

STATES OF JERSEY

Committee of Inquiry Reg's Skips Limited

FRIDAY, 12th MARCH 2010

Panel:

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

Clerk:

Mr. I. Clarkson (States Greffe)

Witness:

Deputy A.E. Pryke of Trinity (Former Assistant Minister for Planning and Environment)
Mr. P. Le Gresley (Assistant Director, Development Control, Planning and Environment Department)

[13:58]

Assistant Director, Development Control, Planning and Environment Department:

Mr. Mills, I was going to sit on the side. I was not intending to speak because I know you will see me next week. It is entirely up to you.

Mr. J. Mills (Chairman):

You are very welcome to sit there, Mr. Le Gresley, in case Deputy Pryke has a question to ask.

Assistant Director, Development Control, Planning and Environment Department:

Okay. Indeed.

Mr. J. Mills:

Very happy with that. Welcome. Perhaps before we begin, can I just ask you to stand because I just want you to say the oath which I will read out. Do you swear that you will declare the truth, the whole truth and nothing but the truth in the present proceedings 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?

Assistant Director, Development Control, Planning and Environment Department:

I do.

Mr. J. Mills:

Welcome, Deputy Pryke.

Former Assistant Minister for Planning and Environment:

Thank you.

Mr. J. Mills:

And Mr. Le Gresley, who is not on our list but Mr. Le Gresley is a supporting Deputy Pryke who is not

now a Minister in the Planning Department and perhaps might need her memory jogging on one or 2 things. I have got Edward Trevor on my left, Richard Huson on my right. I am John Mills. We constitute the Committee of Inquiry. Thank you very much for coming. Perhaps I will just ask you to confirm first your locus in the case. Our understanding is that you were the Assistant Minister for Planning and the Environment for quite a long period from the beginning of the ministerial system at the end of 2005 until you moved to your present post in, I think, early 2009. Is that correct?

[14:00]

Former Assistant Minister for Planning and Environment:

I moved from my old post end of April 2009, but I was a member when I was first elected back in December 2005 of the Planning Application Panel and I did not become Assistant Minister until the chairman at that time, who was Constable Richard Dupré, retired. I am trying to rack my brains.

Mr. J. Mills:

We have probably got a note of it somewhere.

Former Assistant Minister for Planning and Environment:

Yes, I think it was late summer.

Mr. J. Mills:

Okay. So that was correct; you were not Minister for the whole time?

Former Assistant Minister for Planning and Environment:

Assistant Minister.

Mr. J. Mills:

Assistant Minister. Thank you very much. The next question is simply, this has obviously been an important case but when were you first aware of this as a difficult case within the Planning Department?

Former Assistant Minister for Planning and Environment:

I cannot put an exact time I was aware that it was a difficult case as alongside many other cases, but I was not involved at all until I was asked by the Minister for the request for reconsideration. It was not particularly discussed during that time before I became involved. I was aware of it, and that was about it, really.

Mr. J. Mills:

You became more closely involved because the Minister, Mr. Cohen, decided at a certain point to stand down from consideration of the case because of a conflict of interest?

Former Assistant Minister for Planning and Environment:

That is correct.

Mr. J. Mills:

Can you just describe how that process of transmission happened? Did he explain that to you or did you just get a sort of signal through an email or something like that? Was there a conscious discussion with him about the case and your taking the lead?

Former Assistant Minister for Planning and Environment:

I do not know if there was an email. I cannot remember. I am sure if there was an email, perhaps you would have seen it. I cannot say: "On that date it was there", but suffice to say that conflict of interest

was very high on the Minister's, as on my agenda, as with the Planning Application Panel and, like all of us, we take that very seriously. If we feel there is any conflict of interest, whether it actually is a conflict of interest or whether it is a perception of a conflict of interest, then it is our duty, and it was my duty as well as the Minister's duty, to flag that interest up, whatever that interest, and flag it up not only to the rest of ... not only to the rest of the Panel members but also to the officers too. I felt that very important and I know the Minister felt that was important too.

Mr. J. Mills:

Can we just confirm the date at which Deputy Pryke took over the lead?

Mr. I. Clarkson:

On the papers you have received, Chairman, 21st August 2007 was the date on which there was correspondence between Elizabeth Ashworth, the Planner with Heatherbrae Farm within her area, and Mr. Yates. That correspondence appeared to indicate that the Minister was going to be delegating responsibility to Deputy Pryke after that date, so around about 21st August 2007.

Mr. J. Mills:

Okay, and your understanding is the same as that, is it?

Former Assistant Minister for Planning and Environment:

I have got nothing to say it was contrary to that and there would not be any reason why I should think otherwise, really.

Mr. J. Mills:

No, okay. Just so we are clear, for the record, Ian, I will ask you again. This change was in respect of the planning application P/2007/0195 which was the roofing over application. That is correct, is it?

Assistant Director, Development Control, Planning and Environment Department:

That is correct, yes.

Mr. J. Mills:

Yes, because it is important that we are completely clear about that. At the point when you took over that responsibility from the Minister, can you just describe how you briefed yourself on the case and the extent of understanding you achieved on the case prior to the point where decisions were taken on it?

Former Assistant Minister for Planning and Environment:

I suppose, as with any planning application, whether it is a Panel or the few that I have heard in my own right as Assistant Minister, it is very much the same routine that you get briefed by the officer, you get all the paperwork and, in this case, I got all the paperwork read. I obviously read the paperwork because that is important - made any notes that I needed or made any mental notes that I needed to note, and it was suggested, which I absolutely totally agreed with, I think, at the time, to do a site visit, and a site visit was undertaken. I know it was with Mr. Le Gresley. I cannot think if there was anyone else who accompanied us. We went on the site and also, as I am sure you know, the pack of notes that comes with all the letters, whether they are for the application or objecting to the application. So, having all read both, I felt it was important to see not only the site but also from the objectors' point of view, of which we did.

Mr. J. Mills:

Yes, okay. Presumably also you were made aware by Mr. Le Gresley and his team about the slightly unusual background, in a sense, about the Enforcement Notice which had been imposed on the company and then withdrawn a couple of months later, which would have happened a number of months before

you took on the responsibility.

Former Assistant Minister for Planning and Environment:

Yes. I was aware because of what I mentioned in the notes too, but I was also very much aware that this was a request for reconsideration on the covering of the existing slurry clamp, which was an application by the owner of the site.

Mr. J. Mills:

Okay, thank you. Can I then turn to your speech in the States debate on - correct me if I am wrong - 2nd April 2009 on Senator Shenton's proposition. I have got the Hansard here. In that speech in the States you did not say to the States that you had taken on this involvement and that you had been responsible for determining the request for reconsideration which was in fact a refusal. Was that an overt decision on your part?

Former Assistant Minister for Planning and Environment:

I have no idea. I cannot comment. I do not know, to be perfectly honest. I think it was about the actual debate, if I remember it right. It was about the compensation.

Mr. J. Mills:

It is about the compensation but your speech was concerned with the background as well and it was a matter of surprise to us that you had not declared in the States that you had had this direct involvement. Okay. One of the points you made, and this also stood out from your speech, you said in your speech in 2009 that actions taken by Planning and Environment in relation to Reg's Skips were "wholly appropriate under the law" and yet this was after you had learnt about the Enforcement Notice and so forth. I just want to press you a bit on the extent of your understanding of the case because that was a slightly surprising statement for you to put on the record in the States in the light of what had transpired.

Former Assistant Minister for Planning and Environment:

I mean I would need to see that in context. I did not realise that you were going to go back into that because I would have re-read it.

Mr. J. Mills:

We might ask you to write something down for us, I think.

Former Assistant Minister for Planning and Environment:

Yes, sure.

Mr. J. Mills:

Because I am quite keen to be quite clear about this so perhaps rather than try and do it now we might just ask you to comment on that.

Former Assistant Minister for Planning and Environment:

I mean with this back in 2008, you know, this was an application for the slurry so, yes, I did have the background information there but it was very, very focused on that application.

Mr. J. Mills:

Because you were briefed on the whole background though?

Former Assistant Minister for Planning and Environment:

To the extent that I needed ... yes, with what was in the notes here and that but it was made very clear that this was an application just - not only just, that is very disrespectful - for the slurry to cover over the

slurry clamp.

Mr. J. Mills:

I understand. Edward, do you want to ask a question?

Mr. E. Trevor:

Just on a slightly different tack, just one I think and that is we have discussed the redundant agriculture buildings on the Island and I wonder whether, as Assistant Minister, you had any part in trying to decide what should be done with that type of building?

Former Assistant Minister for Planning and Environment:

With an agricultural shed type of building?

Mr. E. Trevor:

Agricultural sheds.

Former Assistant Minister for Planning and Environment:

Regarding within the Planning Application Panel we had quite a few from time-to-time with agricultural sheds that wished to be changed out of agriculture or even to build new agricultural sheds and it goes by policy with the background or the information and the relevant policies that would form a part of the bundled papers that we would all get at the time. But it is a very difficult policy and each one is taken and looked at with regard to policy at that time.

Mr. E. Trevor:

Yes, I accept that each one is looked at individually but were you involved in designing the policy, is what I am really getting at?

Former Assistant Minister for Planning and Environment:

No, I do not think I was, no.

Mr. E. Trevor:

No, that is fine, thank you. No more, thank you.

Mr. J. Mills:

Can we just look now a little more generally at the Planning Department of which you had, you know, an interesting bird's eye view for a number of years because that is one of our terms of reference. We have heard some interesting and, you know, quite sort of strong evidence from various witnesses about the way the Department operated both internally and the way it faced outwards towards the wider public policy environment. The first question is this, soon after you joined the Committee or the Planning Application Panel, were you aware that in the previous few months there had been a fundamental review of the Planning Department led by a man named Mr. Shepley that had been commissioned by Senator Ozouf?

Former Assistant Minister for Planning and Environment:

Probably.

Mr. J. Mills:

It was not sort of high in your consciousness?

Former Assistant Minister for Planning and Environment:

I think the whole learning process at that time when we first started was an interesting programme, shall

we say, because having just been elected and being asked to go on the Panel at that time, which I readily agreed, it makes you sort of think: “What have I put myself into?” So from my point of view it was a steep learning curve but also important to get up to speed exactly what was expected and how the department worked, how the whole ethos of hearing applications and the importance of it. The other 2 members - I think there were 4 members at that time - I cannot remember if the other members did but I know I certainly had some training and explaining of exactly ... and given the Island Plan of which I thought: “Oh, crumbs” so I had the full training then and kind of learnt from there but in a way that as things cropped up, as different policies became kind of addressed by different policies, it was a case of asking the questions and always having a full and honest response from the officers.

Mr. J. Mills:

Can you just enlarge a little bit on the training or the induction that you received as a new person on the block, so to speak, from the Department?

Former Assistant Minister for Planning and Environment:

I think it was Mr. Le Gresley, one of the officers, who walked through the department, explained what every area did, and then given the Island Plan explained the different policies towards the Island Plan and how things go from when an application is put in to how it goes through the process and also at Planning Application Panels.

Mr. J. Mills:

Perhaps I can turn to you, Mr. Le Gresley, if could. This was at the moment when the Planning Applications Panel was invented. This was a new departure with the change to ministerial government. I mean how did you and your colleagues approach this to ensure that the new panel members and, indeed, the Minister were briefed?

Assistant Director, Development Control, Planning and Environment Department:

We have a standard briefing procedure for any new member whether they join as part of a re-elected committee or a panel or whether they join during a panel lifetime. We have a pack of information which we give them which comes in a lever arch folder including the delegation agreement from the Minister to the department and to the Assistant Minister. The Minister is very clear about which powers he is delegating to which people. We have a code of conduct for States Members which we ask them to agree to.

[14:15]

That does change from time-to-time as issues crop up but there has been a code of conduct in place for many, many years. We run through a list of the Island Plan policies with them to brief them on the generality of the Island Plan. We also brief them on the planning law that is in place. I think when Deputy Pryke joined the Panel we were on the cusp of moving from the 1964 Law to the 2002 Law which came fully into power in, I think it was, 1st July 2006, so Deputy Pryke would have first seen a small period of her office as a Panel member with the 1964 Planning Law and then more recently with the 2002 Planning Law which was brought in, in 2006.

Mr. J. Mills:

I ask both of you this; to what extent where you engaged in a debate among the Members and, indeed, your senior officers about the way in which the Department worked and operated? I say this because quite a substantial report by Mr. Shepley which Senator Ozouf had commissioned was delivered in November 2005 just before you and others came in. It is a very interesting report which raises a lot of issues that you might expect to raise in such a review about how business is done, how the planning process works and how different roles within that ... Did you engage in what I would call a wide-

ranging debate about this within the department?

Assistant Director, Development Control, Planning and Environment Department:

Certainly we did within the department and Peter Thorne was the lead officer on the review and you might wish to ask him in detail when you see him next Friday, but certainly as far as I was concerned the Shepley report contained many recommendations, many of which were incorporated into the 2002 Planning and Building Law which had not yet been brought into force and I think that the Shepley report was probably instrumental in the speedier bringing into force of that law. So we were very aware of the recommendations from Mr. Shepley and were keen to act on them because, of course, every recommendation was a suggested improvement in process.

Mr. J. Mills:

You involved the Panel members and the Minister and Assistant Minister in that process, did you, or did they ensure that they were involved?

Assistant Director, Development Control, Planning and Environment Department:

I do not rightly recall, Mr. Mills, as I was not the lead officer. Perhaps Peter Thorne would help you on that.

Mr. J. Mills:

Was this territory you were engaged in as a Panel member?

Former Assistant Minister for Planning and Environment:

I did read the Shepley report because it just came back to me, so I took it on holiday with me just before Christmas.

Mr. J. Mills:

Very noble of you.

Former Assistant Minister for Planning and Environment:

It was very sad but I think being a new member and not knowing much about planning at all it was a case of learning what there was and it was very important that I felt I did learn. But I think the following year with the Planning Law changing from planning applications to have a wider number and in public and having all hearings in public.

Assistant Director, Development Control, Planning and Environment Department:

That was one of the key things, was it not, the holding of the meetings in public and also the publicity of planning applications which was a key issue at the time? I do recall discussions with the Minister about the publicity of applications and the Minister pushing for further and greater publicity as the 2006 law kicked in, the Minister asking for additional safeguards on things like publicity so I can recall that incident so there must have been a dialogue between politics and the staff.

Mr. J. Mills:

Thank you. I am interested in process here rather than the substance. When we got to - Ian, help me - the date on which the decision was taken on the 0195 planning application ...

Mr. I. Clarkson:

24th April 2008.

Mr. J. Mills:

That is right, 24th April 2008, you, the Assistant Minister having taken over the responsibility for determining this, upheld the decision to refuse the request for reconsideration. This was the roofing over case. Can you just explain to us please the process surrounding your taking of that decision? Were you given papers? Were you in a formal meeting situation? How was that done?

Former Assistant Minister for Planning and Environment:

It was in a formal meeting because by this time all the hearings had been made in public so the notices had gone out and into the paper. I would assume, I cannot remember, but I would have thought so because it was part of the public hearing and a hearing was held in, if I remember rightly, at the Arthur Maurant Room at the Société (Société Jersiaise). It was a formal hearing and it was myself and as it said here in the notes that were there, Mr. Le Gresley, Mrs. Ashworth and the Clerk. As in all public hearings I heard the officer outline the whole application, the slurry and this. We went in, we did not have a slide presentation that time so it must have been the plans that were up so we had all the plans there as well. When I heard the officer give the outline of the application then I would ask if there were any objectors. In this case there was an objector. I think there was only one objector and he is allowed to put forward his case and if there were not any more objectors, I would ask if the applicant had anything to say. I think reading the notes there, there were 2 or 3 of them, Mr. Taylor being the applicant as well as 2 other people. I think Mr. Yates, if I remember rightly, had wanted to come back on a couple of points that Mr. Taylor had made which is very unusual. Mr. Yates felt that he had perhaps more to say and which I allowed him to say and also conversely allowing Mr. Yates to come back a second time, I allowed Mr. Taylor to come back a second time.

Mr. J. Mills:

So you felt that that was what I would call proper process?

Former Assistant Minister for Planning and Environment:

Yes.

Mr. J. Mills:

Because we heard some evidence earlier in a previous hearing about what one might say was a lack of proper process in other aspects of this case, not that particular one but I am glad to hear you say that. That was one of the changes I suppose that came with this move to public...

Assistant Director, Development Control, Planning and Environment Department:

Precisely so, Mr. Mills, yes.

Mr. J. Mills:

I get the point. I get the point.

Former Assistant Minister for Planning and Environment:

Can I say this point, having my first kind of ... until the Planning Panel came in public, having worked with ... being a member in a meeting which is held behind closed doors for want of a better word, where we had all the information and the sites or whatever, it was far more difficult I think to make ... not more difficult but you did not get a true feeling from the objector's point of view. You had all the relevant information from objectors as well as everything else in the information but having now applications made in public is 100 per cent better. It is chalk and cheese really; much more open, much more accountable and I think having done both it is a definite improvement.

Mr. J. Mills:

That is very good to hear. That is very helpful, thank you. I think you have answered our question. That is what we wanted to hear from you. I think if I may I will ask Ian Clarkson just to drop you a line

with a copy of what you said to the States because I am quite keen to be sure that you are ... I would just like to know what your thinking was in relation to one or 2 of the points you say.

Former Assistant Minister for Planning and Environment:

I need to read it in context. I have not ...

Mr. J. Mills:

I absolutely appreciate that. We should probably have raised it beforehand but it does not matter. They are just points that I want to be quite clear about for the fullness of our report. So that is all, thank you very much.

Former Assistant Minister for Planning and Environment:

Thank you.

[14:24]