

The planning precedent paradox

JUNE 2026

Guernsey's 'plan-led' planning system contains inherent tensions. Public belief in the concept of 'planning precedent' – the expectation that similar applications should be determined on a consistent basis- is often confounded by the fact that the 2005 Planning Law provides wide scope for decision makers to exercise discretion in individual cases.

Planning precedent in England

In England, claims of planning precedent are often the last act of a desperate applicant. The proverbial kitchen sink thrown at an unmoving planning authority in hope that if permission for a certain form of development has been granted once, then it must be granted in every similar case that follows.

What they are actually seeking to rely on is the 'principle of consistency'. Something that does have a meaningful status in English planning law.

The principle requires that a decision-maker ought, when considering a materially similar proposal, to have regard to the principle of consistency, to have good reason if deciding to depart from the previous decision, and to give reasons for any such departure.

The reasoning behind this was explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993):

'One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...]. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system.'

In *Tesco Stores Limited v Dundee City Council* (2012), a more recent UK Supreme Court case, Lord Reed identified the importance of consistent policy interpretation:

'...The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities.'

'As in other areas of administrative law, the policies which it sets out are designed to be secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality...'

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Lord Reed went on to place further emphasis on that latter point, stating that:

'...planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.'

Beyond this, however, true planning precedent does not exist in England.

In practice, this means that two objectively very similar applications can be submitted to the same local planning authority, to be considered under the same set of local planning policies, but one can be approved and the other refused.

The reasons for this may be many and varied, but to consider just one example, if the applications were submitted at different times it is possible that national guidance had changed in the interim such that a relevant local policy was rendered out of date. That change in circumstances could weigh in the planning balance and justify a different decision being made.

And it is here that we find a key difference between the English and Guernsey planning systems.

Guernsey planning policies

In Guernsey, and with rare exceptions outside the scope of this article, planning policies remain in full force from the day that they are adopted to the day that they are amended or replaced.

There is no equivalent to overarching national guidance (in England, the National Planning Policy Framework). Nor do emerging planning policies take on increasing material weight the closer they move towards formal adoption (however slowly that might be in the case of the ongoing, repeatedly delayed focused review of the Island Development Plan.)

This was confirmed by the Royal Court in *Grand Havre Holdings Limited v Minister of the Environment Department* (2005), it being held that: *'...the provisions of a Detailed Development Plan remain binding on the Environment Department however old the Plan might be. A Detailed Development Plan may be amended by the States during its lifetime but unless amended it remains valid until replaced.'*

That decision also confirmed that: *'...the Environment Department [is] entitled to take account of the consequences of their decision, namely whether it would create a precedent which would affect future applications...'*

The Royal Court reiterated this point as recently as September 2025.

In *Steven Terrance Ogier v The States of Guernsey* (2025), it was accepted that the Planning Tribunal *'... correctly took into account [...] the wider impact and effect of decision making, namely precedent setting, in coming to its decision...'*

The paradox at the heart of this article lies in the fact that as planning policies are binding on decision makers unless, or until, they are replaced, and that earlier decisions can create a precedent affecting the determination of future applications, policy interpretation and application should remain consistent over time.

However this has not proven to be the case in practice.

Planning precedent in practice in Guernsey

Even allowing for cases where reasonable discretion can be exercised, there are many examples of transparently ad-hoc, inconsistent decision making, with very similar planning applications assessed and relevant planning policies interpreted and applied – Humpty Dumpty-like – in markedly different ways.

One reason for this is that, despite recognition by the Royal Court, the concept of planning precedent has developed and been applied in an asymmetrical, unbalanced way.

Where precedent has been cited by decision-makers in Guernsey, that has tended to be where it was feared that to approve a proposed development could establish an 'undesirable' or 'damaging' precedent – thereby making it harder to resist similar proposals in future.

Logically, however, precedent must be a two-sided coin- it should be equally possible for an earlier planning permission to establish a positive, or supportive precedent that could bear on a subsequent, similar application.

Sticking point

Frustratingly, both the DPA and Planning Tribunal have tended to reject such arguments on grounds that planning applications are rarely identical (a very different yardstick to that used when refusing applications that could create a negative precedent) and that each case must be determined on its individual merits.

The danger inherent in this approach is that planning policies are more likely to be interpreted afresh each time a new application is submitted or the decision maker changes, which risks undermining the certainty, consistency and confidence that Guernsey's plan-led system is designed and intended to deliver.

This is damaging for a number of reasons, as an inconsistent planning system is less efficient, less credible, and less trusted by the community it serves.

All of these things should be anathema in any healthy planning system, but especially so here in Guernsey when the island remains in the grip of a housing crisis and facing a critical need to boost economic growth - challenges that will be difficult to address with a dysfunctional planning system.

Looking to the future

Hopefully, there are signs that the current Development & Planning Authority Committee is prepared to grasp the nettle on this issue, DPA President Deputy Neil Inder having set out in December 2025 that:

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'We need to treat people fairly. I'm not saying this hasn't been happening, but there's a perception that you get different treatment depending on who you are or where you live. Whether it's true or not, this perception needs to change. If you put in a planning application, you need to know that it will be treated fairly.'

For the DPA to succeed in this endeavour, much will depend on whether it is prepared to acknowledge the potential for and role of positive planning precedents in Guernsey's planning system, and able to communicate its reasoning in greater detail and more clearly in order to build public confidence that decisions are made on a fair and consistent basis.

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