
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS PANEL: REPORT FOR 2011

Presented to the States on 25th May 2012
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

Chairman's Foreword

The Privileges and Procedures Committee is pleased to present the report of the States of Jersey Complaints Panel for 2011, and 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 honorary work dealing with complaints during this period. In particular the Committee wishes to express its gratitude to Mrs. Carol Canavan, who is retiring from the Board after 15 years' service (9 of which as Chairman), Mr. David Watkins, who has served for 15 years and also to Mrs. Mary Le Gresley and Mr. Tom Perchard, who both have completed 12 years as members of the Board. The Committee recognises that they are extremely busy people in their own right and have generously given their time freely to serve the community.

Chairman

Mrs. Carol Elizabeth Canavan

Deputy Chairmen

Mr. Nigel Peter Edgar Le Gresley

Advocate Richard John Renouf

Members

Mr. John Geoffrey Davies

Mrs. Mary Le Gresley

Mr. Thomas Siouville Perchard

Miss Christine Vibert

Mr. David James Watkins

Mr. Christopher Beirne

Mr. Robert Frederick Bonney

Mr. Frank Dearie

Mr. Stephen William Platt.

**ADMINISTRATIVE DECISIONS (REVIEW) (JERSEY) LAW 1982, AS
AMENDED: REPORT OF THE STATES OF JERSEY COMPLAINTS BOARD
FOR 2011**

Dear Chairman,

I have pleasure in forwarding to you the report for 2011, which includes the resolution of matters outstanding as at the end of 2010. The following statistics show the work undertaken by the Administrative Appeals Panel during this period –

		<i>Request for hearing refused/ withdrawn</i>	<i>Hearings held</i>	<i>Ministers' decisions upheld</i>	<i>Complaint upheld</i>	<i>Report to the States</i>	<i>Complaints carried forward</i>
<i>Complaints carried forward from 2010</i>	5	4	1	1		1	0
<i>Total Complaints 2011</i>	8	4	3	3		3	1

There were 8 new complaints received during 2011 and a total of 4 hearings were convened, one of which pertained to a complaint received in 2010. All 4 hearings were chaired by the Deputy Chairmen. The decisions made by the respective Ministers were upheld by the Panel at all 4 of the hearings, although in 3 of the cases the Board noted that there had been failings by the Minister or Department to either communicate adequately with the complainant or to seek a pragmatic solution. Four reports were presented to the States outlining the findings of the hearings. One complaint was carried forward into 2012.

The Board noted that, as in previous years, most of the complaints received in 2011 related to decisions made by the Minister for Planning and Environment. However, it is acknowledged that the Minister's decision was upheld at all of the complaints which resulted in a hearing.

The Board considers that the reduction of appeals in respect of other Ministers could be a result of improved internal Departmental appeals processes. The increase in Planning-related complaints could be a result of the perceived prohibitive costs of a Royal Court or Third Party Appeal process, but a vast majority of the complaints received by the Board related to the outcome of specific applications, rather than the process followed by the Planning Department; and therefore did not justify a review by a Panel. It is anticipated that improved appeals procedures introduced by the new Minister for Planning and Environment will reduce the number of complaints submitted to the Board in 2012.

The Board wishes to express its thanks to the Greffier of the States and his staff who provide efficient and professional administrative and advisory support to the Panels.

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

**THE FOLLOWING IS A SUMMARY OF THE OUTCOME OF THE
COMPLAINTS WHICH WERE OUTSTANDING IN THE 2010 ANNUAL
REPORT AND OF NEW COMPLAINTS RECEIVED IN 2011**

Outcome of complaints that were outstanding at the end of 2010 and which were referred to in the Annual Report for 2010 (R.56/2011) –

(i) 1386/2/1/17(3)

A statement of complaint was received on 5th October 2010 relating to a decision of the Minister for Home Affairs regarding maladministration by the Immigration Department in respect of an application for an Indefinite Leave to Remain.

A resumé was sent to the Chairman on 20th October 2010 and the complainant was advised on 27th October 2010 that his request for a hearing had been refused on the grounds that the directions set out by the Department clearly showed the process to be followed when an application for a visitor's visa or an ILR was to be made. The complainant was advised that if he wished to challenge the Immigration Department's directions then he was entitled to do so through the Court system, but the Chairman had decided, in accordance with Article 3(5) of the Administrative Decisions (Review) (Jersey) Law 1982, that a review of this case by the Administrative Review Board would not be appropriate.

The complainant appealed this decision and the matter was referred to the Deputy Chairmen. Having considered the appeal, the Deputy Chairmen concurred with the decision of the Chairman that the circumstances did not justify review by a Complaints Board and the complainant was advised of this outcome on 5th January 2011.

(ii) 1386/2/1/2(300)

A statement of complaint was received on 23rd June 2010 relating to a decision of the Minister for Planning and Environment relating to the refusal of a planning application at the property known as Cliffside House, 65 New St. John's Road, St. Helier.

A resumé of the case was sent to the Chairman on 21st July 2010 and it was agreed that the Board would be convened on 27th October 2010. At the complainant's request the hearing was cancelled and the matter was considered at a hearing on 22nd February 2011. The Board noted that the Planning Case Officer who had compiled the original report for consideration by the Assistant Director had also subsequently compiled the 'Request for Reconsideration' report for the Planning Applications Panel. The Board further noted that the issue of "screening", whilst referred to in the minutes of the Planning Applications Panel of 26th February 2010, had not been specifically referred to in the subsequent minutes of 15th April 2010. The Board also noted with interest that the Chairman of the Planning Applications Panel had been required to use his casting vote on 15th April 2010 in order to determine the application following a split vote.

The Board, whilst mindful of the foregoing, concluded that it had been appropriate for the Planning Applications Panel to consider the application as originally submitted. The Panel had visited the site prior to its consideration of the application and appeared to have taken into account all relevant factors, including the issues surrounding privacy screening. The Board decided that Article 9 of the Administrative Decisions

(Jersey) Law 1982 did not apply and it was therefore not minded to request the Minister for Planning and Environment to reconsider the matter. The Board presented its findings to the States on 11th March 2011 (R.26/2011).

(iii) 1386/2/1/2(305)

A statement of complaint was received on 25th October 2010 relating to a decision of the Ministers for Planning and Environment and Home Affairs regarding the Rocket Launch attempt in 2007 by the complainant.

Despite having spent a considerable amount of time reviewing the documentation, the Deputy Chairman, adjudicating the case in the Chairman's absence, advised that he had found no special circumstances which made it proper for him to waive the rule which required that a complaint must be brought within 12 months. The Deputy Chairman therefore decided, in accordance with Article 4(b) of the Administrative Decisions (Review) (Jersey) Law 1982, that a review of this case could not be justified.

The complainant appealed this decision and the matter was referred to the other Deputy Chairman on 15th December 2010 and he upheld the decision. The complainant was advised accordingly on 6th January 2011. The matter was then pursued by the Deputy of St. John, whose proposition entitled 'Importation of Fireworks in 2007 for a Charity Event: investigation' (P.21/2011) was adopted by the States Assembly on 17th March 2011.

(iv) 1386/2/1/2(306)

A statement of complaint was received on 9th November 2010 relating to a decision of the Minister for Planning and Environment to refuse planning permission in respect of the development of the property known as Vale View, Trinity.

A request for a resumé was sent to the Minister and the Planning and Environment Department on 9th November 2010, and the Department requested an extension to the usual 2 week deadline in order that a full submission could be made. There then followed a series of exchanges in which the Chairman sought to establish the basis of the complaint and whether it fell within the jurisdiction of the Board. The last recorded correspondence was on 22nd December 2011, when the complainant was asked to confirm that the application for a hearing was to be re-submitted. No response has been received to date.

(v) 1386/2/1/2(307)

A statement of complaint was received on 22nd December 2010 relating to a decision of the Minister for Planning and Environment relating to the granting of planning permission in respect of the property known as 12 La Cambrette, La Grande Route de la Côte, St. Clement.

A request for a resumé was sent to the Minister and the Planning and Environment Department on 22nd December 2010. Following consideration of the matter by the Chairman, a letter was sent to the complainant on 10th January 2011, advising that as no formal planning application had been submitted, there was currently no basis for a complaint to be heard by the Board.

Outcome of complaints received during 2011 –**(a) 1386.2.1.2(308)**

A statement of complaint was received on 12th January 2011 relating to a decision of the Minister for Planning and Environment to refuse retrospective planning permission for the construction of a wall on land to the south of property known as Leighfield, La Route de la Trinité, Trinity which was situated in the Countryside Zone.

A request for a resumé was sent to the Minister and the Planning and Environment Department on 13th January 2011 and the matter was referred to one of the Deputy Chairmen on 4th February 2011. A hearing was held on 4th April 2011. The Board, whilst having every sympathy for the complainant's situation, accepted that in making the decision to refuse their application, due process had been followed by the Department. It was accepted that the planning applications process had to be governed by the relevant laws and policies adopted by the States of Jersey. The Board, having carefully reviewed the decision made by the Planning Applications Panel, found it to be entirely in accordance with the policies which applied to the application.

However, the Board questioned whether the construction of a wall necessarily equated to 'urbanisation' of a site, and considered that there had been scope for greater dialogue between the Department and the applicants which could have assuaged the situation. It was acknowledged and accepted that mistakes had been made in early communications between the complainants and the Department. The former could have communicated future intentions more clearly to the Department and advised of the change in ownership of the property, whilst the latter should have ensured that the advice given was consistent and unambiguous. The Board expressed disappointment within its findings that a pragmatic compromise had not been sought to resolve the situation. The findings were presented to the States Assembly on 16th May 2011 (R.55/21011).

(b) 1386.2.1.2(309)

A statement of complaint was received on 27th January 2011 relating to a decision of the Minister for Planning and Environment in respect of the refusal of planning permission to construct 10 units of accommodation for agricultural staff at Field 189, Sandhurst (Formerly Le Lay Nurseries), La Route de Vinchelez, St. Ouen.

A request for a resumé was sent to the Minister and the Planning and Environment Department on 13th January 2011 and the matter was referred to the Chairman on 20th May 2011. A hearing was held on 25th July 2011.

The Board, having carefully reviewed the decision made by the Planning Applications Panel, found it to be in accordance with the policies which applied to the application. Accordingly the Board had no option but to reject the Complainant's contention that the decision made by the Minister could be criticised in accordance with Article 9 of the Administrative Decisions (Jersey) Law 1982. However, the Board had agreed that this had been a difficult case to adjudicate. Whilst the majority of the Board had concurred that the complaint against the Minister could not be upheld on the grounds of any of the terms outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, some felt that the final decision had been finely balanced.

The Board opined that the complainant had failed to provide evidence that the Planning Applications Panel had not fully understood the Planning policies or harboured a prejudice against the applicant Company, and it could not support the argument that the decision made had been ‘unreasonable’ in accordance with paragraph (d) of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982.

However, the Board unanimously expressed disquiet that the Minister had decided to remain silent when the matter had been referred from the Planning Applications Panel. Notwithstanding the fact that the Minister had the option to call in the decision and determine the application himself; issue comments or advice, or make no comment and refer the matter back to the Panel, the Board considered it puzzling that the Minister had chosen the latter option and not expressed an opinion one way or another. The Board found this unhelpful and was of the view that when a matter was referred to the Minister in this manner in the future, it was crucial that some form of comment was recorded.

The Board wished to strongly encourage the Minister, the Department and the Planning Applications Panel, to work with the complainant to find an acceptable and coherent solution to the broader issues raised by this appeal. The Board considered that an acceptable outcome could be reached through negotiation. It was suggested that any conditions placed upon agricultural developments in the Green Zone could be strengthened in order to assuage any concerns regarding their long-term agricultural use. The Board recognised the enormously important position the applicant Company occupied within the Island’s agricultural economy, and agreed that all parties should work together in order to achieve the objective of supporting the applicant and the agricultural industry in general. The findings were presented to the States Assembly on 25th August 2011 (R.109/21011).

(c) 1386.1.2(311)

A statement of complaint was received on 23rd May 2011 relating to a decision of the Minister for Planning and Environment to refuse planning permission for the property known as Transvaal, La Rue de Fauvic, Grouville.

A request for a resumé was sent to the Minister and the Planning and Environment Department on 24th May 2011 and the matter was referred to the Chairman on 10th June 2011. A hearing was arranged for 8th August 2011.

The Board noted that, whilst the Planning Applications Panel had originally approved the application for the proposed conversion by Planning Permit dated 20th November 2008, an application seeking the removal of Condition No. 4 (requiring “residents to have free and unrestricted access to amenity space” to be provided in the rear garden) had not been submitted until 25th June 2010. It appeared to the Board that from the outset the applicant must have been aware that amenity space was required, because he had included a measurement of the rear garden marked as “External Amenity Space” on his plan, and it was therefore considered reasonable for the Planning Department to have assumed that the applicant would be content with the shared use of that area with the 3 lodging units being created in order to meet the planning guidelines, on the basis that the necessary amenity space could not be provided elsewhere on site.

The Board considered that it had been reasonable for the Panel to defer (in August 2010) consideration of the application then before it so as to afford the applicant an opportunity to develop his agent's suggestion during the public meeting that it might be possible for an area in the car park to be given over to amenity space. However, the Board accepted that it had also been reasonable for the Planning Department subsequently (in March 2011) not to give favourable consideration to the proposal which had by then been developed by the applicant involving the use of a small part of the existing car park – immediately adjacent to a busy main road and junction – as “private” amenity space, given the degree of overlooking from the public realm and also having taken into consideration its inadequate size for the purpose, which would have rendered it sub-standard.

The Board further agreed that it was also reasonable for the Planning Department not to have given credence to the contention that the use elsewhere of balconies towards achieving the total area required as amenity space should be a significant factor in support of the revised application relating to ‘Transvaal.’ Similarly, the Board accepted that the Panel had given due consideration (as evidenced in its Minutes) to the applicant's suggestion that the availability across the adjacent main road of a 140/50 metre private path to the beach (which ‘facility’ was inevitably subject to variations in respect of tidal conditions) should be given significant weight in its deliberations. The Board recognised, nevertheless, that the availability of such an access to the beach could be considered to represent a ‘bonus’ in terms of the facilities available to the residents of the lodging units at ‘Transvaal’, although it could not be considered a substitute for amenity space of good quality nearer to the units.

The Board considered that it was reasonable for the Planning Department to require that, in situations where the required amenity space could physically be provided, it should be so provided – even though the applicant might prefer to pursue some alternative route.

With regard to the highways considerations of the application, the Board agreed that Planning had had proper regard to the relevant TTS guidelines, with due consideration having been given to the real possibility that some vehicles might reverse along or onto the main road, from which it was evident that the necessary conditions had not been met.

Accordingly, the Board did not uphold the submissions of the Complainant. Its findings were presented to the States on 13th September 2011 (R.112/2011).

(d) 1386.2.1.1(312)

A statement of complaint was received on 18th November 2011 relating to a decision of the Minister for Planning and Environment in respect of a planning application for new cottages in St. Clement.

A request for a resumé was sent to the Minister and the Planning and Environment Department on 19th November 2011, and the matter was referred to the Chairman on 14th December 2011.

Having considered the appeal, the Chairmen decided that the circumstances did not justify review by a Complaints Board and the complainant was advised of this outcome on 23rd December 2011.

(e) 1386.2.1.4(95)

A statement of complaint was received on 5th December 2011 relating to a decision of the Minister for Housing to reject an application for residential qualifications to be granted under Regulation 1(1)(g) of the Housing (General Provisions) (Jersey) Regulations 1970.

A request for a resumé was sent to the Minister and the Housing Department on 6th December 2011 and the matter was referred to the Chairman on 22nd December 2011.

Whilst very sympathetic to the complainant's situation, the Chairmen did not consider that the circumstances justified review by the Administrative Complaints Board, and the complainant was advised of this outcome on 3rd January 2011.

(f) 1386.2.1.20(1)

A statement of complaint was received on 22nd December 2011 relating to the failure of the Minister for Economic Development to respond to a request to publish information under the Code of Practice on Access to Information.

A request for a resumé was sent to the Minister and the Economic Development Department on 23rd December 2011 and the matter was referred to the Chairman, who was conflicted. The matter was then referred to one of the Deputy Chairmen on 6th February 2012.

Complaints received in 2011 which were not followed up**(1) 1386.2.1.2(310)**

A statement of complaint was received on 4th April 2011 relating to a decision of the Minister for Planning and Environment in respect of the refusal of planning consent for an extension to a property in St. Brelade. The complaint was withdrawn.

(2) 1386.2(87)

A statement of complaint was received on 29th May 2011 relating to a decision of the Minister for Planning and Environment in respect of the refusal of planning consent for the redevelopment of a property in St. Helier.

The complainant was advised that this matter did not fall within the remit of the Board.