

Judgment 65/2005

**Grand Havre Holdings Limited v. Minister of the
Environment Department – Royal Court (Civil
action file 919) - 11 November, 2005**

Island Development (Guernsey) Laws 1966-1990 – appeal from refusal of application by the Department – relevance of Policy T5 of Rural Area Plan (Phase 1) – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of November, 2005 before Richard John Collas, Esquire, Deputy Bailiff; present:- Derek Martin Le Page, Alan Cecil Bisson, David Michael Jory, Keith Bichard, O.B.E., Esquires, The Reverend Peter Gerald Lane, Michael Henry de la Mare, Esquire, Susan Mowbray, Barbara Jean Bartie and David Osmond Le Conte, Esquire, Jurats.

In the action of GRAND HAVRE HOLDINGS LIMITED (“the Appellant”) against THE ENVIRONMENT MINISTER (“the Respondent”), Environment Department (“the Department”);

THE COURT heard Advocate M.G.A. Dunster for the Appellant and Advocate R. McMahon for the Department and unanimously answered in the affirmative question No.1 in the attached schedule of Questions for the Jurats, in the affirmative by 5 to 4 votes question No.2, and unanimously in the affirmative question No.3 therein and thereby DISMISSED the Appeal, AWARDED recoverable costs in favour of the Department, and ADJOURNED the matter for written Judgment to be handed down in due course, which Judgment was duly handed down on the 16th day of November, 2005 in the terms attached hereto.

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 GRAND HAVRE HOLDINGS LIMITED

-v-

**THE MINISTER OF THE ENVIRONMENT
DEPARTMENT**

Appellant

Respondent

Date of hearing: Friday 11 November 2005

Supplementary Judgment handed down on 16 November 2005

Before: Richard John COLLAS Esq., Deputy-Bailiff

Advocate for the Appellants: M G A Dunster

Advocate for the Respondent: R J McMahon

Statutes referred to:

Island Development (Guernsey) Law 1966 – 1990, Section 17(a)

Island Development (Amendment) Guernsey Law 1990, Section 2

1. This Supplementary Judgment explains why I gave certain directions to the Jurats on Friday 11 November 2005 in the course of an Appeal by Grand Havre Holdings Limited against the Environment Department.
2. I refer to the:
 - Rural Area Plan (Phase 1) as “RAP1”;
 - Strategic and Corporate Plan 2005 as “S & CP 2005”;
 - Island Development (Guernsey) Law 1966 – 1990 as the “1966 Law”;
 - Island Development (Amendment) (Guernsey) Law 1990 as the “1990 Amendment Law”.
3. The facts of the Appeal are summarised in my directions to the Jurats. In short, this was an Appeal by Grand Havre Holdings Limited, the owner of the Peninsula Hotel, against a decision of the Environment Department refusing permission for a change of use of the hotel to either Use Class 10 (Nursing Home) or Use Class 11 (Accommodation for People in Need of Care).

4. The application was made by the Appellant's agent in a letter dated 13 July 2004 which is surprisingly brief given the importance that the Appellant attached to the proposal. The decision of the Department rejecting the application was made on 11 January 2005. When giving reasons for its decision, the Department referred to Section 17(a) of the 1966 Law and to Policy T5 of RAP1. The Department did not rely upon S & CP 2005 (which had been approved by the States of Deliberation at its meeting on 8 December 2004).
5. I agreed to explain in a written judgment the reasons why I gave certain directions to the Jurats on two issues. Firstly, I directed the Jurats not to take account of the policies of S & CP 2005. Secondly, I directed that the Department was correct in having regard to the wider implications of its decision; that is, whether it might create a precedent which would have an impact on future applications relating to other tourist premises.
6. Paragraph 6.11 of RAP1 and Policy T5 read as follows:

“6.11 Policy T5 is intended to ensure that the existing stock of tourist accommodation is, as far as possible, safeguarded.

POLICY T5

Proposals to change the use of existing tourist accommodation will be dealt with as follows:

- (i) change to permanent residential accommodation, or to other alternative uses, will not normally be permitted:***
- (ii) change to self-catering accommodation will generally be acceptable where this will not result in the loss of a unit of permanent accommodation;***
- (iii) change to staff accommodation will generally be resisted except in cases of demonstrable need, and where the establishment is not likely to make a significant contribution to the creation of additional tourist bedspaces in the foreseeable future”.***

7. The expression “*will not normally be permitted*” is explained in paragraph 1.9 of RAP1. It means:

“There is a presumption that permission will not be given for proposals of the type in question”.

8. The Appellant sought a change to permanent residential accommodation and hence sub paragraph (i) of policy T5 is relevant.
9. The statutory provisions concerning Strategic and Corporate Plans were incorporated into the 1966 Law by the 1990 Amendment Law. Section 2(1) states that a S & CP shall consist of a written statement setting out the strategic, economic and social objectives to be followed by the Department (as successor to the IDC) in relation to the development of the Island. The Policy Council (formerly the States Advisory and Finance Committee) is responsible for preparing a S & CP. Subsection (2) permits the preparation of amendments from time to time. Subsection (3) requires a S & CP to be laid before the States of Deliberation for approval; the States may modify it as

they consider necessary or expedient. By subsection (4), the Department is charged with taking into account the provisions of the S & CP when preparing and reviewing Detailed Development Plans. Subsection (5) provides that nothing contained in a S & CP shall permit any development which is precluded under the terms of a Detailed Development Plan.

10. The 1990 Amendment Law also amended subsection 17(a) of the 1966 Law so as to direct the Department to take account of the S & CP when considering an application for development.
11. In this Appeal there were three specific provisions of S & CP 2005 which were relied upon by Advocate Dunster, on behalf of the Appellant, although none had been drawn to the attention of the Department in the written application. These three provisions were Strategic Policies 17(A), 7 and 8. Strategic Policy 17(A) is as follows:

“The Detailed Development Plans will include policies to ensure that an adequate stock of visitor accommodation is maintained in the interests of sustaining the future viability of tourism”.

12. Advocate McMahon, appearing on behalf of the Department, submitted that the purpose of this policy is to give a direction to the Environment Department as to how it shall draft policies which are to be included in future Detailed Development Plans. Subsection 2(4) of the 1990 Amendment Law specifically envisages that such a direction may be given to the Department through the S & CP. In my view, that is the correct interpretation. That is clear from the use of the future tense: *“Detailed Development Plans will include*”.
13. Even if that interpretation is wrong, Advocate McMahon’s second argument, with which I also concur, is that for the purpose of this Appeal, there is no significant difference between the wording of the explanation for Policy T5 (in paragraph 6.11 of RAP1) and the wording of Strategic Policy 17(A). In any event, the S & CP could not be purporting to lay down new policies contradicting existing policies within a Detailed Development Plan as that is precluded under the provisions of Section 2(5) of the 1990 Amendment Law.
14. I turn next to Strategic Policy 7 and paragraph 10.4.19 of S & CP 2005 which states as follows:

“Buildings suitable for re-use as housing

A significant amount of surplus accommodation exists which is of a lower standard and is no longer economically viable for its former use.

Strategic Policy 7

Encouragement will be given to the re-use of surplus accommodation for housing purposes. This will enable its conversion and subsequent sale or rent as sheltered accommodation, residential or nursing homes and staff hostels. In the case of tourist accommodation, re-use for housing purposes may be encouraged where this is compatible with Strategic Policy 17(A).”

15. This policy relates only to *“surplus accommodation”*. The expression *“surplus accommodation”* is not defined elsewhere and hence must be given its ordinary meaning. The Peninsula Hotel could not be considered *“surplus accommodation”* unless and until the Environment Department decides that it is appropriate to grant permission for a change of use in accordance with Policy T5.

16. Furthermore, as Strategic Policy 7 is expressly linked with Strategic Policy 17(A), it cannot come into play independently of Strategic Policy 17(A) which, as I have said, is not a relevant factor in this case.

17. Strategic Policy 8 states the following:

“Strategic Policy 8

A wide mix of housing which reflects housing needs should be encouraged, including homes for families and small households; housing for elderly households and other households with special needs; and provision for people requiring community care”.

18. In my judgement, Strategic Policy 8 would only become engaged if and when the Environment Department has decided to permit the change of use of the hotel to permanent residential accommodation and then has to decide what type of accommodation should be created. As the Department refused the application on the ground that the requirements of policy T5 were not satisfied, they were not required to go further and consider Strategic Policy 8.

19. A further argument Advocate Dunster advanced was that the Department should have had regard to paragraphs 10.4.20 and 10.4.21 of S & CP 2005 which explain Strategic Policy 8, in particular *“it is already known, for example, that there is under provision of sheltered housing for the elderly”*. He argued that the Department should have taken into account the need for sheltered housing when considering whether the Appellant had successfully rebutted the presumption against a change to permanent residential accommodation. I do not accept that argument. Firstly, if the States had wished to direct the Department to be more favourably disposed towards some types of permanent residential accommodation than others, then in my view they would have amended Policy T5. As it is, Policy T5 dictates that conversions to self-catering accommodation will generally be permitted but a change to any other type of permanent residential accommodation will not normally be permitted. Secondly the Appellant, in its written application, had not adduced any evidence as to what it considered to be the need for such accommodation, nor whether the accommodation it was proposing to create would satisfy all or part of that need.

20. For those reasons, I concluded that the Department were correct in considering only Policy T5 of RAP1 when refusing the application. Consequently, I directed the Jurats not to take account of the policies in S & CP 2005.

21. I turn now to the reason why I directed the Jurats that the Environment Department was entitled to take account of the consequences of their decision, namely whether it would create a precedent which would affect future applications for change of use of other tourist premises.

22. The explanation for Policy T5 (in paragraph 6.11 of RAP1 which I have quoted above) states that the existing stock of tourist accommodation is as far as possible to be safeguarded. The background to that explanation can be found in the introduction to the chapter on Tourism in RAP1 and in particular the paragraphs under the headings *“Strategic Policy Context”* and *“General Objectives”*.

23. In its Cause, the Appellant pleaded that as these policies are now over 10 years old, less weight should be attached to them. RAP1 was approved by the States of

Deliberation on 27 October 1994, and the preparatory work began in 1988 (according to the introduction to the Plan). The tourist industry in Guernsey has altered radically since then. During the course of the hearing I said I thought the Appellant's argument was wrong in law. In my judgment, the provisions of a Detailed Development Plan remain binding upon the Environment Department however old the Plan might be. A Detailed Development Plan may be amended by the States during its lifetime but unless amended it remains valid until it is replaced. As it happens, the States of Deliberation will be asked at their meeting in a few weeks time to consider a revised Rural Area Plan to replace the existing. In the meantime, the present Plan remains in force and, in my judgment, each policy is to be given the same weight now as on the day the Plan was approved, unless it has been amended.

24. When considering this application, the Environment Department were therefore required to ensure that the stock of existing tourist accommodation was, as far as possible, maintained. They could not properly do so unless they had regard to the consequences of the decision. This is not a policy where each application is to be treated on its own merits. Consistency in planning decisions is important and much public criticism of the planning authority arises from perceptions of inconsistency. In each case, the presumption against a change of use has to be rebutted and the Department are entitled to take account of the wider implications. Otherwise, if other tourist premises applied for and were granted permission for a change of use on similar grounds, the Department might then find that the existing stock of tourist accommodation has been substantially reduced. As it was, we heard evidence during the course of the Appeal that three other hotel premises in the north of the Island had been granted permission for a change of use. (One had converted to self-catering accommodation under Policy T5(ii) and the other two premises had converted to permanent residential accommodation under Policy T5(i).)
25. Consequently, I directed the Jurats that the Department was entitled to take account of the wider implications of the decision and that it was a matter for the Jurats as to whether the Department had then reached a decision which was within the band of decisions it was reasonably entitled to take.
26. By way of postscript to this Judgment I add that the Jurats decided, on the facts, to dismiss the Appeal.