

LA BASSE COUR, LES GRUPIEAUX, ST PETER, JE3 7ED

Connétable Mike Jackson
Chairman
Environment, Housing and Infrastructure Scrutiny Panel
Scrutiny Office
Morier House
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15th December 2020

Dear Connétable Jackson

Review of the Foreshore Encroachment Policy

I write further to your Scrutiny Panel's Call for Evidence seeking written submissions concerning its intension to produce a report on P.111/2020 *Encroachments on the Foreshore: Revised Policy*, prior to the States debate on 19th January 2021.

As you are aware I was one of the of the property owners who were fined for alleged foreshore encroachments and who took Jersey Property Holdings (JPH) to the States of Jersey Complaints Board, who subsequently found the actions of JPH to be *"unjust, oppressive and contrary to the generally accepted principles of natural justice"*.

Having regard to the Panel's Terms of Reference I ask the simple question, *"How will the conduct of JPH change as the result of the Revised Policy?"* and I consider this below:

Legal Issues

As a layman I am not best placed to comment on historic and current legal issues affecting alleged encroachments on the foreshore, however I refer you to the representations received from The Jersey Law Society, Sir Philip Bailhache, Advocate Richard Falle and Advocate Geoffrey Crill , all of who question the moral and legal stance of JPH. Indeed, these lawyers have referred to the actions of JPH as *"unfair", "unjust", "improperly discriminatory", "nonsense"* and even as *"extortion"*!

I therefore find it inconceivable that the Law Officer's Department (LOD) would have advised JPH that it has a clear-cut case to fine members of the public for alleged encroachments that predate the Government's ownership and contrary to long established customary legal practices.

JPH refuse to divulge its legal advice received from the LOD, as it is privileged, however during the Panel's Quarterly meeting with the Minister for Infrastructure in September 2019, Mr Rogers (in his capacity of Director General for Growth, Housing and Environment) agreed to Deputy Gardiner's request that JPH should provide the Panel with its legal advice concerning the interpretation of the original contract between the Crown and Public and JPH ability to fine landowners for alleged encroachments.

I am unaware if the Panel has received this legal advice and if not I suggest it is obtained, as I believe it will prove that a legal "grey area" exists and JPH chose to ignore the concerns of the LOD and cherry pick its legal advice to suit its insatiable desire to negotiate the highest possible fines.

I understand that it is not the Panel's remit to consider individual cases but in the two cases referred to the Complaints Board JPH refused to entertain and negotiate on advice received from the

complainant's lawyers, that disputed that certain alleged encroachments existed. The attitude from JPH was a take-it-or-leave-it approach and the Revised Policy contains no provision to prevent this binary posture from being taken again.

The Revised Policy does not refer to amending the contract between JPH and the encroaching party, that doesn't give full title and which contains a clause stating the agreement can be rescinded without notice and without repayment of the fine (although Ray Forster, the former Director of Estates, JPH, informed the Complaints Panel in April 2018 that his department would "look into this".)

The complete lack of legal transparency is illustrated in the Revised Policy which states the "Master Schedule" containing the "Default Boundary Line" cannot be publicly disclosed, despite the fact that the Default Boundary Line would have been assessed from public information obtained within the Public Registry.

Commercial Implementations

The Revised Policy does nothing to allay the fundamental concerns of the previous policy, being that members of the public who need to sell their property are matched against the might and unlimited resources of the Government of Jersey who can, at its absolute discretion, determine if an encroachment exists, the extent of the encroachment and the appropriate fine. JPH thereby act as both prosecutor and judge.

The Revised Policy is silent on the modus operandi of JPH to extract the maximum fine for alleged encroachments and it must therefore be assumed that this policy will continue, without regard to the historic way alleged encroachments have been dealt with prior to the gifting of the foreshore.

The Revised Policy will still be retrospectively applied to members of the public, many of the alleged encroachments which predate their ownership.

The Revised Policy makes no provision to ensure that alleged encroachments are dealt with in a timely manner. Will future negotiations still take 18 months (effectively blighting properties) like previous negotiations have done?

The Revised Policy makes no mention of how valuations will be assessed – there is no confirmation that the public won't be forced to pay for a JPH valuation, be prevented from seeing it and then be charged more than the valuation figure (which as you know has previously occurred).

It is noted that **all** the recommendations of the Complaints Board have been ignored within the Revised Policy. This includes the recommendation that JPH "make public its policy with regard to its stewardship of the foreshore with a publication of a fair and transparent policy regarding the boundaries of the foreshore and encroachments towards it..... and to identify the default location of the landside boundary of the foreshore". Clearly the Revised Policy woefully fails this remit.

Suggested Recommendations

The Revised Policy has been retrospectively formulated, it is purposely vague and secretive and it is also unnecessarily complicated. I therefore suggest a simplified, more equitable, new policy should be recommended as detailed:

- 1) There will be no fines for encroachments that predate the gifting of the foreshore to the Public on 12th June 2015, provided these encroachments do not interfere with the duty of

the Government of Jersey to maintain sea defences as detailed in the Drainage (Jersey) Law 2005.

- 2) If the encroachments predate the Government's ownership and if they interfere with the Government's duty to maintain sea defences, the Government will have its existing right to enforce the Drainage (Jersey) Law 2005.
- 3) For any encroachments that were created after the Government's ownership, the Government will have the right to ask for their removal or request a fair price for their benefit to the landowner, each case to be judged on its own merit, having regard to factors such as planning consent and the extent of the encroachment.

Note: Under Part 4 of the Drainage (Jersey) Law 2005 (as revised 1st January 2018) the Minister for Infrastructure may construct and maintain flood defence works on or over any land at his absolute discretion.

Conclusion

The Revised Policy isn't actually a revised policy at all. At its heart is the JPH previous 2006 valuation policy "*Statement on Land Values*" directive which states the aims of the Department as including "*the extraction of optimum benefit from property assets*", which was written without mention of foreshore encroachments some nine years prior to the gifting of the foreshore.

JPH has acted and as the Revised Policy indicates, JPH will continue to act as brazen property spivs, without regard to the unique circumstances and long established customary legal practice relating to the foreshore.

The Revised Policy has been prepared without any input from the Jersey Law Society (representing the public) and ignores all the recommendations of the Complaints Board, whilst setting out a secretive policy that permits JPH to continue to act as it has always done.

It is reported that the Landside Boundary Review has identified over 400 properties that are allegedly encroaching onto the foreshore and JPH intends to pursue the owners for compensation. Should the Revised Policy be approved by the States I believe a class action will inevitably follow, how will this benefit the Island of Jersey?

I hope that the Panel will reflect on the Crown's original intension of the gifting of the foreshore to the Public and the contract stating the foreshore is transferred with "*the right of access or of exploitation as a matter of longstanding habitual and recognised custom by the general public of the Island or by any member thereof shall be and remain unaffected by this contract of gift cession and transfer*"

Yours sincerely



Julian J C Mallinson FRICS

