
STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS
BOARD: FINDINGS – COMPLAINT
BY MR. I. BARETTE AGAINST THE
MINISTER FOR THE ENVIRONMENT,
REGARDING THE PROCESSING OF
THE PLANNING APPLICATIONS
RELATING TO THE PROPERTY
KNOWN AS BROUGHTON LODGE
FARM, ST. MARY (R.111/2018) –
RESPONSE OF THE MINISTER FOR
THE ENVIRONMENT**

Presented to the States on 8th October 2018
by the Minister for the Environment

STATES GREFFE

RESPONSE OF THE MINISTER FOR THE ENVIRONMENT

States of Jersey Complaints Board

On 7th June 2018, a Complaints Board Hearing constituted under Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#) was held to review a complaint by Mr. I. Barette against the Minister for the Environment, regarding the processing of the planning applications relating to the property known as Broughton Lodge Farm, St. Mary.

On 23rd August 2018, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see* [R.111/2018](#)).

The Minister for the Environment's response to the final report

Introduction

In responding to the Complaints Board's report, I think it is important to provide some context to this case, which has been in progress for several years, and which began well before my election as Minister.

I am responding to the Board's findings with no first-hand knowledge of the events which affected Mr. Barrette. I am relying on the evidence and recollections of the Group Director of Regulation and other officers involved.

The Island has passed laws and signed international conventions, such as the Valetta Convention, in order to conserve our built heritage. In a civilised society laws should be respected by everyone. Listed buildings are independently assessed and evaluated by the Jersey Heritage Trust, and their owners face extra maintenance costs. Those fortunate enough to own such properties are compensated for those extra costs and restrictions by being able to enjoy the aesthetic benefits of their property and are privileged to enjoy their special qualities.

The actions taken by Mr. Barette have resulted in the permanent loss of part of a listed historic building, where the special internal features of the building are protected, and the diminution of part of the Island's valuable heritage. His actions were subject to Royal Court proceedings which he did not appeal.

The Planning Department has the difficult regulatory job of trying to help building owners meet their aspirations whilst ensuring that our heritage is conserved, and I recognise that significant breaches of the Planning Law should always result in clear action being taken. However when action is required, the Planning Department has a duty of care to those against whom action is being taken. The Department should always act with sensitivity and in a way which provides that person with an alternative to prosecution if possible.

During my time as Minister I will ensure that the planning service operates in as customer-friendly way as is possible when undertaking such difficult work. I will also ensure that the lessons of this case are learnt.

I have responded below to the specific Complaint Board's findings and recommendations.

Responses to findings

Board's Finding 5.1

The Board upholds the complaint. It considers this case to be a prime example of how the government interacting with private citizens can have an enormous effect both emotionally and financially on those concerned, especially when communication breaks down, as it did in this instance.

Response

I accept that in this case Mr. Barette felt greatly impacted upon by the regulatory arm of the Planning Department. I also accept that Government, in applying laws, can have an enormous effect on individuals both financially and emotionally.

There is no doubt that relationships between Mr. Barette and Department officers broke down. Records show that department communication with Mr. Barette and his planning agent was extensive and included officers and the previous Minister. This communication provided opportunities for Mr. Barette to comply with the enforcement notice or challenge the regulatory stance taken by the Planning Department by appealing the enforcement notice. Mr. Barette chose not to do this and therefore the Department was left with no choice but to pursue compliance action and refer the case to the Attorney General's office.

There is always great difficulty in enforcing any regulation in a small community. Law makers, regulators and those who need to comply with those laws and rules live side by side and it is often difficult to avoid friction being created.

Compliance is never comfortable but should be no more than is necessary and never excessive.

Board's Finding 5.2

The state of the floors and windows in Mr. Barette's home would have undoubtedly been condemned had they been viewed by Planning Officers. The Historic Environment Officer stated that, had she been advised in 2012 that the windows had dry rot, she would have agreed to their removal and not sought remediation. It would be fair to assume that no enforcement action would have followed. However, the excessive monitoring by the 2 Enforcement Officers, which had created an atmosphere of distrust and conflict, had undoubtedly contributed to the actions taken by Mr. Barette leading up to the removal of the windows. The Board does not condone the fact that he decided to take matters into his own hands and dispose of the windows, but it does understand his rationale for doing so.

Response

There is no evidence to support the Complaint's Board's finding that the floors and windows would have been condemned if viewed by Planning Officers. Mr. Barette destroyed any possibility of evidence and the state of the windows could not be determined.

It is also erroneous for the Board to assume that no compliance action would have followed. Any recommendation for prosecution was supported by the charging Centenier, and by the Attorney General's office, and will have met the required evidential test and public interest tests. All these parties, therefore, agreed that a serious breach had occurred, and agreed with the line of regulatory action.

It is true the site was visited on several occasions. This is because the high risk nature of the site warranted more monitoring. A risk-based compliance regime will result in more visits to some sites than others. I have asked the Department to review its risk-based approach, to ensure this is right and proper.

It is surprising that the Board concluded that there was sufficient rationale for Mr. Barrette to take matters into his own hands, intentionally destroying the windows by fire. It is important to note that the Planning Department's 2 compliance officers acted as a pair, to defend against partiality, and their work was signed off and cleared by a planning team leader and a planning director.

Board's Finding 5.3

It did not hear from the 2 Enforcement Officers and therefore cannot comment on their specific actions. However, the fact that one of them shared a history with Mr. Barette relating to a substantiated complaint of misconduct which the latter had made against that individual when he was a serving police officer, and for which the officer had been disciplined, should have been taken into consideration by Planning, and that officer should not have been involved in Mr. Barette's case in any way. His continued presence in itself was provocative and antagonistic. This was clearly the catalyst for the breakdown in relations with the Department. Every effort should be made to avoid any conflicts of interest in the future by officers, especially in relation to compliance matters. It cannot be just that someone who was the subject of a substantiated official complaint then occupies a position of power over the complainant, and the Board finds this to have been oppressive and improperly discriminatory.

Response

I agree that any officer who had previous history with Mr. Barette should not have been involved in the case. The fact that the Complaints Board identified there was previous "history" between Mr. Barette and one of the compliance officers is of great concern. I asked for this to be checked and have received new information which substantiates this finding. I am advised that this 'history' was unknown and undisclosed to the Planning Department prior to the Complaints Board hearing. This is unfortunate, as the Department were unable to take steps to change the personnel assigned to this case. While the change of personnel would not have resulted in a different regulatory process, I am sorry for the additional stress and anxiety this may have caused Mr. Barette.

The code of conduct for Planning Officers requires such matters to be declared and for officers to withdraw from acting in any case where any possible conflict may exist. Any previous history between one of the officers and the complainant, separate and prior to the employment of that officer by the Planning Department, should have been disclosed. I have asked the Department to introduce a more robust process for identifying and recording any conflicts of interest which officers may have.

I am disappointed that the Complaints Board did not interview the compliance officers concerned, as they have been unable to counter the allegations made against them. This is not in accordance with the principles of a fair hearing.

Board's Finding 5.4

The Board is heartened that, since this case, the role of staff within the Compliance section has been reviewed and redefined, placing greater emphasis on resolution, and using enforcement only as a last resort.

The Board considers it extremely unfortunate that H.M. Attorney General was not provided with the full background to the case, and that attempts were not made to resolve the case informally before enforcement proceedings were pursued.

Response

I'm pleased that the Department has already reviewed its compliance process and a more solutions-focused compliance function is now in operation. Compliance through the Court process is only considered as a last resort, as the very low number of planning court cases demonstrates. In 2017 the Department dealt with 300 compliance cases and served 9 enforcement notices. I want to see further consideration of different ways to enforce and I have asked the Department to look at future options.

I am concerned that the Complaints Board concluded that the H.M. Attorney General was not provided with the full background to this case. The Attorney General's office was not asked to participate in this Complaints Board process, therefore, it is not clear how the Complaints Board came to their conclusion.

Board's Finding 5.5

The Board believes that Mr. Barette was somewhat naïve and had placed too much trust in his agent and the Planning Department, undertaking the wholesale gutting of his property under the mistaken belief that he had permission to do so. There was a process to be followed and he had missed a very important step.

Response

The Complaints Board conclusion that Mr. Barette was naïve and had mistakenly undertaken development work at his property is surprising. Prior to carrying out the unauthorised work at his property, Mr. Barette had submitted a planning application that was refused. Also, in its judgement, the Royal Court commented that "*We consider that the defendant's conduct was deliberate and demonstrates wilful disregard to the advice and warning issued by the Planning Department*".

Board's Finding 5.6

Whilst the Board applauds the changes which were made to the Compliance role, it is of the view that Planning had an obligation to manage the process, and should have made every effort, mindful of the complaints made against its officers by Mr. Barette, to re-engage with him and attempt to resolve the situation. The subsequent delays in dealing with Mr. Barette's applications were therefore unacceptable, and although it recognises that there was blame on both sides, the Board feels that the Department

should have been more proactive. The unwarranted delays have impacted upon Mr. and Mrs. Barette financially as the property has continued to deteriorate, and the costs of building work, especially in the current climate, have increased considerably in the intervening years.

Response

There were long delays before Mr. Barette received a determination of his planning application and permission for replacement wooden windows. It took some time to process because the submitted application was unapprovable, and instead of refusing it, the Planning Department sought constructive dialogue and amendment of the application in order to secure an approval. The Department acted in a helpful way in order to get a solution. I don't believe the Department could have done much more to deal positively with the application without more co-operation by Mr. Barette and his agent.

Board's Finding 5.7

The Board appreciates that there are budget and resource constraints within the Department, but considers that if Regulations are to be imposed, there should be clearer guidance initially as to what would be considered acceptable. Furthermore, if Planning officers consider that they have insufficient information upon which to base a decision, they should make requests early on in the process. The Board recommends that there should be a rigorous procedure implemented to review and monitor potential conflicts of interest in relation to those involved in the planning process, and that a senior manager should be tasked with the responsibility of having such oversight and have the power to intervene, particularly when a complaint is made.

Response

A number of planning process documents and advice notes are published and made available to the public, supported by free officer advice. The Department reviews feedback, comments and complaints received and implements changes and improvements to processes and guidance when appropriate and possible.

I've asked that the Department to commission an independent review of the planning application and compliance process to improve the customer experience. This review will provide valuable information on how the Jersey system compares with others, and will make recommendations on further improvements.

In relation to identifying and recording potential conflicts of interest, as included in my response to the Board's Finding 5.3, I have asked the Department to introduce a more robust process.

Board's Recommendation

The Board also recommends that Mr. Barette receives a written apology from the Department.

Response

I will be writing to Mr. Barette to apologise that the Department wasn't aware of the history he had with one of the compliance officers, that this affected the relationship between him and the Department, and resulted in Mr. Barette finding the process oppressive and affected him emotionally.

I am sorry Mr. Barette found the process and officers "heavy handed". The Department has reviewed its compliance process and a more solutions-focused compliance function is now in operation.