

STATES OF JERSEY

Committee of Inquiry Reg's Skips Limited

TUESDAY, 9th FEBRUARY 2010

Members:

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)

Witnesses:

Mr. A. Pritchard (Community Health Team Leader, Health Protection Services)
Mr. D. Binet (Environmental Health Officer, Health and Social Services Department)

Mr. J. Mills (Chairman):

If you would like to stand up, please, and raise your right hand. 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?

Community Health Team Leader, Health Protection Services:

I do.

Environmental Health Officer, Health and Social Services Department:

I do.

Mr. J. Mills:

Thank you very much. Perhaps you can just begin by introducing yourselves and then I will introduce ... let me introduce the committee first. I am John Mills, I am chairing the Committee of Inquiry; this is Mr. Edward Trevor, a committee member and at the other end, Mr. Richard Huson. Together we comprise the inquiry. So perhaps you could just introduce yourselves for the benefit of us and the recorder and everyone present.

Community Health Team Leader, Health Protection Services:

My name is Andrew Pritchard, I am the Community Health Team Leader for the Public Protection Team. I work in the Public Health Department. By profession I am an environmental health officer, took up my post in June 2006 where I previously worked in the U.K. (United Kingdom) mainstream local authorities and the N.H.S. (National Health Service).

Environmental Health Officer, Health and Social Services Department:

My name is Derek Binet and I am the Environmental Health Officer in the Community Health Team,

and I work underneath Andrew Pritchard here. I have been an environmental health officer working for public health in Jersey since 1977.

Mr. J. Mills:

Thank you. You are part of the Health and Social Services Department.

Community Health Team Leader, Health Protection Services:

That is correct.

Mr. J. Mills:

Okay, well thank you very much for coming. You know what we are interested in and what I would be grateful if you could do, please, is just start us off by recounting in a broad manner, essentially, your involvement in the planning issues concerning Reg's Skips Limited. So just to set the scene. I think that will lead us into certain questions that we want to ask you about how you were involved and some of the actions that you took. But perhaps you could set the scene for us, you know, when you became involved and how you became involved and your main contribution to the process.

Community Health Team Leader, Health Protection Services:

Shall we do it chronologically, Derek?

Environmental Health Officer, Health and Social Services Department:

Yes, well I was firstly involved ...

Mr. J. Mills:

Can you speak up, please, because I want to make sure everyone can hear.

Environmental Health Officer, Health and Social Services Department:

Excuse me, yes, I was firstly involved in 2005 when I was asked to comment on an application for a change of use from dry storage to commercial at Heatherbrae Farm. Then I did not hear anything after that until 2006 when I was contacted by a neighbour, Mr. Yates, who was complaining about noise from Heatherbrae Farm, and he said he had spoken to Planning. Then almost immediately after that Planning asked us to comment on an application for using mechanical sorting skips. I think that is it basically, and from then on we were commenting mainly on that. We commented on that and then they asked for further comments and further assistance and I was involved at various times during the course of that year helping them out, answering their questions that they asked. I think that went on until the end of 2007 because there was a reconsideration. Yes, I think that is about it.

Community Health Team Leader, Health Protection Services:

Derek is an extremely competent and experienced officer. My role in the team is to safeguard and look at risk and liability and ensure that we do things in a professional manner. I became involved when it was clear that there was an element of expectation on us to start designing out problems and I was very clear from the outset that it was not the role of our department to effectively allow the transfer of liability for the design and therefore liability for preventing use of the ...

Mr. J. Mills:

This was the application for the big shed?

Community Health Team Leader, Health Protection Services:

That is right. Very much, so as it got to the point where measurements had been taken, it was clearly ... nuisance is somewhat subjective and there was an expectation on some part that you could determine what could or could not be a nuisance by virtue of what level it was on a meter reading. That is not the

case. I became involved to help Derek through the issues with the Planning Department in making that very clear and also ensuring that at no time were we, as a department, designing a solution that may lead us through a chain of events where we effectively could be held culpable for the failure of a design to prevent a nuisance. That is my role in the team.

Mr. J. Mills:

Okay, that is very helpful, thank you. Can I start by asking you to describe the nature of your relationship with the Planning Department apropos planning applications? You are a separate department and I know they consult you frequently. Can you just describe the basis of that relationship? Is it statutory? Are you a statutory consultee? Is it informal? Is it well ordered?

Community Health Team Leader, Health Protection Services:

I will speak from my experience, obviously it is post-2006 and I was not around at the time when this application was originally made. The simple answer to that is it depends on the nature of the application. In the sense that when it comes to an environmental impact assessment then as a statutory consultee the lines of communication between us and the Planning Department are very clear. I would say that even though there have been a number of changes between the Environment Department managing the process and our individual development control officers leading the process, the environment impact assessment process is fit for purpose, it works well and we do get the plans through in a timely manner and the opportunity is afforded to us to comment on.

Mr. J. Mills:

Okay, let us just stop there. We are ignorant here, we are relying on your expert knowledge. Environmental impact assessments, what is that legislative basis for those?

Community Health Team Leader, Health Protection Services:

There is an Order. So there is an Order about prescribing the type of development that would take place that would then require an environmental impact assessment.

Mr. J. Mills:

These are big things?

Community Health Team Leader, Health Protection Services:

Nature of scale, so we are thinking the Waterfront, the Castle Quays, the Zephyrus developments, the Energy for Waste plant, those sort of processes.

Mr. J. Mills:

This is in the Planning Law, is it?

Community Health Team Leader, Health Protection Services:

That is an Order, so that is within the planning legislation.

Mr. J. Mills:

Within the planning legislation. Sorry, but in this particular case when you first became involved there was no question of an E.I.A. (Environmental Impact Assessment)?

Community Health Team Leader, Health Protection Services:

No.

Environmental Health Officer, Health and Social Services Department:

No, there would not be.

Community Health Team Leader, Health Protection Services:

It would not be ...

Mr. J. Mills:

So therefore, if I get you right, you were not statutory consultees?

Environmental Health Officer, Health and Social Services Department:

That is correct.

Community Health Team Leader, Health Protection Services:

Correct.

Mr. J. Mills:

At that time?

Community Health Team Leader, Health Protection Services:

Still as is the case now.

Mr. J. Mills:

So Planning will take ... let us say some medium-sized application comes in where there is a little judgment about whether it is small or big, does Planning take the decision as to whether an E.I.A. is required?

Community Health Team Leader, Health Protection Services:

Do you want to talk about the list? Within the context of the E.I.A. process the nature of the development is prescribed in the order, in detail, and there must be a presumption on behalf of the Minister not to require the E.I.A. or those processes. When we talk about this sort of application, it is probably worth Derek mentioning the planning list and how that works.

Environmental Health Officer, Health and Social Services Department:

Yes. The applications that come into Planning, or most of them I believe, are put on a list. The list is sent out to the possible consultees. We get a list once a week. On that list, in terms of listing the applications, it also has the list of who the consultees are so, for instance, we know we were getting it but we can also have the opportunity to look at that list and see if we want to comment on any particular application that we think we might need to and then we can request it. Generally speaking when we get the list it is on a Tuesday and we would say we wanted something by the following week.

Mr. J. Mills:

Yes, but Planning would take the initial view as to whether you and/or other relevant bodies ought to be consulted on it or not?

Environmental Health Officer, Health and Social Services Department:

That is right, yes.

Mr. R. Huson:

Sorry, did you say that every application is sent to you on a list and then you determine whether it is right to comment on it or not?

Environmental Health Officer, Health and Social Services Department:

I believe that minor works applications may not be on the list.

[14:30]

Mr. R. Huson:

No, that is like changing a window but if someone is building a house or something slightly commercial ...

Environmental Health Officer, Health and Social Services Department:

The list that appears in the paper, we also get a copy of that list. On that list it says who is being ... who the consultees are. So we know we are getting it or we may already have had it.

Mr. J. Mills:

So that triggers the process of you getting the file?

Environmental Health Officer, Health and Social Services Department:

Yes.

Mr. J. Mills:

But what you are saying is you might spot something else: "Oh, we are interested in that"?

Environmental Health Officer, Health and Social Services Department:

We know about that, yes. We might know something about a premises that the Planning do not and the idea is that ...

Mr. R. Huson:

But you are making the decision from that list based on your ... a decision, yes we want to get involved in that or, no we do not?

Community Health Team Leader, Health Protection Services:

Only on those applications that have not been pre-identified by the Planning Department.

Mr. R. Huson:

Yes. But there is obviously some that fall into a grey area.

Community Health Team Leader, Health Protection Services:

Very much so.

Mr. R. Huson:

Then you make the decision yes, I want to take that further or, no, I do not?

Community Health Team Leader, Health Protection Services:

Yes.

Mr. J. Mills:

To your understanding how does the Planning Department make the decision on who to consult?

Environmental Health Officer, Health and Social Services Department:

There is a document that was agreed some years ago now.

Mr. J. Mills:

Yes, we have seen that.

Community Health Team Leader, Health Protection Services:

I think it is probably best ... were Mr. Smith here then he would be able to answer these questions because he put that protocol in place, and I think it is probably best place for him to answer those specific queries.

Mr. J. Mills:

I think what you are implying is that under the protocol you have got most of the time it sort of works all right and you get to see what you think you need to see, and ...

Environmental Health Officer, Health and Social Services Department:

We may not get something we asked for because they have decided to reject it anyway.

Mr. J. Mills:

The key point is that in the present case you were consulted because you have a view to give on the issues but you were not a statutory consultee?

Environmental Health Officer, Health and Social Services Department:

That is correct.

Mr. J. Mills:

All right. That is helpful. What was the ... so when you are not a statutory consultee do Planning simply send you the application document and say: "Please comment within 28 days" or something like that?

Environmental Health Officer, Health and Social Services Department:

Yes, we would get a letter saying: "We need a comment on this." It would normally come in as a property application form with any plans that were submitted and that is what we would comment on.

Mr. J. Mills:

What then is your internal process in deciding how to comment on those things?

Community Health Team Leader, Health Protection Services:

We would respond to them all. That is very simple, we either have comments ... they would generally be around the technical nature of nuisance so we will look at the aspects of nuisance, be it noise, odour, dust, fumes, the general impact on the environment as well but of course within the Public Health Department we have a wider public health consideration as well. So we look at holistic things such as the impact of air quality and the traffic on the local network and the provision of bus stops or cycle parking. So we do have a slightly wider remit but we generally couch our responses in terms of our powers, our legal powers under the statutory nuisance legislation.

Mr. J. Mills:

Right, and so when you received the 2005 planning application in respect of Reg's Skips Limited at Heatherbrae Farm, what was your response?

Environmental Health Officer, Health and Social Services Department:

My written response? Yes, I ...

Mr. J. Mills:

Well, if you had another response it would be nice to hear that as well.

Environmental Health Officer, Health and Social Services Department:

Sorry, I did not, no. Yes, I responded to them that we did not have any objection to the change of use in principle to commercial use but that some commercial uses could cause problems and we would like to comment on those particular uses. I may not have worded it quite like that.

Community Health Team Leader, Health Protection Services:

I think it is important to differentiate because, of course, when a Planning change of use ... the Planning categories are quite broad so commercial use could be anything from a dry food store all the way through to a skip operation. So there are many activities that could take place without giving rise to noise or odour nuisance. That is why we say in principle it is an industrial unit why should it not be used for a commercial use, however you have to be careful in what type of use you use it for, for the very reasons that Derek pointed that, that there are potential issues with both noise and odour.

Mr. J. Mills:

Just remind me, was it made clear to you by Planning when they sent you the application, et cetera, and the plans that this was for a skip operation?

Environmental Health Officer, Health and Social Services Department:

No, I was unaware of that. All I knew was it was commercial use and I thought that was a general commercial use.

Mr. J. Mills:

Can I just be clear - Ian, can you help us here - was the skip operation mentioned on the planning application documents?

Clerk:

I will pull the application documents out for you.

Mr. J. Mills:

Can we just be absolutely clear about that, please?

Clerk:

That is the copy of the application document that we received from the planning file.

Mr. J. Mills:

“Change of use of area, formerly a slurry store from dry store to commercial.” So I can see from this that you would have had no reason to suppose that it was a skip operation.

Environmental Health Officer, Health and Social Services Department:

No.

Mr. J. Mills:

That is very helpful, thank you. So your comment on that was pretty broad. Can you just describe when you were first approached on the noise issue. You said you were first approached by the complainant Mr. Yates?

Environmental Health Officer, Health and Social Services Department:

Yes. That was in May 2006, I believe.

Community Health Team Leader, Health Protection Services:

Do you want to refer to the file, Derek? Do you mind if we refer to the file.

Mr. J. Mills:

No, no, I hope you do so we are accurate. That just come out ... the email or phone call came out of the blue to you, did it?

Community Health Team Leader, Health Protection Services:

Derek is a case officer. Like we do on many occasions we will have a phone call come through to the department saying: "I have got a problem, can you help us out."

Mr. J. Mills:

What is your normal standard response to such complaints?

Community Health Team Leader, Health Protection Services:

Well, we have obviously a departmental procedure in place where we log the inquiry on a database, then we have to ascertain whether in the first instance it is something that covered by the statutory nuisance legislation or whether it is something we can deal with. Then we go through a process of trying to gather the information and evidence to work out how best to proceed. We generally try and find a common path for both parties to live compatibly. Where we cannot reach an agreement there sometimes comes the position where we have to serve a statutory notice. However, what we try and work through is that before serving a statutory notice ... we only really want to serve a statutory notice on something that is deemed lawful in a planning term before we then effectively take our action.

Mr. J. Mills:

Under the Nuisance Law?

Community Health Team Leader, Health Protection Services:

Under the Nuisance Law. So in this case clearly there were some queries over the planning application and the use of the site. So we felt that through the planning process was best dealt with before using the statutory nuisance notice.

Mr. J. Mills:

Right, so your first action then will be to ring up your colleagues in Planning and talk about it. Is that what you did?

Community Health Team Leader, Health Protection Services:

Not always. I think there is an element of working with the complainant in the first instance.

Mr. J. Mills:

I am just trying to understand the process here rather than ... the process is more significant in a way than the instant details of the case.

Environmental Health Officer, Health and Social Services Department:

I think there were 2 things happening simultaneously. One was Mr. Yates complained to our department about the noise and us visiting him and discussing it, and in fact listening. The first time we visited we did not take any noise measures or anything, it was just a sort of visit to see him. But during the course of the discussions he mentioned that he had been involved with Planning and, that I think he had complained to Planning, and he said that there was an application that was going to be put in to, I think, regularise the use of what they were doing there. So we said: "Right, we need to comment on that then." So I made a note that I would need to comment on it and we would request this application if they were not going to send it to us. In the end, of course, they did send it to us. From then on we were basically involved, more as a consultee to Planning than anything else.

Mr. J. Mills:

When Planning sent you this, this was the reconsideration application, what did they say to you? What did they ask you to do? Did they just say: "Please comment" or did they ...

Environmental Health Officer, Health and Social Services Department:

Yes, basically they said they had had an application to extend the working hours and to use machinery to sort the skips and could we comment on that. That is all they said really.

Mr. J. Mills:

Okay, and what were your comments?

Environmental Health Officer, Health and Social Services Department:

Right, basically my comments were that I thought that the mechanical sorting would be causing a problem noise wise to the neighbouring properties and that ... I think another thing was to extend the working hours and I said that as noise would be a problem that extending the working hours would also be a problem. I sort of gave my reasons for that.

Mr. J. Mills:

Can I just ask one point of context and then I will ask my colleagues to come in. Were complaints and comments by you on planning applications about noise quite common? Was this a sort of common feature of your workload?

Community Health Team Leader, Health Protection Services:

Very much so. There is no 2 ways about it, it is. It is something that we work through with the Planning Department within the process. You have to understand that while we are consultees, once we have provided our professional advice that is where it sits. It does not have to be an iterative process. The comments are there for the Minister for Planning to see as all the consultee responses are and then a planning judgment is made on the basis of the wider view. So some considerations and some comments that we make as a department year on year, some are acted upon and some are not. That is the nature of the planning process.

Mr. J. Mills:

Mr. Binet, could you just read out, or summarise in reading out, exactly what the comments were that you made on the application. This was in 2006, was it not?

Environmental Health Officer, Health and Social Services Department:

Right. Okay, I commented ...

Mr. J. Mills:

Can you just tell us when?

Environmental Health Officer, Health and Social Services Department:

It was 9th June that I sent a letter to Planning. Basically I was saying that there were 2 issues to be taken. The first issue was about the mechanical sorting of skips and I said that the mechanical sorting of skips ... if they used mechanical sorting for skips that would mean that there were likely to be more lorries visiting the site because obviously mechanical sorting is faster than manual sorting, it is more efficient and therefore my contention was that there would be more vehicle movements. Of course as the vehicle is driving down the boundary of Les Ormes, which is the premises Planning were interested in, that could cause a problem. I was saying that also if you were sorting more and more skips in a day by mechanical means then you would have more noise generated from the impact noise that is

associated with things being dropped or put into skips. I also said that I had visited the property and that we had heard noise from the site. Also I spoke about the hours of operation and I gave my reasons why I thought it would not be a good idea to extend the hours and basically I was saying that people are more likely to complain early morning or on weekends and that sort of thing and we would not support extensions of their working hours into that sort of time period. That is basically what I said.

Mr. J. Mills:

On the noise issue, Planning then came back to you, did they?

Environmental Health Officer, Health and Social Services Department:

I think they had a letter from representations of Reg's Skips, I believe, who said that he would like the actual noise readings taken.

Mr. J. Mills:

So Planning came back to you to ask you to do that?

Environmental Health Officer, Health and Social Services Department:

Yes. Planning said: "Can you take some readings as to the effect of the noise on the property at Les Ormes?"

Mr. J. Mills:

Could you just tell us a little bit about how - or perhaps, Mr. Pritchard, you could answer this - your team sets about doing noise readings? Again, is this a common thing that you do? I know you comment on noise a lot but ...

Community Health Team Leader, Health Protection Services:

Each case is different. So whether or not you go out and take noise measurements is very much specific to the case you are looking at because they can have merit but, by the same token, they may not add anything to the equation. Because remember we are talking about statutory nuisance here. There is no such thing as a statutory nuisance meter. So whatever the figure may be, there is no red line over which it suddenly becomes a nuisance. That is just not the case. So the data here is one element of gathering information and evidence that helps you come to a rounded opinion on whether or not something is a statutory nuisance or likely to be statutory nuisance. The measurements are useful in terms of understanding what the baseline, the background noise measurements are. So if the process was not taking place, what is the normal sort of noise environment that one would expect. You can imagine what would be in the country is quite different to what might be in the centre of St. Helier. So you have your baseline figure there to understand what is the norm, and then you look at the operation and the practice, in this case a skip operation, and you go: "Right, with this operating what is the difference between what would normally be expected of someone residing in the area without the process and with the process?" You look at the difference and depending how large the difference is it helps you to come to a view on is it a significant difference that will give rise to annoyance and nuisance.

[14:45]

There is no legal definition of how many decibels difference you need for it to become a nuisance either. However, within British Standards 4142, which looks at industrial noise sources, there is a guide that suggest that a difference of greater than 10 decibels is going to give rise to clearer noise and it is an indication that a nuisance would exist. I say again, there is no definitive level at which a nuisance exists, nor is there a differential between the baseline and actual that will define nuisance. In this figure, I think, Derek, the figure was of the order of magnitude of 18 decibels, which is a considerable difference. So that is some information relating to noise measurements. Again, because it is about an

individual's right to the quiet enjoyment of their premises, the Yates' in this case, although there was a premises closer than the Yates', could one reasonably have the quiet enjoyment of their premises which includes the land, the curtilage of their premises, not just within the property, with that operation taking place at those levels. So that is why in this case the noise measurements proved useful because they provide weight to the argument that a nuisance would exist, which by its very nature is a subjective opinion.

Mr. J. Mills:

Sorry to keep pushing you. So you did this work and this led, on the part of Planning, to their preparing the papers on this request for reconsideration at which there was a site visit, I believe, in September 2006. Were you present at the site visit, when the Minister went to the site?

Environmental Health Officer, Health and Social Services Department:

Yes.

Community Health Team Leader, Health Protection Services:

Yes.

Mr. J. Mills:

Can I ask you, the Planning Department summarised your advice in their report for this, were you consulted on the drafting of that report?

Environmental Health Officer, Health and Social Services Department:

I was not, no.

Community Health Team Leader, Health Protection Services:

I cannot recollect. It is not part of our evidence bundle.

Mr. J. Mills:

Well, can we just make a note, I would like, outside this hearing, if Mr. Pritchard and Mr. Binet could just remind themselves of the Planning report. I would just like you, if you could, to confirm later on whether that wording is either the very wording you submitted in your comments or whether it was something you were entirely comfortable with. I am anxious to be clear that the interaction, in a sense, between them and you was conducted in an effectual way. Mr. Binet, you were then at the site meeting when the Minister was there. Was that, in your opinion, a fairly straightforward event, or an unusual event.

Environmental Health Officer, Health and Social Services Department:

Yes, I would say ... I do not normally go to those sort of things very often. Basically they asked me to describe what I had found and I mentioned the noise level differences and that sort of thing and then I think Andrew said something after that, what it was I cannot remember now, as a general explanation.

Community Health Team Leader, Health Protection Services:

I think we talked in generality about nuisance. I think we did touch on the subject of how ... I think the Minister was looking for the solution to find the common ground where both parties could live as neighbours without inconveniencing each other. By its very nature talking about some of the things that could or could not be done on the site to mitigate the impact of noise would have clearly come up. I know a block brick wall was described. I think my advice was very much along the lines of: "Look, this is an inherently noisy process, very close to a residential property." In what you would have to do to live within the normal context ... I mean where we come from now is to define the end state. How you as a developer or an applicant get to that. We can define the standards you need to achieve, how you get

there is completely at your gift and it is your responsibility to get there. So we are happy to define the end state of what we think is a reasonable noise hour curve or noise level in the Yates' premises, but it is not an unreasonable requirement. The sort of structural works that would need to take place to allow Reg's Skips to carry on the operation they wanted to, and for the noise level to be such that Mr. Yates was not caused a nuisance to, the cost and scale of works were clearly described as extensive and there has to be an element of: "Would the money invested in that process ever be..." and it is a consideration for the applicant and for Planning to view because at that time there was no acceptance that actually planning permission would even be granted for putting on a roof, effectively creating a new structure for that process. So the discussion was very much along the lines of, "for the works that have to be done clearly this is the wrong place for this type of process."

Mr. J. Mills:

Going back to your initial remarks when you said that you then, as team leader, were getting worried that you were being almost the lead decision maker and you said: "I am going to roll back a bit on this, it is not for us." That was your line, I think.

Community Health Team Leader, Health Protection Services:

I never worried and I do not think I rolled back in the sense I was very clear from the outset that it is neither our job nor our role as a States department to design the acoustic protection of a building. It is clearly for the applicant to demonstrate that their design has met the performance criteria that we could happily send before the Planning Department. At no time through this process was that performance criteria achieved.

Mr. J. Mills:

Final question. Did you sense that the Planning Department was, though, trying to push you into some given definition?

Community Health Team Leader, Health Protection Services:

I never felt pushed but then that is maybe me.

Mr. J. Mills:

Okay, thank you. Edward.

Mr. E. Trevor:

Thank you. Just one, I think. Had you, prior to Heatherbrae Farm, had any experience of skip companies or building companies that sorted skips?

Community Health Team Leader, Health Protection Services:

By virtue of the fact that waste operations in the U.K. used to be regulated by local authorities, I was a pollution specialist environmental health officer for the City and County of Swansea that was the waste regulator but included scrap dealerships and skip operations. So, yes.

Environmental Health Officer, Health and Social Services Department:

Certainly during my career I have dealt with many complaints about buildings site and noise from the various operations, including filling skips and that sort of thing.

Mr. E. Trevor:

So when you said in most of your - if not all - responses to Planning, and I am paraphrasing: "No way" that was based upon experience that you have already had.

Environmental Health Officer, Health and Social Services Department:

Yes, and certainly I have been to other skip sites and measured the noise of sorting skips by hand on other sites. There was one in Fountain Lane as I recall.

Community Health Team Leader, Health Protection Services:

My evidence is I also have an institute of acoustics post-graduate diploma in acoustics and noise control.

Mr. E. Trevor:

Okay, thank you.

Mr. J. Mills:

Richard.

Mr. R. Huson:

Can you be a little bit more specific about other skip operators that you have had a noise problem with? Which ones, what sort of area were they in and that sort of thing?

Environmental Health Officer, Health and Social Services Department:

Actual skip operators?

Mr. R. Huson:

Yes.

Environmental Health Officer, Health and Social Services Department:

I personally had not dealt with any complaints about skip operators on my patch.

Mr. R. Huson:

So what you are saying is in all your time there, which is obviously quite a lengthy period of time, you have not had ...

Environmental Health Officer, Health and Social Services Department:

No, but then that is probably because they are on somebody's else's district.

Community Health Team Leader, Health Protection Services:

Yes, we have a number of officers working in the team and we divide ... the Island is divided by parish. So Mr. Binet would not regulate the parish in which he lives, or the area. So it may be that the other team has dealt with it, but of course remember a lot of skip operations take place in Bellozanne or La Collette so when we have, say, like the scrap yard, do we have issues with the scrap yard? Yes, we do. Very much so. A regular list of complaints. As we go through this process now of the Waste Management Law what I would say is we are in a transition phase where these operations will be subject to the Environment Department's licensing regime, of which we will be a consultee in drafting the conditions associated with waste transfer licences and waste operation licences.

Mr. R. Huson:

This waste management policy that the States have adopted - I am looking for your considered opinion here - do you think that they have implemented this without thinking further down the line about the X, Y, Z people who do these jobs and are at the sharp end of it, what they are going to do to try and facilitate this policy, and to fall into line with this States policy? Do you think the States thought it right through to the very end thing rather than just saying: "This is a great idea, we are going to recycle all this stuff."

Community Health Team Leader, Health Protection Services:

Mr. Smith, on behalf of the department, sat on the working group for waste management and the waste strategy. I was not party to the meeting so I do not have a personal knowledge or comment on that. However, from a statutory consultee on the waste process, someone who has been heavily involved in the energy for waste plant, the current waste licensing permit for properties such as Broadlands, Bellozanne, the wider La Collette area, I would say that the waste management process is bringing us to a standard where we do adequately and properly control waste processes from manufacturer to ultimate disposal. So the answer to that is yes.

Mr. R. Huson:

Okay. The other point I would like to raise is Heatherbrae has historically been a cow farm, a milk farm. What is your ... I am sure you get complaints from other farms, it was a fairly large scale operation. It started quite early in the morning and obviously went on in the evening. So you have obviously got things like noise, and I would imagine smell, that are quite a problem. How do you assimilate those ... because there can be no ... in no uncertain terms when you go past a cow farm storing silage it is a smelly place. How do you assimilate those nuisances against ... how do you measure those against the operations like Reg's Skips were trying to achieve?

Community Health Team Leader, Health Protection Services:

There are a number of things that you have to remember when it come to citing nuisance in the sense that in our legal position it does not matter who was there first. So from the outset it does not matter who was there first when you get brought into a dispute between 2 parties. It does not matter that a farm operation may have been there for 200 years previously, if someone moves in and is denied the quiet enjoyment of their premises and a nuisance is caused to them, they have the right to complain in the Statutory Nuisance Law. So that is the first instance. The other thing then is, depending on who the neighbours are, they may well have grown up understanding that if you live next to a farm that there are odours, smells, milking times. Then you look at the individual. If they are not minded to complain about the activity then we do not have cause or redress to be involved. In fact we would not know about it. So if you think about the farm scenario, if you - as many people do on this Island - live next to a farm that operates extended hours but if that is all you have known, it is what you are used to and it does not cause you a problem there is no elements of nuisance.

Mr. R. Huson:

What I am trying to get at is if Mr. Yates bought this property while the cow farm was still in operation, could he then come back to you and say: "I do not like the smells from this, it is causing me a nuisance, it is stopping me enjoying my garden because it smells at 6.00 p.m. when I want to sit in my garden." Then you could eventually take this down the line to the ultimate solution, which for Reg's Skips was that they had to terminate their agreement and leave the premises. So you could ultimately do that to a farmer who had perhaps been there for 200 years?

Community Health Team Leader, Health Protection Services:

I will stop you there. The legal process is the same but the decision-making cycle that goes through the course of events that takes you through each aspect will be inherently different. We go back to the basic subjective nature of the statutory nuisance. So the legal mechanics are there, whether you would reach the same conclusion I could not possibly say. But ultimately the premise that it does not matter who was there first stands. You could not, in your case, your example, apply equally. The same process would not be followed going down the line for the farm complaint with odour as it would do for a noise complaint associated with a skip sorting process.

Mr. R. Huson:

I do not understand why. To me they are just different nuisances.

Community Health Team Leader, Health Protection Services:

You have hit the nail on the head there. They are different nuisances and within nuisances there are many, many categories of statutory defined nuisance. We can provide a copy of the legislation and as you read through them you will see that they are quite distinct and quite particular to those activities. They are things that happen bound within a framework of legislation, with the same powers to deal with those activities but the activities themselves are very different.

[15:00]

So odour would be dealt with in a different way to noise because they are different nuisances. Same as a premises with a leaking roof, a flat roof that is leaking is dealt with by the same legal process that we have dealt with Reg's Skips.

Mr. R. Huson:

Okay, let us go on to the example where Mr. Taylor said that his cow farm started very early in the morning with machinery, you know at 5.00 a.m. or 6.00 a.m. with the milking and what have you, then obviously it went on in the evening again. Now, that could be deemed to be a nuisance because of noise, the same sort of thing as Reg's Skips, albeit from a different source, i.e. mechanical digger or milker or whatever it is. Would that not be dealt with in the same way then?

Community Health Team Leader, Health Protection Services:

I think you are trying to draw me on a point of hypothetical scenarios.

Mr. R. Huson:

Yes, I am.

Community Health Team Leader, Health Protection Services:

I cannot go down the path of answering a hypothetical set of nuisance queries. I can talk about facts, talk about evidence and talk about the actual case we investigated, but within any statutory nuisance investigation there are so many parameters that are brought in, to go down this line of questioning would drag me down a path where I would be uneasy by virtue of the fact that the variables are so great that whatever I say could be taken out of context and misconstrued.

Mr. R. Huson:

Are you happy with that answer?

Mr. J. Mills:

The ex-civil servant in me says that I am not unhappy. I understand it. I think we understood it, thank you. We might want to reflect a little bit on what it means. Can I just go back and ask you, it appears from the papers that we have had in file 3, this case ended up taking up quite a lot of your time. Could you just put that in a context? Was this - given your workload in your department and all the pressures you face - quite a big one?

Community Health Team Leader, Health Protection Services:

Well, I can answer ... do you want me to answer that? We get them every now and again. The department is a rather grandiose term for 6 people covering all aspects of planning inquiries that come across our desk either relating to public health, in relation to air quality, contaminated land, every housing issue impacts. It was one that had a technical interest and it was one that clearly took an awful lot of Mr. Binet's time in monitoring. But in the context of the type of complaints and inquiries that we get involved in, it is not uncommon to be involved for a length of time, a number of years because these

things do take and can take a long time. We have a number of inquiries on the go that might take and are still taking 3, 4, 5 and in some cases 6, 7 years. That is unfortunately the nature of the beast. Some are technically very difficult. We talked about a P.F.O.S. (Perfluorooctane Sulphate) issue relating to St. Ouen, that is still ongoing and will be ongoing for some time.

Mr. J. Mills:

I think you are saying this was quite a significant case.

Community Health Team Leader, Health Protection Services:

It is a significant case. It is a significant case by virtue of the fact that I was involved as well.

Mr. J. Mills:

Can I just ask 2 other questions. Firstly, you refer to the Waste Management Law, you said you were a consultee, are you a statutory consultee under that law?

Community Health Team Leader, Health Protection Services:

I would have to double check but I believe we are. It is administered by the Environment Department.

Mr. J. Mills:

I would like that point just to be checked if we could. Secondly, one of the views that I think perhaps we are hearing and forming through these hearings is that there were some possible weaknesses in the process whereby the Planning Department dealt with planning applications and did all the things they had to do. In your view is there any ... was there any ... looking back to this time in particular, a few years ago, was there anything in the system or process that you, from your perspective, in your small department, felt was not quite as good or as effectual as it perhaps ought to have been? I am thinking particularly about this business that you describe of how you ensured you got to consult on things you needed to consult on and vice versa.

Community Health Team Leader, Health Protection Services:

From my perspective - and Derek may wish to add a comment - obviously it predates my time and I arrived after Mr. Smith had already had a working memorandum of understanding with the Planning Department to address the planning process.

Mr. J. Mills:

When does that date from, that memorandum? The copy we have got is undated as I recall.

Environmental Health Officer, Health and Social Services Department:

I do not know the answer to that question. We would have to ...

Mr. J. Mills:

But it precedes your time which was 2006?

Community Health Team Leader, Health Protection Services:

June 2006.

Mr. J. Mills:

Okay so it precedes that. We can check that. But the essential process whereby you get the list and Planning indicate you are consultee, then you might add a few in and so forth, that process continues. Is it in your view satisfactory? Does it deliver the goods, so to speak?

Community Health Team Leader, Health Protection Services:

I think it gives us transparency of the type of applications that are coming through. As a consultee it would be better to have more resource to take a little bit longer maybe, perhaps on some cases to look at each one in more detail than we can, but that is just a function of time and the resources we have, and then the comments are made. Then that goes within the planning process where the Planning Department view our comments in the context of a planning decision and then we are where we are.

Mr. J. Mills:

Mr. Binet, anything to add.

Environmental Health Officer, Health and Social Services Department:

No, not really, no. I think the system generally tends to work reasonably well most of the time.

Mr. J. Mills:

You enjoy cordial relations with your Planning colleagues?

Environmental Health Officer, Health and Social Services Department:

Yes, I believe so. Well, what have they said about us. [Laughter]

Mr. R. Huson:

That will be on the transcript.

Mr. J. Mills:

That is very helpful. Do you want ...? No, I think we are finished. Thank you very much for coming in. There are a couple of points of detail which we might ask Ian just to follow up. Thank you very much.

[15:06]