full written summary of the Minister's case before the Hearing and the written submissions were amplified by the Principal Planner (Appeals).
- 5.2 It was confirmed that the application site lay within the Green Zone, as detailed on the Island Proposals Map which formed part of the Island Plan approved by the States on 11th July 2002. It was noted that Policies G2, G3 and C5 of the 2002 Island Plan were considered to be of relevance, particularly the latter, which dealt with applications for new developments in the Green Zone. Policy C5 stipulated 'a general presumption against all forms of new development for whatever purpose'.
- 5.3 The Principal Planner advised that the Planning Applications Panel had visited the site and taken into account the full details of the case, especially the personal circumstances of the applicants. However, whilst sympathetic to the Minihanes' situation, the Panel had concluded that the circumstances did not justify making an exception to the existing Green Zone policy. The Principal

Planner acknowledged that it had not been uncommon, during Mr. Shenton's time as a politician, for States members to lodge propositions relating to changes to the Green Zone, but since the 2002 Island Plan it was extremely rare for such matters to be debated by the States Assembly, given the extent of the public consultation now involved in the formulation and adoption of the Island Plan. It was noted that the First-Time Buyer rezoning in Trinity, to which Mrs. Minihane had referred earlier, had been the subject of extensive public consultation. There was a strong emphasis within the Planning and Building (Jersey) Law 2002 on the importance of adhering to the 2002 Island Plan, and Article 19(3) of the Law stated that 'The Minister may grant planning permission that is inconsistent with the Island Plan but shall not do so unless the Minister is satisfied that there is sufficient justification for doing so'.

- 5.4 The Principal Planner advised that all applications for exceptions had to be considered against this need for justification. The Planning Applications Panel, acting on behalf of the Minister, had decided that the circumstances of Mr. and Mrs. Minihane's application had not justified an exception.
- 5.5 The Principal Planner emphasized that the Planning Applications Panel had only considered the application for the northern site and no formal decision had been made in relation to the alternative southern site. Confusion regarding this site's potential use as an alternative had arisen when the Case Officer had written to Mr. and Mrs. Minihane's architect and had mistakenly assumed that the southern site was within the Built-Up Zone. It was noted that this error had now been addressed by the Assistant Director of Development Control and it was important that the meeting concentrated on the application site alone. Mrs. Minihane asked whether it was usual for property-owners to have their gardens divided between the Built-Up Area and Green Zone and was advised that it was unusual, but not exceptional. The meeting was advised that there were a number of properties which were essentially within Built-Up Areas, for instance along La Route Orange, but their gardens had all been designated within the Green Zone.
- 5.6 The Principal Planner advised there were provisions within the Law for the Minister, or Panel acting on his behalf, to justify an exception, but the current Green Zone policy was very strictly applied, and there would need to have been an extremely strong case for an exception to have been allowed. It was noted that the Island Plan was currently being reviewed and a draft was due to be published in the next month.
- 5.7 Connétable P.F.M. Hanning of St. Saviour advised that if the Planning Applications Panel made a decision which was contrary to the advice received by the Planning Officers, then the matter was referred to the Minister to either make a ruling or request that the matter be reconsidered by the Panel. In June 2008 when the Minihanes' application was considered by the Panel, it was deferred in order that alternatives could be investigated and legal opinion was sought on the extent to which an applicant's personal circumstances should impact upon a planning decision. The advice received had been that personal

circumstances should not be a determining factor. The meeting was advised that even if the Panel had approved the application, the matter would have had to have been referred to the Minister as it would have been contrary to the advice given by the Departmental officers. The Minister would have had to assess the application against the Green Zone policy. The Connétable of St. Saviour opined that exceptions, however small, would erode the Green Zone and it was therefore important that the boundary was upheld. It was noted that the development of a residential property on the former Sunset Nurseries site, to which Mr. Shenton had earlier referred, equated to a replacement of redundant agricultural buildings and was therefore consistent with policy – an exception had not been made as the dwelling would not be a new development in the Green Zone. The Principal Planner also highlighted that the other properties to which Mr. Shenton had referred were also examples of replacements of existing buildings, rather than new buildings in the Green Zone.

- 5.8 The Connétable of St. Saviour emphasized that wealth was certainly not a determining factor in planning cases and he maintained that the Planning Applications Panel had been elected by the States to make planning judgements and did so in an impartial and objective manner. He considered that Mr. Shenton had been given adequate time to put his views forward at the meeting in February 2009, and the case had been given a fair hearing. Whilst having every sympathy for the Minihanes, it had been necessary for the Panel to base its decision on planning policy and, on that basis, the decision made had not been unreasonable.
- 5.9 Mr. Shenton claimed that he had only been given ‘adequate’ time to speak at the Hearing because he had protested that the initial 5 minute time-slot was insufficient. He claimed that the outcome of the application had been predetermined and that there had been limited representation on the Panel by members from the urban Parishes. He maintained that he was most dissatisfied with the way in which the Minihanes’ case had been dealt with by the Panel and the Minister for Planning and Environment, but expressed gratitude to the Board for listening to his submission.
- 5.10 The Connétable of St. Saviour rejected the notion that the composition of the Panel was biased and refuted the claim that any decision was made prior to hearing Mr. Shenton’s submission. Mrs. Minihane advised that as she had spoken out of courtesy to both her Connétable and Parish Deputy in advance about the application, this had resulted in both members being conflicted and therefore unable to take part in the adjudication of the case. She argued that this had contributed to a limited Panel and the consequential rejection of the application. This view was countered by the Connétable of St. Saviour, who advised that it was extremely common for Connétables to withdraw from the deliberation of applications based in their own Parishes, in order to avoid accusations of bias, either positive or negative. He also repudiated the accusations of religious prejudice made earlier in the submission by Mr. Shenton.

- 5.11 The Chairman reminded the meeting that the Board's role was to assess the decision made by the Planning Applications Panel, on behalf of the Minister for Planning and Environment. He opined that the planning process was now much more accessible to the public and he was confident that the Panel, the composition of which was determined by the States Assembly, was prepared to keep an open mind and listen to representations before decisions were reached. The composition of the Panel when determining the Minihanes' application was not a decisive factor – even if the Panel had given in-principle approval to the application, the matter would then have been referred to the Minister, and the same justification for building a new dwelling in the Green Zone would have needed to have been ascertained against the existing Policy.

The Chairman emphasized that the Board would focus on whether the decision made by the Planning Applications Panel had been unreasonable. The parties then withdrew from the meeting to enable the Board to consider its findings.

6. The Board's findings

- 6.1 The Board acknowledged that the Planning Applications Panel had acted in accordance with the current Policy which presumed against development in the Green Zone. It was recognised that exceptions to this policy were extremely rare. The Board agreed that the decision made by the Panel could not be criticised on any of the following grounds –
- (a) contrary to law;
 - (b) 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) based wholly or partly on a mistake of law or fact; or
 - (d) contrary to the generally accepted principles of natural justice.
- 6.2 The Board went on to consider whether the decision could not have been made by a reasonable body of persons after proper consideration of all the facts. The Board, having regard to the legal advice received from H.M. Attorney General relating to the interpretation of Policy C5 and the use of personal circumstances as a determinative factor in planning applications, was mindful that, whilst the personal circumstances of the applicants should not be ignored, they should not normally be a permissible reason to move from the existing policy position. Accordingly the Panel did not act unreasonably in accepting and following the legal advice it had been given.

- 6.3 The Board, whilst having every sympathy for Mr. and Mrs. Minihane’s situation and high regard for their efforts to provide for themselves, accepted that the planning applications process had to be governed by the relevant laws and policies adopted by the States of Jersey. The Board carefully reviewed the decision made by the Planning Applications Panel but found it to be entirely in accordance with the policies which applied to the application. Accordingly the Board rejected the Complainant’s contention that the decision made by the Panel could not have been made by a reasonable body of persons after proper consideration of all the facts.

- 6.4 During the course of the Hearing, Mr. Shenton had urged the Board to take a bold step and make a decision which would effectively send a message to the Minister for Planning and Environment and the States of Jersey that there should be greater flexibility in applying planning policies and, in particular, greater regard should be given to the individual circumstances of deserving applicants. The Board acknowledged that it could not criticise a properly made decision solely for the purposes of engendering a political debate. The policies contained in the present Island Plan had been debated and agreed by the States Assembly after extensive public consultation. Mindful that a new Island Plan was being prepared and that a draft was shortly to be released for public consultation, the Board anticipated that Mr. Shenton and Mr. and Mrs. Minihane would participate in that consultation process to ensure that their views were taken into account.

Signed and dated by:
Advocate R.J. Renouf, Chairman

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Mrs. M. Le Gresley

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Mr. T.S. Perchard