

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:

Senator B.E. Shenton

[15:37]

Mr. J. Mills (Chairman):

Welcome, Senator Shenton. Can I just ask you to raise your hand while I make the oath. 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, that you will do so without favour, hatred or partiality as will answer to Almighty God at your peril?

Senator B.E. Shenton:

I do.

Mr. J. Mills:

Thank you very much. Thank you, Senator Shenton, for coming to our hearing. Just so you know who we are. I am John Mills, chairing the Committee of Inquiry. This is Mr. Edward Trevor and Mr. Richard Huson and we comprise the panel. This is a public hearing and you know the form, I expect. You are also a key player in this because it was you who brought the proposition to the States not quite a year ago but it is getting on for that now ...

Senator B.E. Shenton:

Well it seems like a long time ago.

Mr. J. Mills:

Yes ... about the whole issue of the case which led to the setting up of a Committee of Inquiry. Of course, we have both your introductory speech in the States and your winding-up speech in the States which set out quite a lot of your views and thoughts and those are on the record. I think what we really want to ask you is if you could describe your involvement in getting alongside Mr. and Mrs. Pinel in their dealings with the Planning Department when you first became involved in this, and also with other relevant parties and then the thoughts that really arise from that. I think we have one or 2 questions we

want to ask you about that which, to some extent, will reflect what you have already said in the States and perhaps elsewhere. I think the other angle that we are interested in, and this is part of our terms of reference too, is what I might call the planning process: what went right here, what did not go right, in your views, and the observations you have about that which can help us to pull our threads together. So, it is really over to you just to describe how you got into this and your broad thoughts on it.

Senator B.E. Shenton:

Yes. I cannot remember whether it was the end of 2007 or the beginning of 2008, I was contacted by Reg and Rita Pinel about a problem they were having with Planning to do with the skip operation. I arranged to go up there and it was on the Saturday, 5th January 2008, I met them up at Heatherbrae in the morning just so that they could run through what exactly the problems were.

Mr. J. Mills:

Were you acquainted with them before that?

Senator B.E. Shenton:

No, although they did know my father. My father has helped them out in his political capacity. They had had contact with a number of previous politicians before asking me to help out. I could not tell you why they decided to contact me but they did. I went up there and I met them and they explained the whole situation. At this point they were looking to appeal against a court decision that had been made against them by the neighbour under the law of *voisinage*. Now obviously at that point I had never heard of the law *voisinage* but I think if ever I was going to sit on Mastermind I would probably use it as my specialist subject now. So I met them at Heatherbrae; they ran through what the problems were and so on and so forth. What you do as a politician is you listen to whatever complaint a member of the public has and then you go away and try and ascertain whether that is the whole story because, unfortunately, occasionally people will contact you and only give you one side of the story and they will leave out very, very important facts and then when you find that out, you find that there is quite a different angle on it. I was Minister for Health and Social Services at the time, so I went away and looked up to see what the law *voisinage* was and had some general discussions with Health Protection about the relationship with Planning, which by all accounts was not very good. The crux of the matter was at that point that they were looking to appeal the decision. That very much hinged, the decision on whether to appeal, because their lawyers had told them that they had a very good chance of winning their appeal but they still wanted to operate out of Heatherbrae obviously. So there was a requirement to make sure that the landowner would be able to make the premises soundproofed to an extent that they could continue to operate and this would be the roofing-over of the area, I think it is the slurry area, at Heatherbrae. Because this was important, I then telephoned the Minister for Planning and Environment who phoned me back and said that they would be given permission to roof-over and from that conversation and the fact that the lawyers had said they had a very good chance of winning, Reg and Rita Pinel went ahead with the appeal process. When I was reviewing the whole case there were 2 aspects that were of particular concern to me. I have concerns about the appeal processes in general as a politician. It seems to me in a lot of cases, and this is a general observation, that a lot of the appeal processes within the States of Jersey are just cul-de-sacs where people are just sent off to make their representations if they have been hard done by and very rarely do they ever get what I would call true justice. The second part of it was the *voisinage* law which is an old customary law. The Law Commissioners, through another proposition I brought to the States, have been asked to do a review of customary law because this was a very subjective law; I took some definitions of *voisinage* from Crill Canavan's website and presented them to the Attorney General that this is what it says and he disagreed almost totally with the interpretation.

[15:45]

There is the old saying that you can ask 10 lawyers for advice and get 10 different answers. Because *voisinage*, according to most interpretations, was a law between landowners, here I was representing a tenant and not a landowner who had been sued in an action that was meant to be between landowners. It is landowners of adjacent properties and I could not even see that they were renting premises that were adjacent as such. So as a politician there were 2 angles that I needed to cover: one was the fact that I felt Reg and Rita Pinel had been hard done by and the other was the law of *voisinage* so that no one else falls into the trap. There have been previous cases where ancient laws have been used to the detriment of members of the public and there was one particular case regarding a Mr. Barker which is where eventually everything was quashed on appeal but it is quite a mucky case if you ever look at it. I cannot exactly remember the turn of events but one thing that I became fairly certain of in my own mind was that the reason that the Pinels were at Heatherbrae was because they were approached by Planning to go to Heatherbrae. I honestly do not think they would have ever ended up there if there had not been an approach from Planning. I also believe that when the problems started arising with the neighbour, Planning were more interested in covering their tracks than they were in making sure that a fair and equitable solution to Reg and Rita Pinel was possible. I think, and this is a political statement, too often in Jersey we use the power of government just to tread on what some people might mischievously call the "little people" and those are the people, at the end of the day, that really should be represented. I think most politicians would have probably done a written formal request to Planning or have even asked for a judicial review of the decision or this, that and the other but if you go back to earlier in my conversation when I said that I think most of the processes are cul-de-sacs, I decided that something a little bit more forthright was required. With the help of the States Greffe there were cases in the past where propositions were taken to the House of people who had felt aggrieved and there was one particular case where there was money paid out which is quoted in the proposition. Although it is a rather unusual angle to take, I honestly felt that this was the only way to get recompense for Mr. and Mrs. Pinel. What I was looking for was not to get any more than a repayment of the financial impact that they had suffered from Planning asking them to move to Heatherbrae. I do not really want to go into great detail about some of the aspects that Planning used to try and diminish my proposition and I certainly do not want to go into what I think of some of the people I encountered, but I think that Mr. and Mrs. Pinel have been treated exceedingly badly. I think Mr. Taylor has been treated extremely badly as well to his financial loss, and I am obviously glad that you are looking into it.

Mr. J. Mills:

Thank you very much for that. It is good to have that on the record. That is not too dissimilar from what you said in the States but it is very helpful to have it on our own record. Edward, what did you want to ...?

Mr. E. Trevor:

Thank you. You referred to a cul-de-sac for appeals, effectively.

Senator B.E. Shenton:

There is an old saying that the process is a cul-de-sac where appeals are taken and quietly strangled.

Mr. E. Trevor:

My question in fact is in the U.K. (United Kingdom) there is a Planning Inspectorate which looks at appeals and I wondered whether you thought that there should be some such system here because, as you will be aware from our terms of reference, we are not only looking at whether there was fault or otherwise in Planning, but whether we should make recommendations to how things should be changed should we feel they need to be changed.

Senator B.E. Shenton:

Yes. There should certainly be an independent appeals panel and there should also be a method of

appealing where it is not cost-prohibitive. My understanding is that to mount an appeal these days costs about £400-and-something to appeal against a decision.

Mr. J. Mills:

Here in Jersey?

Senator B.E. Shenton:

In Jersey, yes.

Mr. J. Mills:

We will check that; we do not know that but we will check that.

Senator B.E. Shenton:

If you just want to appeal about where your satellite dish has been positioned or a small bathroom window that is worth about £120, you are not going to spend £400-odd undertaking the appeal, so there is no justice from that point of view. There is also the aspect of third party appeals which I do not know whether your remit covers but certainly I have 2 cases at the moment that I am dealing with where the third parties have won their appeal. When they went to the Royal Court, the Royal Court was very critical of Planning, and Planning are now - not refusing - in negotiation with regard to the costs that they had incurred. In one of these cases they won the third party appeal; the costs they incurred were in the region of £45,000. Planning have offered so far just over £20,000. Now, if you take a third party appeal out in Jersey and your costs are £45,000, if you lose that third party appeal one assumes that you may also have to pay the Planning costs as well. So you are looking at significant sums of money to take out a third party appeal. The fact that even if you win the appeal you still then have to struggle to get the money off Planning is totally unacceptable in my eyes and this is another case that ...

Mr. J. Mills:

The States did not make provision for financial apportionment?

Senator B.E. Shenton:

No, they did not. No. But I think as with anything there is a question of honour. I am a stockbroker by profession and in the old days we did not have all this compliance and now we seem to have loads of compliance. We also seem to have scandals left, right and centre but if you go way back we did not have any compliance but it was a case of "my word is my bond" and I think that has been lost in this modern age.

Mr. E. Trevor:

So in the U.K. with the Planning Inspectorate there are rarely costs awarded unless it is a vexatious appeal or there has been a complete mess by the planning authority.

Senator B.E. Shenton:

Well the third party appeal here you have to go to the Royal Court. Now anything that goes to the Royal Court is expensive. There are no alternatives so, unfortunately, that is your only avenue.

Mr. J. Mills:

You refer to something like an independent appeals panel to deal with the more common or garden appeals of the kind which happen all the time in the U.K., would you envision just a panel made up of local people who are not associated with the Planning Department directly?

Senator B.E. Shenton:

Well, yes, but they would need to have knowledge of the planning laws, obviously, because the large

part of the appeal would have to be on planning grounds; not on subjective grounds of whether you like this or like that.

Mr. J. Mills:

In the U.K. the inspectorate is seen as the expert body.

Senator B.E. Shenton:

Yes, yes. It would have to be an expert body. So you could not have just general lay people sitting on it. As I said before, any appeal would have to be purely on planning grounds and I think this is where Planning fails a lot over here because there is an element of subjectivity coming into it, especially with the Planning Applications Panel and the Minister himself who tends to put his own views on applications as opposed to looking primarily at planning merits and whether it is within the planning law.

Mr. E. Trevor:

With some planning applications it could go either way depending on your point of view because they are neither black or white; very often it is grey.

Senator B.E. Shenton:

Yes. You have to look; does it fit the criteria of the planning laws: yes or no? You might decide: "I do not like the railings; I do not like the windows" or this, that and the other but, again, that is a subjective view. I do not think any architect ever deliberately set out to do a bad set of drawings, so I think there is a little bit too much over here of a subjective nature with regard to the planning process due to the fact that the Planning Application Panel has no experts within it and obviously the Minister for Planning and Environment is no expert either.

Mr. J. Mills:

Just to be clear here, when you refer to the planning laws, you are including here the guidance of the Island Plan essentially; the policies that are set out within that are, of course, the key building blocks on which the law is administered?

Senator B.E. Shenton:

Yes. Now, obviously I am not an expert on the Island Plan. In fact, I have only looked at, or read it, once. What it did strike to me though is a lot of the guidance within the Island Plan, the way it has been written, is very much subject to interpretation which gives a very wide remit for the planning officers to interpret it how they so wish. So I think certainly there needs to be a timing of the actual remit that we give out because at the moment it is too wide and too open to interpret it.

Mr. J. Mills:

The States will have that opportunity again in a short-ish while, will they not, to deal with the new plan?

Senator B.E. Shenton:

We will do, yes.

Mr. J. Mills:

We will not go there but you and others are obviously very alert to that. Edward?

Mr. E. Trevor:

Yes, changing the subject, you commented on *voisinage* and you said that it was between 2 landowners and in this case it was a landowner and a tenant and that it should not be in place. But is not the law of *voisinage* very similar to the law of nuisance in the U.K. and therefore probably does have some

standing?

Senator B.E. Shenton:

It is similar to the law of nuisance in the U.K. but it is not the same as. It is specifically the law between 2 neighbours. All previous cases have been between 2 owners of land and by some interpretations the land has to abut each other, so if there was a road in between them you would not be neighbours under the law of *voisinage*. The legal opinion ... what I can never quite work out is ... what actually happened was the neighbour originally sued, from memory, the Planning Department.

Mr. J. Mills:

Sought judicial review?

Senator B.E. Shenton:

Yes. The Bailiff who was in the chair said: "Well, the law of *voisinage* is probably a better solution to your problems." Therefore the neighbour ended up suing Reg's Skips under the law of *voisinage*. My perception was always that he should have sued the landowner. I would hate to burden the landowner with that but I think he should have sued the landowner rather than the tenant. It was never really explained even in the judgments why this interpretation had been put on to the law and to this day I have absolutely no knowledge of why but hopefully this will be a *voisinage* that has been undertaken, it might sort of enlighten me.

Mr. E. Trevor:

We have heard your Mastermind explanation, thank you. Regardless of whether it is *voisinage* or whatever, should there not in fact be some law covering nuisance? Should there be one?

[16:00]

Senator B.E. Shenton:

Well, there is. There is a Statutory Nuisance Law which is administered by Health Protection and it is very much based on the U.K. (United Kingdom) Statutory Nuisance Law which takes into account the modern day life that we lead and the fact that certain areas will be noisier than other areas and so on and so forth. This Statutory Nuisance Law is a fairly new law to Jersey. It was heavily consulted upon before it came in. It is operated by the Health Protection Unit and they would take a real and commercial view towards any nuisances and they do have the power to close down businesses or take whatever action is necessary should a statutory nuisance occur. It is a law that is commonly used for nuisances of any matter and I think the difference between the law of *voisinage* and the Statutory Nuisance Law is with *voisinage* you can bring an action yourself. With the Statutory Nuisance Law you are very much reliant on the Health Protection Unit deeming it to be of such a nuisance that they will take legal action or serve an enforcement notice.

Mr. R. Huson:

You touched on this thing about appeals and it cost, you said, £400-something to launch an appeal. But the trouble is, if you make it no cost at all then anyone who has a disagreement with Planning is just going to launch an appeal, are they not, and the whole process is going to get bogged down. Every refusal they can just appeal, surely. You need some sort of a barrier to make it worth ... weed out the chaff, sort of thing?

Senator B.E. Shenton:

You do, but then one would assume that if I am Dandara appealing against the building of a massive block of flats there could be some way that the charges for that appeal are slightly different to me saying

I am not happy about where my Sky dish went or something like that.

Mr. R. Huson:

But like the scale of charges when you put in plans for the size of your property, it is scaled. It may be something like that, I do not know.

Senator B.E. Shenton:

That would probably work but at the moment for very small appeals there is a barrier to make an appeal.

Mr. J. Mills:

Just on the process here; have you found, not necessarily for this case, that you as a senior politician are able to make representations to the Minister or the Assistant Minister or to senior officers of the department? Do you find that they treat you properly if you do that?

Mr. R. Huson:

Carefully choose your words.

Senator B.E. Shenton:

What I will do is I will just recount some advice that my father gave me before I went into politics, and so this is not referring to any particular department. He said: "What people say to your face is not necessarily what they say behind your back." In my experience as a politician that is a very true piece of advice.

Mr. J. Mills:

Switching subjects very slightly. You said in your opening remarks, you mentioned because you were the Minister for Health for some of this period and you touched on the Health Protection Unit. By all accounts you said its relations with the Planning Department were "not very good", those were the words you used. We have had some evidence from the Health Protection Unit team and the Planning side of that, how they do their business together and one or 2 interesting issues cropped up. When you were a Minister with this particular responsibility, among others, was this in your consciousness as something that was in need of repairing and did you set about making any repairs?

Senator B.E. Shenton:

Well, I did not actually know there was a problem there until I started asking the questions, which obviously is not very good because ... What I got back was that relationships were better but certainly, at the time of the Reg's Skips application, the original application to move to Heatherbrae, I think the phrase "not talking to each other" was used. I am not quite sure why the fallout was. I am not sure whether Planning objected to having to run every application past the Health Protection Unit or whether they were fed up with the Health Protection Unit's advice. I could surmise but it would be very difficult to...

Mr. J. Mills:

We have had some quite interesting evidence on that. I think we will ...

Senator B.E. Shenton:

The relationships were not good at that time.

Mr. J. Mills:

We will want to touch on that I think in our report because it is quite an important point. It applies also to other consultees of the Planning Department when planning applications come in. When you were the Minister there was not anything sort of jumping off the agenda?

Senator B.E. Shenton:

No, there was not, no. This is very much done as a private Member of the States of Jersey as opposed to the Minister and the propositions were lodged as such.

Mr. J. Mills:

I understand that.

Mr. R. Huson:

We have heard quite a lot about the waste management strategy of the States they have adopted.

Senator B.E. Shenton:

Have they got one, have they?

Mr. R. Huson:

Well, that is an interesting response.

Mr. J. Mills:

Perry Mason would say: "Strike it from the record."

Mr. R. Huson:

And the lack of joined up thinking about what the whole process from what you decide in the Chamber down to people like Reg's Skips, how they are going to implement this. Do you feel that the decision by the States to adopt this recycling and waste management policy has impacted on this case with Reg's Skips? That their policy sort of forced them into moving from just having skips to sorting skips because the cost became prohibitive to dump and things like this?

Senator B.E. Shenton:

I think the sorting of loads is not anything to do necessarily with Jersey's strategy. I think globally we are becoming more conservationally minded and less prone to dumping everything.

Mr. R. Huson:

Recycling is a wonderful idea but of course then you have got to have, where do we do it? How do we do it? Do we give permission to people like Reg's Skips to do this and I think as a panel we feel that perhaps the States have not quite thought it through to the end of the process.

Senator B.E. Shenton:

What happened was I got involved prior to Reg's Skips with another skip operator, Graham Pallot. Graham had contacted me because ...

Mr. R. Huson:

Is that Graham from Fountain Lane.

Senator B.E. Shenton:

Yes, down at St. Saviour's. What had happened there is he was doing the bin collections for the Parish and he was operating out of an area and one of the neighbours had complained about the noise that his operation was generating. I got involved with him to try and work out a solution because Planning were starting to get involved and trying to limit the use of the outside area for skip sorting and so on and so forth. The business was long established and the person who had complained had just moved into the area. He had an operation up at St. Ouen, or had an area up in St. Ouen which he could have used instead of the other area but Planning were not too keen on that being used either because of the

proximity to St. Ouen's Manor. At the end of the day what we decided to do was just play hardball with Planning and just sort of knocked back any sort of representations they made to force him to cover over the area where he was doing his sorting. It did mean though that it overlapped slightly with the Reg's Skips case because Guy de Faye was the Transport and Technical Services manager and it seemed to make a lot of sense to get all the skip operators into one place, and the reclamation site would have been an ideal place to do that. So, I made representations to the Minister for Transport and Technical Services about finding a place down on the reclamation site where skip operators could operate. Although I never contacted WP Skips, I was aware that perhaps Broadlands was not an ideal place for a skip operation either. I met Guy for lunch because it was the only way I could get to meet him and he said he would look into it and so on and so forth but certainly the impression I got from the department was that they were not willing to give up any of "their land".

Mr. R. Huson:

This is T.T.S. (Transport and Technical Services)?

Senator B.E. Shenton:

Yes, because I also asked if there was any land up at Bellozanne that could be used to relocate or ... So going all the way back to the strategy with regard to the waste strategy, in my opinion Jersey has one in a document form but it has never ever tried to really carry it out. We own large tracts of land as a government and we should be able to find somewhere to put nuisance neighbours like skip companies but because departments want to hold on to all their land, and their assets, we never get anywhere. So, we still have skip companies operating in areas where ideally they would be better somewhere else.

Mr. R. Huson:

That is not their fault then, is it, because the Government is just not willing between the various departments to try and find a solution.

Senator B.E. Shenton:

There has been no real concerted attempt to find a solution. All you get from Planning is negativity. Reg and Rita spent a long time trying to identify sites round the Island and all Planning did ... any site they came up with it was a no. As a Government we need to do better. There needs to be a complete mindset change. But the Island should, as a Government, it should provide areas of land.

Mr. R. Huson:

I mean you have got Langlois down at the end of La Collette and they have got a terrific site. I know how much they paid for that site, it is a lot of money, but it is a fantastic site for that purpose that they are doing, and it would seem logical to me to use other parts of La Collette but the Government just does not seem willing to bite the bullet and say: "Let us put them all together down there." They prefer to put buses and things like that.

Mr. J. Mills:

We note from that some criticism of the Planning Department on your part in relation to that sort of broader perspective.

Senator B.E. Shenton:

Well, you are meant to have an environmental licence to operate and as far as I am aware none have been issued.

Mr. J. Mills:

Yes, we have been told that.

Senator B.E. Shenton:

When I was Minister for Health the Health Protection Unit was aware of complaints to do with there being waste dumped down at La Collette. As a result of that we served an order on T.T.S. which was suspended because one department suing another is not a great idea in the first place because the other department then has to start employing lawyers to defend itself and it is you and me, the taxpayer, that is paying for it. But the green waste site needed or needs a permit to operate but they have never got one.

Mr. R. Huson:

Did somebody not say that States departments do not need a permit? Who said that?

Mr. J. Mills:

We had Mr. Rogers giving evidence about the waste strategy and I do not recall that particular point coming up. It is a very interesting point.

Mr. R. Huson:

But did not Mr. Rondel say that today?

Mr. I. Clarkson:

The committee would need to check it. The understanding I have at the moment is States departments have an obligation to apply for a waste management licence when their activities fall within the remit of the Waste Management Law. I will check that for you.

Mr. J. Mills:

That sounds like a very clever way of avoiding problems.

Mr. E. Trevor:

What Mr. Rondel said was that the States did not have to apply for Planning but they normally did. That is what he said today.

Senator B.E. Shenton:

They do need a licence for the green waste but they do not have one.

Mr. E. Trevor:

He was talking about planning not licence.

[16:15]

Mr. J. Mills:

I think what you are saying to us, Senator, you are confirming what others have said, that there is clearly an issue here which is exemplified by Reg's Skips' case that the States in its entirety has not sorted this problem. It has got the right ideas about recycling and so forth.

Senator B.E. Shenton:

I think it makes matters worse because if the States themselves are meant to have a licence and they do not comply with the law then why should anyone else? The licences are, I think, £8,000. It is not cheap. But until the States get their own ... and the reason they have not got a licence probably down at La Collette is probably because they do not meet the standards to issue the licence.

Mr. J. Mills:

I think you can be sure that one aspect of our report, whatever we end up saying about the instant case, will be about this wider issue of how you actually manage this kind of business, this kind of growing

business in the environment and the situation that we now find ourselves in because that is the general lesson that has to be learned from this particular case.

Mr. R. Huson:

How did you solve the problem at Graham Pallot's eventually? Or has it not been solved?

Senator B.E. Shenton:

It has not really been solved. We sort of just forced them to put it on the backburner, to be honest.

Mr. J. Mills:

Remember, we have had evidence from the Planning Committee in writing about other skip things and they noted to us that that particular application was refused, the one at Fountain Lane, because of the likely impact on the character of the area and also on the resultant harm to amenity in terms of knowledge, traffic movements and other disturbance. But then it said: "It must be said that this application was dealt within the full knowledge of and with the experience gained from the Heatherbrae Farm case."

Senator B.E. Shenton:

Right, okay.

Mr. J. Mills:

Planning's position was they were learning a lesson from that.

Senator B.E. Shenton:

As far as I am aware Graham is still operating from ...

Mr. R. Huson:

Is he still sorting skips there?

Senator B.E. Shenton:

I do not know whether he is officially.

Mr. J. Mills:

Well, we note what is said there. Anything else?

Mr. R. Huson:

No.

Mr. E. Trevor:

No more, thank you, no.

Mr. J. Mills:

I think that concludes our public session, thank you. You have explained very overtly where you came into this and we thank you for giving that account.

Senator B.E. Shenton:

I am assuming, because I do have a massive pile of papers to do with it which I handed back to Reg and Rita, which I assume you ...

Mr. J. Mills:

We have seen quite a lot of paper. I think we have got a skip load of paper.

Senator B.E. Shenton:

We know where to dump it.

Mr. J. Mills:

Thank you very much, Senator Shenton. That concludes our public session for this afternoon. Thank you everybody.

[16:18]