Judgment 2/2003

Grangehurst Limited v Island Development Committee
Royal Court
(Civil action file 680)
31st December, 2002

Island development – appeal – change of use of dwelling to office – Urban Area Plan –policies set out in OBS1 and OBS2 – whether Committee precluded from considering application.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 31st day of December, 2002 before Andrew Christopher King Day, Esquire, C.B.E., Lieutenant Bailiff; sitting alone.

In the action of GRANGEHURST LIMITED ("the Appellant") against THE PRESIDENT OF THE ISLAND DEVELOPMENT COMMITTEE ("the Committee") in the terms attached hereto;

WHEREAS on the 19th day of December, 2002, THE COURT heard Advocates J. A. S. White and R. McMahon, Counsel for the Appellant and the Committee respectively;

THE COURT this day GAVE JUDGMENT in the terms attached hereto, and:-

(1) HELD that the Committee was precluded from considering the Appellant's application, subject of the appeal, by the provisions of the Urban Area Plan, in particular policies OBS1 and OBS2;

(2) DISMISSED the appeal; and

(3) MADE NO ORDER as to costs.

S. M. SIMMONDS
Her Majesty's Deputy Greffier

CL (JASW)

27.05.02

GRANGEHURST LIMITED **whose address for service is c/o 7 New Street in the parish of Saint Peter Port, in the Island of Guernsey ("the Appellant")**

ACTIONS

THE PRESIDENT OF THE ISLAND DEVELOPMENT COMMITTEE, c/o St James' Chambers in the parish of Saint Peter Port aforesaid **TO SEE** the Appellant appeal under the provisions of Section 26(1) of the Island Development (Guernsey) Laws, 1966-1990 against the decision of the Island Development Committee ("IDC") made on 25th March 2002, reference number A1.1453/P15D on the grounds that the said decision was unreasonable. The whole in the following circumstances:-

The property

1. The Appellant is the owner of the property known as Grangehurst, situated in The Grange, St Peter Port, Guernsey ("the property").

The original use

2. Permission in principle was granted by the IDC for a two storey extension to the property ("the extension") on 18 November 1996 and the Building Licence was issued on 23 June 1997. The original use class of the extension is not clear; but is assumed to have been Residential Use Class 1 under the Island Development (Use Class) Ordinance 1991: "Use of a detached dwelling as a permanent residence for one household."

The amended use

3. Permission was granted by the IDC for a change of use of the extension on 20th December 1996 to Residential Use Class 5:

> "Use of any dwelling principally as a permanent residence for one household, but also by a member of the household for professional or business purposes not involving –
>
> (i) public display or sale of goods, or

(ii) storage of bulky equipment or materials, or

(iii) use for any industrial purpose, or

(iv) a use which materially affects any of the matters mentioned in section 17(b) (e) or (f) of the Law."

4. The present use of the extension is for professional or business use by a member of the household.

The proposed use

5. A planning application was submitted to the IDC by the architect and surveyor Mr John Bamford by letter dated 13th October 1999 to change the use of the extension and a small part of the dwelling to Commercial Use Class 25 ("the proposed use"), with the original three storey dwelling remaining in Residential Use Class 1. Commercial Use Class 25 is:

> "Use of any premises as an office for any purpose, including the purposes of a bank or other financial institution …"

6. At the IDC's request further documentation was submitted in support of the application by letter from Mr Bamford dated 18th November 1999 including drawings of floor plans, site plan and location plan. This application was rejected by the Committee by letter dated 17th February 2000. Applications for reconsideration were made by letters from Advocates Carey Langlois dated 11 August 2000, enclosing a report by Shield's & Co. on the need for office space of this size (rejected 21 November 2000), 8 March 2001 (rejected 14 June 2001) and 16 January and 12 March 2002 (rejected 25 March 2002).

The IDC's decision

7. The IDC's reasons for rejecting the application on 25 March 2002, under the provisions of Section 17 of the Island Development (Guernsey) Laws, 1966-1990 ("The Law"), were:

(a) the Urban Area Plan and the Strategic and Corporate Plan as approved by the States; in particular Policies OBS1 and OBS2 of the Urban Area Plan and Strategic Policy 10 of the Strategic and Corporate Plan.

(e) the extent to which the proposal would detract from the character and amenity of the locality concerned.

New office use in this location outside the Central Activities Area of St Peter Port would run counter to current adopted office policies OBS1 and OBS2, as set out in the Urban Area Plan and to the intentions of the Strategic Policy 10 of the Strategic and Corporate Plan.

The Committee has consistently resisted the introduction of further office uses into this predominantly residential area of town, outside of the identified Central Activities Area of St Peter Port, and is of the view that this proposed development would, if approved, result in significant harm to the residential character and amenities of the locality."

8. The IDC's reasons for rejecting the application for reconsideration, given on 21 November 2000 included:

> *"The approved proposal for a limited extension to the existing offices of Kleinwort Benson was in accordance with Policy OBS1 of the Urban Area Plan. The extension was carefully designed with advice from the Island Development Committee so as not to detract from the amenities of existing adjoining residential properties, including Grangehurst. In addition, the rear extension to the Grangehurst itself, which was proposed and approved as an extension to the domestic dwelling, served to overcome, to a material degree, existing problems of overlooking arising from a previous extension to the offices of Kleinwort Benson."*

Copies of all the above-mentioned letters are attached marked "G1".

<u>The IDC's reliance on Policy OBS1 was unreasonable</u>

9. The IDC particularly relied upon Policy OBS1, which states:-

> "*Proposals for limited development within existing office sites will generally be permitted provided that:-*
>
> *(i) The overall appearance of the building and its contribution to the character of the locality is not adversely affected;*
>
> (ii) *provision is made to meet any additional parking requirements.*"

9.1 The IDC when making its decision was aware that the appearance of the extension and the dwelling will not alter; and that adequate parking already exists.

9.2 The Appellant avers that, contrary to the assertion of the IDC, the character of the locality is not predominantly residential, but is predominantly commercial and States' office use; and will not be adversely affected by the use of the extension for a commercial office, rather than its present permitted use as a private office.

9.3 The Appellant avers that the decisions of the IDC to allow the development of extensions to the offices of Kleinwort Benson and other offices neighbouring the property have effectively blighted the residential amenity of the property and in particular any private use of the extension.

9.4 OBS1 provides that proposals for limited development, such as the subject of this appeal, will generally be permitted. The qualifying provisions of OBS1 are met and the IDC's decision to reject the proposed use under this policy was therefore unreasonable.

The IDC's reliance on Policy OBS2 was unreasonable

10. The IDC further particularly relied upon Policy OBS2 which states:-

"*Major new office development will only be permitted as part of a comprehensive mixed use scheme for the whole of a Mixed Use Redevelopment Area, and only where the overall scheme provides major opportunities of significant benefit to the visitor economy. Further, the provision of office space as part of such a scheme will only be acceptable if it is subsidiary to the primary uses of the site. Mixed Use Redevelopment Areas may only be brought forward within the context of an Outline Planning Brief prepared or adopted by the IDC for the whole of the area so zoned.*"

10.1 The proposed use is not a "major new office development". The IDC's decision to reject the proposed use under this policy was therefore unreasonable.

The IDC's reliance on Strategic Policy 10 was unreasonable

11. The IDC further particularly relied upon Strategic Policy 10 which states:

"The refurbishment of the existing office stock in the Town should be encouraged. New office development may be facilitated on redevelopment sites to secure a more diverse mix of uses including housing, subject to safeguarding the character of the Town."

11.1 The Appellant avers that Strategic Policy 10 is an enabling policy (in that it sets out what may be done, rather than what must or must not be done) and does not preclude the proposed use. The IDC's decision to reject the proposed use under this policy was therefore unreasonable.

The IDC's reliance on Section 17(e) of the Law was unreasonable

12. The IDC further particularly relied upon Section 17(e) of the Law and assessed that significant harm would be caused by the proposed use to the residential character and amenity of the locality.

12.1 The IDC failed to particularise its reasons for this assessment and the Appellant is therefore unable to counter with any particularity the assessment of harm.

12.2 The Appellant avers that the character of the locality is not residential, that no neighbouring property is residential, that the present permitted use is private business use, and that the proposed change to commercial office use could have no harmful effect on the character and amenity of the locality.

12.3 The IDC's decision to reject the proposed use under Section 17(e) of The Law was therefore unreasonable and further its failure to give reasons for its rejection under this provision was unjust.

The IDC's reliance on the policy for the Central Activities Area was unreasonable

13. The IDC further relied on the site being located outside the Central Activities Area ("CAA"). Paragraph 2.3.6 of the UAP states that the policy emphasis of the CAA is:

"To create a framework within which retail and commercial activities that are vital to the Island's future will be encouraged to thrive."

13.1 The Appellant avers that this is an enabling policy, and does not preclude the provision of commercial activities outside the CAA.

13.2 The site is located in what is presently designated an Urban Conservation Area ("UCA"). Paragraph 2.3.16 of the UAP states that the policy emphasis of the UCA is:

"To protect the special environmental qualities of Conservation Areas from inappropriate development …".

13.3 The proposed use would not affect these physical qualities.

13.4 Neighbouring properties are in commercial office use.

13.5 The IDC's decision that further commercial office uses outside the CAA should be resisted is therefore unreasonable.

14. The Appellant avers that there are no other polices within the UAP or the Strategic and Corporate Plan that preclude the approval of the proposed use.

15. The Appellant avers that the IDC failed to take account of the fundamental principle of the UAP set out in paragraph 2.1.3 of the UAP to use resources wisely, and to meet the needs of the present generation (for further office space) without compromising the ability of future generations to meet their needs.

Conclusion

The Appellant avers that, in the light of all the policies and the circumstances of the proposed use, the IDC's decision to reject the proposed use was unreasonable and should be set aside.

AND the Appellant claims costs.

Approved Judgment
31st December, 2002

IN THE ROYAL COURT OF GUERNSEY

(sitting as a Full Court)

APPEAL under section 26 of the Island Development (Guernsey) Law, 1966 ("the Law")

Between **GRANGEHURST LIMITED** **Appellant**

V.

THE ISLAND DEVELOPMENT COMMITTEE **Respondent**

Judgment of Day L.B. on the construction of the Urban Area Plan ("the UAP") in relation to office development.

Advocate J.A.S. White appeared for the Appellant
Crown Advocate R. J. McMahon appeared for the Respondent

Hearing date:- 19th December, 2002

Judgment handed down:- 31st December, 2002

Cases Referred to:-

Walters v. States Housing Authority Guernsey Court of Appeal No. 231 23 rd July, 1997

Portholme v. IDC Guernsey Court of Appeal No. 320 20th September, 2002

C.P. Developments Limited v. Secretary of State for the Environment and Salisbury District Council (1997) JPL 930

Le Noury v. IDC (1986) 3 GLJ 44

Blue Diamond v. IDC (1995) 20 GLJ 41

1. Background

The Appellant owns a dwelling house situated in the Grange, St. Peter Port, known as Grangehurst. In October 1996 it applied to the Respondent to utilise part of the dwelling for professional/business purposes, that is to say to change its use to RESIDENTIAL USE CLASS 5 under the Island Development (Use Classes) Ordinance, 1991. The application was granted by the Committee on the 19th December, 1999, and

the extent to which use which could be made of the dwelling for professional/business purposes was stated thus:-

> *"Please note that the approval does not enable staff to be employed at the property in connection with proposed professional or business use, which must be undertaken only by a member of the resident household, or for any part of the property to be used for commercial office purposes falling within COMMERCIAL USE CLASS 25 of the 1991 Use Classes Ordinance.".*

On 23rd June, 1997, the Respondent granted the Appellant's further application to build a two-storey extension to the rear of the dwelling, subject, specifically, to this condition:-

> *"1. The additional accommodation hereby permitted shall not be used other than for purposes ancillary and ordinarily incidental to the enjoyment of the existing dwelling house known as Grangehurst as such, and shall not at any time be occupied or used separately from that dwelling.".*

That extension was completed in, I believe, 1998. The position was thus that Grangehurst, as extended, remained as a dwelling house but with permission for part of it to be used for professional/business purposes by a member of the household, and no more.

Since October, 1999, the Appellant has made application to the Respondent in relation to the use of Grangehurst in alternative forms; firstly, to change the use of the whole of the property to COMMERCIAL USE CLASS 25, namely for use as offices for any purpose, including the purposes of a bank or other financial institution; alternatively, the Appellant seeks permission for the same change of use but limited to the two-storey extension. Both applications have been consistently refused by the Respondent. The latest refusal decisions were made on the 19th March, 2002, and the Appellant so informed by letter dated the 25th March, which in respect of change of use of the extension is in the following terms:-

> *"THE ISLAND DEVELOPMENT (GUERNSEY) LAWS 1966-1990*
>
> *PROPOSAL: Change of use of part of dwelling to commercial office accommodation (Use Class 25) [reconsideration]*
>
> *LOCATION: Grangehurst, The Grange, St. Peter Port*

> *I refer to your application received on 07/02/2002 regarding the above proposal which the Committee considered on 19/03/2002.*
>
> *The Committee decided to reject your proposal for the following reasons under the provisions of Section 17 of the Island Development (Guernsey) Laws, 1966-1990:-*
>
> *(a) the Urban Area Plan and the Strategic and Corporate Plan as approved by the States;*
>
> *In reaching its decision the Committee has taken into account all relevant policies in the above Plans. Particular attention is drawn to Policies OBS1 and OBS2 of the Urban Area Plan and Strategic Policy 10 of the Strategic and Corporate Plan.*
>
> *(e) the extent to which the proposal would detract from the character and amenity of the locality concerned;*
>
> *New office use in this location outside the Central Activities Area of St. Peter Port would run counter to current adopted office policies OBS1 and OBS2, as set out in the Urban Area Plan and to the intentions of the Strategic Policy 10 of the Strategic and Corporate Plan.*
>
> *The Committee has consistently resisted the introduction of further office uses into this predominantly residential area of town, outside the identified Central Activities Area of St. Peter Port, and is of the view that this proposed development would, if approved, result in significant harm to the residential character and amenities of the locality.".*

Appeals under section 26 of the Law by persons aggrieved by a decision of the Committee may be brought on the grounds that it was *ultra vires* (to be construed in its widest sense including procedural irregularities and perversity – see Walters) or an unreasonable exercise of the Committee's powers.

The Appellant now appeals against the Committee's decision on the general grounds of unreasonableness, as contained in its Cause which was first lodged at the end of May, 2002. The appeal was set down for hearing before the Jurats on the 19th December. At the very last moment Mr. McMahon indicated, for the very first time, that the Respondent would be defending the appeal in the first place on the grounds that the UAP precluded the Appellant's proposals being regarded favourably, or indeed in effect considered at all, by the Respondent. That submission raises a matter of law for my sole determination.

2. Construction of the Urban Area Plan in relation to office development.

The relevant substantial provisions of the Law relating to the control of development are contained in sections 14-18. From this group of sections of the Law Beloff JA, giving the leading judgment of the Court of Appeal in Portholme, distilled the following propositions, which I gratefully adopt:-

> *"a. The Committee's permission is a sine qua non of a development envisaged in an application (including the proposal).*
>
> *b. The Committee, seized of an application for such permission, may either grant it outright or on terms, or reject it.*
> *c. In deciding which option to select out of the forgoing the Committee must take into account the considerations listed (a) [relevant development plans with one proviso] – (f) in Section 17.*
> *d. The proviso is that the Committee may grant permission to carry out development involving a departure from the Detailed Development Plan, if in the Committee's opinion it is of a minor nature. Otherwise, for such departure a Planning Inquiry under an Inspector is mandatory.*
>
> *Were it not for Section 18(1), I would construe the Committee's obligation as being to "take account of" the listed considerations, i.e. to bear them in mind, not to be bound by them. How the Committee applied such considerations (if engaged) to any particular applications for permission would, subject to its conclusion not being flawed by perversity, be a matter for it. The language of Section 18(1) seems, however, to constrain the Committee to depart from a relevant plan only when the departure would be minor; otherwise it enjoys no discretion to make such departure. (For the avoidance of doubt I note that the other considerations listed demand exercise of appreciation and judgment only)"*

The decision and reasoning in Portholme are central to Mr. McMahon's submissions. That was a case under the Rural Area Plan (1) and involved housing. The appellant sought permission to knock down an existing building and to construct ten units of residential accommodation in its place – new residential development for the purposes of that Plan. The Committee, in contrast to its initial position, in due course concluded that it was precluded under the terms of the RAP (1) from granting the permission sought, explaining its decision in comprehensive and meticulous detail. The developer appealed against that decision, which appeal was allowed by the learned Bailiff who concluded that the Committee had placed inappropriate reliance on the provisions of the Plan so as to flaw its decision. The matter was remitted to the Committee for further consideration on the merits of the proposals against the general criteria for development contained in that Plan. The Committee appealed against that decision, which the Court of Appeal reversed, thereby supporting the position which had been taken by the Committee.

Beloff, JA, carefully analysed all the provisions in RAP (1) relating to new housing development. On his approach to construction, Beloff, JA was specifically guided by CP Developments Limited and the distillation of previous English case law by Robin Purchas, Q.C., sitting as a Deputy High Court judge, (at p. 938) as follows:-

> *"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 policy should be construed on a commonsense and straightforward basis, having regard both to context and underlying purpose ……."*.

Bailiff JA concluded that in the particular circumstances of that case the applicant's proposals did not fall within any of the relevant planning provisions. Importantly, Beloff, JA (at p20) said this:-

> *"….. 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."*.

Whilst the Court of Appeal in Portholme were concerned with the construction of policies relating to housing development contained in RAP (1), the analytical approach of that Court I would gratefully adopt, even if I am not strictly bound by it.

Such an analysis in this case requires consideration of the relevant policies in context and as part of the UAP as a whole, as approved by the States, and adopting a commonsense and straightforward approach.

The UAP is divided into three broad sections, section 1 providing the introduction, section 2 reciting the aim and objectives in relation to various types of development (e.g. housing, retail, offices, etc), and section 3 identifying the detailed policies in respect thereof (and statements of intent when relevant – not so in this instance).

The Planning Objectives relating to offices and business services are contained in section 2.2.27- 31 inclusive. Such Planning Objectives are stated to be:-

> *"A to make provision for the refurbishment and/or redevelopment of existing office accommodation in appropriate circumstances;*
>
> *B to provide for major new office development as part of mixed use schemes."*

These Planning Objectives are taken forward to the specific policies at section 3.7 which I quote in full:-

> *"INTRODUCTION*
>
> *3.7.1 Office accommodation is a major land use in the Urban Area, particularly St. Peter Port. The largest occupier of this space is the banking and financial services sector which is very much the mainstay of the Island's economy. It employs 16% of the working population spread across 300 employers, and makes a major contribution to the Island's economy. A significant amount of office space is also used for public administration. Ancillary to these activities is the business services sector, which includes equipment supplies, data collection and processing, marketing, public relations, printing and publishing. This concentration of office and business service activity provides an important dimension of the visitor economy in that it serves as the main destination for business visitors who also use the other facilities on offer. As such, the business visitor plays a major part in maintaining the vitality of the Town.*
>
> *3.7.2 The Planning Objectives for Offices and Business Services are:-*
>
> *A to make provision for the refurbishment and/or redevelopment of existing office accommodation in appropriate circumstances;*
>
> *B to provide for major new office development as part of mixed use schemes.*
>
> *A PROVIDING FOR THE REFURBISHMENT AND/OR RE-DEVELOPMENT OF EXISTING OFFICE ACCOMMODATION*
>
> *3.7.3 Different standards of office accommodation occur throughout the Plan area, ranging from purpose-built complexes such as those in Le Truchot to converted residential and industrial buildings. These all make an important contribution to the overall stock of office accommodation in the Island which the IDC will seek to maintain so that the needs of the financial services sector and other business services activities can be met. However, the IDC is also aware of the importance of modernising this stock to meet the ever more demanding requirements of the market, particularly with regard to new technology. Whilst the IDC will seek to respond to these demands*

in a positive way, modernisation should not be achieved at the expense of harming the amenity of local residents or the fabric of buildings of particular architectural or historic merit.

POLICY OBS1
Proposals for limited development within existing office sites will generally be permitted provided that:-
(i) the overall appearance of the building and its contribution to the character of the locality is not adversely affected;
(ii) provision is made to meet any additional parking requirements.

MAJOR NEW OFFICE DEVELOPMENT AS PART OF MIXED USE SCHEMES

3.7.4 Strategic Policy S.P.1 states that no further provision for major new office development will be made except as part of a mixed development in the Urban Area. This policy has been adopted because a recent survey of office accommodation revealed that there is sufficient space already available or in the pipeline to meet existing and anticipated demand. The IDC will not therefore allocate land or permit proposals for major new office accommodation.

3.7.5 Nevertheless, development of mixed use schemes in the three Mixed Use Development Areas provides an opportunity to stimulate area-wide regeneration through the provision of new houses, visitor bed spaces and purpose-built offices, and by securing significant environmental enhancement. The balance between the uses to be incorporated in a scheme and the overall office content will be set out in an Outline Planning Brief approved by the States following a Planning Inquiry.

POLICY OBS2

Major new office development will only be permitted as part of a comprehensive mixed use scheme for the whole of a Mixed Use Redevelopment Area, and only where the overall scheme provides major opportunities of significant benefit to the visitor economy. Further, the provision of office space as part of such a scheme will only be acceptable if it is subsidiary to the primary uses of the site. Mixed Use Redevelopment Areas may only be brought forward within the context of an Outline Planning Brief prepared or adopted by the IDC for the whole of the area zoned."

Mr. McMahon argues that policies OBS1 and OBS2 implicitly provide the total regime under the Plan for office development. Any application must fall within the ambit of one or other of these policies to warrant consideration by the Committee.

It is common ground between the parties that OBS2 can have no application because what is proposed by the Appellant is not major new office development. With equal correctness the Grangehurst premises cannot be described as falling within an existing office site where limited development would generally be permitted under OBS1, subject to the stated provisos. The designation of the Grangehurst site for planning purposes, to which I have already made reference, is that of residential use, albeit with a minor amount of ancillary office use for members of the household. In correspondence with the Respondent, the Appellant's Advocates acknowledged that situation, though in the Cause the opposite view was taken. Miss White graciously concedes that the earlier view must be correct and that Grangehurst is not an existing office site.

On the face of it, therefore, as OBS1 and OBS2 are the only two statutory policies relating to office development under the UAP, and as it can find assistance from neither, the Appellant would appear to be confronted by a major if not insuperable hurdle.

However, Miss White argues, Portholme can be distinguished. A distinction can be drawn between the housing policies in RAP (1) and the office policies contained in the UAP. In the former, there is an express prohibition, as she describes it, at least with regard to new residential development, so that unless an applicant for such development is able to place his case within one of the relevant housing policies his proposals must fail. In contrast, she argues, there is no such express prohibition in the UAP, nor can one be implied. For this she seeks support from two quarters. Firstly, section 2.2.30 of the UAP (the "aims and objectives" section) states:-

> *"THE STRATEGIC AND CORPORATE PLAN also notes that there is an ongoing requirement to improve, upgrade and refurbish existing office accommodation in appropriate circumstances. This requires that the relevant planning policies are sufficiently flexible to accommodate limited developments within existing sites and to provide a restricted amount of new purpose built offices where, as the result, existing sites are released for redevelopment to provide for other essential uses.".*

The point which Miss White rightly makes in respect of this paragraph is that reference is made to the relevant planning policies being sufficiently flexible not only to accommodate new developments within existing (office) sites, but also, and Mr. McMahon acknowledged this, to allow for new purpose built

offices on sites which did not currently contain offices, in exchange, in effect, for an existing office site being released for redevelopment for other essential purposes.

That argument faces various difficulties. Firstly, paragraph 2.2.30 in the UAP is merely a recitation of what had been stated in the relevant Strategic and Corporate Plan. (I do not propose to examine the relationship between the Strategic Plan and a Detailed Development Plan as the former is irrelevant for present purposes, nor did the matter form any part, rightly, of Counsel's submissions). The stated requirement in the Strategic Plan for sufficient flexibility is not followed through into the provisions of the UAP itself. It is not referred to in the Planning Objectives – paragraph 2.2.31 repeated at paragraph 3.7.2 which I have already cited – nor, more importantly, in either of the two specific policies OBS1 and OBS2. As Beloff JA said in Portholme *"the particular must, consistent with general legal principle, trump the general."*. Moreover, if Miss White's argument in this regard is correct, namely that there was some residual flexibility given to the Committee, no guidance is provided, no criteria are set down, as to how that discretion (or flexibility) might be exercised. Thus if a proposal for office development related to a site not containing existing offices, and therefore falling out with the ambit of policy OBS1, a free-for-all could ensue. That argument is not sustainable either in context, as part of the Plan as a whole, or in accordance with its underlying purposes, the whole being to provide planning order and guidance, not anarchy.

Secondly, Miss White argues that it is clear from the correspondence from the Committee and not least the specific letter of rejection of the 22nd March, 2002, that the Appellant's proposals were rejected by the Committee not on the grounds of policy, but on the merits. Hence the reliance placed on paragraph (e) of section 17 of the 1966 Law (in addition to paragraph (a)) and the Committee's statement that it had consistently resisted the introduction of further office uses in this predominantly residential area of town, outside the identified CENTRAL ACTIVITIES AREAS of St. Peter Port, and that the proposal would, in the Committee's opinion, result, if approved, in significant harm to the residential character and amenities of the locality. That demonstrated that the Committee itself cannot have believed that it was precluded from considering the proposals because of the statutory policies.

One must have a certain sympathy for Miss White and her clients. The Respondent does not unambiguously and exclusively rely, in its letter of rejection of the 25th March, 2002, or in earlier

correspondence, on the statutory policies. That is a matter to which I will return. What I am concerned with, however, is the law and whether the Respondent's submissions are correct, rather than evaluating criticism of the conduct of the Respondent during the planning process.

However, in the instance case complains Miss White, the Respondent's conduct has caused unfairness and hardship. If the Committee had unequivocally stated its primary planning grounds for rejecting the application, and had done so on earlier occasions, the Applicant could well have asked the Committee to consider applying section 18 of the 1966 Law (minor developments). Candidly, she said, the new planning regime under the amended Urban Area Plan, which has come into force since the institution of the appeal, provided for an even stricter regime, with the result that the Committee would be even less likely to consider applying section 18. That may or may not be the case, but that does not prevent the Appellant now asking the Committee to exercise its discretion under section 18, as Mr. McMahon suggested.

3. Conclusions

I necessarily agree with Miss White that the underlying facts in Portholme are not the same as in the instant case. Nevertheless, I am persuaded by Mr. McMahon's submissions that OBS1 and OBS2 (including the explanatory preceding paragraphs) implicitly provide the total regime relating to office development under the UAP. Out with the circumstances identified in those policies, office development is not allowed. The Appellant cannot find any *"presence for permission"* (Beloff JA) within the UAP. Its application was doomed to failure, as a matter of law. The appeal must be dismissed.

However, as already intimated, I feel it appropriate to offer some further thoughts which I hope will be accepted in the same spirit as that in which they are given. It is only since the judgement of the Court of Appeal in Portholme that the position has been clearly established that where policies within a Detailed Development Plan relating to a particular subject matter or activity, whatever it may be – horticulture, retail, housing etc. – provide implicitly, as opposed to explicitly, the entire planning regime into which any application for development must be fitted – *"If a Plan allows for development only in certain identified circumstances"* – then *"by necessary inference development out with those circumstances is not to be allowed"*. Prior to that decision there could well have been, I believe there was, uncertainty as to whether when the statutory policies only implicitly provided the total planning regime, there remained any area for

discretion outside that regime. That position has now been clarified. Its seems to me, therefore, that it would be helpful, at the very least, when the Committee in future considers itself precluded either expressly (as in Le Noury or Blue Diamond) or implicitly from considering an application on its merits, which would bring into play the factors contained in paragraphs (b) - (f) of section 17 of the Law, then it should say so unambiguously. Natural fairness demands it. And an applicant aggrieved by such a decision can mount any appeal solely on the point of law with greater expedition.