

STATES OF JERSEY

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FIELDS 848, 851 AND 853, BEL ROYAL, ST. LAWRENCE: COMMITTEE OF INQUIRY

**Lodged au Greffe on 2nd April 2007
by the Connétable of St. Lawrence**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to establish a Committee of Inquiry in accordance with Standing Order 146 in order to investigate –
 - (i) the process and rationale of rezoning Fields 848,851, 853, and 854, Bel Royal, St. Lawrence as identified in policy H2 of the Island Plan 2002 (and including Fields 861 862A and 863A);
 - (ii) the present demand for the type of houses proposed under the scheme set out in the most recent planning application for the fields;
 - (iii) the effectiveness of the depth of analysis and review performed by States' Departments in assessing the suitability of the fields rezoned;
 - (iv) the effectiveness of the Planning and Environment Department in independent consideration and assessment of the developer's proposals;
 - (v) the effectiveness of the consideration by the Planning and Environment Department of the submissions and documentation of the developer in meeting the terms of the development brief and/or the Island Plan 2002 specifically to include statements contained in paragraphs 8.69 to 8.73 of the Island Plan 2002;
 - (vi) the status of the development brief and its relationship with separate statements in the Island Plan 2002;
 - (vii) the impact of the proposed development upon the infrastructure of the West of the Island in matters such as schools, roads, traffic, drains and existing flood plains;
 - (viii) any other matters which are shown to be relevant during the period of inquiry.
- (b) to request the Minister for Planning and Environment to suspend consideration or determination of any existing or new planning applications in respect of this site pending the results of the inquiry.

CONNÉTABLE OF ST. LAWRENCE

REPORT

1. It is with extreme reluctance that I bring this proposition to the Assembly, and in no way should it be regarded as a criticism of the present Minister for Planning and Environment.
2. As members will recall they adopted P.48/2006 which I brought (with the full backing of both of the Deputies of St. Lawrence and the Deputy of St. Peter), which requested the Minister for Planning and Environment –

to bring forward for approval by the Assembly an amendment to paragraph 8.71 of Island Plan 2002 which relates to the above fields so that the words “The site could accommodate approximately 97 homes with 1.5 acres (3.4 vergées) of public open space/landscape area as part of the development” in the said paragraph be amended to read “The site will accommodate a maximum of 97 homes (comprising two, three or four bedrooms or any combination thereof) with 1.5 acres (3.4 vergées) of public open space/landscape area as part of the development”.
3. As members will be aware the Minister has not formally brought back an amendment to the Island Plan, but he does appear to have been mindful of the States’ decisions in determining applications so far.
4. For ease of reference I attach a copy of the original proposition and report (at Appendix A), which outline many of the relevant details surrounding this site, and the conclusions from the Minister’s report of 2nd August 2006, outlining the 5 reasons for rejecting the application of that year (Appendix B).
5. I am mindful that a Scrutiny review might be an alternative way of dealing with this matter, and when considering this matter, members may prefer to request this route. However I am fully aware that Scrutiny already has a full agenda of work, and I would not wish to divert resources from their present schedule on to yet another matter of importance.
6. Since the date of the lodging of P.48/2006, a number of matters have arisen which to me have served to demonstrate the lack of depth of consideration of various matters connected to this development: for example –
 - (i) The location of a proposed pumping station on part of Le Perquage which appears to be protected by covenant.
 - (ii) The discovery by the Environment Scrutiny Panel that the Development Brief appears not to have been properly authorised.
 - (iii) The statement (in respect of revised traffic assessments) by the Minister of Transport and Technical Services that “I can confirm that estimates of the predicted effect of the recent housing developments on those roads listed (in a written question raised by Deputy Le Fondré on 5th December 2006) have not previously been undertaken”.
 - (iv) The continued concern of the Health Protection Unit (see Appendix C).
 - (v) The recent public concerns expressed by the Minister as to the level of the development on this site.
7. The Minister is constrained by law as to the matters he can properly consider in determining the application, and it appears legally difficult for him to challenge the nature of this development even when he has publicly expressed reservations about size of the scheme and whether the site is appropriate for the number of houses proposed under the Jersey Island Plan 2002.
8. Members will be aware that there is considerable public concern about this development, not just from direct neighbours of the site. In my opinion it would be appropriate for a full and transparent enquiry to be held into this development and the rationale for adopting this site before it is determined. 170 letters of objection were received by the Department in respect of this latest application.

9. Given the effort generally involved in submitting an objection to a planning application, it is my view that this high level of objections remains indicative of the far wider public concern over this development.
10. Objectors continue to consider that the reasons for rejecting 129 units of accommodation on this site are equally applicable to 102 units, and are dismayed that the Minister appears to be procedurally inhibited from considering this matter further.
11. Equally, it is in the interests of the developer to have the application determined within a reasonable period of time.
12. The most recent amendments to the plans were submitted on 12th March 2007. The Public Hearing into this matter was held on 20th March 2007. I will be asking the Assembly to consider this matter as speedily as possible, hopefully on 17th April 2007, and the Assembly will note that I have asked for the Committee to consider this matter in as urgent a manner as possible. It therefore should not unreasonably impinge upon the rights of the developer to have their application determined within an appropriate period.
13. I reiterate the point made in my previous report and proposition that there is a strong level of public disquiet over the rationale of this development and the method by which the present application has been arrived at. I hope members will continue to understand the reasons for bringing this proposition, and will show the same level of support as they did in respect of P.48/2006.

Financial and manpower statement

There will be costs involved in carrying out a public inquiry, but such is the public concern over this issue, I believe the public will accept that it will be money well spent.

The costs will depend upon the level of officer support required. I would consider that seconding an officer on a part-time basis should cost in the region of £10,000 for the period of the enquiry, and I consider that a prudent provision for sundry expenditure of £5,000 would be appropriate.

STATES OF JERSEY

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ISLAND PLAN 2002, POLICY H2: FIELDS 848, 851, 853, AND 854

Lodged au Greffe on 20th April 2006
by the Connétable of St. Lawrence

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 11th July 2002 in which they approved the Island Plan 2002 and, in particular, in which they approved the zoning of land for Category A housing listed in Policy H2 of the Plan including Fields 848, 851, 853 and 854, Bel Royal, St. Lawrence, and –

to request the Minister of Planning and Environment to bring forward for approval by the Assembly an amendment to paragraph 8.71 of Island Plan 2002 which relates to the above fields so that the words *“The site could accommodate approximately 97 homes with 1.5 acres (3.4 vergées) of public open space/landscape area as part of the development”* in the said paragraph be amended to read *“The site will accommodate a maximum of 97 homes (comprising two, three or four bedrooms or any combination thereof) with 1.5 acres (3.4 vergées) of public open space/landscape area as part of the development.”*

CONNÉTABLE OF ST. LAWRENCE

REPORT

1. Standing Orders do not allow a proposition to be brought in the name of more than one private member but I must stress that this proposition is brought with the full support of both of the Deputies of St. Lawrence and the Deputy of St. Peter.
2. This site has proved the most controversial of all of the H2 Island Plan sites. It is affected by, or has an impact upon, flooding, traffic, neighbouring businesses and noise issues.
3. In 2003, as part of the initial consultation by the Planning Department, the Parish of St. Lawrence was asked for comments in respect of this site and the proposed development. In my written reply we expressed significant concerns and specifically commented on the 97 units identified in the Island Plan. The Planning and Environment Department did not at that time correct the presumption that the number of units involved was 97, and therefore the consultation with the Parish never even mentioned the possibility that the development would be for more than 97 units.
4. It is my opinion that any member of the Public (or indeed any Member of the States) would quite naturally assume, upon reading the Island Plan, that the development would consist of the 97 units mentioned in paragraph 8.71. Many of the initial concerns of the Parishioners of St. Lawrence and St. Peter (and other members of the Public) were based upon 97 units. During the whole planning process to date, many hundreds of written representations have been received by the Department, and all public meetings at St. Lawrence Parish Hall have been very well attended; the most recent meeting on 24th October 2005 was attended by approximately 180 people.
5. From day 1, many residents of both St. Peter and St. Lawrence have objected to various aspects of this proposed development, generally to no avail.
6. As has been the case with a number of other H2 sites, the actual proposals for the development are entirely different to the original details in the States approved Island Plan. The first formal application was for 150 units, which was subsequently modified to approximately 140. Neither of these were approved. The present application (which has not yet been determined) is for 129 units.
7. Many Island residents do wonder what was the purpose of the Island Plan given that various aspects in respect of the H2 sites appear to have been disregarded (by the Planning Department) since the Island Plan was approved by the States Assembly. Essentially residents feel entirely let down by the whole situation, and do question the integrity of the consultation process.
8. The aim of this proposition is to request the Minister for Planning and Environment to bring back part of the Island Plan to the States. The development is item 1 of Island Plan Policy H2 and is referred to in paragraphs 8.71, 8.72 and 8.73 of that document. I wish to achieve clarification of what paragraph 8.71 of the Island Plan actually means.
9. I believe that by giving the opportunity to the States to confirm and clarify this part of the Island Plan we can begin the process of reengagement with the Public of this Island. It will be recognised as a positive signal that we are indeed prepared to listen to their concerns and are willing to consider and address them at the highest level.
10. A brief outline of some of the issues surrounding the site are as follows –
11. The traffic implications of this one site are horrific. By placing it on one of the two key routes in from the West of the Island it is impacting upon an already congested area. The projections for delays are not just on the St. Peter's Valley Road. For example, traffic delays on Mont Félard are projected to increase by over 50% (thus impacting on anyone from St. Mary, St. John or St. Lawrence who use this road for the morning commute). These projections exclude any other development occurring in the West of the Island.
12. The office of the Deputy Prime Minister in the United Kingdom has recently completed public

consultation on Planning Policy Statement 25 (Development and Flood Risk) (PPS25) (it will replace Planning Policy Guidance 25 when issued). Broadly speaking it seeks to encourage development in areas with a lower flood risk, to shift development from areas of higher risk to areas of lower risk, and appears to indicate that one should not build on a flood plain. Whilst the UK guidance is not applicable to Jersey (as a separate jurisdiction), it is my opinion that both the current and the proposed flood guidance would not support this development, which appears to fail the proposed 'Exception Test' on at least one count. However the consultants employed by the developer have indicated that they are satisfied that the development will not be at risk from flooding. They have based their modelling on a site in the United Kingdom (which they consider to be similar to the one in Jersey). It is fair to say that many residents remain unconvinced by their views.

13. The site is directly opposite Jersey Steel, and whilst Jersey Steel could be considered to be a 'bad neighbour' the company has been at its present location since the 1950's and generally has operated with few complaints. This is primarily because the noise from its operations is directed out across the marsh, generally only disturbing grazing cows or horses. The company employs 60 people and is one of the principal suppliers of steel in the Island. In the same way that one or two residents near the harbour have complained about the noise of port operations, there is serious concern that complaints from residents of the new estate could detrimentally curtail the operations of the company.
14. A number of the community facilities that made the site attractive (due to reduced vehicle trips) have gone (Sandybrook Parade used to have a 'corner shop', a hairdresser and a laundry – these have all been replaced by a stationers, and the Britannia Pub is being developed into apartments).
15. There are a whole variety of design issues associated with the site, but these are a matter for the Department. However, for example, all of the earlier proposals had no garages (estimated area 147 ft² or 13.72 m²), with the developer providing the alternative of a small garden shed (approximately 34 ft² or 3.2 m²) to cope with the general clobber that comes with family living and children. The homes themselves are just above the minimum standards.
16. Ultimately the main concern can be summarised as the sheer size of the development. The Parishes and the residents had already expressed significant concerns at 97 units. They were aghast at proposals for 150 homes. A development smaller than that proposed in the present application would provide a better quality of life for the new residents of the estate; it could be moved further away from Jersey Steel and the areas prone to flooding, and would have less of a traffic impact. Even on a smaller estate the requisite proportions of first-time buyer homes and social rented homes can be retained, and this may also allow the Minister to enforce his views on design, spatial requirements and all the other elements that could improve the design of this estate and its approach towards sustainability.
17. Detailed understanding of the problems of the site could not have been reached by the House when it accepted the development principle in the Island Plan. In addition members could not have envisaged the concerns of residents and how they feel they have been treated. The (draft) Strategic Plan specifically refers to engagement with the Public as being one of the issues that needs to be addressed. I believe that by supporting this proposition we can begin the slow process of reconstructing the Public belief in this Assembly. I hope you will understand the reasons for bringing this proposition, the logic behind it, and trust you will support it.
18. There are no manpower implications arising from this proposition. There are no obvious financial implications arising from this proposition. Any other financial implications will depend upon the actions of the Planning Department and the outcome of any subsequent proposition and debate.

Extract from Bel Royal Development Review – August 2006, report of the Minister for Planning and Environment

4. DECISION

4.1 After a careful appraisal of the application and the relevant material planning considerations, I have decided to **refuse planning permission** for the following reasons:

Overdevelopment

The proposed housing development would be an unacceptable overdevelopment of the site, contrary to the indication of yield included in the Island Plan, resulting in a development which is harmful to the character and amenity of the area and which will lead to unacceptable problems of traffic generation, contrary to Policies H8 and G2 of the Jersey Island Plan, 2002.

Site Boundary

The proposed housing development extends beyond the boundaries of the site zoned for Category 'A' housing purposes and encroaches into an area identified as 'Important Open Space', contrary to Island Plan Policies H2 and BE8.

Education

There is unreasonably inadequate capacity in the local States schools at Bel Royal Primary School and Les Quennevais Secondary School to accommodate the likely increase in the number of school aged children in their catchment areas generated as a consequence of the proposed development.

Noise Impact

The future occupants of the proposed housing development are likely to be exposed to unacceptable noise nuisance from the operations conducted at the nearby premises of Jersey Steel Co. (1935) Ltd due to its proximity and the failure of the applicants to demonstrate their ability to make adequate provision for noise mitigation.

Design

The design of the proposed new housing development is unacceptable in that it fails to adequately reflect relevance to Jersey, particularly in terms of form and architectural details; is insufficiently spacious; and would present an unsatisfactory appearance, detrimental to the character of the area; contrary to Policy G3 of the Jersey Island Plan, 2002. and the published 'Design Principles' of the Minister for Planning and Environment.

**Senator Freddie Cohen 2nd August 2006
MINISTER FOR PLANNING AND ENVIRONMENT
STATES OF JERSEY**

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APPENDIX 13 13
 States
 of Jersey

18 December 2006

States of Jersey Environment &
 Public Services Committee
 Planning and Building Services
 South Hill
 St Helier
 JE2 4US



Our ref: A/DH

Dear Sir

Fields 848, 851,853,854,861,862A and 863A, Bel Royal, St Lawrence

Application Number P/2006/2489

PROPOSED WORK:-

CATEGORY A HOUSING DEVELOPMENT TO PROVIDE 102, 3 AND 4 BED DWELLINGS INCLUDING ROAD WIDENING ACCESS IMPROVEMENTS, DRAINAGE INFRASTRUCTURE, PUBLIC AMENITY SPACE AND COMMUNITY BUILDING.

In respect of the above application, this Departments comments are as follows:-

I have discussed this matter with Mr S Smith, Assistant Director Health Protection and Mr A Pritchard, my Team Leader and I would make the following comments. I understand that both the applicant and Jersey Steel have used independent noise consultants; clearly they disagree on a number of points. At this stage I would like to point out that the Department did not approve the applicant's noise consultant assessment methodology as they have stated. In fact the opposite is perhaps more accurate as a number of the Department's queries regarding the initial assessment remain unanswered.

Our current position is that having ourselves sought independent advice, the comments made by Atkins, Jersey Steel's consultant, broadly align to our position. The measures suggested by the applicant are unlikely in themselves to negate the likelihood of potential occupants of the proposed development from being adversely affected by noise emanating from Jersey Steel.

There is quite some history to this application and I am mindful of your Minister's comments. Senator Cohen stated in his Report dated August 2006 in relation to the Noise Impact:

"In the circumstances, I find that the proposed solutions to the noise impact issue have not been satisfactorily proven and, in particular, there are outstanding doubts as to whether the off-site mitigation measures can be implemented."

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He continued by stating that a ground for refusal was the impact of noise:

"The future occupants of the proposed housing development are likely to be exposed to unacceptable noise nuisance from the operations conducted at the nearby premises of Jersey Steel Co. (1935) Ltd due to its proximity and the failure of the applicants to demonstrate their ability to make adequate provision for noise mitigation"

Since August 2006 the applicant has not significantly altered their noise mitigation proposals from the original application. This Department believe that this element of the application has not addressed the Minister's concerns and as such remains live.

In trying to reach a compromise our consultants suggested the use of roller shutters at Jersey Steel. I have taken your Minister's comments on board and understand that this is not accepted as a workable solution by your Department. The issue of planning gain and the opportunity for the applicant and Jersey Steel to resolve any potential issues may not have been pursued to its full potential.

If the development goes ahead in its present form noise complaints are likely from the future occupants of the new build properties. If we follow the logical sequence, the noise is likely to be deemed a Statutory Nuisance under the Statutory Nuisances (Jersey) Law 1999. Should the Department be forced to intervene our course of action would have to be with Jersey Steel; they would incur all costs associated with remedying noise nuisance caused to the occupants of the proposed development. Based on our work to date, but without prejudging what might happen, works such as roller shutters, insulation, bunding and fencing may be required in addition to a review of permitted hours of operation. The impact for Jersey Steel would be significant.

Furthermore the quality of life for those living in this development is likely to be diminished. If the noise issues are not resolved and the application is approved both Jersey Steel and prospective purchasers may consider legal action against the States.

In order to help the applicant and assist in resolving outstanding issues I would like to offer the following suggestions:

1. The dimensions of the earth bund and potential reduction in noise levels at the nearest housing have not been provided. The proposed barrier length needs to be long and high enough to prevent sound diffracting round the edges. Ideally the barrier needs to be on the west side of the perquage, positioned approx 14 m to 15m from Jersey Steel's doors. The previously proposed bund is unlikely to reduce noise levels significantly as the bund was not close enough to Jersey Steel.
2. I recommend the applicant specifically considers the premises closest to Jersey Steel, numbers 1-6, 52 - 56 and 86- 88. The applicant may want to consider their aspect and the benefit of having gardens facing east away from Jersey Steel and acoustic double glazing to the windows facing east and associated whole house ventilation. The premises will also act as a noise barrier to the gardens. However, the applicant needs to remember that during the summer it is not unreasonable for people to open windows; then even acoustic double glazing affords little or no protection.

3. The Department require a construction site management plan detailing measures proposed to minimise noise, dust and vibration during site preparation and construction phases of the development; vehicle movements on site and from HGVs accessing the site. The use of de watering pumps etc should be enclosed/insulated properly to minimise noise to neighbouring property and should be sited as far as is practicable from residential housing.
4. A dedicated wheel wash facility should be provided to minimise mud on the highway and the associated dust. The highway in close proximity to the site should be cleaned daily to minimize mud and dust. The vehicles bringing materials to the site from other construction sites should be covered on the highway to prevent dust affecting the highway and premises on route.
5. I recommend no more than 30 vehicle movements/day. No fill deliveries on weekends or bank holidays.
6. The contactor(s) and sub contractors involved should follow the Department's Guidance in relation to minimising noise and dust and vibration. (Copy attached)
7. The Contactors should liaise with local residents regarding the work planned, time scales, compensation measures such as cleaning cars, etc plus any pre and post assessments of properties for vibration damage. Forging a good relationship with local neighbours is key to minimising complaints.
8. Additional detailed considerations:
 - (1) Ensure the pumping station machinery at the proposed sites does not cause noise or vibration nuisance to neighbouring properties (isolation and insulation as necessary of pumping machinery).
 - (2) In order to minimise the need for short car journeys and therefore reduce the burden of traffic related air pollution, consideration needs to be given to the provision of public transport and retail development. There needs to be compliance with the States Sustainable Transport Plan.
 - (3) The design of the premises should be such as to prevent any ingress of dampness from the very high water table in this area.
 - (4) No contaminated material as listed in page 11 of the Waste Management Report Project Ref: 15151 Feb 2005 PB Associates shall be brought onto the site. To achieve this sampling and analysis may be required and clarification of the source of such materials

The impact of noise on the potential occupants of this proposed development cannot be underestimated. Without wishing to enter the dispute between two independent noise consultants I would pose the following question; was the applicant's initial noise assessment proportional to the perceived noise problem, investment committed or likely detail required to determine this application. I would suggest not.

Note

The Department do not believe the applicant has demonstrated they have addressed the noise issues associated with this application. Should this application be approved in its current form a Statutory Nuisance is likely, and in resolving any

potential action this Department would be forced to take action against the person responsible for the noise nuisance; Jersey Steel in this case.

Yours sincerely



Alan Irving
Environmental Health Officer

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Copy to:

Senator F Cohen, Minister for Planning and Environment

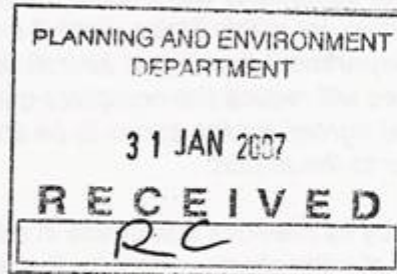
Senator S Syvret, Minister for Health and Social Services

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APPENDIX 14 14
States of Jersey

Mr R Corfield
Principal Planner
Planning and Building Services
South Hill
St Helier
JE2 4US

29 January 2007



Our ref: AMI

Dear Roger

Re: Bel Royal Housing Development - Noise Issues

Thankyou for the email regarding the above development. I would make the following comments:

1. Do Jersey Steel presently meet the current noise parameters agreed with HP? *There are no noise parameters as such only hours of work. The previous complaints related to Sat pm/Sun working, which were resolved. The point to note is that housing is not immediately adjacent to the significant noise source.*
2. Assuming noise barrier on west side (i.e. 2-storey wall) not acceptable (because of impact on Le Perquage), do you still think it possible to come up with mitigation measures to resolve the issue, or to ensure any future potential noise complaints would be considered unreasonable to pursue under the Statutory Nuisances Law?

For example: a combination of roller shutter doors; on-site planted bunding; re-orientating proposed homes nearest the noise source; introducing acoustic ventilation / upgrading to these units (i.e. removal of acoustic baffled wall vents; removal of letter plates from entrance doors in lieu of wall mounted letter boxes; high performance acoustic rated windows and doors; higher wall and roof insulation). I understand the noise mitigation measures in bracket above, were agreed by Health Protection for the applicant's housing development in the Noise Zone adjacent to the airport.

The above suggestions may help resolve some noise breakout affecting properties but there may still be complaints from residents using their gardens. The properties and gardens are likely to be higher than the existing land to deal with the risk of flooding; this will increase the number of properties in line of sight with the noise source and so the number of affected dwellings. I am not in a position to warrant a solution and cannot guarantee that noise complaints won't arise. The situation at the airport is different as some of the properties are within Noise Zone 3 and therefore specific measures are required by your Department to mitigate aircraft noise. Living close to an airport even with these measures will reduce the occupiers quality of life especially as the States (against our advice) agreed for the zones to be shrunk further thereby allowing more development closer to the airport.

3. Does HP stand by its previous comments in relation to the earlier application that that the installation of roller shutter doors for the two door opening at Jersey Steel's premises that face east, together with the filling of holes in the structural façade "will provide the necessary acoustic reassurance to overcome the outstanding concerns of noise nuisance".

Following discussions with Jersey Steel these doors are likely to remain open at times due to Health and Safety issues regarding heat and ventilation in the shed and the movement of steel. This would negate their effectiveness and if a complaint was received we are still duty bound to investigate and take action if it is deemed to be a nuisance. I have also taken your Minister's comments on board and understand that he does not accept it as a workable solution and as such I have discounted it as a viable option.

4. Would HP be content if the applicants agreed to enter a clause within the contractual agreement of every purchaser that highlights Jersey Steel as their neighbour and denies them the right to complain about noise nuisance as long as the Company operates within parameters agreed with HP?

I do not think this is an acceptable proposition; morally or legally. It achieves nothing as it would not negate the existing provisions in law and we would still be duty bound to take action if complaints were received and justified. We would then need to determine if Jersey Steel were following best practice (which is not being achieved at the moment as no nuisance exists).

I understand the Minister is in a difficult position; this is not a suitable site for domestic dwellings. I assume the States have explored the opportunity for Dandara or the States to offer a land swap with Jersey Steel?

Yours sincerely



Alan Irving
Environmental Health Officer

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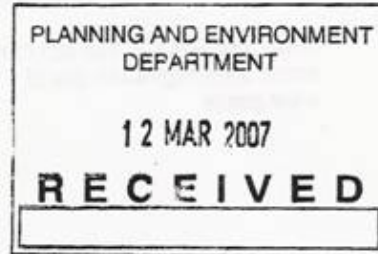
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APPENDIX 15
States
of Jersey

Mr R Corfield
Principal Planner
Planning & Building Services
South Hill
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JE2 4US

9 March 2007

Our ref: AMI/AP/SDS/2007



Dear Roger

Re: Bel Royal Housing Development Noise Issues

I apologise for the delay in responding. I have had a chance to reflect on the case and like everyone else in the Department we are looking for a swift and professional conclusion. The offer by the applicant to model potential noise environments is extremely useful; we don't want any of this work to be abortive and I think it extremely important to have agreement from all parties as we go through the process. One of our consistent concerns regarding the application is the appropriateness of the applicant's noise data. A concern shared by Bruce Halliwell at Jersey Steel.

As we move this application forward it is clear that we need to establish representative noise levels; a level that reflects the noise occupants of the proposed development are likely to be exposed to. I envisage Public Health establishing this baseline; without this agreement I feel the process will stall. As things stand the applicant's modelling is based on a noise level we feel is unrepresentative of the actual. I think it is also essential evidence should any one lodge a third party appeal against the eventual decision.

Mr Alan Irving has spoken further to Bruce Halliwell at Jersey Steel and I believe we need to carry out some further monitoring of L_{max}/L_{90} to have comfort in the modelling. Mr Irving has asked Bruce if he can monitor this week to get a representative view, it is worth remembering:

1. The original monitoring by us was back in November 2004; the noise climate is likely to have changed
2. Three separate consultants have been involved; providing differing and often conflicting views and figures
3. Frequency data is needed to assist re designing the fencing.

Mr Alan Irving should be able to provide some data this week; it would be extremely useful if you could ensure the applicant can sign up to this approach. In providing the data there are other comments regarding the proposed scheme that are relevant; increasing Jersey Steel's fence to 3m to act as a more effective barrier is one example. However, I believe it is best to understand the existing noise climate in detail before consolidating the Departments response.

Yours sincerely



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APPENDIX 16 15

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Mr R Corfield
Principal Planner
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South Hill
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JE2 4US

14 March 2007

Our ref: Health Protection/Planning/Goose Green
Your ref:

Dear Roger,

Application for Category A Housing at Bel Royal

I am conscious you are looking to the Minister to make a decision on this matter on the 20 March; I have attempted to bring some pertinent background together in one place to frame our comments.

As mentioned early on in the process by Sarah Le Claire¹, the application has not followed the Environmental Impact Assessment (EIA) process and I suspect this has been at the heart of many of our current discussions. It is fair to say we have consistently, from the outset, doubted the applicant's noise consultant's position and the modelling assumptions they have made². It is fair to say that we stand by Alan Irving's comments of the 29 January 2007³ and my follow up letter to the Minister⁴.

Whilst we could go to great length discussing background levels, the reality is that Mr Irving's current assessment shows a Lmax of 70 dB(A); in 2004 it was between 60 to 65 dB(A) at a different monitoring location further from Jersey Steel. This is what we would expect given the nature of impact noise. Modelling is all well and good but it does not match actual readings taken on the ground. This is loud; certainly a level that would significantly interfere with a resident's ability to enjoy the comfort of their own home. We must be mindful that it is not just the noise itself that is a problem; with intermittent noise the anticipation of noise is part and parcel of the stress and nuisance caused. The applicant's noise consultants have, and continue, to use a lower Lmax figure that we do not feel is representative. Their modelling uses this lower than accepted figure and as such we cannot accept the modelling outputs. The modelling parameters have not been disclosed and this adds to our misgivings and doubt.

Fitting a roller shutter door to Jersey Steel's building may provide up to 10 dB reduction; an essential element needed to protect potential residents; when the shutter door is open that reduction is lost. The Planning Department must note that Health Protection

¹ Email Le Claire to Corfield dated 24 December 2004 shown at Annex A.

² Email Irving to Corfield dated 26 July 2005 shown at Annex B

³ Letter Irving to Corfield dated 29 January 2007, shown as Annex C.

⁴ Letter Smith to Sen Cohen dated 15 February 2007, shown as Annex D.

may not be able to take action should a Statutory Nuisance occur. If Jersey Steel can show a Best Practicable Means (BPM) defence, which on completion of all works they might, we are not able to take action. Anyone affected by nuisance noise from Jersey Steel would not have a means of legal redress, through the Statutory Nuisance Law, to secure the quiet enjoyment of their home.

The berm between the site and Jersey Steel will assist, but not greatly; perhaps a reduction of a few dB. A higher fence at Jersey Steel's boundary, 3m high, will be useful as it is closer to the source. The frequencies involved are mainly mid range and higher frequencies which, on a positive note, are easier to reduce

If development does take place on the proposed site, the following measure constitute the minimum works needed:

1. Automatic roller shutter doors (default closed) – Jersey Steel.
2. Lean-to Building – Jersey Steel.
3. 3m high close boarded fence – Jersey Steel's boundary.
4. 3m high berm with trees (close planting to screen) to screen.
5. All generally eastward facing facades to have acoustic glazing and affected properties to have whole house ventilation.
6. All generally eastward facing boundary walls / fences to be a minimum 1.8m high close board or solid construction.
7. All additional measures stated by the Applicant in their PBA report⁵ dated, paragraph 5.1.2 page 11 (written confirmation required by Health Protection)

These works constitute a basic requirement if development is to take place; the Departments do not warrant the solution. I feel it only fair to restate our consistent concern that we run the risk of allowing a development to proceed which will expose potential occupants to a noise nuisance we have no means of abating.

Yours sincerely

Stephen D Smith
Head of Health Protection Services

Annexes:

- A. Email Le Claire to Corfield dated 24 December 2004
- B. Email Irving to Corfield dated 26 July 2005
- C. Letter Irving to Corfield dated 29 January 2007
- D. Letter Smith to Sen Cohen dated 15 February 2007

⁵ PBA Report on Bel Royal noise assessment, project 15151/001 dated March 2007