

**Judgment 54/2005**

**Hamon and Hamon v. Minister of the  
Environment Department – Royal Court  
(Civil action file 930) – 17 October, 2005**

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**Island Development (Guernsey) Law, 1966 – appeal from refusal of application by the Department – Rural Area Plan (Phase 1) – whether Policies CE5 and IN6 of that Plan precluded the Department from granting the permission sought – appeal dismissed.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 17th day of October, 2005 before Richard John Collas, Esquire, Deputy Bailiff; sitting alone.

In the action of MICHAEL JOHN HAMON  
and STELLA LYNN HAMON (“the Appellants”) against the MINISTER OF THE  
ENVIRONMENT DEPARTMENT (“the Department”);

WHEREAS on the 19<sup>th</sup> day of September,  
2005 the Court heard Advocate C.H. Edwards for the Appellants and Advocate R. McMahon  
for the Department on a point of law arising in this matter and RESERVED JUDGMENT to a  
date and time to be fixed;

THE COURT this day handed down Judgment in  
the terms attached hereto, to the effect that the Appeal must be DISMISSED and THE  
COURT ORDERED costs in favour of the Department on the normal recoverable basis unless  
either party applies for a different order within seven days hereof;

S. M. Simmonds  
Her Majesty’s Deputy Greffier

Approved Text

**IN THE ROYAL COURT OF GUERNSEY  
(Sitting As A Full Court)**

**APPEAL UNDER SECTION 26 OF THE  
ISLAND DEVELOPMENT (GUERNSEY)  
LAW 1966**

**Between MICHAEL JOHN HAMON AND STELLA  
LYN HAMON**

**Appellants**

**-v-**

**THE MINISTER OF THE ENVIRONMENT  
DEPARTMENT**

**Respondent**

**Date of hearing: Monday 19 September 2005**

**Judgment handed down on 17 October 2005**

**Before: Richard John COLLAS Esq., Deputy-Bailiff**

**Advocate for the Appellants: C. H. Edwards**

**Advocate for the Respondent: R. J. McMahon**

**Cases, texts & statute referred to:**

- 1 *Island Development Committee v Portholme Properties Limited* (Civil Appeal 320, 20<sup>th</sup> September 2002)
- 2 *CP Developments Ltd v Secretary of State for the Environment and Salisbury District Council* (1997) JPL 930
- 3 *Grangehurst Limited v Island Development Committee* (Royal Court 31<sup>st</sup> December 2002)
- 4 Rural Area Plan (Phase 1)
- 5 Island Development (Guernsey) Law 1966, S.17(a).

**JUDGMENT**

**Background**

1. Mr Hamon and his wife have sold ice creams for a number of years. They store their ice cream vans and trailers in a yard at Petit Marais, Vale. This is in contravention of the Island Development (Guernsey) Law, 1966 (“the 1966 Law”) because the authorised use of the yard is for agriculture/horticulture – Agricultural Use Class 60. On 5th November 2004, the Environment Department refused an application from Mr

and Mrs Hamon for retrospective permission to store vans and trailers in the yard. Mr and Mrs Hamon appealed against the decision.

2. The appeal raises an issue for my sole determination namely whether the Department was correct in concluding that because of Policies CE6 and IN6 of the Rural Area Plan (Phase 1) it was precluded from granting the permission sought by Mr and Mrs Hamon.
3. In its reasons for refusing the application, the Department wrote that:-

*“The site is within an Area of Landscape Value (Green Zone 2) in Rural Area Plan (Phase 1).*

*Policy CE6 states that in the Areas of Landscape Value, the overall policy is to protect the character, quality and generally open nature of the rural landscape. New development will only be permitted in certain specific and limited circumstances and then only in relation to agriculture, horticulture, recreation or tourism use. The erection of new housing will not be permitted.*

*The proposed use for parking for commercial vehicles does not fall within any of the categories of use specified under Policy CE6 and conflicts with the intentions of Policy IN6, which states that new industrial development on new sites will not be permitted anywhere in the Plan area.*

*In these circumstances, the Department is precluded from granting the permission sought.”*

4. In the course of argument Advocate Edwards, on behalf of the Appellants, conceded that Storage/Distribution Use Class 44 is the appropriate Use Class to describe his clients’ activities. He accepted that the current authorised use is Agricultural Use Class 60.

### The Law

5. A change in the use of land from one use class to another is deemed to be a material change in the use of the land (by virtue of section 2 of the Island Development (Amendment) (Guernsey) Law 1988) and hence amounts to “development” (as

defined in section 40 of the 1966 Law) which is prohibited without the permission of the Environment Department as successor to the Island Development Committee (section 14 of the 1966 Law).

6. In considering an application for permission to carry out development, the Department is required to take into account the factors set out in section 17 of the 1966 Law, including (under sub-section 17(a)) the relevant Detailed Development Plan which in this case is the Rural Area Plan (Phase1). In this judgment I refer to the Rural Area Plan (Phase 1) as the Plan.
  
7. In *Island Development Committee v Portholme Properties Limited* (Civil Appeal 320, 20<sup>th</sup> September 2002) (a case in which I appeared unsuccessfully for Portholme) the Guernsey Court of Appeal considered how a Detailed Development Plan should properly be construed when it does not expressly address the type of development for which permission is sought. The Court of Appeal was guided by reference to *CP Developments Ltd v Secretary of State for the Environment and Salisbury District Council* (1997) JPL 930 at p. 938, where Robin Purchas QC sitting as a Deputy High Court Judge, distilled previous case law to this effect.

*“It is axiomatic that for a decision maker to have regard to or indeed to determine an application in accordance with it the policy must have been properly understood.... In approach to the construction of a policy in a development plan, as with the construction of any other document, it is important to have regard to the policy in context and as part of the development plan as a whole. In that sense planning policies can be distinguished from statutes or contracts as intended to provide a framework for decision or proposals when made in the planning sphere. Notwithstanding this, however, I accept that a development plan falls to be construed on the basis of its finally approved or adopted terms..... The guiding principle should be that the policies should be construed on a commonsense and straightforward basis, having regard both to context and underlying purpose...”*

8. In *Portholme* the Court of Appeal held, in the judgment of the Court delivered by Beloff, JA, at page 20, that :

*“if a Plan allows for development only in certain identified circumstances, by necessary inference development out with those circumstances is not to be*

*allowed. Portholme pray in aid the absence of prohibition, when what they require is the presence of permission”.*

9. Portholme was applied by Lt-Bailiff Day in Grangehurst Limited v Island Development Committee (31<sup>st</sup> December 2002) where he observed that Portholme had removed any uncertainty as to whether, when the statutory policies only implicitly provided the total planning regime, there remained any area of discretion outside that regime.

#### The need to find a policy gateway

10. In this appeal Advocate McMahon, on behalf of the Respondent, argued that Portholme has established that when considering an application for development the Department must first look for a policy gateway. If there is no policy gateway because a proposed development is either expressly or impliedly prohibited by the Plan then permission must be refused.
11. Advocate Edwards, for the Appellants, contended there a number of use classes for which no specific provision is made in the Plan. So the Plan can not be considered an exhaustive statement of planning policy and Portholme does not establish a general principle to be applied in every case. In Portholme, application was made for residential development and as the Plan contained specific policies relating to housing he argued there would have to be a policy gateway before the merits of an application for housing development could be considered under the other sub-sections of section 17. He distinguished the present case from Portholme because this application was for a storage or distribution use and the Plan does not contain any policies dealing specifically with storage, distribution or parking. So, he argued, the Plan is not a relevant consideration and the Department should have ignored section 17(a) and proceeded to consider the application under sub-sections 17 (b) to (f) of the 1966 Law.
12. Under section 17 (a) of the 1966 Law the Department is obliged to consider the Plan and I agree with Adv McMahon that, following Portholme, it is correct to adopt the approach of Mr Purchas QC in CP Developments and to have regard to the Plan as a whole, to construe it on a commonsense and straightforward basis, to see whether the application fits within the planning framework approved by the States. Paragraphs

1.7 and 1.8 of the Plan make it clear that the States intended it to be a comprehensive statement of the policies to be applied throughout the Plan area.

13. The general policy in relation to conserving and enhancing the rural environment in areas of Green Zone 2 (the relevant zoning) is Policy CE6:

*“In Areas of Landscape Value (Green Zone 2) the overall policy is to protect the character, quality and generally open nature of the rural landscape. New development will only be permitted in certain specific and limited circumstances and then only in relation to agriculture, horticulture, recreation or tourism use. The erection of new housing will not be permitted”.*

14. My interpretation of Policy CE6 is that it prohibits all forms of development in areas of Green Zone2 except where development may be specifically permitted under the policies relating to agriculture, horticulture, recreation and tourism. Development for the purposes of storage or delivery is precluded by the general prohibition and it matters not that there are no specific policies in the Plan relating to those activities.

Was this a tourism or recreation use?

15. Mr Edwards argued that if Policy CE6 does apply, the Department should have considered whether the application was for recreation or tourism and as they did not do so the decision must be quashed on grounds of *ultra vires*. He argued that if a policy gateway is required, then in relation to those use classes for which there is no express provision within the Plan, the Department should look deeper to identify a secondary purpose which, in this case, would be tourism. He did not argue strongly for recreation but he submitted that because ice creams are sold to tourists, the storage of ice cream vans and trailers is a tourist activity.
16. Reminding myself of Mr Purchas QC’s distillation of previous case law in CP Developments I find that Policy CE6 must be interpreted on a commonsense and straightforward basis. The Department is not required to dig deeper to look for the secondary purpose of any activity.
17. Advocate McMahon tentatively suggested that “tourism” in Policy CE6 covers only those activities that are encompassed by the Tourist Use Classes 13 to 15. In my view, the word “tourism” must be given its ordinary meaning and there is no need to

limit it to the statutory definition of the Tourist Use Classes. Whichever meaning is to be applied, the storage of ice cream vans and trailers (Use Class 44) is not a tourism use. Furthermore the letter of application did not draw attention to any tourist activity; ice creams are not sold exclusively to tourists; and even if the **sale of ice creams** could be considered a tourist activity, the **storage of ice cream vans** is a different use.

18. Even if I am wrong and the specific tourism policies (which are contained in Chapter 6 of the Plan) are applicable, they do not permit the development proposed.

19. Similarly, if this is a recreation use, the policies on Outdoor Recreation (in Chapter 7) do not assist.

#### Was this a retail use?

20. I also reject the Appellants' argument that the decision should be quashed because the Department failed to consider the possibility of the application being for a retail purpose. I do not consider an application for a change of use to storage/distribution to be a retail use. In any event the specific policies relating to retail outlets in Chapter 9 of the Plan are not relevant to the application.

21. In rejecting the application the Department did consider Policy IN6 which it regarded as the most relevant of the general policies. I do not accept Mr Edwards' criticism of the Department for failing to conduct a greater examination to see whether the proposal involved another secondary use that would be permissible.

#### Section 18(1) of the 1966 Law

22. Mr Edwards did not criticise the Department for failing to apply the provisions of section 18(1) of the 1966 Law. The Appellants had not requested consideration under those provisions because they do not regard the change of use as a departure from the Plan.

#### Conclusion

23. When considering the application for change of use from Use Class 60 to Use Class 44 the Department had a duty to take account of the planning framework approved by

the States of Deliberation in the Rural Area Plan (Phase 1). In doing so they had to construe the Plan on a straightforward and commonsense basis. I find that the general provisions of Policy CE6 prohibit the change of use. The proposal did not fall within the specific and limited circumstances set out in Policy CE6 in which development will be permitted. Consequently, the Department correctly decided that it was precluded from granting the permission sought. Accordingly, the appeal must be dismissed.

#### Costs

24. I would propose to order costs in favour of the Department on the normal recoverable basis unless either party applies for a different order within seven days.