

STATES OF JERSEY



COMMITTEE OF INQUIRY INTO FIELDS 848, 851 AND 853, BEL ROYAL, ST. LAWRENCE FINAL REPORT (R.101/2008) – RESPONSE OF THE MINISTER FOR PLANNING AND ENVIRONMENT

**Presented to the States on 20th November 2008
by the Minister for Planning and Environment**

STATES GREFFE

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Introduction

At the outset, I would like to thank Mrs. Canavan and the members of the Committee of Inquiry (the Committee) together with their advisors for their efforts in getting to grips with and reviewing the extremely long and complex history associated with the rezoning of this site and the subsequent pre-application and application processes.

I am well aware that the amount of information held on file in the Department of Planning and Building in relation to this matter is enormous and must have presented the Committee with a daunting prospect. I would like, therefore, to express my appreciation for the many hours of deliberation that must have preceded the publication of the Committee's report. I should also extend my thanks to all those who provided evidence for the Committee, including the Minister for Housing, the Constable and Deputies of St. Lawrence, the developers and officers from the Planning, Environmental Health and Transport and Technical Services Departments.

I recognise that inquiry reports of this nature, which review complex events over several years, will nearly always attract adverse claims from interested parties regarding the selection of evidence, the weighting given to different pieces of information and attempts to post-rationalise events. Furthermore, different interests will always look to cherry-pick the findings which support their particular point of view. Nevertheless, when the proposition was brought for a Committee of Inquiry, I supported it and stated my belief that it would demonstrate that the decisions regarding the development of the Site were properly arrived at after a robust and transparent planning application process. I still believe in the sentiments expressed in that statement, although I would readily concede that there is room for improvement in the processes and procedures that were followed. To that end, I think that many of the findings and recommendations of the Committee can make a useful contribution in informing and influencing future decision-making processes and procedures in relation to –

- The current Island Plan Review process... particularly in relation to future housing policies, site selection and evaluation and consultation;
- The application process for large-scale housing developments, including the formulation of development briefs.

However, before commenting further on the Committee's particular findings, I would like to take this opportunity to express my views on the housing development which is now nearing completion. Notwithstanding all the difficulties that have arisen in getting to this stage, it is my belief that this scheme has the potential to be one of the best large scale first-time buyer housing developments to have been built in Jersey. It is being constructed to high design and layout standards and this, together with its location, should serve to provide future residents with much needed good quality homes in an attractive and high quality place. I should also point out that 46 of these homes will be 'Jersey Homebuy' units, offering more affordable family accommodation to those who could not otherwise aspire to home ownership.

The findings

The Committee's findings are set out in its report under 5 main headings, as follows –

- Section 2– Pre-zoning/Rezoning of the Site;
- Section 3– The Development Brief and the period between 2002 and December 2004;
- Section 4– The effectiveness of the Consideration of the Application by the Planning Department from January 2005 onwards;

- Section 5– Impact on the Infrastructure of the west of the Island; and
- Section 6– Miscellaneous matters.

I will restrict my response to some general observations on the main findings as set out in the Executive Summary and to the Committee’s 16 recommendations and would comment as follows:

Section 2 – Pre-zoning/rezoning of the Site

As I reported to the Committee, I was not a politician at this time and my knowledge of events is largely based on hearsay.

Nevertheless, on the evidence available, I would accept that there were problems with resources in association with the last Island Plan Review, which eventually led to the appointment of consultants to assist the process. The availability of adequate resources is a recurrent problem for the Planning Department and other States departments, particularly when tasked with major projects. That said, I am more than happy to take up the Committee’s recommendation that I scrutinise the resource situation relating to the current Island Plan Review process to ensure this runs effectively and efficiently.

I would also accept that the last Island Plan Review process could have been better in relation to the public consultation on sites put forward for rezoning for housing purposes. At the time, the Planning Law did not prescribe procedures for engagement with the public and the method chosen was exhibitions, public/parish meetings and provision for written representations. We can now benefit from the 2002 Island Planning Law, which is more prescriptive about the manner in which the Island Plan should be produced. The Law provides for a formal tried and tested process for the hearing of representations in public (e.g. Examination in Public). No doubt this will help people affected by future housing site proposals to more clearly understand the potential implications of rezoning decisions. I am pleased, therefore, that the Committee supports this approach as an improvement to the rezoning process.

Notwithstanding the above, it seems clear to me that even if this new process had been followed at the time, the site would still have be regarded as suitable for Category A housing purposes by the planning authority of the day based on all the information they had available to them, including the results of the chosen site selection and evaluation processes. The balance of the evidence at that time pointed to this being a comparatively good housing site, which complied with the established ‘spatial strategy’, had numerous advantages and was not anticipated to be affected by any insurmountable technical constraints.

Feasibility studies were produced for all the sites proposed for rezoning to cover the main planning and technical issues relating to each site, to ensure there were no overriding constraints to development and to inform the site evaluation and selection process. All the main issues raised in the Island Plan consultation process were addressed in the feasibility study for the site in question. It is difficult to see what additional information could have been gathered and who else might have been consulted at that stage. However, I would concur with the Committee that the initial failure of Environmental Health to advise the Planning and Environment Committee of the potential noise issue arising from the nearby Jersey Steel premises was a “fundamental error”. That said, it is difficult to follow the Committee’s logic in arguing that this omission was compounded because Environmental Health were not given a copy of the Feasibility Study so that they might review their comments. Why would the Planning and Environment Committee expect them to say anything different?

It is certainly true that the notion of ‘Parish Impact Assessments’ recommended by Professor McAuslan (in his review of the Consultation Draft of the Island Plan) for the parishes of St. Clement, St. Lawrence and St. Savio was not fully implemented and that resources and time constraints played a part in this. However, it is important to recognise that the main driver for this recommendation was to ensure a more equitable distribution of proposed housing sites. As a direct consequence, the Spatial Strategy was amended to take into account the equity of housing site distribution, and the proposed sites were reassessed with this in mind. This process led to the reduced concentration of proposed housing sites in certain areas, including the omission of another large site in the Bel

Royal area. For my part, I remain to be convinced of the value of using Parish Impact Assessments *per se* as a means of determining an equitable distribution of homes throughout the Island in future. This would not necessarily sit happily with the principles of sustainable development and current moves to concentrate the vast bulk of new housing development in St. Helier.

With regard to the inferred criticism about the recent proposition to rezone additional sites for “lifelong homes” and first-time buyers, I would simply point out that this was brought as a direct response to an urgent need for such homes identified by the Minister for Housing and Parish Connétables, which was supported by evidence from a variety of sources. The merits of each site were carefully weighed against the existing spatial strategy in the Island Plan and all the relevant material considerations were taken into account, in consultation with Transport and Technical Services, the main service providers, Health Protection and the respective parish authorities.

Section 3– The Development Brief and the period between 2002 and December 2004

It seems clear that there were some procedural irregularities in the planning process during the formulation of the development brief, relating to –

- The final version of the development brief being approved by the Planning Sub-Committee rather than the full Committee, as required by Island Plan Policy H2;
- The decision to require the developer to conduct a “technical seminar” before the development brief could be approved and the unorthodox manner in which this was decided; and
- The unsatisfactory recording of certain Committee decisions.

However, the Committee raises a much more fundamental issue to address in relation to the development brief process. I would concur entirely with its views regarding the process approved by the States of Jersey in 2002 for public consultation during the formulation of the briefs, in advance of formal applications. Despite its laudable aims, this process, which preceded my appointment as Minister, was unnecessarily time-consuming and undoubtedly gave rise to significant problems. In this particular instance, it only served to provoke and intensify opposition among local residents and their political representatives.

As I explained to the Committee, I am not a fan of development briefs. However, where they are considered desirable, I believe they should adopt a more outline form, providing a broad overview of the planning authority’s aspirations. I also believe that public consultation would be better confined to the specific proposals and issues arising from a formal planning application. For the above reasons, I welcome the Committee’s recommendation that supplementary policy guidance be formulated and agreed on the status, preparation and consultation of future development briefs.

With regard to the noise issue raised belatedly by Health Protection at the end of July 2002, I feel the suggestion that no further consideration was given to the issue might inadvertently mislead some readers. There is evidence to show that there were various exchanges between Health Protection and the Planning Department at the time and Health Protection’s concerns were included in the draft development brief approved by the former Planning and Environment Committee in March 2003, as the basis for public consultation. Interestingly, noise was not raised by local residents as an issue during the consultation process, although it was raised by Jersey Steel. Furthermore, the noise issue was addressed by the former Planning Sub-Committee in approving the final development brief in May 2004. Consequently, the brief called for the introduction of appropriate measures along the western boundary of the site to, among other things, muffle noise from the Steel Works, including the removal of the nearest proposed homes and the introduction of planted mounds. The noise issue has, of course, been addressed extensively on numerous occasions since the first application was submitted in November 2004.

In relation to the assertion that there was antipathy at the time between the Planning Department and Health Protection, I should point out that this view is not shared by the Director of Planning.

Section 4– The Effectiveness of the Consideration of the Application by the Planning Department from January 2005 onwards

Clearly, one would normally expect major applications of the scale proposed to be processed more slowly than others. However, I would have to agree that the time taken to deal with planning applications for this site from the first submission in November 2004 to my decision to grant permission in March 2007 was unprecedented and could not be regarded as acceptable.

There were, of course, many reasons for this and, not least: the highly politicised nature of the application process; the complexity of the issues raised; deficiencies in the information submitted with applications; and the difficulties presented in meeting the planning authority's aspirations and in satisfactorily resolving certain environmental and traffic concerns.

I would acknowledge that I have played a part in adding to the length of the application process, by refusing permission for 129 homes in August 2006 and requiring among other things a reduced number of homes and a change to the design approach. My reasons were well documented at the time and, naturally, I am pleased with the Committee's conclusions that I have provided the necessary leadership to resolve the outstanding issues.

The Committee is perfectly correct to highlight the noise issue as the single greatest factor in causing delay to the application process. It has been the most difficult issue to resolve and has consumed vast amounts of time and energy. This eventually led to the planning consent being conditional upon the implementation of a satisfactory 'noise protection scheme' involving noise mitigation measures both on and off the site.

On a more positive note, I was delighted to note that the Principal Planner and case officer has been completely exonerated over misplaced claims of bias.

I also welcome the Committee's findings with respect to –

- The coverage of environmental matters throughout the application process;
- The resolution of site encroachments beyond the land intended for housing;
- The compelling grounds for allowing for commencement of the development in advance of the Planning Obligation Agreement; and
- The benefits of my introduction of 'Public Hearings' for major or more controversial applications.

I acknowledge that there remains an outstanding requirement to produce up-to-date supplementary guidance on the design of new homes.

Section 5– Impact on the Infrastructure of the west of the Island

It seems clear to me that many of the concerns raised by local residents, including those in relation to traffic, flooding and drainage and education, have been fully addressed by experts and either proven to be unfounded, or to offer insufficient justification for opposing the site's development.

In this respect, I welcome the Committee's findings regarding traffic and education provision.

However, I cannot accept that the potential flooding issues have been underplayed at any stage in the planning and application process. As I have said previously, there has been a requirement from the outset for the applicant to analyse the risk of flooding and incorporate flood relief measures as part of any development. Indeed, the development brief calls for the appointment of a suitably qualified consultant to undertake the work and demonstrate that the proposed development would not be susceptible to future flooding or result in future flooding

of existing property. Experts have been appointed to carry out this work and I am satisfied that the proposed measures adequately address the flooding issues.

I also consider it is worth providing some clarification with regard to the issue of tree retention along St. Peter's Valley Road. Yes, this did come to a head at a late stage in the development. However, the issue was addressed from the outset of the application process and the political steers given by former planning committees were that the safety benefits associated with required road improvements outweighed the benefits of retaining the trees in question. It was only after the public outcry which followed the felling of most of these trees that I took the decision to try to protect the remaining trees.

Section 6– Miscellaneous matters

I note that the Committee accepts my reasons for the substantial reduction in the number of 'Homes for Life' from the number outlined in the Development Brief.

Recommendations of Committee of Inquiry

I am generally in agreement with the recommendations put forward by the Committee, albeit with certain reservations, and my specific comments are as follows:

Recommendation 1: *The Committee invites both the Minister for Planning and Environment and the Council of Ministers to reflect on whether the processes selected and the corresponding level of resources – and time – allocated to facilitate the on-going Island Plan Review are truly satisfactory.*

The restricted availability of resources is a perennial problem for the Planning Department. Fortunately, I have recently been able to secure funding for additional planners to assist in tackling the more immediate problems associated with the day-to-day planning applications workload. This has been made possible by employing 'User Pays' policies, involving planned increases in application fees.

I recognise that the Island Plan Review process is now placing increasing reliance on an overstretched Policy and Projects Section, where resources are particularly limited.

I intend, therefore, to keep the resource situation for the on-going Island Plan Review process under regular review and will advise the Council of Ministers accordingly. Given the significance of the Island Plan as the most important document for the planning and use of land, and the need to update it so that it remains a useful guide to the future, I will look to ensure that any identified resource deficiencies are properly addressed by the Council of Ministers and ultimately the States.

Recommendation 2: *States Members should continue to have the final say on rezoning sites for housing. They must be given full information and clear recommendations from the Planning Department as to why sites are considered suitable for rezoning and of any real or potential issues arising. Members should rely heavily on this advice.*

Agreed. This has always been the policy of the Planning Authority and I see no reason to change the position. The Planning and Building (Jersey) Law 2002, at Article 3, requires the Minister to seek approval from the States Assembly regarding the designation of land for particular purposes.

Recommendation 3: *Some indication as to site yields for Category A sites should be given in an Island Plan but not the final figure. The indication should have a built-in margin of error which is specified. Members can then assess whether or not the housing needs of the Island will*

be satisfied.

I would agree that it is necessary to give an indicative yield for Category A sites included in an Island Plan to allow an assessment of their potential contribution to identified housing requirements. Such indications have been included in both the current and previous Island Plans and various rezoning propositions over the years. I also believe there would be merit in providing a range for the indicative yields based on potentially applicable alternative theoretical densities.

However, the situation is by no means clear-cut. Planning applications must continue to be judged on their individual merits, and actual yields can only be properly determined by an acceptable design and layout. With larger sites and certain urban sites it is often difficult to predict in advance what will be the nature of the chosen design solution and, therefore, the final yield.

The problem with the earlier applications for the site in question was that the proposed number of homes did not bear what might be described as “*any reasonable resemblance to*” the stated indicative yield. It was for this reason that I refused the application for 129 homes on the site as an unacceptable departure from the Island Plan.

In the circumstances, the onus will remain with the Planning Authority to try to ensure that the indicative yields stated in future development plans are as realistic as possible. For my part, I will seek to ensure that actual yields arising from planning applications properly relate to indicative yields.

Recommendation 4: *Consideration should be given to the viability of organising a formal programme of visits for all elected States Members to sites earmarked for rezoning.*

Agreed. I believe that providing such an opportunity to all States Members would be an extremely useful exercise. By so doing, Members can be fully apprised of the sites in question and would get an opportunity to ask questions and raise concerns in advance of the formal decision-making process in the States Chamber.

Recommendation 5: *The fact that there is a willing seller of land, which is otherwise suitable for the purpose intended, should remain a material circumstance to be taken into account by the Planning Department when selecting sites for possible rezoning, albeit that the existence of a willing seller should not override other material planning considerations.*

Agreed. The willingness of the land-owner to have sites developed has been a material consideration in evaluating and selecting Category A housing sites for the last 20 years. It is one of many material considerations and important to ensure that development comes forward in the required time-frame to meet identified housing needs. In the absence of any such consideration, progress could be severely constrained by unwilling sellers, which might only be resolved by employing compulsory purchase powers. This is something which has always been seen in political circles as a last resort and something to be avoided if at all possible. It goes without saying that the existence of a willing seller does not override other material planning considerations, including the requirements of any approved spatial strategy and other relevant strategic planning policies.

Recommendation 6: *A clear policy on the status, preparation and consultation of future development briefs should be formulated (if there is no such policy in existence) and agreed upon. A list of people to whom it must be circulated should be created and adhered to, whatever the application. A Development Brief should contain indications and guidelines for the development of a site in more detail than those included in any Feasibility Study. It should not contain rigid requirements. Its purpose should be as a discussion document for use between the Planning Department and the developer to enable costing to be undertaken and potential problems/areas of conflict identified.*

I am on record as not being a particular fan of development briefs. Not least, because there will always be changes

in circumstances and alternative approaches to development which are not addressed in the briefs. However, where development briefs are deemed necessary to provide guidance and a framework of advice for the development of a site, it is clear that substantial weight must be given to them in dealing with subsequent applications. I would, therefore, support the preparation of supplementary guidance to set out clear policies on the status, preparation and consultation of development briefs, as recommended. I will ask my Department to include this in its work programme.

Recommendation 7: *It should be made clear to statutory consultees that a “No comment” answer is insufficient. Some reason for the disinterest in the application, even if relatively brief, must be given thus enabling the planning officer to be assured that due consideration has been given to the application.*

Agreed. I will instruct my Department accordingly.

Recommendation 8: *There should be no more than one Draft Development Brief sent out to statutory consultees for their consideration.*

I am advised that only one draft development brief was prepared for the site in question. However, in any event, the matter has now been superseded. In future, only finalised development briefs will be sent out to consultees.

Recommendation 9: *A Draft Development Brief should not be published for the purposes of an extended public consultation.*

Agreed. This approach was promoted by the former Planning and Environment Committee in proposing the current Island Plan and agreed by the States. It had never been done prior to 2002, and I do not intend that it be done in the future. As alluded to earlier, not only was the consultation time-consuming in the case under consideration, it also served to intensify opposition from local residents and their political representatives.

Recommendation 10: *A developer should not be permitted or encouraged to propose any scheme until the Development Brief for a rezoned site is finally approved following consultation with statutory bodies and others as outlined above.*

Again, this refers to the approach promoted by the former Planning and Environment Committee, which encouraged the developer to produce a scheme as an interpretation of the draft development brief for public consultation purposes. In future, where a development brief is deemed necessary, the developer will be encouraged to wait for the brief to be finalised, and I would not be prepared to permit any development in advance of that.

Recommendation 11: *Clear and realistic timescales should be identified for each stage in the planning process to alleviate the risk of unnecessary delays.*

Whilst I agree there is merit in producing a timetable for each stage in an Island Plan preparation process and for the formulation and completion of development briefs, this cannot be extended to the planning application process for major/complex developments. All such cases will need to be considered on their individual merits and, as in the case in question, there are many reasons why unforeseen delays may occur. A great many of those reasons are outside the control of the planning authority (e.g. delays arising from: late submission of applications; not providing specific information requirements; additional requirements of statutory consultees; additional unforeseen requirements emerging from representations/consultation; and the submission of unsatisfactory/unacceptable development proposals).

Recommendation 12: *Material decisions of Committees or Ministers must be properly recorded and minutes of meetings must be accurate and suitably comprehensive in all respects.*

Agreed. However, it has always been the intention to properly and accurately record the decisions of former States Committees and Ministers. I would hope that any errors that did occur in the past are less likely to occur in the future, following the introduction of the new recording processes that came in with Ministerial Government and which have now largely been bedded in.

Recommendation 13: *Parties who could potentially be asked to participate in a Planning Obligation Agreement should be identified and involved in discussions at the earliest stage possible.*

Agreed. Obviously, attempts have been made to do just this, since the relatively recent introduction of Planning Obligation Agreements.

Recommendation 14: *An Island-wide traffic study and plan against which such developments can be assessed is long overdue. The Committee suggests that the Minister for Transport and Technical Services should take the necessary steps to publish and to implement his forthcoming Integrated Travel and Transport Policy without further delay.*

Agreed. I am aware that the Minister for Transport and Technical Services has prepared a draft Integrated Travel and Transport Policy document, which has been the subject of consultations with the Council of Ministers. It is due to be reviewed by the next Council of Ministers, as reconstituted, following the forthcoming elections and the formation of the new States Assembly.

Recommendation 15: *An Environmental Impact Assessment should be carried out as a matter of course in such large developments in the future.*

Article 13 of the Planning and Building (Jersey) Law 2002 sets out the basis upon which applications for planning permission require an 'environmental impact statement'. This includes where the proposed development –

- (i) falls within a class of development prescribed by Order for the purpose; and
- (ii) would be likely to have a significant effect on the environment of the Island, or elsewhere.

The Planning and Building (Environmental Impact) (Jersey) Order 2006, which post-dates the initial applications for the site in question, includes a list of developments which specifically require an 'environment impact assessment' and housing developments are not included in that list.

As a consequence, it will remain for me, in consultation with the Environment Department, to determine whether any future proposed residential development will have a sufficiently significant effect on the environment to justify/require an 'environmental impact assessment', based on its nature, size or location.

Each case will have to be determined on its merits and if the development proposals in question were to come forward now, I would follow the process laid down in the relevant Order.

Recommendation 16: *The Committee invites both the Minister for Planning and Environment and the Minister for Housing to reflect on whether existing definitions and policies on first-time buyer housing provision remain an effective and efficient way of satisfying housing need.*

This recommendation relates to a miscellaneous matter considered by the Committee of Inquiry. It was concerned that the definition of those requiring 'first-time buyer' homes includes potential anomalies which could complicate and distort the Island's housing market and reduce the effectiveness of satisfying the need for such properties. For example, it could include (under various circumstances) owners of Flying Freehold and Share Transfer flats.

For planning purposes, the definition of a 'first-time buyer' is –

“(1) any person who –

(i) does not own, and has not previously owned, whether as a sole owner or jointly in common with any persons –

(a) any immovable property;

(b) either in his own name or as beneficial owner shares in any company, ownership of which confers the right to occupy residential accommodation;

and –

(ii) any person who has been approved by the Minister for Housing as being a person to whom consent should be granted to acquire or to occupy the residential accommodation as the case may be notwithstanding the fact that he does not fall within (1) above.”

The onus, therefore, is effectively on the Minister for Housing to determine who qualifies as a 'first-time buyer'.