STATES OF JERSEY

STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MS. A. MCGINLEY AGAINST THE MINISTER FOR THE ENVIRONMENT REGARDING THE ENFORCEMENT OF PLANNING CONDITIONS BY THE PLANNING DEPARTMENT (R.99/2019) – RESPONSE OF THE MINISTER FOR THE ENVIRONMENT

Presented to the States on 18th November 2019
by the Minister for the Environment

STATES GREFFE

RESPONSE OF THE MINISTER FOR THE ENVIRONMENT

States of Jersey Complaints Board

On 28th May 2019, a Complaints Board Hearing constituted under Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 was held to review a complaint by Ms. A. McGinley against the Minister for the Environment regarding the enforcement of planning conditions by the Planning Department.

On 2nd August 2019, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see* R.99/2019).

Ministerial response

The Board made a number of recommendations and I would like to respond to each in turn. I apologise for the length of delay in providing my response. Resources within the regulatory team are currently tight and this has led to the delay.

I set out below my response to specific points.

1. Article 23(1) of the Law should be applied subjectively in order that the wider consequences of any permission can be properly controlled.

Paragraphs 4.1 to 4.3 of the Board's report record Mr. Townsend's comments on this issue. The officers have taken legal advice which accord with this. The officer's view is that a condition can only reasonably apply to the development applied for. The application in hand was not for the Zap Zone which was alleged to be a cause of noise nuisance, and therefore it would not have been reasonable to impose conditions upon it through this application. Whilst I appreciate the Board's and the neighbour's desire to consider the operation of the site as a whole, given that legal advice has been taken on this matter I must agree with the officer's views on this point.

2. All conditions must be precise and understandable and should be assessed by two people.

I agree with both of these points. The double-checking is already in place – all applications have to go through at least 2 officers. I will discuss the use of conditions with the Development Control team. Adding conditions to a permission can generate additional work for officers and the applicant, or can raise the expectations of a neighbour, and should only be used where necessary.

3. There should be a system for keeping complainants informed of progress on enforcement issues in the same way that there is for objectors on planning applications.

People who make comments on a planning application are automatically notified when their comments are received, and once the decision is made. Officers do not enter into correspondence with them, other than to notify them if the application is to be considered by the Committee.

Similarly, people who raise complaints about unauthorised works receive acknowledgement from the Compliance Team, which also informs them once a matter is finalised – akin to telling an objector when an application is decided. The notification processes are therefore very similar.

Officers find that complainants will, however, often seek frequent updates. The Compliance team is very small – currently 2 members of staff covering both Planning and Building Control – but it endeavours to keep complainants up-to-date, and to respond to queries, but we do not have the resources available to notify people as often as they would like. That was clearly the case here.

4. Only enforceable documents should be approved.

I agree with this recommendation, and it appears that, in approving the Design Statement which included reference to the hours of use of the interior parts of Tamba Park, this gave neighbours the impression that these would be controlled, even though they were not part of the application.

5. There should be a system for ensuring that conditions are complied with.

I accept the principle of this suggestion, and as part of our increasingly digitised system, officers are looking at a way of reporting on conditions which require action. However, these systems ultimately require staff to take the action required. As resources are limited, I would reinforce my response to Recommendation 2 above, and avoid conditions which are unnecessary.

6. There should be closer co-operation between relevant departments.

I do not believe that this was an issue in this case. The Compliance Team and Environmental Health have liaised repeatedly on this case. The 2 teams are both part of Regulation, and both now share an office, so joint working opportunities will be excellent.

7. Consideration should be given to amending the Law to enable action to be taken more quickly, and more prosecutions should be considered.

I am content that the Law gives us the power to take action, but the recurrent issue is what action is reasonable and proportionate. I understand that the Board were referred to the guidance on the Compliance service which is available online. This very honestly explains that we will assess the severity and importance of an alleged breach and prioritise accordingly. This is what happened in this case. However, what this case also illustrates is that officers' views of priorities may not match the aspirations of the complainant. The Board has not given any apparent weight to the fact that the site has been visited on more than 20 occasions, and on none of those occasions was there any evidence of a statutory nuisance.

Moreover, officers dealing with both applications and complaints about unauthorised work cannot just consider the neighbour. If work is stopped, this clearly has serious commercial implications.

In this case, officers have been seen as not taking adequate action, and in Recommendation 7 it is encouraged to consider prosecution more often. It is, however, very aware of previous criticism from the Board, in a case where prosecution was pursued, that it has been over-zealous. My officers are therefore faced with difficult judgements on a daily basis. This is a feature of an increasingly contentious climate in which planning matters are to be considered. In the longer term, we might consider a fully independent group to consider such property and land-related disputes between owners, occupiers and their neighbours, to find resolutions for all parties. This would be a fundamental change in the Law, and requires extensive discussions with the Jersey Law Society and stakeholders. In the absence of such, the Planning team will continue to do their best to achieve the best balance.

Conclusion

I have also noted the Board's comment in paragraph 6.10 that if resources are an issue, then that is a matter requiring urgent attention. This is a matter for all service areas, and will need to be assessed as part of the ongoing restructuring of Government.

In this case, the Board suggested that retrospective applications should be dealt with quickly, (i.e. prioritised). In the more recent Binet case, a similar argument was made for "Major" applications, which account for around 30% of all applications. Greater focus on monitoring conditions has also been suggested, and I would like to see small-scale household applications dealt with as a priority. Clearly, not everything can be a priority.

Currently, all applications go through a similar process in terms of public engagement and administration. I know, however, that my Development Control team are keen to introduce some new ideas, and the recent Planning Officers' Society Enterprises report that the Group Director, Regulation commissioned, offers ideas along the same lines. I will be encouraging the team to make positive changes wherever possible, and to take account of the Board's comments.