1240/5(5796)

WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT BY SENATOR B.E. SHENTON
ANSWER TO BE TABLED ON TUESDAY 16th NOVEMBER 2010

Question

Which Article of the Planning and Building (Jersey) Law 2002 does the Minister rely on in making a decision which represents a substantial departure from the current Island Plan, such as the recent granting of planning permission in respect of Field 621 (Green Zone)?

Answer

Article 19 of the Planning and Building (Jersey) Law 2002 states (in part)

19 Grant of planning permission
(1) The Minister in determining an application for planning permission shall take into account all material considerations.
(2) In general the Minister shall grant planning permission if the proposed development is in accordance with the Island Plan.
(3) The Minister may grant planning permission that is inconsistent with the Island Plan but shall not do so unless the Minister is satisfied that there is sufficient justification for doing so

As such it is Article 19(3) that gives the authority to make a decision that does not accord with the Island Plan.

Article 12 of the Law goes on to state

12 Public inquiries
(1) This Article applies in respect of an application for planning permission where the Minister is satisfied that if the proposed development were to be carried out –
(a) the development would be likely to have a significant effect on the interests of the whole or a substantial part of the population of Jersey; or
(b) the development would be a departure (other than an insubstantial one) from the Island Plan.
(2) Where this Article applies the Minister shall not determine the application until a public inquiry has been held.

This effectively sets a process for determination of applications that represent 'substantial' departures from the Island Plan. As I indicated in my written answer to the Senator's question on 6 July 2010 since I took office in 2005 there have been no planning applications approved for developments that are more than an insubstantial departure from the plan. Consequently there has been no need to convene a Public Inquiry in line with Article 12(1)(b).

The Esplanade Quarter planning application was for a significant development that would be likely to have an effect on the interests of the whole or a substantial part of the population of the Island. Consideration of that planning application was made through the mechanism of a Public Inquiry, under Article 12(1)(a).

As regards Field 621 the process of the granting of planning permission did not follow the normal course of events. A written undertaking to develop a single home on Field 621, Route de Noirmont, St Brelade, was made by the Environment and Public Services Committee in April 2004 at a time when the site was designated as a Built-up Area in the Island Plan, within which, under Policy H8, there is effectively a presumption in favour of development subject to compliance with a number of listed criteria.

As a result of that undertaking and also on the basis of the (then) Zoning within the Built Up Area, the site was acquired by to the current owner.

This occurred before the Planning and Building (Jersey) 2002 came into force in July 2006.

The planning history of the site is attached to this written answer, and demonstrates why, having consistently accepted the principle of a single dwelling on this site since April 2004, the decision to refuse an outline application for one dwelling which reserved all matters other than the principle of development, became indefensible on the grounds of inconsistency when the applicants lodged an appeal to the Royal Court.

Accordingly I had no option but to concede the appeal. The decision in law was then made by the Royal Court's Consent Order and not by me as the Minister. The Article of the Law under which it was made was Article 113 (3) (b) of the Planning and Building (Jersey) Law 2002

Chronology - Field 621, La Route de Noirmont, St Brelade

July 2002
The States Assembly, in adopting the 2002 Island Plan, placed Field 621 in the Built-up Area, in which proposals for residential development that meet the criteria in Policy H8 will normally be permitted.

September 2003
The (then) owner submitted an application to construct 2 houses on the site

December 2003
Following a site visit, the Planning Sub-Committee refused permission.

January 2004
A 'request for reconsideration' was submitted to the Environment and Public Services Committee together with a petition, signed by 43 neighbours, opposing any development of the site

April 2004
The Environment and Public Services Committee visited the site, and met a delegation of local residents, the local Deputy and the applicant's lawyer. The Committee maintained the refusal of 2 houses, but in doing so agreed 'that it would be appropriate to permit limited and appropriate development of the site.' This decision was conveyed to the applicant by letter dated 7 April 2004, and explained that the Committee conceded the construction of 1 dwelling on the site in principle, with size position and design to be agreed.

June 2004
The site was acquired by the present owner, on the basis of the aforementioned letter of advice. The owner then submitted a new application for 2 dwellings of modified scale and design compared to the previous application.

September 2004
The application was refused by the Planning Sub-Committee, **but not on grounds of the principle of development (for 1 dwelling)**, which had been established in April 2004.

October 2004
A further 'request for reconsideration' was submitted to the Environment and Public Services Committee.

December 2004
The Committee visited the site, but deferred a decision, pending the submission of further drawings.

January 2005
Following the submission of those drawings, the Committee maintained the refusal for 2 dwellings but in so doing maintain the previous undertaking to support the principle of 1 dwelling on the site.

February 2005
Deputy J Hilton lodged a proposition to amend the 2002 Island Plan by changing the designation of Field 621 from Built-up Area to Green Zone.

March 2005
A neighbour submitted a request to the Greffier of the States for a hearing by a Board of Administrative Appeal. The neighbour was advised by the Greffier that it would be logical to await the outcome of Deputy Hilton's proposition. These proceedings did not continue thereafter.

The owner's advocate wrote to the Committee advising them that a new application for 2 houses was about to be submitted, explaining that:

1. The owner had acquired the site on the basis of its Built-up Area designation and the Committee's advice conceding some development on the site;
2. That if the land were rezoned as Green Zone then a substantial claim for the resultant loss in value would be made on the basis of 'legitimate expectation'; and
3. The new application about to be submitted needs to be considered in the context of the existing policy context.

The Committee sought legal advice on the extent to which it was bound by its earlier decision, notwithstanding that the site may become part of the Green Zone.

The new application for 2 houses was received.

July 2005
Deputy Hilton's proposition was approved by the States and adopted by the Committee as an amendment to the 2002 Island Plan.

September 2005
The Committee, having taken note of the legal advice it had sought, refused the new application for 2 dwellings on similar grounds to its decision in January 2005, but **decided to maintain its decision regarding the principle of one dwelling on the site**, based on the advice and notwithstanding the change in the designation of the site.

November 2005
The owner submitted a new application for 1 dwelling.

December 2005
The owner lodged an appeal to the Royal Court against the September 2005 decision of the Committee to refuse 2 dwellings.

The introduction of Ministerial Government occurred.

June 2006
The Planning Applications Panel considered the application for 1 house on the site. Having taken into planning history of the site**, the Panel accepted the principle of 1 dwelling on the site** but refused the application on grounds of unacceptable scale, siting and design. As this decision was contrary to the Department's recommendation, the matter was referred to the Minister under the 'cooling-off' protocol.

July 2006
Planning and Building (Jersey) Law 2002 came into force.

The Minister refused the application on the grounds of unacceptable scale, siting and design, and unreasonable harm to the area, **but not on the grounds of principle of development**.

August 2006
The Royal Court heard the appeal against the September 2005 decision. In submissions to the Court on behalf of the Minister, it was explained that while 2 houses were unacceptable, **the principle of 1 dwelling was supported**.

September 2006
The appeal was dismissed by the Royal Court

March 2007
A new application was submitted for 1 dwelling on the site.

April 2007
Following a meeting with the Minister and his officers, a further set of plans were submitted with the intention of meeting the concerns that had been expressed by the Department. A second set of revised plans were submitted in December 2007.

March 2008
The Planning Applications Panel considered the revised application in a public hearing. Representations were made both against and for the proposal. The Panel deferred the application for further legal advice.

October 2008
The Planning Applications Panel considered the revised application again, having received further legal advice. It decided that it was minded to refuse the application, not only on grounds of scale, siting and design, but also on the issue of principle, now that the site was designated Green Zone. Again the cooling-off period was invoked. The Minister remitted the application to the Panel.

February 2009
The Panel further considered the application, and confirmed its decision to refuse on grounds of scale, siting and design, **but not on grounds of principle given the legal advice and the planning history of the site**. The owner lodged an appeal to the Royal Court shortly thereafter.

March 2009
The owner lodged an appeal to the Royal Court against the February decision.

June 2009
The owner of the site submitted an outline application for 1 dwelling on the site, effectively seeking to formalise the previous undertakings regarding the commitment to one dwelling.

October 2009 and November 2009
The Planning Applications Panel considered the outline application to establish the principle of one dwelling on the site, and decided, at the second meeting, to refuse permission, contrary to every prior decision and advice given.

December 2009
The owner of the site lodged an appeal to this decision, on the grounds that the decision was wholly inconsistent with every previous application decision that had been made in relation to this site vis a vis the principle of 1 dwelling on the site.

Early 2010

It became clear, as the case against the Minister developed, that **given all the background circumstances of this case, the Minister's position in defending the appeal against the Panel's** decision of November 2009 was untenable. Accordingly, he had no option but to concede the appeal. The Royal Court's Consent Order was made on 5 May 2010, and the outline permission was issued on 27 May 2010.