

STATES OF JERSEY



COMMITTEE OF INQUIRY: CONSTRUCTION OF 76 HOUSES AT JAMBART LANE, ST. CLEMENT; AND PUBLIC CONSULTATION PROCEDURES (P.33/2004) – COMMENTS

**Presented to the States on 11th May 2004
by the Environment and Public Services Committee**

STATES GREFFE

COMMENTS

Introduction

1. It is fortuitous that a projet of this nature is referred to a largely new Environment and Public Services Committee which is able to take a fresh and dispassionate view of the circumstances surrounding the decision of its predecessor Committee to grant permission, subject to the prior agreement of a planning obligation, to construct 76 houses on Fields 203, part of 204 and 252, Jambart Lane, St. Clement.
2. The Committee, having reviewed the decision and the background to it, wishes to comment on the projet in the terms set out below. Before doing so, it is appropriate to state that to the best knowledge of the Committee and the Planning Department, Deputy Le Hérissier has only recently requested the opportunity to review the Departmental file and at the time of writing his report and proposition had not sought to establish the true facts of this case. Indeed, it is clear from the contents of his projet that he does not know them and relies on hearsay.
3. On 12th February 2004, the former President, Deputy Dubras, wrote to all States Members informing them of the Committee's decision and the reasons for it. Having reviewed all the circumstances and relevant information about the application, the current Committee can only conclude that the decision to grant permission was entirely reasonable. Indeed, had the Committee refused the application or granted permission subject to a condition limiting the numbers to 45 dwellings, we believe that the Committee could not have successfully defended such a decision in the Royal Court.
4. First, it is necessary to correct the misleading information and fill the gaps in the chronology prepared by Deputy Le Hérissier.
5. The Consultation Draft of the Island Plan was published in July 2001. It is true that it indicated a yield of 45 houses for this site. That was an error of measurement of the area of the site by the Committee's consultants, W.S. Atkins, which was subsequently corrected to 75 houses in the Draft Plan published in April 2002 and adopted by the States, unanimously, in July 2002. It is accepted that the mistake caused confusion at the time, although the boundaries of the site remained the same throughout the Island Plan process.
6. Following consultations in the Parish of St. Clement in July 2001, which included a day-long exhibition of the Island Plan proposals followed by a "lively" meeting in the Parish Hall, written representations were invited. There was considerable concern that the Parish was expected to accommodate a disproportionately high number of Category A housing sites compared with other Parishes. There were of course, specific representations about individual sites, including that of Jambart Lane. However, there is no evidence that opposition to the scheme was "unanimous".
7. The representations on the consultation Draft Plan were reviewed independently by Professor Patrick McAuslan, a planning academic and barrister. He reported on the representations in September 2001 and concluded that it was inequitable that the Parish of St. Clement (and St. Lawrence and St. Saviour) had disproportionate number of the proposed Category A sites. He suggested that the Planning and Environment Committee should adopt a more equitable geographic distribution of sites and undertake assessments in these Parishes to evaluate the cumulative impact of a number of sites being developed. He did not comment on the yield of the Jambart Lane site.
8. The Committee published Professor McAuslan's report in November 2001 together with its response to all his recommendations. There was significant public interest in the findings.
9. As a result of the Parish assessments for St. Clement the Committee deleted one of the proposed sites and downgraded others which had been put forward as prospective sites for Category A housing subject to further consultation (eventually Policy H3 sites in the adopted Island Plan) to a category which safeguarded them in the eventuality that housing needs would increase beyond those that had been identified (Policy H4).

10. The Committee lodged the amended draft Island Plan on 30th April 2002 (P.69/2002). The area and the yield for the Jambart Lane site were corrected to 5.3 acres* and 75 homes respectively (*subsequent detailed surveys of the site have corrected the area to 6.3 acres, although the yield has not altered).
11. On 11th June 2002, Deputy G. Baudains of St. Clement lodged an amendment to the Plan which, if successful, would have had the effect of deleting all three of the sites in St. Clement proposed for Category A housing. Votes for the amendment were taken on each individual site, and that for Jambart Lane was defeated by 26 votes to 19. **The site was subsequently designated for Category A housing on 11th July 2002, in the knowledge that the indicated yield was 75 homes.**
12. In accordance with Policy H2 of the Island Plan, the Committee produced a draft Development Brief for public consultation in July 2003. Also exhibited at an exhibition were drawings submitted by the prospective developer's architect showing his interpretation of the Brief. As Deputy Le Hérisser states in his report, the consultation generated many critical comments – addressing both the principle and details of the development. There were, however, favourable comments made as well.
13. On 13th July 2003 the Environment and Public Services Committee agreed modifications to the Brief arising from matters raised during the consultation process. The Committee decided to invite an application on the basis of the modified Brief.
14. **On 24th September 2003, the developers submitted an application for 79 homes on the site, in accordance with the Island Plan designation and, broadly, in accordance with the modified Brief.** The Parish of St. Clement were consulted on the application, and a delegation attended a meeting of the Planning Sub-Committee on 22nd October. The comments made were indeed “taken on board” by the Sub-Committee members and issues arising were taken up as a result of that delegation. In addition, officers of the Planning and Public Services Departments attended a public meeting in St. Clement on 7th October 2003 about the development, and a further meeting took place between the Planning Department and the Parish Roads Committee on 17th November to discuss matters relating to traffic and pedestrian safety.
15. Deputy Baudains lodged his proposition on 4th November 2003 because, it is claimed, that neither the President or the Sub-Committee were able to give the assurances that Deputy Baudains sought”. The President or Vice-President of the former Committee responded to each of his requests. He was advised, in a hand-delivered letter on the morning of 4 November, that this was likely to be at the end of the month, and that he and the constable were invited to attend the meeting to make a representation. In the event, Deputy Baudains lodged his proposition anyway, and the application was held in abeyance pending the debate.
16. The only certainty about the States debate on 27th January 2004 is that the States supported Deputy Baudains' proposition by 28 votes to 13. Very few of the speakers in that debate addressed specifically the planning issues of the Jambart Lane development. Additionally, and significantly, there was no substantiation of the claims made by the Deputy that –
 - the density at 62 habitable rooms per acre is more appropriate in town – *it is slightly less than the norm for estate developments on the edge of the built-up areas. Densities in central St. Helier are substantially greater.*
 - there are problems with the local drainage systems – *the Public services engineers have advised that the foul and surface water sewers have the capacity to deal with the expected flows from the development.*
 - there is insufficient capacity in the schools – *The Education, Sports and Culture Department advised that there is sufficient capacity.*

- there is inadequate car-parking for residents – *the car parking provision exceeds the Committee’s requirements.*
- the development will reduce parking for the Parish Church and Caldwell Hall – *the four or five spaces lost are to be replaced on the new development.*
- there are inadequate facilities for school-children – *the development provides over half an acre of playspace and a safe pedestrian route will be created along Jambart Lane (following the Westhill model).*

17. **As the application had been held in abeyance for two months pending the debate, the Committee called a special meeting on 11th February 2004 to consider the application.** It was not an “emergency” meeting as Deputy Le Hérisier claims. It is the Committee’s duty to deal with applications on a timely basis, and with the States having by then debated the matter, there was no cause for further delay. The fact that the Committee faced a vote of confidence is irrelevant, and any new Committee which might have replaced it would be bound by the same duties and obligations under the Law.

18. The Constable and Deputy Baudains were advised by e-mail on the Thursday of the decision, out of courtesy. All members would have received the President’s letter on 13th February. Deputy Le Hérisier gives several reasons for their surprise at the decision –

- (a) the States decision – *which was taken into account by the Committee as a consideration in its decision.*
- (b) the Sub-Committee’s concerns – *which had been overcome or resolved.*
- (c) the vote of confidence – *which is irrelevant.*
- (d) that the application contravened Island Plan policies – *which is patently untrue. It is absurd to suggest it is so.*

The permission is for exactly what the Island Plan prescribes for the site. Issues of parking, safety and infrastructure had been addressed to the satisfaction of the Committee. There is no technical evidence that the infrastructure cannot accommodate this development.

- (e) suggestions that officers advised the Committee that it would leave the Committee open to millions of pounds in compensation – *this is totally untrue.*

The advice given to the Committee by the officers was that it would find it extremely difficult to defend a decision in the Royal Court to refuse or limit the development to 45 homes. If it did lose the case then it is likely that the appellant’s costs in bringing the action would have been awarded against the Committee. The Committee did not take legal advice on this specific application, but has received advice on a number of other cases which are relevant.

19. **The Committee had all the relevant facts before it when it made its decision.** Why would the decision be made under duress? What grounds does Deputy Le Hérisier have for this possibly being the case?

20. There is no evidence to suggest that the officers gave inaccurate advice or that the Committee was placed under any obligation by that advice. It is reprehensible of the Deputy to suggest this might be so in the absence of evidence and of research on his part. He was not at the meeting. No pressure was placed on the Committee by any of the parties, nor indeed were any of the parties themselves pressurised.

21. The Committee’s “hands (are not) tied”, as Deputy Le Hérisier puts it, by the Island Plan, but neither can the Committee ignore its legal responsibilities, the relevance of Island Plan, or that the States adopted it unanimously. The States’ strategic policies and the Island Plan seek to ensure that sufficient land is

available to meet all the Island's housing needs. A large component of that need is for affordable housing (Category A)– either for first-time buyers or for social rental. The land designated in the Island Plan is intended to be used for this specific purpose, and the Committee has a responsibility to ensure that the supply of land is sufficient to meet the needs. If one site, for example, does not yield its potential as indicated in the Plan, then it is axiomatic that the shortfall will have to be met elsewhere. If all the sites fail to deliver their full potential, then the Committee will have no option but to bring another raft of sites to the States for designation.

22. There is no evidence to suggest that the demand for Category A homes has changed. While there has been much activity in the private sector-driven Category B housing market in the last 2 or 3 years, it will have done little to satisfy first-time buyer needs and nothing for social rental. If there has been a windfall effect on the first-time buyer market, it will have been for one and two-bedroom flats – not two, three and four-bedroom family homes. Preliminary assessments on the supply of Category A housing suggests that the Committee will need to realise the anticipated needs off the designated sites and bring forward additional sites in line with Policy H3 of the Island Plan.
23. The comments made by the Deputy in his penultimate paragraph are unfortunate. The suggestion that the officers are not “sufficiently detached to give the Committee an impartial recommendation” is serious and impugns the integrity of individual officers, the Department and the former Committee. They are completely unfounded and no evidence is proffered to support them.
24. As there is absolutely no evidence to support the assertion, the Deputy should be invited to withdraw it, whether or not he proceeds with his proposition, particularly as he has only very recently sought to obtain information, and did not attend the Committee meeting. The officers have not been “working with” a developer for some time. Certainly there have been pre-application discussions with the developer's architect and further discussions once the application was made, particularly in regard of the points raised by residents and the Parish of St. Clement. There is nothing untoward in this– it is how the Department, and from time to time the Committee, deal with most applications. At all times, officers make it clear that any advice given does not prejudice the Committee's right and duty to make the decision.

Conclusions

25. The Committee's conclusions, having reviewed the case, are as follows –
 - The States designated the site for Category A housing, on the basis of an indicative yield of 75 homes, on 11th July 2002.
 - The Committee approved a Development Brief for the site, following public consultation, on 13th July 2003.
 - The developer submitted an application for 79 homes on 24th September 2003, which fell to be considered against the planning policy guidelines in force at that time. For the most part the application was in accordance with the Brief.
 - While taking notice of the States decision on 27th January 2004, the case made by Deputy Baudains was not proven.
 - The legal authority for making decisions on applications rests with the Committee and not the States.
 - Legal opinion, backed by case-law, is that the Committee should not substitute the States decision for its own.

- The former Environment and Public Services Committee made the correct decision on the application.
 - Had it refused the application, or restricted the yield to 45 homes by a conditional permission, the applicant had advised that it would have appealed to the Royal Court under Article 21 of the Island Planning (Jersey) Law 1964. Taking all material matters into account and based on legal advice received in other similar situations, the Committee considers that the Royal Court would have decided that the decision was unreasonable and would have granted permission.
 - Arrangements for consultation on the development of the site were extensive, and included separate consultation periods on the Consultation Draft of the Island Plan, on the Draft Development Brief and on the Application. The Committee was under no illusions about the feelings of local residents against the development
26. Finally, the new Environment and Public Services Committee is confident that a Committee of Inquiry into the Jambart Lane decision (and any “other cases dealt with by Deputy Baudains in the past”) would totally vindicate the actions and advice of officers and the decision of former Committee. However, the Committee is unanimous in considering that there is no justification for a Committee of Inquiry. Not only would it be a unnecessary use of public funds at this time, but the facts and issues are well documented in this and other reports on the matter.