

APPEAL TO THE ROYAL COURT OF A DECISION OF THE PLANNING TRIBUNAL  
PURSUANT TO SECTION 72 OF THE LAND PLANNING AND DEVELOPMENT  
(GUERNSEY) LAW, 2005

[2025]GRC070

(ORDINARY DIVISION)  
Global Number: 2025.1106

Between: STEVEN TERRANCE OGIER Appellant

-and-

THE STATES OF GUERNSEY  
(Acting by and through the Development and Planning Authority) Respondent

Date of hearing: 24 July 2025  
Judgment handed down on: 9 September 2025

Before: Fionnuala A Connolly, Judge of the Royal Court

For the Appellant: Steven Terrance Ogier, in person  
For the Respondent: Crown Advocate P Grainge

**Cases and Legislation Referred to:**

The Land Planning and Development (Guernsey) Law, 2005  
The Land Planning and Development (Appeals and References) Rules, 2009  
The Employment Protection (Guernsey) Law, 2005  
Land Planning and Development (General Provisions) Ordinance, 2007  
The Employment Protection (Appeals and References) Order, 2006.

*MN and NA (Declaration of Marital Status: Unrecognised State)* [2020] EWHC 93 (Fam)  
*Chen Li Hung v Ting Lei Miao* [2000] 3 HKCFAR 9  
*Susan Cotterill v The States of Guernsey* Judgement 58/2017  
*The States of Guernsey (acting by and through the Development and Planning Authority) v Steven Terrance Ogier* (ex tempore decision, 12 October 2018)  
*The States of Guernsey (acting by and through the Development and Planning Authority) v Steven Terrance Ogier* (ex tempore decision, 12 February 2019)  
*The States of Guernsey (acting by and through the Development and Planning Authority) v Steven Terrance Ogier* (ex tempore decision, 22 March 2019)  
*Strachan v The Gleaner Company Ltd & Anor (Jamaica)* [2005] UKPC 33  
*Park v Cho and others* [2014] EWCH 55 (Ch)  
*Deputy Commissioner of Taxation v Leonard and Arthur Casley* [2017] WASC 161  
*Island Development Committee v Portholme Properties Limited* Guernsey Court of Appeal 20 September 2002  
*Grand Havre Holdings Limited v the Minister of the Environment Department* Royal Court 11 November 2005

**JUDGMENT**

**Introduction**

1. This is an appeal against a decision of the Planning Tribunal (“the Tribunal”) dated 23 April 2025. By that decision, the Tribunal dismissed an appeal brought by Mr Steven Terrance Ogier

(“the Appellant”) pursuant to Section 68 of the Land Planning and Development (Guernsey) Law, 2005 against a decision of the Development and Planning Authority (“the Respondent”) made on 19<sup>th</sup> December 2024 by which it refused planning permission in respect of a planning application relating to lands at Ruelle du Frocq, Castel (“the lands”):

*“to erect a portacabin to create a residential dwelling and associated works, erect porch and external steps to the south of bunker to the east of the site, erect porch to the east elevation of the bunker to the west of site, install trailer and caravan (retrospective). Erect garage/store to the south of the site, erect fencing to create dog run to the south of the site.”*

2. This is the first appeal brought before the Royal Court of Guernsey under Section 72 of the Land Planning and Development (Guernsey) Law, 2005. The Court is grateful to Mr Ogier and Crown Advocate Grainge for their helpful written and oral submissions. The Court has given careful consideration to all of the evidence and submissions.

### **Procedural Background**

3. The appeal was lodged with the Court on 20 May 2025. A further bundle was lodged by the Appellant on 16 June 2025. The Respondent lodged written submissions on the appeal on 15 July 2025. The Court was provided with supplemental documents on behalf of both parties at the hearing.
4. There are pending enforcement proceedings before the Court against the Appellant in relation to the lands. By application dated 10 May 2024, the States of Guernsey acting by and through the Development and Planning Authority, allege that Mr Ogier has at least on one occasion breached an Order made against him on 22 March 2019 pursuant to Section 52 of the Land Planning and Development (Guernsey) Law, 2005 that he shall not, whether by himself or by instructing or encouraging others, undertake any work or action amounting to “development” as defined under the Land Planning and Development (Guernsey) Law, 2005 on the land situate at Ruelle du Frocq, Castel, without first having sought and obtained planning permission as required by Sections 13 and 14 of the Land Planning and Development (Guernsey) Law, 2005. During the course of those proceedings, on 23 September 2024, Mr Ogier undertook to submit a planning application. The enforcement proceedings are adjourned to 25 September 2025.
5. The Appellant lodged a planning application and it was refused. He unsuccessfully appealed to the Tribunal and it is the Tribunal decision that is now under appeal before this Court. Thus, the enforcement proceedings are separate to the present proceedings but they provide context for the decision of the Tribunal that is now under appeal before the Court.
6. The Court had the benefit of written submissions on behalf of both parties.

### **The Legal Framework**

7. The ***Land Planning and Development (Guernsey) Law, 2005*** (“the 2005 Law”) is of central relevance to this appeal. In short compass, the Law provides for a framework within which development in Guernsey can be planned and regulated in accordance with the strategic policies of the States of Guernsey.
8. The 2005 Law defines the territory within which it shall have force of law in its introductory paragraph:

*“THE STATES, in pursuance of their Resolutions of the 27th January, 1993a, the 27th June, 2002b and the 26th January, 2005c, have approved the following provisions,*

*which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.”*

9. Section 1(1) of Part 1 provides that the purposes of the 2005 Law are to protect and enhance and to facilitate the sustainable development of the physical environment of Guernsey.
10. Section 1(2) provides that the 2005 Law seeks, *inter alia*, to protect and enhance the natural beauty and amenity of Guernsey’s coasts, countryside and other open spaces, to maintain a balance between the competing demands of the community for the use of land and to ensure that all development is carried out in a sustainable manner and in such a way as to achieve a safe and healthy living and working environment.
11. Section 1(3) provides:

*“With a view to achieving these purposes the Law will provide a framework within which development in Guernsey can be planned and regulated in accordance with the strategic policies of the States by –*

*(a) the preparation and adoption of Strategic Land Use Plans, Development Plans and Subject Plans and Local Planning Briefs,*

*(b) controlling the carrying on of building, engineering, mining and other operations and changes in the use land or buildings in the light of such Plans and Briefs,*

*(c) applying special and additional controls in relation to areas, sites, buildings and operations of particular importance, interest, sensitivity or concern,*

*(d) the preparation and adoption of building regulations.”*

12. Sections 14 and 15 of the 2005 Law govern grants of planning permission and applications for planning permission to the Development and Planning Authority respectively. Pursuant to Section 16(5), in determining an application for planning permission or outline permission, the Development and Planning Authority must have regard to the purposes of the 2005 Law, to any relevant Development Plan, Subject Plan or Local Planning Brief (subject to Section 77(9) and to such matters relating to the purposes of the Law as may be specified by Ordinance of the States).
  13. Part VI of the 2005 Law governs appeals and reviews. Section 68(1) provides for a range of circumstances in which a planning applicant may appeal against a decision of the Authority on the merits to the Planning Tribunal.
  14. Section 69(2) of the 2005 Law provides that on an appeal under Section 68, the Planning Tribunal may
- “(a) allow or dismiss the appeal, or*
  - (b) reverse or vary any part of the decision (whether the appeal relates to that part of it or not), and may deal with the application which is the subject of the appeal as if it were the [Authority] dealing with it in the first instance.”*
15. Pursuant to Section 72(1), the provision under which the Appellant brought the present appeal:

*“A person aggrieved by a decision of the Planning Tribunal made on an appeal under section 68 or 70 may appeal to the Royal Court on a question of law.”*

16. Section 74 of the 2005 Law empowers the Royal Court to make rules in relation an appeal to of the kind in the present case on matters including the manner and period in which an appeal under Section 72 may be instituted and the conduct of proceedings on such appeals. The ***Land Planning and Development (Appeals and References) Rules 2009*** (“the 2009 Rules”) were made under Section 74 of the 2005 Law.
17. Section 8 of Part III of the 2009 Rules provides for procedure on appeal to the Royal Court. Section 8(6) provides:

*“(6) Save as otherwise expressly provided in these Rules, the procedure at the hearing of an appeal or reference in accordance with Part I or II shall be such as the Royal Court may from time to time determine.”*

### **Factual Background**

18. The salient facts and events are summarised below.
19. By application deemed valid on 19 November 2024, the Appellant sought full planning permission for “*land at Everland Border, Ruelle Du Frocq, Castel*” (FULL/2024/1784). The proposal for the planning permission application is as cited at paragraph 1 above.
20. By decision made on 19 December 2024, the Respondent refused the planning application pursuant to Section 16 of the 2005 Law for these reasons:

*“Island Development Plan Policy OCI makes provision for some housing Outside of the Centres but this is allowed only in very limited, specified circumstances, where achieved through subdivision of an existing dwelling or the conversion of an existing building in accordance with the other relevant policies. The creation of housing in any other circumstances beyond those specified is not supported under the Plan.*

*The application as submitted seeks retrospective approval for the erection of a portacabin and the installation of a caravan, both of which structures are currently being used for residential purposes and do not therefore meet the above requirements of OCI.*

*The development would also result in an unsubstantiated loss of agricultural land within an Agriculture Priority Area. Given this, and that the development is not supported by any other Policy within the Island Development Plan, the application is contrary to Policies OCI: Housing Outside of the Centres and OCS(A): Agriculture Outside of the Centres – Within the Agriculture Priority Area, of the adopted Island Development Plan.”*

21. The refusal decision drew the attention of the Appellant to Section 68(1) of the Law which provides for a right of appeal against a decision to refuse an application for planning application or outline planning permission to the Tribunal on the merits and the statutory time frames for bringing such an appeal.
22. The refusal decision was accompanied by a Planning Application Report which provided the following background to the planning application:

#### **“Site Description**

*“The application site is to the south of Ruelle Du Frocq, a pedestrian “green lane” located in Castel. Two existing bunkers occupy the site. The site is agricultural land sited within an Agriculture Priority Area Outside of the Centres as defined with the Island Development Plan.*

### **Relevant History**

*The site has been subject to on-going enforcement action due to unauthorised works which has resulted in the serving of Notices and subject to Royal Court action.”*

23. The Appellant lodged a notice of appeal to the Planning Panel, which appoints Planning Tribunals, against the refusal decision on 13 January 2025. The appeal notice requested that the case be determined by a Written Representation and that the Tribunal be led by a single professional member of the Tribunal sitting with two lay members.
24. The Planning Panel acknowledged receipt of the appeal by letter dated 23 January 2025. By letter dated 31 March 2025, the Planning Panel advised it would meet to determine the appeal on the basis of written representations and a site visit to inspect the premises on the morning of Friday 4 April 2025 and it further advised that it would be chaired by Mr Stuart Fell with side members Mr David Harry and Mr Mark Dunster.
25. In its written statement in response to the grounds of appeal, the Respondent stated, *inter alia*:

*“6.4 The use of the site for residential purposes is not lawful and although the appellant considers the land forms a separate state not falling under the jurisdiction of Guernsey, this is not supported under Guernsey Law. The land falls to be considered under the relevant Laws, Policies and Ordinances in respect to Planning Law and as such the omission of any lawful redesignation of the land from agriculture to domestic means that the site is being unlawfully used for residential purposes. The site falls within the remit of Guernsey Planning Legislation.”*

26. In response, the Appellant stated:

*“I maintain that as Everland is still currently a separate (although unrecognized) legitimate state within (and not currently of) Guernsey, and even though it has agreed to temporarily lower its flag while it considers its possible options, the policies stated and enforced by Guernsey planning do not apply within my land. This also includes the policies that are referred to by Guernsey planning; they have no authority or jurisdiction over it, and that has always been my argument. I am the current Government there. Everland is within its rights as an unrecognized state by law, and I reserve all my and my state’s rights, until I willingly choose to dissolve the said state. Only then, when placed under planning’s jurisdiction, will they apply. I am open to doing this, and this is why I have spent so much time and resources pursuing the available options.”*

### **The Tribunal decision**

27. The appeal was considered on the basis of written representations at the Appellant’s request and with the agreement of the Respondent. The members of the Tribunal undertook an accompanied site visit on 4 April 2025. The Appeal Decision Notice expressly states that the appeal was made under the provisions of Part VI and Section 68 of the 2005 Law. The Tribunal had before it a written statement with supporting material filed by the Appellant, an appeal statement from the Respondent and further response to that appeal statement from the Appellant.
28. At the outset of the decision, the Tribunal addressed the Appellant’s claim to Statehood as follows (para 4):

*“In his written response to the Authority’s appeal statement, Mr Ogier reiterates his claim, made in 2018, for recognition of his claimed Statehood of the appeal land, arguing that the land lies beyond the jurisdiction of the States of Guernsey and the Crown. Mr Ogier requested that Tribunal recognise his claim and set aside the confines*

*of Guernsey Law and policies in reaching its decision. However, the Tribunal has been appointed by the Guernsey Planning Panel to determine this appeal on its behalf. The Panel was established in April 2009 under the Land Planning and Development (Guernsey) Law, 2005 as an independent statutory body to determine appeals against planning decisions made by the Development & Planning Authority in accordance with Planning Law and adopted planning policy. As the Tribunal has no discretion in this matter, we are unable to accede to Mr Ogier's request."*

29. The Tribunal described the appeal site and summarised the recent planning history as follows:

*"6. The appeal land is located in a rural setting on the south side of Ruelle du Frocq. In Planning Policy terms, it lies within an Agricultural Priority Area Outside of the Centres, as defined in the Island Development Plan.*

*7. The appeal site is a flattened 'D' shape with its curved southern boundary intruding into the adjoining agricultural land, while its straight northern boundary follows the edge of Ruelle du Frocq. The external boundaries are defined by established planting set on low banks which, to some extent, shield the interior of the site from public viewpoints and from the residential properties that lie to the north and north-west. Vehicular access to the north-western extremity of the site is gained from the west along a narrow 3 unmetalled track that leads from La Percée. Beyond the site access the track continues eastwards along Ruelle du Frocq, described by the Authority as a pedestrian green lane.*

*8. Because much of the development subject to this appeal is retrospective and has been carried out over a period of several years, we consider it necessary and appropriate to set out in some detail our understanding of the site as it was before the commencement of the development for which planning permission is now being sought. The written submissions of the parties, including photographs, together with the observations made during our site inspection, have informed this assessment.*

*9. Within the site there are two concrete bunkers of modest size, accompanied by two small structures described as 'gun turrets'. It seems to be an accepted fact that these structures were constructed by the German forces during the occupation of the Island during WW2, and they probably formed part of a larger series of fortifications.*

*10. One of the bunkers, with a curved roof, lies towards the western end of the site. It has an access door on the eastern side and a window on the western side with its cill at ground level. The other bunker, which has a flat roof, lies in the north-east corner of the site. It originally had an entrance from Ruelle du Frocq leading down a flight of steps to the bunker interior. This entrance is now walled up and access to the interior is gained by windows in the southern wall.*

*11. Aerial photographs show that the site had become heavily overgrown when Mr Ogier purchased the site in 2011. In his written testimony he describes the site as having been used for the dumping of rubbish. The concrete structures referred to were created with their interior floor levels set approximately one metre below the prevailing ground surface at the western end of the site. The open area between the bunkers was also set at this lower level, and photographs submitted by Mr Ogier in 2011 show that this had a flat concrete surface. It was accessed by vehicles at that time by means of a ramp constructed from rubble. The form of the original ramp dating from the Occupation period is unclear.*

*12. Having purchased the appeal site, Mr Ogier applied in October 2011 for planning permission for the following use: "Change of use for household storage and a parking space for Land Rover (bunker)". Photographs accompanying the application show the condition of the site at that time.*

13. *Planning permission was granted by the Authority on 15th December 2011 for “the use of the area, including two bunkers, for domestic storage and parking” (Ref: FULL/2011/3256. The permission was granted subject to a number of conditions. These, inter alia, made it clear that the permission was personal to Mr Ogier, that the use of the land was restricted to the agreed purposes with no external storage permitted, and the duration of the permission was limited to two years, ending on 13 December 2011. This date is clearly incorrect as the permission is dated 15th December 2011 therefore the expiry date should read 14th December 2013. After this date the use was to be discontinued unless a further permission was granted by the Authority.*

14. *Enforcement activity followed which has no direct relevance to this appeal and will not be considered here.*

15. *A further application for planning permission was submitted by Mr Ogier in May 2016 (Ref: FULL/2016/1295). The proposal was described as the “reuse of the area, including two bunkers, for domestic storage and parking”. Planning permission was granted by the Authority in July 2016. Standard conditions were applied to ensure that the approved development would be carried out in accordance with the application details, that any work would begin within three years of the date of the permission, and this would be carried out in compliance with the requirement of the Building (Guernsey) Regulations 2012.*

16. *Condition No 5 attached to the permission stated that no outside storage, other than one vehicle, should take place outside the bunkers. The reason given for this condition was the proximity to residential property such that a limitation on the use was needed to prevent nuisance or annoyance to nearby residents.*

17. *While the duration of the 2011 planning permission was limited to a period of two years, no such limitation was made in respect of the 2016 permission, which accordingly remains in force, subject to the remaining conditions that were attached to that permit.”*

30. The Tribunal recalled the reasons for refusal of planning permission and identified two main issues in the appeal. The first issue was whether the proposal conflicted with the aims of Policy OC5(A) which deals with agriculture Outside of the Centres and within an Agriculture Priority Area. The second more substantial issue was whether the proposed development conformed to the strict requirements of Policy OC1 of the adopted Island Development Plan, which relates to the control of new housing Outside of the Centres. The Tribunal observed that if the appeal failed in that regard, a related question was whether a case could be made for the appeal development to be permitted as a minor exception to Policy OC1.

31. On the first issue, the Tribunal observed that Policy OC5(A) gives broad support to development relating to the agricultural use of an existing farmstead or agricultural holding, or for a purpose ancillary to the existing principal agricultural use, and it also deals with proposals for the development of new farmsteads. A third limb of the Policy deals with the loss of an existing farmstead or agricultural holding. The Tribunal considered that none of those elements of the policy engage directly with the appeal land which had not been used for agricultural purposes for 80 years. Relying on paragraph 17.3.9 of the Island Development Plan, the Tribunal concluded:

*“34. ... the fact that the appeal land has been out of agricultural use for over 80 years seems to us significant. A further consideration is that the building of military structures on the appeal land during the Occupation is likely to have rendered the land unsuitable for agricultural use without the need for remedial work.*

35. *The recent planning history is also relevant, in that the conditional planning permission granted to Mr Ogier in 2016 for the use of the appeal land, including the two bunkers, for domestic storage and parking still remains in force, indicating that the Authority has already conceded the principle of the loss of this land from agricultural use.*

36. *Our conclusion on the first issue is that Policy OC5(A) does not present an obstacle to the development of the appeal site, provided that the development in question accords with all other relevant policies of the Island Development Plan.”*

32. On the second issue, the Tribunal concluded as follows:

“37. The strategic policy context for the appeal development is provided by Policy OC1: Housing Outside of the Centres, the introduction to which states:

*“Outside of the centres, proposals for the creation of new dwellings will only be supported where this is achieved through the subdivision of an existing dwelling or the conversion of an existing redundant building.”*

38. *The rationale underlying this principle is set out fully in paragraph 16.1.3 of the explanatory text to the Policy as follows:*

*“The Island Development Plan does not make provision for new build housing Outside of the Centres in order to satisfy the strategic requirement to focus housing within the Centres and also owing to the negative impact housing development can have on the landscape character Outside of the Centres. In this respect, and in order to make the most effective and efficient use of land on the Island, the creation of new dwellings Outside of the Centres will be supported only where this can be achieved through the subdivision of existing dwellings and the conversion of redundant buildings. This approach allows for use to be made of the existing housing stock and existing unused but structurally sound structures while protecting the open areas of the Island from development. Other forms of new housing development Outside of the Centres will not be supported.*

39. *As the appeal development does not involve the subdivision of an existing dwelling or the conversion of a redundant building it is clear to us that a fundamental conflict arises with the aims of Policy OC1 such that we are unable to support the appeal.”*

33. On the question of whether it was appropriate to grant planning permission on the basis that the proposal represents only a minor departure from Policy OC1, the Tribunal held:

*“40. ....We have carefully considered how such a decision might be justified, bearing in mind that substantial progress has already been made in the implementation of development without the benefit of planning permission or building regulation approval. We take the view that were we to allow this appeal and grant permission in this case, this would give a clear signal to the other owners of land Outside of the Centres that a potential route to the creation of a new dwelling might be to ignore the requirements to first obtain the necessary planning and building approvals and simply commence building work.*

*41. It is our view that the consequence of our allowing this appeal and granting planning permission would be to undermine and diminish the underlying purpose and effectiveness of Policy OC1. Given this conclusion, we do not consider that there is a*

*valid justification for granting planning permission for the appeal development as a minor departure from Policy OC 1 given its strategic purposes.*

*42. As the conclusion we have reached is that the proposed development fails to satisfy the basic requirements of Policy OC1, and accordingly conflicts with Policy OC5(A), it follows that we are unable to support this appeal.”*

34. The Tribunal dismissed the appeal.

### **The Grounds of Appeal**

35. The Appellant relies on the following grounds of appeal:

*“Point of Law: The Planning Appeal Panel did not consider all full and complete aspects of this unique case, as they were constrained by policies that I believe should not have applied.*

*Conflict of Interest: The outcome was restricted and bound to Guernsey Planning Policies, which may have resulted in significant conflict of interest that was not addressed by the Planning Tribunal.”*

### **Summary of the Submissions**

#### *The Appellant’s Submissions*

36. The central tenet of the Appellant’s case was that the lands were “a separate state from Guernsey. It is within but not part of Guernsey.” In Mr Ogier’s submission, Guernsey policies or jurisdiction did not apply within *Everland*.

37. It was submitted that the Tribunal was established under the 2005 Law as an independent statutory body in accordance with planning law and adopted planning policy. The Tribunal had no discretion to take into account some of the major facts surrounding the case, namely that *Everland* is currently a separate state, its structures are already an accepted failure, and their policies do not at this moment apply to it. They did not have the discretion to view the case as a means for accepting the land back into Guernsey jurisdiction as it is. It was submitted that this was ‘a major stopping point’ towards the acceptance of his plans.

38. On the existence of *Everland* as a State, in his written submissions, Mr Ogier said this:

*“Everland exists in a tangible sense; this fact cannot be reasonably disputed...I created it, I have been to the Guernsey Courts 30 times defending it...its name is well known; it has been the subject of many stories within the media. A visit to its borders would affirm its reality; normally the flag flies proudly, clear borders are established and I reside there. Everland is indeed a real place, it has a defined (sic) territory and albeit small, that in many ways enhances its strength. Everland has a permanent population of 21 residents, although only 2 are people, with a larger voting outside population that has also existed for years; they also make up part of its population. My active role in governing Everland is evident, and the absence of crime or unrest within its territory speaks to the effectiveness of its governance.”*

39. Mr Ogier relied on the *Montevideo Convention on the Rights and Duties of States* 1933 (“the Montevideo Convention”). It was submitted that *Everland* fulfils the criteria that define a state as set out at Article 1 of the Montevideo Convention, namely:

*“The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.”*

40. Mr Ogier also referred the Court to the judgment of the High Court in England and Wales in **MM and NA (Declaration of Marital Status: Unrecognised State)** [2020] EWHC 93 (Fam). This was an application pursuant to Section 55 of the Family Law Act 1986 for a declaration in relation to the marital status of the parties who married in the Republic of Somaliland which was not recognised by the United Kingdom as a State. Roberts J made a declaration that MM and NA were validly married to one another and held that the marriage was valid and subsisting and was entitled to formal recognition according to the law of England and Wales. Mr Ogier drew the Court’s attention to extracts from the judgment. First, Roberts J referred to the findings of Lord Denning MR in **Hesperides Hotels Ltd and Another v Aegean Turkish Holidays Ltd and Another** [1978] 1 QB 205 (para 28):

*“The choice*

*If it were necessary to make a choice between these conflicting doctrines, I would unhesitatingly hold that the courts of this country can recognise the laws or acts of a body which is in effective control of a territory even though it has not been recognised by Her Majesty's Government de jure or de facto: at any rate, in regard to the laws which regulate the day to day affairs of the people, such as their marriages, their divorces, their leases, their occupations, and so forth: and furthermore that the courts can receive evidence of the state of affairs so as to see whether the body is in effective control or not.”*

41. Further, Mr Ogier relied on a citation in **MN and NA** from a judgment of the Court of Final Appeal in Hong Kong in **Chen Li Hung v Ting Lei Miao** [2000] 3 HKCFAR 9 in which Bokhary PJ held:

*“The answer to the question of law*

*Turning now to answer the question of law which I posed at the beginning of this judgment, I would answer it thus. In certain circumstances our courts will give effect to the orders of non-recognized courts. By the expression "non-recognized courts" I mean to cover courts sitting in foreign states the governments of which our sovereign does not recognize as well as courts sitting in territory under the de jure sovereignty of our sovereign but presently under the de facto albeit unlawful control of a usurper government. Our courts will give effect to the orders of non-recognized courts where:*

*(i) The rights covered by those orders are private rights;*

*(ii) Giving effect to such orders accords with the interests of justice, the dictates of common sense and the needs of law and order; and*

*(iii) Giving them effect would not be inimical to the sovereign's interests or otherwise contrary to public policy.*

*That is the principle; and none of it involves recognizing any unrecognized entity. It goes purely and simply to protecting private rights.”*

42. Mr Ogier urged on the Court to take into consideration its understanding of all of the facts of “the greater case” which I understand to mean the enforcement proceedings.

43. As referred to above, it was accepted by Mr Ogier that both the Respondent and the Tribunal were limited by policy and restricted by Law. He said this:

*“Everland will remain a separate state and Planning would have no jurisdiction. Everland fulfils the criteria of what makes a state, the Guernsey Justice System have no power to make any judgment against it.....The Court must act within the Rule of Law....Without first proving jurisdiction against my land (which cannot be done), no further conviction against my name would be lawful or excusable. On the other hand, I have come to understand that the Court is restricted from making a judgment in favour for it too.”*

44. It was argued that the policy binding the Respondent and the Tribunal “somewhat restricted” his case from being “*fully judged in its completeness*”. It was suggested that the Royal Court has “*a bit more freedom and it would be the only one that can take everything into account.*” The restrictive outcome seemed counter-productive in this unique case, in Mr Ogier’s contention. He argued that the outcome so far was “*not really in the interests of anyone involved, or the public and where this case is concerned may even be hindering the common good.*”
45. Mr Ogier submitted that contrary to his previous position that the land was not agricultural, it had occurred to him that the land is home to many animals and poultry and that *Everland* could be considered a small non-profit farm. He said that the addition of five new ducks born on the land within the last year have led to the production of more eggs. Whilst the scale is minor, it was submitted that there is no real definition to the size of a farm. Mr Ogier said that the animals currently consist of nine runner ducks, two cockerels, six dogs and four cats. He contended that the land is also a green energy farm, harvesting energy from the sun and that this is similarly non-profit. Mr Ogier suggested that this perhaps renders the minor departure point less of an issue.
46. In Mr Ogier’s submission, whilst the Respondent and the Tribunal were against his proposal, in his consideration, the public as a whole were for the proposal and “*want an end to this situation*”. He drew the Court’s attention to comments posted on *Facebook*, the social media platform, which were provided in his appeal bundle. Mr Ogier submitted that he was certain that the public would “*not be at peace with the constant, ever-expanding drain on the States coffers*”.
47. Finally, Mr Ogier described the situation that led to the appeal, the events surrounding it and his case as unique and were unlikely to reoccur. In his submission, the case would not set a precedent for others to follow.

#### *The Respondent’s Submissions*

48. On the legal framework for the present case, Crown Advocate Grainge, on behalf of the Respondent, drew the Court’s attention to a lacuna in the Rules, namely that they are silent as to the powers of the Court on appeal pursuant to Section 72 of the 2005 Law. It was submitted that in determining the powers of the Court on a Section 72 appeal, assistance may be drawn from a similar appeal provision in the Employment Protection (Guernsey) Law, 2005 (“the Employment Law”). Section 25 of the Employment Law relates to appeals against a decision of the Employment and Discrimination Tribunal and provides:

*“A person aggrieved by a decision or award of the Tribunal on a question of law may, subject to the provisions of subsection (2) and (3), appeal therefrom to the Royal Court in such a manner and within such period as may be prescribed by order of the Royal Court.”*

49. Crown Advocate Grainge referred the Court to *Susan Cotterill v The States of Guernsey* Judgment 58/2017 in which Deputy Bailiff McMahon (as he then was) said (para 44):

*“Neither the 1998 Law nor the Employment Protection (Appeals and References) Order, 2006 sets out what this Court should do at the end of an appeal, save that the decision “shall be in writing, signed and sealed by the Greffier and transmitted by him to the Secretary” (article 9 of the 2006 Order), which these reasons will be. In those circumstances, I am prepared to proceed on the basis that it is open to the Court to dismiss the appeal or allow it in whole or in part. **Where an appeal is allowed, the circumstances may enable the Court to substitute for the decision of the Tribunal a decision that it ought properly to have made had it directed itself properly with respect to the law.** In other cases, of which this is an example, the outcome is such that the only sensible solution is to remit the Appellant’s complaint to the Tribunal for it to be re-heard.” [emphasis added]*

50. It was submitted that the Court should apply the guidance of the Court in *Cotterill* to the present case such that the powers on the present appeal under Section 72 of the 2005 Law are to dismiss or allow the appeal in whole or in part and that if an appeal is allowed, the Court has discretion to remit the application to the Planning Tribunal to be reheard or to substitute its own decision for that of the Planning Tribunal but only if the circumstances enable the Court to do this.
51. It was submitted that in its decision, the Tribunal rightly recognised that as a creature established by the 2005 Law, appointed to consider decisions made by the Respondent in respect of planning applications made pursuant to the 2005 Law, the Tribunal could only consider the matter on the basis upon which the planning application had been made, in other words a planning application made pursuant to Section 16 of the 2005 Law. As such, the Tribunal could only consider whether, on the basis of the relevant provisions of the Law and Guernsey planning policies, the decision of the Respondent was lawful and correct.
52. In Crown Advocate Grainge’s submission, the Tribunal did not (and does not) have discretion to determine, as contended by the Appellant, that the land was not part of Guernsey and that the 2005 Law and Guernsey planning policies do not apply. Such a decision was beyond the Tribunal’s jurisdiction and in any event, it was res judicata because the Royal Court had considered the Appellant’s contention that *Everland* was a separate state to the Island of Guernsey and had dismissed it when the planning injunction was granted. Specifically, Deputy Bailiff McMahon (as he then was), concluded as follows in three *ex tempore* decisions:
  - a. In *The States of Guernsey (acting by and through the Development and Planning Authority) v Steven Terrance Ogier* (12 October 2018), proceedings brought by DPA in respect of a parcel of land physically situated on the Island of Guernsey, Mr Ogier contended that the Royal Court in those proceedings had no jurisdiction in respect of the matter because the majority of the parcel of land in respect of which the proceedings were brought related to a new sovereign state named *Everland*. Deputy Bailiff McMahon gave careful consideration to Mr Ogier’s claim that *Everland* was a sovereign state and concluded that this claim was “entirely without foundation”. In an *ex tempore* decision, Deputy Bailiff McMahon concluded:

*“15. ...In short, it is not a matter for this court to recognise declarations of statehood but in the absence of any evidence that there is even consideration of recognition of statehood, I regard the claim by Mr Ogier that Everland is now a sovereign state as to be entirely without foundation. From the principles that I have just summarised, it is quite clear that there is no population. That population must be human because it is only humans that can form a political government. A population of one, in my view, cannot satisfy the requirements for statehood because there is no one to be governed. A population of two would be the bare minimum but if that population includes persons who would be regarded as minors, then that is again inadequate because the governed are effectively controlled in a way other than through the organs of a recognised state. Put simply, whilst I take the assertion seriously, which is why I have gone away and*

*looked at some materials to satisfy myself that I should disregard it rather than simply rule it out of hand, it is quite clear to me that this is an attempt to avoid the imposition of Guernsey's domestic law on this small parcel of land and that objection to the jurisdiction of this court and that process is therefore dismissed."*

b. Subsequently, Mr Ogier entered into an undertaking with the Development and Planning Authority. Further proceedings were brought by the Development and Planning Authority for breach of that undertaking (**The States of Guernsey (acting by and through the Development and Planning Authority) v Steven Terrance Ogier**). In an *ex tempore* decision delivered on 12 February 2019, Deputy Bailiff McMahon held:

*"7. I dealt with the question of whether or not this small parcel of land could be regarded as no longer part of Guernsey at the hearing on 12<sup>th</sup> October 2018, where I rejected Mr Ogier's assertion that he had established what he terms as a micronation. He has referred then and subsequently to the hallmarks of international legal personality and sovereignty that are found in the Montevideo Convention, which was extended to Guernsey not that long after it was made in 1933, where the four criteria for the purposes of international law and recognition in international law are a permanent population, a defined territory, a government and capacity to enter into international relations.*

*8. I still question, on the facts that I have heard this afternoon, whether it can be said that this parcel of land that Mr Ogier calls Everland, and where he is the self-proclaimed king of the new micronation, has a permanent population. On his evidence, this afternoon, nobody has slept on this parcel of land, therefore in Everland, since the declaration of independence was made. I question, therefore, whether there is any population at all in the sense of a human population falling to be governed.*

*9. In any event, a unilateral declaration of independence itself does not assist Mr Ogier. There must be recognition by other sovereign states of the existence of a new state otherwise it cannot be imbued, in my understanding of the legal position, with international legal personality. Recognition of a state is the formal acknowledgment by another state that an entity possesses the qualifications for statehood and so denotes a commitment to treat that entity as a state. That form of recognition, as I understand the position, is essentially a political act which is accorded in most cases by the executive as a matter of policy. This is why Advocate Gist has referred to the absence of the executive, meaning the government of the United Kingdom, which is responsible for international relations of the Bailiwick of Guernsey, identifying, as a matter of policy, whether or not Everland exists and is so recognised.*

*10. The importance of there being recognition is that it relates to status. There has been, on Mr Ogier's case, no recognition of Everland by anyone. It is not in the gift of this court unilaterally to recognise an emerging state because, as I have just said, the international relations of the Bailiwick of Guernsey are conducted by and through the United Kingdom government, the Crown.....*

*11. Advocate Gist has referred to the opinion of the Judicial Committee of the Privy Council in a case called *Christian v The Queen*, which was an appeal from the Court of Appeal of the Pitcairn Islands and was delivered on 30<sup>th</sup> October 2006. Their Lordships quoted from what Atkin LJ had said in *The Fagernes* [1927] P 311, 324:*

*"What is the territory of the Crown is a matter of which the Court takes judicial notice. The Court has, therefore, to inform itself from the best material available; and on such a matter in may be its duty to obtain its information from the appropriate department*

*of Government. Any definite statement from the proper representative of the Crown as to the territory of the Crown must be treated as conclusive.”*

*12. The argument effectively runs in reverse, that in the absence of any statement on behalf of the Crown that a portion of the territory of the Island of Guernsey has no longer the status of being part of the British Islands as they are defined in the interpretation legislation means that the parcel of land continues to be a part of, in this instance, the Island of Guernsey. Accordingly, in the absence of any declaration one way or the other recognising a certificate provided by the executive in respect of Everland, it is not open to this court to give effect to Mr Ogier’s independence declaration from May 2018 and therefore **I am satisfied that as a matter of Guernsey law, this parcel of land remains part of Guernsey and is subject to all the laws of Guernsey but, most particularly, to the 2005 law and the suite of subordinate legislation underneath it.** Accordingly I reject Mr Ogier’s primary defence that the court has no jurisdiction to entertain this application or this court had no jurisdiction to accept his undertaking that was given, as I believed, freely on 12<sup>th</sup> October 2018.” [emphasis added]*

c. In a subsequent *ex tempore* decision delivered on 22 March 2019, having found Mr Ogier to have been in contempt of court for breaching an undertaking given to the Court, the Court gave consideration to the issue of sentencing (**The States of Guernsey (acting by and through the Development and Planning Authority) v Steven Terrance Ogier**). In his decision, Deputy Bailiff McMahon said this (para 3):

*“The respondent, Mr Ogier, has consistently argued since his first appearance before this Court that the Royal Court of Guernsey has no jurisdiction over that parcel of land because he has declared independence in respect of it. This is an action he took in May 2018. However, each time those arguments have been raised before me they have been rejected. They have been repeated again this afternoon and, without repeating the reasons I have given previously, I similarly reject them again today. **I remain satisfied that this parcel of land continues to be a part of the island of Guernsey, and that it has not been separated from it as a micronation, as Mr Ogier claims. Accordingly, this parcel of land in the Castel remains subject to the laws of Guernsey, including the 2005 law and subject to the jurisdiction of this Court.**” [emphasis added]*

53. It was underlined by Crown Advocate Grainge that Mr Ogier, who was a party to those proceedings, did not appeal the findings of Deputy Bailiff McMahon.

54. It was argued that the Appellant, at various points in his written bundle before the Court and at hearing, had recognised that the Tribunal did not have discretion to determine the Appellant’s contention that the Land was not part of Guernsey and so the Law and the Guernsey planning policies did not apply to it. For example, in his papers lodged on 22 May 2025, the Appellant stated:

*“The Tribunal had no discretion to take into account some of the major facts surrounding this case, namely that Everland is currently a separate state, its structures are already an accepted fixture, and their policies do not at this moment apply to it. They did not have discretion to view the case as a means for accepting the land back into Guernsey jurisdiction as it is.”*

55. In Crown Advocate Grainge’s submission, by agreeing to make a planning permission application under Section 16 of the 2005 Law, and then seeking to appeal the refusal decision to the Planning Tribunal, the Appellant accepted, or must be deemed to have accepted, that at least for those purposes, both the Respondent and the Tribunal would make their decisions on

the only basis that they could, namely that the lands are part of Guernsey and the 2005 Law and Guernsey planning policies apply to it. Otherwise, if the Appellant was correct in his claim that the land was not part of Guernsey, there would have been no need for the Appellant to lodge the planning application. The Appellant had not raised a valid question of law in the present proceedings and the appeal should therefore be dismissed.

56. Crown Advocate Grainge submitted that if the Court concluded that the Appellant had raised a valid question of law, it was contended that the Tribunal did not make an error of law for the reasons set out above and therefore the appeal should be dismissed. As a creature of statute, the Tribunal had correctly followed its jurisdiction and had correctly applied the 2005 Law and planning policies.

57. The Court was referred to the judgment of the Privy Council in **Strachan v. The Gleaner Company Ltd & Anor (Jamaica)** [2005] UKPC 33 in which Lord Millett said (paras 32 and 33):

*“32. The Supreme Court of Jamaica, like the High Court in England, is a superior court or court of unlimited jurisdiction, that is to say, it has jurisdiction to determine the limits of its own jurisdiction. From time to time a judge of the Supreme Court will make an error as to the extent of his jurisdiction. Occasionally (as in the present case) his jurisdiction will have been challenged and he will have decided after argument that he has jurisdiction; more often (as in the Padstow case) he will have exceeded his jurisdiction inadvertently, its absence having passed unnoticed. But whenever a judge makes an order he must be taken implicitly to have decided that he has jurisdiction to make it. If he is wrong, he makes an error whether of law or fact which can be corrected by the Court of Appeal. But he does not exceed his jurisdiction by making the error; not does a judge of co-ordinate jurisdiction have power to correct it.*

*33. In the present case Walker J held that he had jurisdiction to make the order he did. If wrong, his decision could be reversed by the Court of Appeal which would be bound without going into the merits to set aside his substantive order as a nullity. As between the parties, however, and unless and until reversed by the Court of Appeal, his decision (both as to jurisdiction and on the merits) was res judicata. As a judge of co-ordinate jurisdiction Smith J had no power to set it aside.”*

58. Relying on **Strachan**, which was applied by the High Court in England and Wales in **Park v Cho and others** [2014] EWCH 55 (Ch), Crown Advocate Grainge submitted that in the event that the Court considered the Deputy Bailiff had erred in his conclusions (which was not accepted by the Respondent), a judge of a co-ordinate jurisdiction does not have power to correct it, that being a matter solely for the Court of Appeal of Guernsey. The Court was therefore bound by the findings of Deputy Bailiff McMahon.

59. In Crown Advocate Grainge’s submission, if the Court was satisfied that the Tribunal had erred in law and was considering its discretion to substitute its own decision for that of the Planning Tribunal, the Court (as in the case of the Planning Tribunal) would in doing so be standing “in the shoes” of the Respondent. The Court’s discretion on appeal is limited to granting planning permission or upholding the decisions. Within the context of the present proceedings, the Court did not have jurisdiction to determine that the Law does not apply to the lands as they are not part of Guernsey. However, it was contended that the Appellant would be at liberty to pursue his contention that the lands are not part of Guernsey in the enforcement proceedings.

60. Crown Advocate Grainge submitted that if the Court considered that either the Tribunal should have or the Court can now within the present proceedings determine the question of whether the Lands are not subject to the Law and Guernsey planning policies, the Court was referred to

extracts from the Respondent's written submissions in the enforcement proceedings and to relevant authorities referred to therein.

61. The Court was addressed on the criteria as set out in the Montevideo Convention namely that an entity must manifest a permanent population, a defined territory, a government and capacity to enter into international relations. The Respondent did not accept that the land has a population. Two persons lived on the lands since around May 2021 and they had been living there in breach of a planning injunction. Those two persons it was submitted were not part of the population of *Everland*, they are part of the population of Guernsey. As far as defined territory is concerned, it was submitted that the plot of land is defined by a conveyance that would have been entered into before the Royal Court of Guernsey's Contract Court. It has no more defined territory than any other plot of land on the island. It was further argued that Mr Ogier did not amount to a government. On capacity to enter into international relations, it was submitted that neither Mr Ogier nor the land had that capacity. The land did not have capacity to enter into international relations. The Bailiwick of Guernsey's international relations are the responsibility of the United Kingdom Government and neither the Court nor the United Kingdom Government have recognised Mr Ogier's state.
62. It was submitted that the case of ***NM and NA*** was wholly different to the present case. In that case, the Court gave recognition to the marriage of two persons married in Somaliland. The issues before the Court in the present case are not about private law rights but rather statutory planning law which affects the public as a whole. It was submitted that giving effect to the rights claimed by the Appellant would be inimicable to the Sovereign's interest or otherwise to public policy. Crown Advocate Grainge referred the Court to ***Deputy Commissioner of Taxation v Leonard and Arthur Casley*** [2017] WASC 161, Australia per Miere J (para 5):

*"Each of the defendants has filed an affidavit and written submissions and made oral submissions to the effect that the court does not have jurisdiction over the defendant or to hear the matter because they are the sovereign of, or a citizen of, the Hutt River Province which is an independent sovereign state. That argument has no legal merit or substance. Anyone can declare themselves a sovereign in their own home but they cannot ignore the laws of Australia or not pay tax."*

63. Crown Advocate Grainge drew the attention of the Court to the findings of Deputy Bailiff McMahon in his decision on 12 October 2018, namely that it was quite clear to him that there had been an attempt to avoid the imposition of Guernsey's domestic law on this small parcel of land. Further, it was contended that the potential for precedent was significant and that this related to public policy.
64. In Crown Advocate Grainge's submission, as the Appellant had not sought to raise a question of law regarding the Tribunal's decision that there was no valid justification for granting planning permission for the proposed development as a minor departure from planning policy OC1, it was not open to the Court to consider whether any error of law was made by the Tribunal in reaching that conclusion. If the Court did not accept that submission, it was contended as follows:
- a. in accordance with section 12 of the Land Planning and Development (General Provisions) Ordinance 2007 ("the Ordinance"), if an application involves a departure from the Island Development Plan ("the IDP"), the application must be refused. There is an exception in relation to applications that only involve a minor departure from the Plan if there is a written request to consider this from the applicant.

- b. it is clear from *Island Development Committee v Portholme Properties Limited Guernsey* Court of Appeal 20 September 2002, case decided on prior to the introduction of the 2005 Law, that when considering whether a development amounts to a minor departure, the Respondent should look at the Plan as a whole.
- c. similarly, it is clear from *Grand Havre Holdings Limited v the Minister of the Environment Department* Royal Court 11 November 2005, another pre-2005 Law case, that it is reasonable (as the Tribunal did in the present case) to take into account the wider impact and effect of decision making (i.e. precedent setting).
- d. whilst there is no court authority on what would amount to a “minor departure”, the Court was referred to a series of sample planning application decisions and reports where minor departures had been granted. It was submitted that a minor departure would not involve a development that would be in conflict with the established spatial strategy for Guernsey as set out in the Strategic Land Use Plan (2011) and the Spatial Policy set out in the Island Development Plan (2016). As such the application in the present case would not amount to a minor departure.
- e. the Court was referred to the decision of the Tribunal in case PAP/010/2019, a case in which both the Respondent and the Tribunal considered whether a proposed development might be considered as a minor departure from the IDP under Section 12(2) of the Ordinance. The Tribunal held (para 56):

*“The Authority has considered whether the proposal might be considered as a minor departure from the IDP under the provisions of section 12(2) of the Land Planning and Development (General Provisions) Ordinance, 2007, but takes the view that it should not. The Tribunal agrees. Albeit that the proposed development would be fairly minor, the issues raised are fundamental to the policy with respect to the conversion of redundant buildings (or buildings claimed to be redundant).”*

- f. the Court was also referred to the decision of the Tribunal in case PAP/006/2018. This was a case, similar to the present case, in which the question of whether the proposed development might be considered as a minor departure from the IDP was raised only before the Tribunal (i.e. not in the original planning application). The Tribunal held:

*“47. What constitutes a minor departure is not defined in law, but is a matter of fact and degree in each case. At the Hearing, the DPA asked the appellant to say by reference to which policies the minor departure was being claimed. However, in our view, there is no obligation on the appellant to identify any particular part or parts of the development plan in this connection, or indeed to acknowledge that the development would be a departure. Rather, it is for the Tribunal to measure the proposed development against the provisions of the development plan as a whole before deciding first, whether it would represent a departure from any of its provisions, and second, if it would, whether it should be regarded as minor*

*48. By reference to issue (b) concerning the effect of the development on the landscape, we find no departure from the development plan. As for issue (c) relating to the potential for loss of agricultural potential, we have found that the proposed development would represent a departure from the IDP by reference to Policy GP20.*

49. *As to the extent of the departure, we consider that the potential for harmful impact on the agriculture deriving from the proposed development would be limited by the fairly small amount of land that would be directly or indirectly affected. However, we are aware that on the Island there is a significant amount of land categorised as agricultural by reason of s 45a of the 2005 Law. Much of this land is not being actively used for agricultural purposes and some is unused or under-used. There is unsurprising pressure to develop it for other purposes. The IDP acknowledges the legacy of redundant glasshouses, principally in the explanatory text to Policy OC7. Beneficial as such a development may be in some circumstances, within APAs it is strictly controlled. The Tribunal recognises that individual developments may have limited impact but, in view of the large number of sites falling within the compass of s.45a, it could in simple terms be repeated too often, such that the cumulative impact could be very significant in terms of the loss of agricultural potential and urbanising effect. We are of the opinion that to allow such development other than in strict conformity with the Aims, Objectives and Policies of the IDP would set a very undesirable precedent in that regard. We therefore do not agree with the appellant that the development should be regarded as a minor departure for the purposes of Section 12(2) of the General Provisions Ordinance.”*

65. It was submitted that in the case of PAP/006/2018, the Tribunal correctly took into account -as the Tribunal did in the present case – the wider impact and effect of decision making, namely precedent setting, in coming to its decision that the proposed development should not be regarded as a minor departure. It was further submitted that the Tribunal did not err in law in concluding that there was no valid justification for granting permission for the proposed development as a minor departure from Policy OC1.
66. On the second point relied on by the Appellant in his grounds of appeal, namely that the outcome of the Tribunal decision “*was restricted and bound to Guernsey Planning Policies, which may have resulted in significant conflict of interest that was not addressed by the Planning Tribunal*”, in Crown Advocate Grainge’s submission this did not add anything to the Appellant’s case.
67. Relying on the above submissions, Crown Advocate Grainge urged the Court to dismiss the appeal.

## **Discussion**

68. At the outset, it is important to recall the role of the Court in these proceedings. Notwithstanding the overlap, to some degree, in arguments relied on by the parties in the pending enforcement proceedings, primarily on the subject of Statehood, the Court is solely concerned in the present proceedings with the appeal against the decision of the Tribunal.
69. The parties were in agreement that should the Court conclude that the Appellant has not raised a valid point of law, there would be no requirement to consider the remainder of the arguments.
70. I turn to consider a point of indisputable importance which relates to the relevant legal framework and specifically to the powers of the Royal Court on an appeal of the kind in the present proceedings. Crown Advocate Grainge correctly identified that the legislative framework does not provide for the powers of the Royal Court at the conclusion of an appeal brought under Section 72 of the 2005 Law.
71. In the absence of express legislative provision, I find the Respondent’s analogy with the Employment Law to be helpful and I find that the guidance of Deputy Bailiff McMahon in *Cotterill* to be relevant. In *Cotterill*, the Court upheld an appeal brought against the dismissal

by the Employment and Dismissal Tribunal of the Appellant's complaint that she had been unfairly dismissed by her former employer, the States of Guernsey. The Court observed that the employment legislation did not set what the Court should do at the end of an appeal save that the decision "*shall be in writing, signed and sealed by the Greffier and transmitted to him by the Secretary*" (Article 9 of the Employment Protection (Appeals and References) Order, 2006.

72. As in the *Cotterill* case, neither the 2005 Law nor the 2009 Rules set out what the Court should do at the end of an appeal before the Royal Court save that "*the decision of the Royal Court on an appeal to it ...shall be in writing, signed and sealed by the Greffier and transmitted to him to the Secretary*" (Section 9 of Part III General Provisions of the 2009 Rules).
73. The Respondent's submission that the Court should apply the approach adopted in *Cotterill* is compelling and I accept it as correct. Accordingly, in the absence of express statutory provision, I am prepared to proceed on the basis that the powers of the Court on an appeal under Section 72 of the 2005 Law are to dismiss or allow the appeal in whole or in part and that if an appeal is allowed, the Court has discretion to remit the application to the Planning Tribunal to be reheard or to substitute its own decision for that of the Planning Tribunal but only if the circumstances enable the Court to do this.
74. I turn next to consider the Appellant's first ground of appeal which was at the heart of the appeal, namely that the Tribunal did not consider all full and complete aspects of the Appellant's case as they were constrained by policies which should not have applied because according to the Appellant, *Everland* is a separate state to the Island of Guernsey.
75. Strikingly, on multiple occasions both in his written and oral submissions, the Appellant conceded that the Tribunal was limited by policy and restricted by Law.
76. It is abundantly clear that at paragraph 4 of its decision (cited at paragraph 28 above), the Tribunal expressly addressed the Appellant's claim to Statehood and it concluded that having been appointed by the Planning Panel, a body established under the 2005 Law as an independent statutory body to determine appeals against decisions of the Development and Planning Authority in accordance with planning law and planning policies to determine the appeal on its behalf, the Tribunal had no discretion in this matter and was unable to accede to the Appellant's request for consideration of this issue. I accept the Respondent's contention that it would have been beyond the Tribunal's jurisdiction to determine the Appellant's argument that the land was not part of Guernsey and that the law and planning policies of Guernsey did not apply to it. Having examined the *ex tempore* findings of the Deputy Bailiff on the Appellant's claim to Statehood in the injunction proceedings, I am satisfied that the issue was *res judicata* because the Court had given careful consideration to the Appellant's contention that *Everland* was a separate state to the Island of Guernsey and had dismissed it when the planning injunction was granted. I am entirely satisfied that the Tribunal's conclusion was correct in law.
77. I am equally persuaded that by agreeing to make a planning application under Section 16 of the 2005 Law and then seeking to appeal the refusal decision to the Tribunal, the Appellant accepted or must be deemed to have accepted that both the Respondent and the Tribunal would reach their decisions on the basis that the lands are part of Guernsey and the law and planning policies of Guernsey apply to it. I observe that the planning application form completed by the Appellant, the decision to refuse planning permission, the notice of appeal to the Tribunal and the decision of the Tribunal itself all make express reference to the governing legislative framework, including the 2005 Law.
78. Consequently, I find that the Appellant has not raised a valid point of law on the first ground of appeal.

79. Had I been persuaded that the Appellant had raised a valid point of law, I would have concluded that the appeal was entirely without merit. The findings of the Tribunal at paragraph 4 of its decision were unassailable for the reasons set out above. The Tribunal was manifestly correct to proceed on the basis that the land was part of Guernsey. I consider that in reaching that conclusion, I would have been fortified by the findings of Deputy Bailiff McMahon – which were not appealed by the Appellant - that the lands remain subject to the laws of Guernsey including the 2005 Law. I accept as correct in law that as a judge of co-ordinate jurisdiction, the findings of the Deputy Bailiff would be binding on this Court (***Strachan***). It is therefore unnecessary for me to give consideration to the arguments raised on Statehood in this appeal.
80. I turn to consider the Appellant’s secondary point, namely that the outcome was restricted and bound to Guernsey planning policies which may have resulted in significant conflict of interest that was not addressed by the Planning Tribunal. I agree with Crown Advocate Grainge that this point does not add anything to the Appellant’s case. There is, in my consideration, some conflation with the first point raised by the Appellant and in any event, I consider that the Tribunal properly acknowledged the Appellant’s contention on Statehood, addressed it and it explained in clear terms the reasons as to why it had no discretion to accede to the Appellant’s request.
81. I accept the Respondent’s submission that as the Appellant did not raise a point of law point on the minor departure from policy point, there is no need for the Court to give consideration to that point. Had I considered it appropriate to give consideration to this point, I would have concluded that the Tribunal was manifestly correct in its findings for the reasons relied on by the Respondent.
82. Finally, the comments of members of the public posted on the social media platform, *Facebook*, in support of the Appellant’s contention that the public supported his planning proposal are of no relevance to the issues before the Court.

### **Conclusion**

83. For the reasons set out above, I find that the Appellant has not raised a valid point of law and I dismiss the appeal. I shall hear from the parties on costs and on any consequential orders or directions.