

STATES OF JERSEY

Committee of Inquiry Reg's Skips Limited

TUESDAY, 9th FEBRUARY 2010

Panel:

Mr. J. Mills C.B.E. (Chairman)

Mr. E. Trevor M.B.E, F.R.I.C.S.

Clerk:

Mr. I. Clarkson (States Greffe)

Witnesses:

Mrs. E. Ashworth (Planner, Development Control)

Mr. P. Le Gresley (Assistant Director, Development Control, Planning and Environment Department)

Mr. J. Mills (Chairman):

We are now into the second session and we have got before us Mrs. Ashworth from the Planning Department and Mr. Le Gresley from the Planning Department. Before we start could I just ask you to stand please and are you both content to take the oath?

Assistant Director, Development Control, Planning and Environment Department:

Yes.

Planner, Development Control:

Yes.

Mr. J. Mills:

If you say "I do" after I have read this. 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 which you will do so without favour, hatred or partiality as you would answer to your Almighty God at your peril.

Planner, Development Control:

I do.

Assistant Director, Development Control, Planning and Environment Department:

I do.

Mr. J. Mills:

This session is just myself as Chairman of the Committee of Inquiry and Mr. Edward Trevor. Mr. Huson, the third member of the inquiry has excused himself from this item because he is having some professional dealings with you, Mrs. Ashworth, at the moment apropos another application, so he judged it was better that he did not participate in this session and I think you were aware of that.

Planner, Development Control:

Yes.

Mr. J. Mills:

Thank you both very much for coming. We have seen you before, Mr. Le Gresley, so we have had your introduction. But perhaps we could start by asking you, Mrs. Ashworth, if you could just set the scene about who you are and what you do in the Planning Department and how you came to be involved in it, in quite short order please, just your sort of involvement in this particular case and the main factors that are really in your mind about it, and then I think we will take the questioning from there.

Planner, Development Control:

I worked in the department for 41 years but have done the job of a Development Control officer for about 22. That job entails determining planning applications, which is ... also information gathering and using the policies of the Island Plan and also the Planning Law to determine those applications. In this particular instance we became aware of a problem on this site by way of, I believe it was first a phone call followed up by an email to myself from Mr. Yates and which he explained that there were various problems with noise emitting from the site on his southern boundary and asked various questions about the conditions of the original permission, of which I was not the case officer at that time. In accordance with normal practice I involved Mike Porter as the enforcement officer. I would gather certain information and then pass on to him the nature of the complaint, which is what we did. Mike Porter attended on site with Mr. and Mrs. Pinel, and at that time established through conversation with them that they had indeed intensified the use upon the site at Heatherbrae Farm from that which had pre-existed at La Prairie. You have heard Mike Porter's indication of the fact that they had increased the number of loads, they also no longer used Abbey Plant which used mechanical sorting, but not on the La Prairie site, and the information gathered at that meeting led us to conclude that there had been what we would regard as an intensification of that use on the site but also it appeared to the detriment of the neighbouring property.

[12:30]

Part of the planning officer's role in determining an application or situation like this is to try and resolve a situation. It is not to try and come down hard on either one side or another. It is to mediate and try and resolve a situation. We established that there appeared to be a noise nuisance and Mr. Porter then advised Mr. and Mrs. Pinel that they could request a reconsideration of the conditions that had been imposed on the site at Heatherbrae, which included matters such as the hours of the operation and so on. So subsequently they did submit a request for reconsideration application. As part of that reconsideration application we would, as a normal consequence, involve the Environmental Health Protection Unit because the Planning Department does not have the ability or it is not within its remit to look at such matters as noise nuisance. It was determined that the operation at Heatherbrae Farm was resulting in a level of noise that was incompatible with its proximity to neighbouring residential properties. The Minister and myself, Mr. Porter and 2 representatives from Environmental Health, which are Mr. Pritchard and Mr. Binet, attended on site having ... I had prepared a report that outlined the concerns, the history and so on ...

Mr. J. Mills:

This is your request for reconsideration?

Planner, Development Control:

That is right. Yes, it is the one that is dated ...

Mr. J. Mills:

11th September. Yes, we have that.

Planner, Development Control:

So we visited the site and it was concluded that the noise emitting from the site was considerable but as a result of the site visit the Minister decided to delay reconsidering that decision of the conditions in order for Mr. and Mrs. Pinel to try and come up with a solution that would eliminate or certainly reduce the noise levels on the site. Following that, we then had an application to cover over the area, which was a former silage clamp, but the information we had from the Environmental Health Protection team, again normal process is to consult with that body, was that they did not have the sophisticated equipment to really model the sound and methods of reducing the sound on the site. As a result of that the department felt that it could not approve a situation which, firstly, had not been proven that it would prevent or eliminate or mitigate the noise problem but also there was an issue of the fact that the site lies in what we call the Countryside Zone and policies relating to that zone are strongly in favour of agricultural buildings and agricultural operations, but in this particular case we would not consider it would be acceptable, or it would be an exception to policy to allow cover over the shed and because it was not proven that this would alleviate the problem we had no alternative but to refuse that application. Subsequent to that we had a request for reconsideration of that decision and again we rehearsed the whole of the history on the site and came to the conclusion that unfortunately the noise levels were ... it had not been proven that they could be eliminated, reduced and so on by the covering over the shed and that request for reconsideration of that decision to refuse permission was maintained.

Mr. J. Mills:

Thank you very much for that introduction. I think that confirms what we have learnt already from the hearings that we had a month or so ago. That is very useful. Could I ask you to turn to your September 2006 report; this will be on the public record; if it is not already, it will be when we publish all the documents at the end. This was the report that I believe you drafted for the Minister?

Planner, Development Control:

Yes.

Mr. J. Mills:

This was, as you just described, to see whether the conditions of the application could be changed and so forth. I just want to touch really and ask you to enlarge a bit on your understanding of the original 2005 consent and how you got from the conditions that were imposed then to the views that were taken in this report and then the subsequent activity. You say in your reconsideration report, you do touch on the original consent, the 2005 one which was granted on 23rd May 2005, and you refer to the previous case officer, it was not yourself, I accept that: "Who had experience of operations carried out by R.S.L. [that is Reg's Skips Limited], and who was satisfied the use would not cause a noise nuisance. The file note on the case states: 'Some noise impact, no worse than scaffolding company already authorised to use the rest of the shed for dry storage'." You then based your case on the so-called intensification, I think that is the bit we wanted to concentrate on. Could I just ask you first of all if you could enlarge upon your understanding of the 2005 consent and the conditions that were imposed then and how that came about and your view of it.

Planner, Development Control:

Obviously I cannot read the mind of my previous colleague but my understanding was that another site had been looked at, another property in St. John, the Homestead, and that had been looked at by my previous colleague and by the department and by the Panel and ruled out as not an acceptable site because of the proximity of the residential properties. I was of the view that my colleague had obviously gone on to site at La Prairie and there were residential properties in reasonably close

proximity but, that having viewed the situation there, that she had concluded that the site at Heatherbrae would be an acceptable site. My own dealings with this site have been based on driving past the site many, many times. I had never seen mechanical operations taking place to the best of my knowledge. I also spoke with Gerald Bisson, who is a former enforcement officer, and again my understanding was that he had not understood that there was any mechanical sorting on that site. So for those reasons that my colleague was happy, content, that the site at Heatherbrae was an acceptable site and recommended the approval. The conditions which are the first one about operating the same way, again because she had ...

Mr. J. Mills:

That is the key one really.

Planner, Development Control:

Yes, because she had gone on to site I was comfortable with the assessment of her knowledge of that site and therefore comfortable in looking at Reg's Skips that she assumed that Reg's Skips was a suitable site.

Mr. J. Mills:

Two questions: firstly, you say you drove past a lot. Was that because you drive that way to work?

Planner, Development Control:

I used to live in St. Peter and obviously as part of the role of a development control officer, particularly in those days, we were out and about frequently and my mother still lives in the area and therefore I frequently drove past. But also not only in the evenings, when obviously work would not be taking place, but during the daytime as well, a normal work day.

Mr. J. Mills:

When you came to be involved in this case leading up to what we have just been talking about, did you form a view about the nature of the conditions imposed on the 2005 consent?

Planner, Development Control:

Only inasmuch as they were not particularly helpful to me in determining the situation that had arisen on that site, but I also relied on the information that the enforcement officer, Mike Porter, gave me when he met with Mr. and Mrs. Pinel on site and they gave us the information or gave him the information that, yes, there had been an intensification of use and that they were also mechanically sorted. So I relied on that information.

Mr. J. Mills:

Presumably Mr. Porter presented you with a dossier of evidence on which you could then base your report to the Minister?

Planner, Development Control:

I have not any recollection of any paperwork. A lot of the times we discussed things among ourselves, so to the best of my knowledge I cannot really recall whether he documented that inasmuch ... but I relied on the information that he had when he spoke with me.

Mr. E. Trevor:

My first point is, we have had a lot said to us over the 2 hearings so far about intensification. Can you tell me under what legislation intensification of the use is in fact development and therefore requires an application?

Planner, Development Control:

I will ask my Assistant Director.

Assistant Director, Development Control, Planning and Environment Department:

Yes, I will cover that one, if I can, Mr. Trevor. It is a very complicated argument but there is case law to suggest, certainly in U.K. planning case law, that a development can, by intensification, become maybe a change of use. A change of use might be involved if something intensifies to such an extent that it was not expected or not anticipated. I am trying to think of an example but quite often you get uses which occur on a site and it is very difficult to be precise about the activities. Sometimes there are more than one activity that occurs on any hypothetical site and that one of those uses might be ancillary to another, but as the businesses develop an ancillary use may, in fact, grow to such an extent that it becomes a dominant use or at least a dual use and there is a concept in Planning Law that a dual use might in itself require a separate consent if that intensification has taken place. It is sort of a case law argument, I would agree. It is not written into the legislation. It is not on the statute, but there are cases where things like that can happen. I think the issue here is not necessarily a dual use, we are talking about a use which intensified beyond where we had intended it to be. You can see from the paper trail that the department and the previous Committee had tried to impose a limitation, if you like, on the company by saying that it is okay to transfer your use from La Prairie to Heatherbrae but we do not want it ... by imposing that condition, number 1, and other conditions there were clear limitations that the department was trying to impose by saying: "We do not want it to spread beyond these times. We want you to carry on the same sort of activities that you were carrying on at La Prairie." Now, I have given evidence last time that, because you directed the question at me, whether or not those conditions were satisfactory and up to the job, and I have said to you in the past that on reflection I do not think they were. I have not moved from that view but there was an intention there on the part of the Department and the Committee to limit in some way the intensity of the activity.

Mr. E. Trevor:

The impression I was getting from the paperwork that I have read that in fact the department probably did not know precisely what went on at La Prairie anyway and therefore the number 1 condition was probably inappropriate with which you have possibly partly agreed anyway. But you said intensification could be dual use. In this particular case it was a skip sorting business moving from one site to another. No one I think has alleged that there was a second use.

Assistant Director, Development Control, Planning and Environment Department:

No, that is right. I was trying to give by example a way in which another use could grow on a site to become a dual use and by that way that type of intensification might require planning consent. I am not saying that is the case in this example at all.

[12:45]

Mr. E. Trevor:

Would you agree with me that in this particular case it was the intensification of a similar use?

Assistant Director, Development Control, Planning and Environment Department:

It was the same operation. It was just done in a different way, we felt.

Mr. E. Trevor:

Thank you. I have a different sort of question. Can you tell me please at Heatherbrae we are looking at redundant agricultural buildings; what policies did you use for deciding upon the sort of use to which these buildings could be put on the basis that at that time, as I understand it, there was a certain amount of pressure to have these buildings reused for some purpose or another?

Planner, Development Control:

I think we would have used policy C19, which refers to the alternative use of redundant agricultural buildings because clearly if there is no further use for an agricultural building the owner would be seeking an alternative use and one of the alternative uses which we are quite commonly asked to deal with it is a use for dry storage, which is a benign use, if you like. It is a use that allows the areas to be used for storage purposes but does not allow them to be used for a mini industrial estate where a lot of working activity would take place. So that is one of the policies of the Island Plan which we would use to determine another use for a redundant set of agricultural buildings.

Mr. J. Mills:

Is policy 19 short enough for someone to read it to us so we have got it on record, please?

Assistant Director, Development Control, Planning and Environment Department:

I can give it a go, Chairman, if you wish. It is not that short but I will do my best. "Applications for the change of use and/or conversion of modern farm buildings will normally be permitted where they are at least 5 years old. The redundancy to both the farm unit and to agriculture as a whole is proven by the applicants to the satisfaction of the Planning and Environment Committee, the building is not of strategic importance to the agricultural industry and provided that the development ..." then it goes into a number of criteria: "(1) is an appropriate use of the building, such as industry, warehousing and distribution uses; (2) relates to a redundant building where the applicant has demonstrated that over a period of 12 months he has tried unsuccessfully to find an appropriate alternative user for agricultural purposes; (3) will not create a demand for a new replacement building; (4) will not unreasonably affect the character and amenity of the area; (5) will not have an unreasonable impact on neighbouring uses and the local environment by reason of noise, odour, pollution, visual intrusion and other amenity considerations; (6) will not have an unacceptable visual impact; (7) will not have an unacceptable impact on a site of special interest, building of local interest or a conservation area; (8) will not lead to unacceptable problems of traffic generation, safety or parking; (9) includes for the provision of satisfactory mains drainage and other service infrastructure; and (10) is in accordance with other principles and policies of the plan. Proposals which do not satisfy these criteria will not normally be permitted. Where permission is granted the committee will, as appropriate, impose conditions relating to external storage of materials, parking, landscaping and visual improvements to the building."

Mr. E. Trevor:

Thank you. You referred in there to industry or commercial. What is the difference?

Assistant Director, Development Control, Planning and Environment Department:

The wording in the first criteria, Mr. Trevor, was that provided that the development is an appropriate use of the building such as industry, warehousing and distribution uses. I think it is just offering a range of choices that the Committee may want to consent to if all else is appropriate.

Mr. E. Trevor:

Thank you.

Mr. J. Mills:

Thank you. Can I just then be quite clear that when you receive a complaint and you have begun this process which led to the request for the reconsideration and so forth, your evidence about what had been going on at La Prairie or not been going on was, in essence, anecdotal; is that fair?

Planner, Development Control:

Yes, I think that is fair.

Assistant Director, Development Control, Planning and Environment Department:

No problem with that.

Mr. J. Mills:

Okay, we have established that.

Mr. J. Mills:

Okay, we have established that. Could we go on to the question of the enforcement notice? Just to get the sequence right, the request for consideration proceeded during that summer, which was 2006, was it not? Eventually you prepared your report and that was ready for the site visit which was in September 2006. At that meeting, after they had it, the Minister took the view that there should be a 3 month pause for a solution to try and manage that?

Planner, Development Control:

Yes.

Mr. J. Mills:

That is fair comment. Then you got to the point at the end of the year where the Minister then having considered that, he then took the decision to issue the enforcement? Could I please just ask how the decision making process in your office worked on this? Were you present at the site meeting in September 2006?

Planner, Development Control:

Yes.

Mr. J. Mills:

Were you, Assistant Director?

Assistant Director, Development Control, Planning and Environment Department:

I do not believe I was on that occasion. I do not recall.

Planner, Development Control:

I do not think you were.

Mr. J. Mills:

Okay, can you just take me through the decision process? I think we know what the decisions were but I just want to be clear about the process once you had come away from that site meeting.

Planner, Development Control:

Well, the Minister, as you said, gave a delay for the applicant and the owner of the site to try and reach a resolution but then it became apparent that this was not going to be forthcoming and at a meeting - I cannot remember the dates there - I had a discussion with Paul Nichols, the then Chief Officer of the department, Mike Porter and the Minister and the decision was made. It was an informal meeting.

Mr. J. Mills:

So the decision was made ...?

Planner, Development Control:

Regarding the enforcement notice.

Mr. J. Mills:

What advice, what written advice, did you put to the Minister as the basis of that decision?

Planner, Development Control:

I do not recall that we gave any written advice. It was an oral report if I remember rightly.

Mr. J. Mills:

So there is no record of that?

Planner, Development Control:

There is a record of the decision but not of the meeting, no, no.

Mr. J. Mills:

Is that normal?

Assistant Director, Development Control, Planning and Environment Department:

Yes, that is normal. The Minister is able to take decisions either in public or in private and frequently has discussions with officers on a case. On many occasions he has a series of discussions which means that he may ask an officer a question and have a quick discussion about a particular site and then at another occasion, after considering it, he may arrive at a decision.

Mr. J. Mills:

So you would not formalise in a submission to the Minister, which sets out the arguments and the pros and cons, that fact that some people were supportive of the application and so on and so forth?

Assistant Director, Development Control, Planning and Environment Department:

Well, the Minister would have had the benefit of the paperwork previously. Do not forget he had a meeting prior to this and there was a report in front of him so he had the paperwork ...

Mr. J. Mills:

The request for reconsideration report, was that the one?

Assistant Director, Development Control, Planning and Environment Department:

Yes, that is right.

Mr. J. Mills:

That was in September?

Assistant Director, Development Control, Planning and Environment Department:

Yes.

Mr. J. Mills:

We are now talking about December.

Assistant Director, Development Control, Planning and Environment Department:

Yes, but we would not have prepared another report for the Minister having given him the detail, the full detail, in the first report.

Mr. J. Mills:

Were you both involved in that meeting with him when there was an oral report?

Assistant Director, Development Control, Planning and Environment Department:

No, I was not present.

Planner, Development Control:

I was there. I have to say I do not recall it, or I do not recall the details of it but, yes.

Mr. J. Mills:

Was it what I would call a formal meeting?

Planner, Development Control:

No, no. A very, an informal meeting.

Mr. J. Mills:

Can you just describe what you understand by an informal meeting with the Minister, please? Sorry to press you on this.

Planner, Development Control:

No, no...

Assistant Director, Development Control, Planning and Environment Department:

Well, I will help out. The Minister is not always in the office, he is extremely busy as I am sure you will appreciate. Quite often officers will see him in the office and say: "We wish to discuss a matter with you, have you got 5 minutes?" and he would say yes or no and they would gather the people that they needed for that quick briefing and discuss a matter. That is quite frequently the way the Minister works.

Mr. J. Mills:

Okay. So you were present then. Mr. Porter was present but you were not?

Assistant Director, Development Control, Planning and Environment Department:

I was not present, no.

Mr. J. Mills:

Were you as the head of department or the man in charge, were you aware there were discussions had taken place or were on the point of taking place?

Assistant Director, Development Control, Planning and Environment Department:

No, I was not. I simply do not recall it.

Mr. J. Mills:

So you did not keep your boss informed?

Planner, Development Control:

I did not inform him of that particular meeting but as he has said the Minister is often not there and you have to grab him with the information that you have.

Mr. J. Mills:

I understand that.

Planner, Development Control:

I do not recall advising Mr. Le Gresley of that meeting, but Mr. Porter was there, the Enforcement Officer, and the Chief Officer was there.

Mr. J. Mills:

Mr. Porter told us an hour or 2 ago that it was his recommendation that the enforcement action should proceed. Is that in accordance with your views?

Planner, Development Control:

Well, the Enforcement Officer has that ... that is his role and I would abide by that advice because that is his role to advise us of whether an enforcement notice is relevant but it still has to be ratified by other people in the department.

Mr. J. Mills:

Who?

Assistant Director, Development Control, Planning and Environment Department:

Well, in my absence the Chief Officer was clearly the senior officer present and we would usually try to make sure that in any meeting like that with the Minister, albeit informal, that there is at least a senior officer present.

Mr. J. Mills:

So who was the senior officer present?

Planner, Development Control:

Mr. Nichols, Paul Nichols.

Mr. J. Mills:

At that meeting?

Planner, Development Control:

I believe so.

Mr. J. Mills:

You did not know about this meeting?

Assistant Director, Development Control, Planning and Environment Department:

No, I do not remember it at all.

Mr. J. Mills:

Can I just create a context, how often do you issue enforcement notices in a year?

Assistant Director, Development Control, Planning and Environment Department:

Thirty, 40 times possibly.

Mr. J. Mills:

Maybe once a week, once a fortnight?

Assistant Director, Development Control, Planning and Environment Department:

Yes, something like that, yes.

Mr. J. Mills:

So they are not abnormal but they are not sort of every day occurrences?

Assistant Director, Development Control, Planning and Environment Department:

They are not every day occurrences but they are usual enough that ... you know, they are quite frequent and we know the process ...

Mr. J. Mills:

So you do not routinely get to know about them as head of department?

Assistant Director, Development Control, Planning and Environment Department:

Well, the situation has changed now. The process has changed in that the Minister has now delegated authority to myself and Peter Thorne to sign enforcement notices on behalf of the department. So now I routinely see them fairly frequently and, indeed, sign them. But at that time the power to serve an enforcement notice was kept either with the Minister or with the Planning Committee of the day. So every enforcement notice would have to go through a political nomination.

Mr. J. Mills:

At the discussion you had - we will have to ask the Minister this but I want to get your interpretation - did you make any comment about the need for legal advice or ...

Planner, Development Control:

No.

Mr. J. Mills:

... did anybody?

Planner, Development Control:

No. I certainly do not recall doing that, no.

Mr. J. Mills:

Okay. When did you first learn about the fact that this enforcement notice had been agreed by the Minister?

Assistant Director, Development Control, Planning and Environment Department:

I could not give you a date, Chairman, but it was shortly afterwards.

Mr. J. Mills:

You probably would have told ...

Assistant Director, Development Control, Planning and Environment Department:

As Mrs. Ashworth has stated, we were all involved in regular discussions about this case and many others, keeping ourselves, as any colleagues do, informed of what is happening on a particular case. I am sure I was informed very shortly afterwards that the Minister had agreed to sign a notice.

Mr. J. Mills:

Okay, were either of you informed or present at the discussions Mr. Porter said he had, I think, the following day with Mr. and Mrs. Pinel and their lawyer, Mr. Clarke, about this issue of intensification, whether they could demonstrate ...

Planner, Development Control:

I was present.

Assistant Director, Development Control, Planning and Environment Department:

I was not.

Mr. J. Mills:

Did it strike you as a strange discussion to have after the serving of the notice?

Planner, Development Control:

Yes.

Mr. J. Mills:

Did you make comment on that?

Planner, Development Control:

I cannot recall if I made comment on it, no.

Mr. J. Mills:

You certainly did not go to Mr. Le Gresley and said: "This looks a bit strange"?

Planner, Development Control:

I certainly cannot recall doing that.

Mr. J. Mills:

Okay, thank you. The next step then, as I recall, was that after you had served the enforcement notice, Mr. Porter said he served it when the Pinels came to the office, I think, 6th January, am I right? 10th January. Shortly after that Mr. Clarke, who is the lawyer acting for the Pinels, gave notice of an appeal against the enforcement notice, that is the next thing in the sequence, is it not?

Clerk:

Effectively, yes.

Mr. J. Mills:

What did you do then?

Planner, Development Control:

I do not recall doing very much because it would be then handed on to Mr. Webster who deals separately with all the appeals on behalf of the department. Just to set a little bit of background, at any one time I might have 20 or 30 cases, not as complicated as this one but I would be dealing with a whole range of cases and therefore I would not become involved in the appeal process. That is Mr. Webster's role and so I would move on to something else.

Mr. J. Mills:

But he would rely on you for advice?

Planner, Development Control:

Yes, yes. But he would have the files and have all the information on the file to carry that forward.

Mr. J. Mills:

So you have got to know that presumably as quickly as ...

Assistant Director, Development Control, Planning and Environment Department:

Yes, indeed, yes.

Mr. J. Mills:

What did you then do? Or what was your reaction and ...

[13:00]

Assistant Director, Development Control, Planning and Environment Department:

As Mrs. Ashworth says, when we get a Royal Court appeal that goes to Mr. Webster's office, there are 2 members of staff in that little section there and Mr. Webster would then literally take the case and look at it forensically because the tests on Royal Court appeals are stringent and you have to be absolutely certain of your grounds, as I am sure you can understand. Mr. Webster, I am sure, would have then spoken to Mr. Porter and Mrs. Ashworth, although I do not know that he did but I am sure that he did, and would have then formed a view on the strength of the Minister's case should the matter come to court.

Mr. J. Mills:

But under the process that you were operating, before all this happened, before the enforcement notice was agreed or decided upon, Mr. Webster, who clearly was a man of some experience in all this, was not involved at all?

Assistant Director, Development Control, Planning and Environment Department:

No.

Planner, Development Control:

No. Not to my recollection.

Mr. J. Mills:

What was your reaction to the advice that was then received on the enforceability or otherwise of the enforcement notice?

Assistant Director, Development Control, Planning and Environment Department:

Well, if I recall Mr. Webster queried the voracity of condition one and I think at that time we sought legal advice on this case. Was there not an approach to the Solicitor General?

Planner, Development Control:

I think there was, yes.

Assistant Director, Development Control, Planning and Environment Department:

That may have come slightly later but somewhere in that sequence there the Minister, I believe, asked for legal advice from the Solicitor General. Clearly when you are facing a Royal Court appeal where there are significant costs potentially involved, the Minister is very careful to make sure that he is not committing the department to a process which it might ultimately lose and we look at the evidence very carefully at that point.

Mr. J. Mills:

But only at that point?

Assistant Director, Development Control, Planning and Environment Department:

I do not want to give ... I know where you are going but I think that there is ... we looked at the evidence carefully in any event and we had formed a view but, as in most of these legal challenges, you can form a view either way. We had formed a view that there was a case to make but the Solicitor General on her experience of the matter ultimately advised the Minister that he did not stand a high chance of being able

to defend the appeal.

Mr. J. Mills:

You use the first person plural “we” but you had said that you were not involved, Mr. Porter has already confirmed he did not take any legal advice. You confirmed, I think, that there was no mention of legal advice in the informal meeting of the Minister where this was ...

Planner, Development Control:

Not to my recollection, no.

Assistant Director, Development Control, Planning and Environment Department:

I use the word “we” to try and encapsulate the department.

Mr. J. Mills:

I understand why you are saying that but ... all right, I will leave it there, I will not pursue it any further.

Assistant Director, Development Control, Planning and Environment Department:

I just want to make one point if I may, Mr. Mills. I think just to impress that when you go to the Royal Court that really is the acid test and no party enters into those sorts of proceedings without being extremely careful of its grounds.

Mr. J. Mills:

I understand that, completely. Edward, do you want to come back in?

Mr. E. Trevor:

No, I think I will leave the other points, thank you.

Mr. J. Mills:

Can I just touch on one other issue, and this is really directed at you, Mrs. Ashworth. When you were dealing with this case and sort of reflecting on it and thinking about the reconsideration process and so on, weighing all the factors, how did you take into account States policy on waste management?

Planner, Development Control:

Well, I understood that at that particular time we were looking at - I say “we”, the Island - at recycling as much waste as possible and that in actual fact the Pinels were providing - in terms of waste management and recycling of waste - the type of service that the Island would be looking to improve upon in the future. But that was just ... that was as an aside, it was not a major consideration in looking at the details of the application. It is just an awareness of what the Island was requiring and will continue to require as regards the recycling of all sorts of waste materials.

Mr. J. Mills:

Just an aside?

Planner, Development Control:

Well, it is an awareness of what the Island was wanting to do, an understanding that the Pinels were providing a very good service in that respect but that was not to get away from the problems that we were faced with of the noise issues.

Mr. J. Mills:

Let us weigh this for a moment, please. I know we touched on this briefly when you appeared before us before but your response slightly surprises me. This was in 2006, this was shortly after the passing of

the Waste Management Law. This was when there was the policy in the Island Plan. It was a time of some boom in the construction industry where there is a huge amount of waste material, and there was a terrific push politically to boost recycling. So I am slightly surprised when you say that.

Planner, Development Control:

Could I just go back one step? I think you will find that in the file there is reference to the Environment Department and whose comments came back that they had no comments about the application. So that was the comment from that department.

Mr. J. Mills:

Sorry, I am moving around a bit here. What you are saying is that you get a nil response from the waste management people so you do not report that as a positive, you just say: "That is a nil response"?

Planner, Development Control:

Yes, they have responded but they have no comments to make.

Assistant Director, Development Control, Planning and Environment Department:

I think where you were trying to get to there, Mr. Chairman, was the issue around the context in which we were deciding the applications and I think what Mrs. Ashworth was saying was that we were aware of the background and the push, as you put it, in the Island to improve on recycling and waste reclamation. That did form part of our thinking in terms of the application. What Mrs. Ashworth went on to say was that does not mean that you must accept every application that is put in front of you. I think the concerns that she had were brought out in the noise issue.

Mr. J. Mills:

But you did not write a submission to the Minister inviting him to weigh these factors? There was no submission at the point of decision by the Minister on the enforcement notice where one might have expected the pros and cons to have been ...?

Planner, Development Control:

No.

Assistant Director, Development Control, Planning and Environment Department:

There were no written papers before the Minister, as I think you have heard. But I am sure the Minister would have weighed that in his own mind.

Mr. J. Mills:

Mr. Nichols, he is no longer at the Planning Department?

Mr. I. Clarkson (States Greffe):

That is right and Peter Le Gresley will confirm.

Mr. J. Mills:

Okay. But he was there, what was he ... he was the head of department?

Planner, Development Control:

Yes. Yes.

Mr. J. Mills:

Did he also have responsibility for waste management and environment and that kind of stuff?

Assistant Director, Development Control, Planning and Environment Department:

Yes, he would have done, yes. He was the Chief Officer for Planning and Environment and the waste management sections comes under the environment division.

Mr. J. Mills:

So it would have ended up reporting to him?

Assistant Director, Development Control, Planning and Environment Department:

Yes.

Mr. J. Mills:

Okay. You do not recall him mentioning this at the meeting?

Planner, Development Control:

I do not. No, I do not recall that.

Mr. J. Mills:

We might want to ask Mr. Nichols about that.

Clerk:

I wonder if it worth clarifying, Chairman - either party will correct me if I am wrong, I am sure - the waste regulations, the regulator aspect, as I understand it, of waste is something that sits within the Environment Department. The actual construction of the solid waste strategy management policies that were within that document, I think, is where you start to move more towards the Transport and Technical Services Department. Hopefully that is correct.

Mr. J. Mills:

That sounds familiar.

Assistant Director, Development Control, Planning and Environment Department:

That is correct, yes.

Mr. J. Mills:

Okay, that is not for you either, it is just ... I am just anxious to establish that that was not, in your mind, a primary factor, it was there somewhere but not in ...?

Planner, Development Control:

Yes.

Mr. J. Mills:

Okay. That is probably all I want to ask at the moment. Have you got anything, Edward?

Mr. E. Trevor:

Not any more, no, thank you.

Mr. J. Mills:

I think we have probably reached a natural point there, I think there will be some more things we might want to ask. We are taking this in stage by stage and we are trying to get a clear understanding so I certainly think Mr. Le Gresley we might well be asking you to come yet again.

Assistant Director, Development Control, Planning and Environment Department:

Very helpful.

Mr. J. Mills:

But I think for the moment we can call a halt there. I think you have told us what we needed to know from you at this point so thank you very much for coming.

Planner, Development Control:

Thank you.

Assistant Director, Development Control, Planning and Environment Department:

Thank you.

[13:09]