STATES OF JERSEY

Committee of Inquiry: Reg's Skips Limited – Planning Applications

FRIDAY, 19th FEBRUARY 2010

Members:
Mr. J. Mills, C.B.E. (Chairman)
Mr. E. Trevor, M.B.E, F.R.I.C.S.
Mr. R. Huson

Witness:

Mr. R. Webster (Principal Planner (Appeals), Planning and Environment Department)

In attendance:
Mr. I. Clarkson, States Greffe (Clerk)

[14:15]

Mr. J. Mills (Chairman):
Right, if we could just begin the proceedings. If you could just stand up for a moment, please, and if you could just respond by saying: "I do" to the oath, please? Do you swear that you will declare the truth, the whole truth and nothing but truth in the present proceeding before this Committee of Inquiry, which you will do so without favour, hatred or partiality as you will answer to Almighty God at your peril?

Principal Planner (Appeals), Planning and Environment Department:
I do.

Mr. J. Mills:
Thank you, Mr. Webster. Welcome, let us just introduce ourselves. I am John Mills, the Chairman of the Committee of Inquiry. This is Mr. Edward Trevor on my left and Mr. Richard Huson on my right. Thank you very much for coming to see us. Could you just begin by describing who you are and your role? What you do, and that will give us the context to begin the process. Thank you.

Principal Planner (Appeals), Planning and Environment Department:
My name is Roy Webster, I am a qualified planning officer. I have had 34 years' post qualification experience, 12 years in U.K. (United Kingdom) local government and the last 22 years in Jersey. For the last 8 years, that is working in the States of Jersey Planning Department, my principal duties have been dealing with all the Royal Court appeals, the appeals to the Royal Court against planning decisions and also Appeals Complaints Board hearings which used to be Review Board hearings previously. So basically all appeals. Royal Court appeals can be first party appeals or now, for the last 3 years, we have third party appeals introduced since the end of March 2007 so that is what I do. Since we have had third party appeals I have an assistant now as well who helps me and I work in close consultation with the Law Officers Department as well in dealing with them.

Mr. J. Mills:
Okay, thank you. Just to set some context. How many Royal Court appeals does the Planning Department face each year, in a broad order of magnitude?

Principal Planner (Appeals), Planning and Environment Department:
Well, in the 8 years I have been dealing with them ... it varies each year. But in the 8 years I have been dealing with Royal Court appeals I think we have had about 80.

Mr. J. Mills:
Eighty?

Principal Planner (Appeals), Planning and Environment Department:
Yes, so that is averaging out about 10 a year but since third party appeals I think it is probably more 15-20 a year. Then in that similar period we have probably had about 70 Complaints Board appeals. What is interesting about Royal Court appeals is although we have had, say, about 80 ... sorry, I do not have the precise figure.

Mr. J. Mills:
No, no, just an order of magnitude.

Principal Planner (Appeals), Planning and Environment Department:
But what is interesting is usually ... because I was checking some months ago and there is not more than about a third that actually go to court, which is quite surprising. The reason for that is quite often when we have done the planning submissions in response to the appeal, the appellant will drop out of it or sometimes we reach a compromise solution, say it is like an overdevelopment issue or something like that. That is another thing I get involved in. Or another alternative, we will look at a case and we think that we have little chance of success on appeal and I would have taken it back to what would have been the former Committee and now the Minister and advise that it is still the Minister's final decision as to whether they still wish to pursue it in court. But we will have legal advice on that as well and that is the decision that is made because obviously there are costs involved. It usually works on a loser pays system. Over that period we have had a high success rate with appeals generally.

Mr. J. Mills:
Okay, that is helpful, thank you very much. Okay, let us turn to the case in question, Reg's Skips Limited and the planning history of that. Could you describe to us when and how exactly you first became involved in this case? I think this is at a very early part of 2007 and then just take us forward so we have got an overview of your involvement.

Principal Planner (Appeals), Planning and Environment Department:
What I have done is I have just extracted from the file the bit where I became involved and my involvement, because I had none whatsoever until this lands on my desk, which is the formal notice of appeal to the Royal Court served on behalf of the company, Reg's Skips Limited, against the enforcement notice which had been served specifying the required measures.

Mr. J. Mills:
Yes, just remind us of the date of that, please?

Principal Planner (Appeals), Planning and Environment Department:
The date this was received was 7th February 2007. That is the date the appeal was lodged.

Mr. J. Mills:
So upon the lodging of the appeal a file, no doubt, is dumped on your desk, is that how it works?

Principal Planner (Appeals), Planning and Environment Department:
Literally it is just this that comes on my desk and what we are required to do, what I do on behalf of the Minister, is in receipt of this we have got 28 days to prepare a sworn affidavit, a planning statement, which sets out - this is all within the context of the Royal Court Rules - the facts material to the decision, the background, the policy context, all the background circumstances and then usually I will add initial comments in response to those grounds of appeal. That statement, under the Royal Court Rules now, has to be done, as I say, in the context of a sworn affidavit. I will send that off to the Law Officers Department and then I will go over there and swear it in and that is lodged with the Judicial Greffier. That is the first stage in the proceedings. What happens with a Royal Court appeal as well, within 5 days of receipt of the appeal the appellant and our lawyers are required to go to court to fix the date for the hearing. The procedure now is that the court will fix a date for the hearing within 3-4 months of receipt of the appeal, because years ago there used to be a lot of slippage. There is a number of stages which are gone through. My affidavit is the first stage and everything is on a tight timescale so everyone is battling against time.

Mr. J. Mills:
Okay, thank you. So could you describe to us, please, what you did with this important piece of paper when it arrived on your desk on 7th February 2007.

Principal Planner (Appeals), Planning and Environment Department:
Immediately I received the appeal ... I had other work on as well at the time but I would go and dig the file out from the system or the case officer who had been dealing with it and then I will, obviously to set out all the circumstances, go through all the papers to start preparing my affidavit in response, which is what I did in this instance. What happened in this instance was as I was going through the file it became increasingly apparent to me that there was going to be little chance of successfully defending this appeal. As I looked at the permit, the condition of the permit, the actual notice which had been served and the grounds of appeal I rapidly came to the conclusion, and there is a note on the file - I do not know if you have had copies of the file - that in my opinion I thought there was nil chance of successfully defending the appeal. So what I did is I ... do you want me to carry on just to explain and you just ...

Mr. J. Mills:
Yes, I just want to get this process.

Principal Planner (Appeals), Planning and Environment Department:
Yes. So whereas I would normally have had my affidavit statement getting typed and prepared I stopped doing that and I literally just worked ... because it is pretty brief, I did not have a great deal of ... I despatched this one, so to speak. What I did was I sent an email to the former Solicitor General, Stephanie Nicolle, explaining that I thought we had little chance of success and obviously if I was going to be advising the Minister on that, and some of these decisions are very important decisions, I will obviously wish to take legal advice. So I asked if we could have a meeting with Stephanie Nicolle. She immediately responded, this was on 26th February when I sent the email, and we arranged to meet on 28th February. In the meantime, the next day on 27th February I sent in my notes explaining the reasons why I thought we had little chance of success on appeal. We met on 28th February and she agreed with me, and we had a response the same day from the Solicitor General. It is always privileged information, legal information, so to cut a long story short she sent her view on that and literally again on the same day, which is 28th February, I immediately arranged to see the Minister to go through it and explain the situation. Do you want me to just carry on?

Mr. J. Mills:
Yes, just carry on up to 6th March.

Principal Planner (Appeals), Planning and Environment Department:
Okay, it was just in case there were any questions. On that same day I saw the Minister and what I did then was I had my notes set out, so I had my notes and I had the legal opinion on the matter and I went through that thoroughly with him explaining why I thought there was little chance of success with the appeal. I explained my conclusion that we should withdraw the notice and the best remedy was alternative action in this instance under the Nuisance Law. So on that day, as I say, the Minister agreed with that course of action. There was a note of the Minister's decision made to record that and what then followed was I drafted a letter to the appellant company's lawyer to explain that the Minister had decided to withdraw the notice. Before sending that letter I asked for a review from the Solicitor General again about the wording of that letter which I cleared with her as well. That letter went off on 6th March and that was that basically. Just 2 things to further add, because we withdrew the notice and then there was an issue if any action was going to have to be taken it was under the Nuisance Law, I had a meeting with officers from Environment Health to explain the circumstances, letting them know that there may be an issue that was arising with the Nuisance Law and just have a word about that. Then what I also did, as well ... I never met the neighbour Mr. Yates previously or have not since but I felt just as a matter of courtesy, because obviously this notice had been re-served as a result of the complaints from the neighbour, I went just to explain the situation why this action was being taken. That is it basically.

[14:30]

Mr. J. Mills:
Okay, just another question about process first, please. When you had reviewed the case, you had gone to see the Solicitor General, you had formulated your views and you were ready to see the Minister, did you discuss this or put your thoughts there to other colleagues in the department or was it entirely your own decision, so to speak?

Principal Planner (Appeals), Planning and Environment Department:
No, it was my decision in consultation with the Solicitor General. Quite often I will but I just thought this was such a clear cut case.

Mr. J. Mills:
So you did not discuss it with other colleagues, with your other senior colleagues.

Principal Planner (Appeals), Planning and Environment Department:
No. I would have told them. Quite often again I will sit down with the Director and Assistant Director of Development Control to do this but I would have let them know that as well. I would have let them know and ...

Mr. J. Mills:
Was there any sort of sense among those senior colleagues of concern at the decision you had either taken or were moving towards taking?

Principal Planner (Appeals), Planning and Environment Department:
Yes, but when I just went through it logically they could not really argue. They could not dispute the reasons. You know, obviously these decisions are taken and conditions are attached, but in hindsight

when it is just looked at carefully - and I just went through the reasons why I thought there was no chance of successfully defending it - it was accepted basically but obviously with concern, yes.

Mr. J. Mills:
Could we then revert back to your note that you referred to of 27th February, your comments on the case which was the note I think you said you then sent to the S.G. (Solicitor General) ahead of your meeting. You have got a copy there and we have a copy here and it will be one of the documents that becomes public when this inquiry is concluded; it will be part of the published bundle. Could I just ask you to take us through it, please, point by point because this is very important to the ... it is the nub of our inquiry in a sense.

Principal Planner (Appeals), Planning and Environment Department:
Just as a general point before I go through the note, this appeal related to an enforcement notice relating to the required compliance with a planning condition. As a general comment I think it is useful to just make a few general comments and a couple of analogies and then we can put this one in context. That is there is certain well established principles and tests relating to use of planning conditions attached to planning permissions. Among those principles and tests are requirements that planning conditions should be reasonable - that is one key point - that it should be enforceable and also that all planning conditions need to be clear and precise and unambiguous. If I can just briefly generally ... there are other requirements, there is relevance, necessity, et cetera, but those issues of reasonableness, enforceability and precision ... just a few simple examples to demonstrate the point, on the issue of the need for reasonable conditions, it is a fundamental issue that you should not have an over-restrictive planning condition attached to a permit. The argument is if you need an over-restrictive condition you should not be granting permission in the first instance. As an example, if you had an application for, say, a joiner's workshop close to residential property it would be an unreasonable condition, for instance, to require a condition saying they could not operate an electric band saw because it goes with the territory. You should not be putting that type of condition on, you should be refusing it because of the potential noise nuisance. It would be an unreasonable condition. I can put this back in the context of Reg's Skips in a minute. On the issue of enforceability, any condition has to be enforceable. An example of an enforceable condition, if you had, say, an application for B&Q on the main Queen's Road and somebody wanted to impose a condition that there should not be more than X number of traffic movements to the site; that would clearly be an unenforceable condition because you would have the Enforcement Officers going to count the traffic basically. It is either acceptable access or unacceptable or it is acceptable subject to improvements but you would not have an unenforceable condition. The need for the condition to be clear and precise, really that goes without saying because it is in everybody's interest. From the applicant's point of view the applicant needs to be absolutely clear what they need to do to comply with the condition and it needs to be clear and precise particularly back to the enforceability issue. So the enforcement officer knows precisely what needs to be done to comply with it. So they are basic tests and they are tests which have been established over time through planning case law, U.K. case law primarily and Jersey case law. Jersey obviously has its own unique planning law but the basic principles relating to the control of development and the need to apply for permission follow the principles of English case law. That is why in Royal Court appeals when the parties are arguing the cases and the courts are making the judgment, reference is made both to Jersey case law and English case law. Reference is occasionally made, and it has been made by the former Solicitor General in a couple of appeals to a Government circular, the circular is 11/95 - this is in the U.K. - which about the use of planning conditions and it refers to the tests that I have just mentioned: reasonable, enforceable, et cetera.

Mr. J. Mills:
That is helpful. Just as an aside on that, I take it that anybody who wishes to become a qualified planning officer, this is the kind of stuff they have learn and be able to deal with in their exams?

Principal Planner (Appeals), Planning and Environment Department:
Yes, you have a section on planning law, yes.

Mr. J. Mills:
Okay, that is good. Thank you very much. Sorry, go on.

Principal Planner (Appeals), Planning and Environment Department:
Sorry, I was going to say, just to relate that ... I was saying I thought it was important to explain that because to come back to this appeal what was clear to my mind is that the enforcement notice, the condition that it was referring to, to my mind that condition was clearly unreasonable and unenforceable. That was the main reason.

Mr. J. Mills:
Okay. Could you then just take us through your comments note, just so it is on the record, which is a noted dated 27th February 2007 which forms the basis of your subsequent discussions with the Solicitor General and the Minister. If you could just take us through it with particular focus on your ... on the reasons why you came to the view that the department had nil chance with the appeal.

Principal Planner (Appeals), Planning and Environment Department:
Yes. On point 3(1) on page 2 ...

Mr. J. Mills:
It is probably best if you read it through really and I think, for the benefit of the members of the public here who will not have seen this, summarise as you go.

Principal Planner (Appeals), Planning and Environment Department:
Do I need to summarise from the beginning?

Mr. J. Mills:
If you would, it would be helpful for the record, I think.

Principal Planner (Appeals), Planning and Environment Department:
Okay. I will summarise as far as I can. Obviously the notice forming the subject of the appeal required the appellant ... there were 2 basic elements which were subject to the bill. One was to cease the employment of the mechanical digger in connection with the company's sorting of skips and the other part of the notice was to cease the intensification of operations and reduce the quantity of skip sorting to that described within the condition of the permit. Because unusually in this instance the condition of the permit had stated that the use should be operated in the same way as the company's previous operation at a site at Beaumont in St. Peter, which was Mr. Le Ruez's site in St. Peter. If I just go on to point 3, I said: "Comments regarding the reasonableness and enforceability of the condition" which is the 2 issues I was talking about.

Mr. J. Mills:
Sorry, could I just ask you to deal point 2 before you deal with point 3.

Principal Planner (Appeals), Planning and Environment Department:
Yes. The permitted use, the existing permitted use, usually the permitted use is set out on the description of the development at the top but in this instance the existing permission, the description at the top, the permit was for change of use of area to south and part of building to northeast from dry storage to commercial. I was making the point that the term "commercial" does not really mean

anything in terms of the legal permitted use under the planning law. Commercial can cover a range of different planning uses. We have different use classes: retail, office, industrial, storage, and commercial includes a whole range of things. Really the only specification to the use involved with this permit was through conditions 1 and 3 of the permit, which referred to the sorting and storage of skips. Just one point, very briefly, I sent an amendment on that note further on.

Mr. J. Mills:
I have seen that.

Principal Planner (Appeals), Planning and Environment Department:
It was just a factual ... it was saying it was not just one condition but it is 2 conditions where it is referring storage and sorting of skips.

Mr. J. Mills:
Okay, we know that.

Principal Planner (Appeals), Planning and Environment Department:
So clearly the permitted use, the legal permit, the permitted use - although the top refers to commercial, which is unusual - was for storage and sorting of skips.

Mr. J. Mills:
Okay, please continue.

Principal Planner (Appeals), Planning and Environment Department:
What I have said in this note is the part of the condition which we were seeking to enforce requires that the use of the site shall operate in the same way as the current site, which is the Beaumont site, as a skip sorting yard only and for no other purpose. So I then made a number of comments and points. The first point I made was as a general point it is unreasonable to attach a planning condition for any permitted commercial use merely requiring that the use be operated in the same way as operated on a previous site, particularly without being more specific on the restrictions which need to be complied with. As I was explaining, any conditions need to be enforceable. So if you had a business premises, say, a retail premises and you wanted to relocate - you know, get permission somewhere else - you would not normally put a condition on to say it shall operate in the same way. If you were you would have to set out what that same way was and it did not so to just say that was not, as I have said here, reasonable and enforceable. Now, carrying on, the first part of the notice, there were 2 separate requirements in the notice and the first part required the appellant to cease the employment of a mechanical digger in connection with the company sorting of mixed skips. The 2 points I made were just facts. The first point was that most importantly there is no condition on the permit which specifically states that a mechanical digger cannot be used. So if you are trying to enforce that condition it just came back to the operating in the same way and I will come on to that. But the second point I made, even if there was such a condition that would seem an unreasonable condition in the first instance when the authorised use is specifically for a skip sorting yard. What I said was a skip sorting yard is a skip sorting yard and the use of a mechanical digger to sort mixed loads to a large extent goes with the territory. That is why I was just giving the example of a joiner's workshop without a band saw. It is just what you expect. So I thought even if we had put that condition on it would have been unreasonable and I made the point: "Mixed loads from demolition and building sites often include boulders and lumps of granite so you would not be expecting to sort that by hand."

[14:45]

The second problem was that if our argument was instead that even though we did not specify there

should be no mechanical digger, that if our argument was that a mechanical digger should not be used because the use should operate in the same way as the Beaumont site that the fact was … I checked with our former enforcement officer Gerald Bisson and the fact is that the Le Ruez site at Beaumont had a historical pre-Planning use for the storage of trailers. If it is pre-Planning, that is in the absence of any subsequent permit, that is its existing legal permitted use and the only other permitted use was for the storage of skips. The former enforcement officer Gerald Bisson advised me that on occasions when there had been any sorting at Beaumont that the enforcement officer ... it may have been to Mr. Le Ruez himself, that said that should not happen without permission. What was ironic is the permit was making it clear it was for skip storage and sorting at Heatherbrae at the same time saying it should operate in the same manner as Beaumont and yet the permitted use at Beaumont did not include sorting. So that was yet another problem of why it was illogical to use that condition. All I am doing here is just going through my notes.

Mr. J. Mills:
Yes, that is very helpful to us, very helpful indeed.

Principal Planner (Appeals), Planning and Environment Department:
The point I have made there, I have put: "The second part of the notice requires the appellant to cease the said intensification …" this is operating in the same way about the intensification of the use and the quantity of skips stored and sorted. I put: "A further difficulty with this case is that even if the condition requiring the use of the site to operate in the same way as the Beaumont site was considered reasonable" - and I did not think it was reasonable anyway on the basis of the preceding comment – "it is only enforceable if we had full details of the previous operation at Beaumont" and yet we did not have any such details on file. So without such details we could not possibly in court. If they were arguing about the Enforcement Notice without those details it was just a totally unenforceable condition which did not pass the legal test that I was talking about. The final point was even if we did have the details of the use it would be difficult over a period of time to continuously visit and monitor and enforce the intensity of the use. Again, the question of the Enforcement Officer being there all the time checking, which was when I was using the B&Q traffic example. In conclusion, I have said: "Which comes back to the whole issue of the reasonableness and enforceability of this type of condition and the principle that if such a condition or this type of condition needs to be imposed then permission should not have been granted in the first place." Therefore, that concluded my recommendation to withdraw the notice and to say that if the use is causing an unacceptable noise nuisance the alternative remedy is for action under the Statutory Nuisance Law.

Mr. J. Mills:
Well, thank you very much for going through that, it is a powerful memorandum, if I may say so.

Principal Planner (Appeals), Planning and Environment Department:
It was only done very briefly because you know the timescales there.

Mr. J. Mills:
I have got a few more points but I think I will turn to you, Edward. I know you have got a point.

Mr. E. Trevor:
Yes, I have got one or 2. Going right back to the beginning of what you said, what percentage of enforcement procedures that would go to the Royal Court did you recommend should not go, should be withdrawn - roughly?

Principal Planner (Appeals), Planning and Environment Department:

In the 8 years I have been … most planning appeals … it is just a pity I have not got a schedule of all the … most planning appeals are against decisions to refuse permission, I suppose, to enforcement notices. It is difficult to answer the question because, as I say, we have had 80 appeals, as I was saying, in the last 8 years. We have had … I am aware of one appeal in particular, an enforcement notice appeal in St. Clement about a joiner's workshop use where it went to court and we lost the case. It was one of the few cases we lost because there was an issue about an established use. But to answer your question, we have not had many enforcement notice appeals that have gone to court. I would have to check but the one I can remember we lost anyway.

Mr. J. Mills:
Perhaps you could just check for us anyway …

Principal Planner (Appeals), Planning and Environment Department:
Yes, and I can get back on that, yes.

Mr. J. Mills:
… and let Mr. Clarkson know if there is any change in that, thank you.

Mr. E. Trevor:
Are you saying, therefore, that of the approximate number of 80, most of them were where people were appealing against refusal rather than enforcement?

Principal Planner (Appeals), Planning and Environment Department:
Yes.

Mr. E. Trevor:
Can you give an approximate figure of the number of enforcement actions that were referred to the Royal Court or when you were asked to take them there, whether you said yes or no?

Principal Planner (Appeals), Planning and Environment Department:
I would only deal with it if it was an appeal against an Enforcement Notice. What I am saying is we have had very few appeals, yes.

Mr. E. Trevor:
Very few, thank you. Am I right in thinking that you have said that condition one of the permit was (a) unenforceable, and (b) did not make sense?

Principal Planner (Appeals), Planning and Environment Department:
I just said unreasonable and unenforceable in the sense that it was saying it should operate in the same way as another site, particularly because without giving particular details …

Mr. E. Trevor:
On that basis, should any competent planner, therefore, in fact have worded a condition in this way?

Principal Planner (Appeals), Planning and Environment Department:
The problem is that I have got to say I have not seen such a condition before. You would generally say, obviously, no. I mean, obviously when this was being dealt with people were working under pressure, there were many cases ongoing at the time. There was obviously … I think there was a recognition that the company Reg's Skips had been desperately trying to find sites, so the planner who would have been dealing with it was obviously trying to be as helpful as possible. The planning officer would have seen the operation at Beaumont and with the best of intentions that permit would have been put on to see that

the use would be operating in the same way. But the answer to the question is it is an inappropriate condition, really, which is the reason why I just said we had no chance of enforcing it.

Mr. E. Trevor:
Thank you. The next one relates to intensification which has come up several times during the hearings. Is it practical to say that intensification of a use is, in fact, requiring an additional planning consent or would it be more normal to say well that is just somebody improving their business?

Principal Planner (Appeals), Planning and Environment Department:
If there is an existing legal permitted use, be it for a shop, whatever business, whatever use, retail use, there is no control whatsoever over the intensity of the use. That is business and there is no point where permission is required … separate permission, it is what the permission be for. If it is an existing legal permitted use, say, for a retail premises or, say, for a warehouse, the amount of traffic or the amount of business, if that is the legal permitted use it does not matter how busy or intense the business it does not need permission if it is operating as legal permitted use. When you talk about intensification of use requiring permission, that is usually when it involves a change of use by intensification of use. I am just trying to think of an example. If somebody was operating … if it was somebody, say, in a residential property, if they were doing the odd car repairs business for friends or something as a hobby and the degree of use was *de minimis* - you know, not something that required permission - but if it started intensifying there is a point where you say: "Look, you need permission for this, there is a material change of use." But within the confines of an existing legal permitted use there is no control over that, you could never control that. That is business, is it not? You know, if a business is successful you cannot control that. As I say, I have never seen a condition where we are trying to keep something ... the intensity of the use, as I have just explained.

Mr. E. Trevor:
Thank you. Finally, you said to us in answer to the Chairman, that you had almost instantaneously decided that the enforcement was not enforceable and decided it would be lost in Royal Court or anywhere else. You mentioned to your colleagues that the Nuisance Law should, in fact, be a better approach. That is what you said to us.

Principal Planner (Appeals), Planning and Environment Department:
Yes.

Mr. E. Trevor:
You then went to see Mr. Yates; did you mention that to him?

Principal Planner (Appeals), Planning and Environment Department:
Yes.

Mr. E. Trevor:
You did?

Principal Planner (Appeals), Planning and Environment Department:
Yes.

Mr. E. Trevor:
Thank you. No more questions.

Mr. R. Huson:
I found it very enlightening, your explanation, in fact one of the most enlightening ones we have had

since the review. What I would like to know is who wrote the conditions on this permit? Who is the person who wrote those conditions?

Principal Planner (Appeals), Planning and Environment Department:
That would have been the case officer, planning officer.

Mr. R. Huson:
Who was?

Principal Planner (Appeals), Planning and Environment Department:
I think the name of the planning officer, who no longer works in the department, was a lady called Emma Baxter.

Mr. R. Huson:
Right, okay, we know of her, yes. So she wrote them and then issued the …

Principal Planner (Appeals), Planning and Environment Department:
They would have been checked.

Mr. R. Huson:
By?

Principal Planner (Appeals), Planning and Environment Department:
They would have been checked by her superior and/or the Assistant Director.

Mr. R. Huson:
Was that Peter Le Gresley?

Principal Planner (Appeals), Planning and Environment Department:
Yes. I have got to say, one thing about the Royal Court of Appeals generally, and it has probably been said already, I do not know, but there are thousands of applications and everybody is under pressure of time and doing things in a rush to the best of their ability. Quite often when one particular application comes under scrutiny, when I deal with other Royal Court cases, there is always … you know, nothing is absolutely perfect. Obviously in this particular instance, as you say, that is just an inappropriate condition so ideally that should have been picked up. As I say, it has been done with the best of intentions to try on the one hand to get Reg's Skips business moved to an appropriate site, what was considered an appropriate site, but at the same time trying to minimise the impact as far as possible where, as I say, with the best of intentions, the Planning Officer has seen the operation at Beaumont and saying it should operate in that manner. But it is clearly, when it comes to the crunch, unenforceable.

Mr. R. Huson:
Yes, unenforceable. That is the only question I have.

[15:00]

Mr. J. Mills:
We have almost finished now, could I just come back to the question of you and your relationship with your colleagues in the department. I think you have explained to us that the kind of issue that this case gave rise to is an unusual one in your experience. You know, you did not do many quite like this so it

obviously occasioned some remark because it was unusual. Did you get a sense of any kind that … from the people you did discuss it with and the notes you saw on the file and so forth, that there was some concern about it, uncertainty, views given in hindsight, and so forth, or did your views - your considered views that you have described to us - come as a great surprise really to others in the department and, indeed, the Minister?

Principal Planner (Appeals), Planning and Environment Department:
Obviously, when I got back at the time - the case officer had been and gone by that time, by the way - to my colleagues because the thing we do with all the Royal Court appeals is feed back on lessons to be learned. You know, there are checks and balances. Talking about checks and balances, by the way, I was just mentioning about the introduction of third party appeals - sorry, I am just flying off at a tangent - that is another check and balance in the system now because if we are in the present day and there was an application the neighbour would have a right to formally challenge the grounds of permission in the first place as well. But, sorry, going back to the question, no, obviously, in the cold light of day when you … because these conditions … there are dozens of conditions going out on dozens of permits. But when I just come to the nitty-gritty of it, yes, it is acknowledged that it has gone wrong basically and, yes, that we could not defend the appeal. I have just simply gone through the notes there, both to the Minister and to the others, that we could not enforce the condition. I mean, that is not to say... you have still got a permit for the skip storage anyway but it was just enforcing that condition, you know, it could not be done.

Mr. R. Huson:
Quite a lot of the permissions that you give, they are all much the same, are they not? They all fall into much the same sort of category? You know, you have got a house being built or you have got an extension being built or you have got a business moving premises, you have got change of use. I mean, is it not … a lot of it is just repetition, is it not? I mean, I would not say there are that many what are called unique ones, are there, in Jersey?

Principal Planner (Appeals), Planning and Environment Department:
Yes, well, it is surprising, it is amazing to an extent, the sort of standard type conditions but the circumstances you would not believe, the variations and what happens. So it is not as simple as that.

Mr. R. Huson:
No?

Principal Planner (Appeals), Planning and Environment Department:
The conditions relate as well to levels of information and additional required details and the particular context and circumstances. So it is not as …

Mr. R. Huson:
Not quite as easy.

Principal Planner (Appeals), Planning and Environment Department:
Yes, box-ticking, as you might think.

Mr. R. Huson:
No. Okay, then.

Principal Planner (Appeals), Planning and Environment Department:

That is one of the problems, it sometimes can go into a semi box-ticking culture with conditions, which did not happen here …

Mr. R. Huson:
No, because I can see this one.

Principal Planner (Appeals), Planning and Environment Department:
… which is equally wrong as well because you have got to think it through, basically, the actual conditions because that is the nub of it, that is the legal permit.

Mr. J. Mills:
Once the appeal had been withdrawn and you had written to the appellant's solicitors and you had been to see Mr. Yates, was that the end of your involvement in the case?

Principal Planner (Appeals), Planning and Environment Department:
Yes. My only involvement after that was the letter from the appellant's solicitor asking for costs … and then I just sent that to the Law Officers.

Mr. J. Mills:
That goes to somebody else, yes.

Principal Planner (Appeals), Planning and Environment Department:
That is me, finished with it.

Mr. J. Mills:
Okay, I think we are finished too.

Principal Planner (Appeals), Planning and Environment Department:
Okay.

Mr. J. Mills:
Thank you very much indeed. Very, very helpful, thank you.

[15:04]