FIELD 126, LA GRANDE ROUTE DE LA CÔTE, ST. CLEMENT: CONSTRUCTION OF HOMES (P.98/2002) - REPORT

Presented to the States on 1st October 2002
by the Planning and Environment Committee

STATES OF JERSEY

STATES GREFFE

150 2002 P.98 Rpt.

Price code: B

REPORT

Introduction

The States of Jersey, by virtue of the Island Planning (Jersey) Law 1964, as amended, has delegated the statutory responsibility for making land use decisions on applications to the Planning and Environment Committee. While the States Assembly has the ability to amend the Law under which the Committee operates, it is unable to alter a decision of the Committee made under Article 6 of that Law. It is the Committee alone that has the responsibility to consider the application, having regard to any material considerations which includes, among other things, the designation of the site on the approved development plan, detailed planning considerations and any representations made on the application.

In this case, however, the application was not one made under Article 6 of the Law. It was a non-statutory application to test the principle of development on the site. While the process of consultation and determination is the same as for an application made under Article 6, there is no right of appeal to the Royal Court. Were the Committee to accede to a request of the States to reconsider the decision it has made (implicitly with a view to cancelling that decision and refusing development on the site), it is a fairly simple process for the applicant to submit a development application under Article 6, the refusal of which would entitle him to appeal to the Royal Court. The Royal Court would have regard to the earlier non-statutory decision to grant permission in its considerations.

While it is open to the Committee under Article 7 of the Law to revoke (or modify) a permission it has already granted, that Article carries with it a statutory right of appeal to the Royal Court under Article 21 of the Island Planning (Jersey) Law 1964. Were the Committee to reconsider and decide to revoke the permission as a result of a States decision requesting it to do so, the applicant has indicated he is likely to exercise his right of appeal to the Royal Court. In these circumstances, the Committee would need to be able to defend its decision to revoke the permission on the basis of a change in the material considerations since it granted permission. It is doubtful as to how much weight a States decision to support Senator Lakeman's proposition would carry in the Royal Court - particularly if the debate strayed from purely planning factors (i.e. Le Maistre -v- Planning and Environment (2002)). Rarely, if ever, do "after the event" debates about planning decisions lead to satisfactory outcomes. The test in the Royal Court would be one of reasonableness - having granted permission in November 2001 was it reasonable for the Committee to revoke that decision in 2002?

This particular case, of course, is further complicated, as the Committee originally refused the application, and permission was only granted after representations from the applicant to reconsider the application. So the Committee would have to justify first, why it had refused permission; second, why it had then granted permission; and then, third, why it had subsequently revoked the permission.

The Committee has already considered the representations made by Senator Lakeman when he attended the Committee on 22nd November 2001 as part of a delegation comprising the (then) Connétable of St. Clement, Deputy Gerard Baudains and a neighbour. It decided that, despite the representations, no new factors were put forward that hadn't previously been taken into account when the application had been granted permission (the neighbours and parish representatives having consistently opposed the application). The Senator's projet (P.98/2002) similarly contains no new material planning factors, which cause the Committee to alter its view that the decision to grant permission was correct.

Detailed points in the Senator's projet *(projet references)*

6.1 The Senator claims that there is no basis in fact or law why the Committee should have changed its decision to refuse permission at its meeting on 8th November 2001. That of course is his opinion, although he does not support it in his projet. The Committee, however, believes it was entitled to reconsider its decision. The significant factors in reversing its decision were the "encouragement" given by the Department to the developer, and the designation on the Island map 1/87. Consequently, it considered that on balance that it would be difficult to sustain a refusal were the matter to end up in the Royal Court. If the Committee was at fault in any way, then it was in refusing permission too hastily in October 2001 and not giving sufficient attention to the Solicitor General's advice and the assumptions and qualifications contained in it.

6.3 The Senator refers to "The Island Plan error". While the discrepancy between the drawings in the draft Island Plan and the States' approved Island Map is most likely a draftsman's error, we cannot be sure of it. The developer, the Committee and the officers were entitled to rely on the designation of F.126 on the map approved by the States in November 1987, and would have done so rather than rely on drawings contained in the "Island Plan - Volume 2- Plan and Policies". This was a consultation document published in July 1986, the content of which was later modified by IDC projet 126/87.

6.3(a) F.126 would not have been designated as Green Zone - it fails to fulfil the criteria for designation in Policy C1 of

the 1987 Plan. If it had not been designated as Built-up Area then it would likely have been Agricultural Priority Zone.